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THE CIVIL COURT MANUAL
(IMPERIAL ACTS)

THE
CIVIL COURT MANUAL
(IMPERIAL ACTS)

EIGHTH EDITION

[REVISED AND ENLARGED]

VOLUME III
(*BROUGHT UP TO DATE*)

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THE
CIVIL COURT MANUAL
(IMPERIAL ACTS)

[VOLUME III]

THE HINDU DISPOSITION OF PROPERTY ACT (XV OF 1916).

Year.	No.	Short title.	Amendment.
1946	XV	The Hindu Disposition of Property Act, 1916.	XXI of 1929.

[28*th September*, 1916.

An Act to remove certain existing disabilities in respect of the power of disposition of property by Hindus for the benefit of persons not in existence at the date of such disposition.

WHEREAS it is expedient to remove certain existing disabilities in respect of the power of disposition of property by Hindus for the benefit of persons not in existence at the date of such disposition: it is hereby enacted as follows:—

Short title and extent.

1. (1) This Act may be called THE HINDU DISPOSITION OF PROPERTY ACT, 1916.

(2) It extends, in the first instance, to the whole of British India, except the Province of Madras: Provided that the [1][Provincial Government] may, by notification in the Official Gazette, extend this Act to the province of Madras.

Dispositions for the benefit of persons not in existence.

2. Subject to the limitations and provisions specified in this Act, no disposition of property by a Hindu, whether by transfer *inter vivos* or by will, shall be invalid by reason only that any person for whose benefit it may have been made was not in existence at the date of such disposition.

Limitations and conditions.

3. The limitations and provisions referred to in section 2 shall be the following, namely:—

(*a*) in respect of dispositions by transfer *inter vivos*, those contained in [2][*Chapter II*] of the Transfer of Property Act, 1882, and

(*b*) in respect of dispositions by will, those contained in [2][sections 113, 114, 115 and 116 of the Indian Succession Act, 1925].

4. *Failure of prior disposition* [*Repealed by the Transfer of Property (Amendment) Supplementary Act* (*XXI of* 1929), *S.* 12.]

LEG. REF.

1 Substituted for the words "Governor-General in Council" by A.O., 1937.

2 Substituted by Act XXI of 1929, S. 12.

Application of this Act to the Khoja community.

5. Where the [1][Provincial Government] is of opinion that the Khoja community in [2][the Province] or any part thereof desire that the provisions of this Act should be extended to such community, [3][it] may, by notification in the Official Gazette, declare that the provisions of this Act, with the substitution of the word "Khojas" or "Khoja", as the case may be, for the word "Hindus" or "Hindu" wherever those words occur, shall apply to that community in such area as may be specified in the notification, and this Act shall thereupon have effect accordingly.

THE HINDU GAINS OF LEARNING ACT (XXX OF 1930).

[25*th July*, 1930.

An Act to remove doubt as to the rights of a member of a Hindu undivided family in property acquired by him by means of his learning.

WHEREAS it is expedient to remove doubt, and to provide an uniform rule, as to the rights of a member of a Hindu undivided family in property acquired by him by means of his learning: It is hereby enacted as follows:—

Short title and extent.

1. (1) This Act may be called THE HINDU GAINS OF LEARNING ACT, 1930.

(2) It extends to the whole of British India.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "acquirer" means a member of a Hindu undivided family, who acquires gains of learning;

(*b*) "gains of learning" means all acquisitions of property made substantially by means of learning whether such acquisitions be made before or after the commencement of this Act and whether such acquisitions be the ordinary or the extraordinary result of such learning; and

(*c*) "learning" means education, whether elementary, technical, scientific, special or general, and training of every kind which is usually intended to enable a person to pursue any trade, industry, profession or avocation in life.

Gains of learning not to be held not to be separate property of acquirer merely for certain reasons.

3. Notwithstanding any custom, rule or interpretation of the Hindu Law, no gains of learning shall be held not to be the exclusive and separate property of the acquirer merely by reason of—

(*a*) his learning having been, in whole or in part, imparted to him by any member, living or deceased, of his family, or with the aid of the joint funds of his family, or with the aid of the funds of any member thereof; or

(*b*) hmself or his family having, while he was acquiring his learning, been maintained or supported, wholly or in part, by the joint funds of his family, or by the funds of any member thereof.

Savings.

4. This Act shall not be deemed in any way to affect—

(*a*) the terms or incidents of any transfer of property made or effected before the commencement of this Act,

(*b*) the validity, invalidity, effect or consequences of anything already suffered or done before the commencement of this Act,

(*c*) any right or liability created under a partition, or an agreement for a partition, of joint family property made before the commencement of this Act, or

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LEG. REF.

[1] Substituted for the words "Governor-General in Council" by A.O., 1937.

[2] Substituted for the words "British India" by *ibid.*

[3] Substituted for the word 'he' by *ibid.*

(*d*) any remedy or proceeding in respect of such right or liability; or to render invalid or in any way affect anything done before the commencement of this Act in any proceeding pending in a Court at such commencement; and any such remedy and any such proceeding as is herein referred to may be enforced, instituted or continued, as the case may be, as if this Act had not been passed.

THE HINDU INHERITANCE (REMOVAL OF DISABILITIES) ACT (XII OF 1928).

[20*th September*, 1928.

An Act to amend the Hindu Law relating to exclusion from inheritance of certain classes of heirs, and to remove certain doubts.

WHEREAS it is expedient to amend the Hindu Law relating to exclusion from inheritance of certain classes of heirs, and to remove certain doubts; It is hereby enacted as follows:—

Short title, extent and application.

1. (1) This Act may be called THE HINDU INHERITANCE (REMOVAL OF DISABILITIES) ACT, 1928.

(2) It extends to the whole of British India, including British Baluchistan and Sonthal Parganas.

(3) It shall not apply to any person governed by the Dayabhaga School of Hindu law.

Persons not to be excluded from inheritance or rights in joint family property

2. Notwithstanding any rule of Hindu Law or custom to the contrary, no person governed by the Hindu Law, other than a person who is and has been from birth a lunatic or idiot, shall be excluded from inheritance or from any right or share in joint family property by reason only of any disease, deformity, or physical or mental defect.

Saving and exception.

3. Nothing contained in this Act shall affect any right which has accrued or any liability which has been incurred before the commencement thereof, or shall be deemed to confer upon any person any right in respect of any religious office or service or of the management of any religious or charitable trust which he would not have had if this Act had not been passed.

THE HINDU LAW OF INHERITANCE (AMENDMENT) ACT (II OF 1929)

[21*st February*, 1929.

An Act to alter the order in which certain heirs of a Hindu male dying intestate are entitled to succeed to his estate.

WHEREAS it is expedient to alter the order in which certain heirs of a Hindu male dying intestate are entitled to succeed to his estate; It is hereby enacted as follows:—

PREAMBLE.—"HINDU MALE DYING INTESTATE"—MEANING OF.—The words "Hindu male dying intestate", in the preamble of the Act, simply mean the Hindu male who has died or may die hereafter and they cannot be construed as meaning only a Hindu male who will hereafter die intestate as excluding one who has already died. 16 P. 215 =18 Pat.L.T. 8=1937 P. 117 (F.B.). The Act affects all Hindus governed by the Mitakshara. Hence in the absence of an interpretation clause the Courts should interpret the terms of the enactment in the sense in which they are used in the Mitakshara law. 69 I.A. 145=1943 P.C. 10=(1943) 1 M.L.J. 180 (P.C.). This Act is no guide to the interpretation of the rules of the old law of Inheritance. 1942 N.L.J. 65=1942 Nag. 57 =I.L.R. (1942) Nag. 629. The Hindu Law of Inheritance Amendment Act only applies to the separate property of a Hindu male

Short title, extent and application.

1. (1) This Act may be called THE HINDU LAW OF INHERITANCE (AMENDMENT) ACT, 1929.

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who dies intestate. Where the estate in dispute is the stridhanam property of a Hindu widow, the property can only be regarded as belonging to her in her own right and hence the Act does not apply; succession to such property is governed by the ordinary rule of Hindu lalw. 59 L.W. 134=(1946) 1 M.L.J. 196. The Act applies not only to persons who were already heirs under the Mitakshara law but also to the persons specified so as to constitute them heirs even in those provinces where they were not heirs according to the prevailing view of the law of the Mitakshara. 69 I.A. 145=1942 P.C. 10=(1943) 1 M.L.J. 180 (P.C.). The Act does not apply to the Bombay Province, and the order of succession in Bombay giving the sister a place after the father's mother and before the father's father is not affected or altered by the Act. Under the Bombay school a full sister is a preferential heir to a half-sister. 45 Bom.L.R. 434=1943 Bom. 213.

SEC. 1: ACT, IF RETROSPECTIVE—SCOPE AND EFFECT.—The provisions of Act II of 1929 regulate succession to the estate of a Hindu male, governed by the law of the Mitakshara, who had died before the Act came into force but whose estate had vested in a female holder who was alive on 21st February, 1929, which is the date of the enforcement of the Act. 39 P.L.R. 448=1937 Lah. 196 (2). *See also* I.L.R. (1937) Mad. 948=46 L.W. 37=1937 Mad. 699=(1937) 2 M.L.J. 209 (F.B.); 18 Pat.L.T. 8=16 Pat. 215=1937 Pat. 117 (F.B.); 1937 O.W.N. 672 =1937 Oudh 402. The Act merely alters the order of succession but does not alter the date on which the succession opens out. It is clear the question about the order of succession is material only when the succession opens out, and so if that event occurs after the Act has come into force, the order given in the Act should apply. 172 I.C. 858=1938 Nag. 97. Where the last male owner dies before the passing of the Act leaving a female heir who is alive after that Act came into force, the succession to the last male owner is governed by the provisions of this Act. 1943 O.W.N. 140=1943 Oudh 316. Succession to the estate of a Hindu who leaves a widow surviving him is governed by the state of things which exists, not at his death, but at the death of his widow. In other words, for the purposes of succession a Hindu is deemed to have died not on the date on which he actually died, but on the date of the death of his widow. Where a Hindu dies intestate before the passing of the Act but his widow who takes the estate dies after the coming into force of the Act, the Act will govern the succession to that estate. To apply the Act when the widow dies after the Act is in no sense to make the Act retrospective. 40 Bom.L.R. 120=1939 Bom. 50. Stridhan of maiden dying after 1929 —Succession—Preferential right among heirs of father—Determination—Reference to Act is permissible. I.L.R. (1939) Bom. 228=41 Bom.L.R. 287=1939 Bom. 194. The object of the Hindu Law of Inheritance (Amendment) Act is to allow a new class of persons "to succeed by inheritance" and the Act applies to all cases where succession opens after its coming into force. Where a Hindu owner dies before the coming into force of the Act and is succeeded by his grandmother who dies after the Act comes into force, the sister is entitled to succeed to his estate under the Act as succession opens when the grandmother dies, and not when the last male owner dies. 161 I.C. 353=1936 A.L.J. 64=1936 A. 154. If succession opens out after the coming into force of Act II of 1929, a sister can take advantage of the provisions of the Act even though the last male owner had died previously. A sister can, therefore, after the Act has come into force, maintain a suit for a declaration that an agreement entered into between the widows and the reversioners on the last male owner's death is not binding on her, even though the agreement was executed before the Act came into force. 163 I.C. 756=1936 A.L.J. 659=1936 A. 507 (F.B.). The Hindu Law of Inheritance (Amendment) Act applies even to cases where the last male Hindu owner had died prior to the coming into force of that Act, and after the passing of that Act, the sister has a reversionary right to his estate. Where, therefore, the last male owner died before the Act came into force and he was succeeded by his mother who remained in possession of the property till after the Act came into force and then executed a deed of gift in favour of her daughter, the deed of gift being by one limited owner in favour of another who is the next reversinary heir would have the effect of acceleration of the interest in her favour. 1937 O. 204=12 Luck. 324=1936 O.W.N. 712. Act II of 1929 is not retrospective and a sister is not an heir where the Hindu male through whom she claims died before the passing of the Act. 1933 L. 777 (1)=34 P.L.R. 964=146 I.C. 511 (1). *See also* 153 I.C. 545=1935 A. 203; 57 M. 718=66 M.L.J. 70=1943 M. 138. Act II of 1929 applies to the case of a person who dies before it came into force, if his widow, who inherits his estate, is alive at the time of its enforcement. (1932 L. 361 and 1934 P. 324, Foll.). 17 L. 356=1936 L. 124. Act does apply to cases in which a male governed by the law of Mitakshara has died before the date on which the Act came into force leaving a widow who was alive on such date. (1936 L. 124, Foll.) 163 I.C. 480 (1)=1936 L. 139. *See also* 1937 L. 196 (2). Where a widow is in possen-

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas, but it applies only to persons who, but for the passing of this Act, would have been subject to the law of Mitakshara in respect of the provisions herein enacted, and it applies to such persons in respect only of the porperty of males not held in coparcenery and not disposed of by will.

Order of succession of certain heirs.

2. A son's daughter, daughter's daughter, sister, and sister's son shall, in the order so specified, be entitled to rank in the order of succession next after a father's father and before a father's brother:

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sion of her husband's estate as a limited owner, the question whether certain persons are heirs under Act II of 1929 depends on the date of the death of the widow and not on the date of the death of the last male-holder. In such cases the question is not whether Act II of 1929 is retrospective. 150 I.C. 1039=15 P.L.T. 707=1934 P. 324. But *see also* 66 M.L.J. 70. On the language of the Act as it stands, no question of its retrospective operation arises. The mere fact that the change of law introduced by the Act affects also the estates of persons who have died intestate before the Act does not, by itself, make the Act retrospective in its operation. The critical date being the date when the succession opens, the Act would be retrospective only if it was applied to cases where the succession opened before the Act. That the Act may in certain cases apply to the estates of persons who died before the passing of the Act cannot prejudicially affect any rights which the reversioner possesses only in a representative capacity. It cannot therefore be said that the Act is retrospective. 16 P. 215=1937 P. 117 (F.B.). The effect of the Act is simply to substitute a revised list of reversionary heirs to a Hindu male with certain additions and alterations in place of the list which was in force under the law as it stood before the Act. The Act, however, makes no reference to the date of death of the Hindu male and there is no reason why the operation of the Act should depend upon that date. The only date which is material is the date when the succession opens or when the question of succession to the estate arises. If such a question arose before the Act came into force, the succession would be governed by the Hindu Law as it stood then; but if the question were to arise after the Act, the Act would apply. The only criterion to be applied in determining whether the Act is applicable to a particular case is to enquire when the succession opened and whether the conditions laid down in the Act for its application have been fulfilled. The question of the applicability of the Act will arise only when the succession opens and not before it. 16 P. 215=18 Pat.L.T. 8=1937 P. 117 (F.B.). The Act was designed not only to give a sister a higher position in the order of succession than she previously held in provinces where she was already an heir but also to constitute her an heir even in provinces where she was not previously an heir according to the prevailing view of Hindu Law. 10 O.W.N. 424=1933 O. 231; 168 I.C. 733 =1937 Oudh 402=1937 O.W.N. 672. *See also* 57 B. 377=35 Bom.L.R. 397=1933 B. 272; 146 I.C. 511 (1)=1533 L. 777 (1). Right to challenge alienation by widow already barred by time—Persons becoming reversioners by reason of this Act—Right of suit. *See* 19 Pat.L.T. 145=1938 P. 510.

SEA. 1 (2): "PROPERTY NOT DISPOSED OF BY WILL"—MEANING OF.—The words "not disposed of by will" which occur at the end of the sub-sec. (2) of S. 1 of the Act cover also property that cannot be disposed of by will. 16 P. 215=18 Pat.L.T. 8=1937 P. 117 (F.B.). The term 'Hindu' should be interpreted as including Jains more particularly in view of the wording in S. 1 (2) of the Act. 1938 N.L.J. 168=1938 Nag. 298. The Act applies not only to persons who were heirs under some sub-schools of the Mitakshara but also to son's daughter, daughter's daughter, sister and sister's son in all the provinces governed by the Mitakshara and makes them heirs in those provinces. 15 Luck. 229=1940 Oudh 138 (F.B.). The Act applies to Hindus including Jains, and to all persons governed by the Mitakshara law including those governed by the Mitakshara law as modified by the Mayukha. Among Jains from Gujarat who have migrated and settled in the Belgaum District, the sister's son is entitled to succeed to a deceased male in preference to a father's sister. The position of the father's sister as a preferential heir as a gotraja sapinda is not saved by S. 3 (*a*) of the Act. I.L.R. (1941) Bom. 250=43 Bom.L.R. 114=1941 Bom. 233.

SEC. 2.—The Act is very limited in its scope, and regulates succession only to the separate property of a Hindu male dying in intestacy. It does not purport to alter the law in respect of the property of a female. But where a husband succeeds to his wife's stridhana property, and dies, it descends in the same way as if it had belonged to the husband himself; and to ascertain as to who the heirs of the husband are, the Court must refer to the law governing succession to the property of the husband in force at the time when succession opens out. If at such time Act II of 1929 has come into force, it is that Act which governs succession and the property cannot be deemed to be property of a female,

Provided that a sister's son shall not include a son adopted after the sister's death.

Savings.

3. Nothing in this Act shall—

(*a*) affect any special family or local custom having the force of law, or

(*b*) vest in a son's daughter, daughter's daughter or sister an estate larger than, or different in kind from, that possessed by a female in property inherited by her from a male according to the school of Mitakshara law by which the male was governed, or

(*c*) enable more than one person to succeed by inheritance to the estate of a deceased Hindu male which by a customary or other rule of succession descends to a single heir.

THE HINDU MARRIED WOMEN'S RIGHT TO SEPARATE RESIDENCE AND MAINTENANCE ACT (XIX OF 1946).

[*4th May*, 1946.

An Act to give Hindu married women a right to separate residence and maintenance under certain circumstances.

WHEREAS it is expedient to provide for the right to separate residence and maintenance under certain circumstances in the case of Hindu married women; It is hereby enacted as follows:—

1937 Lah. 196. *B* gifted certain property inherited from her son to her daughter's son. In April, 1925, the reversioners obtained a decree to the effect that the gift did not affect the reversioner's rights. The donee preferred an appeal and during its pendency Act II of 1929 came into force. The donor being alive, *held*, that the suit should be dismissed because under the new Act the donee was entitled to succeed *B* in preference to the plaintiff. *Semble*: Had *B* died before the Act came into force the position would have been different. 13 L. 178=138 I.C. 291=1932 L. 361.

SISTER AND HALF-SISTER.—Although the term sister in S. 2 includes a half-sister, the full-sister and the half-sister will not take together. The latter will take the inheritance only when there is no full sister to claim it. 69 I.A. 145=1943 P.C. 10=(1943) 1 M.L.J. 180 (P.C.). *See also* 1938 Nag. 134 (F.B.). The word "sister" in S. 2, includes a half-sister by the same father. 1943 P.C. 184=(1943) 2 M. L. J. 459 (P.C.). *See also* 1938 Mad. 364; 1947 Mad. 555. The Act must be construed strictly but it must be construed in accordance with Hindu conceptions; the word "sister" in S. 2 includes also a half-sister by the same father. I.L.R. (1943) Mad. 235=56 L. W. 12=1943 Mad. 139=(1943) 1 M.L.J. 1 (F. B.); 1933 A.L.J. 680=1933 All. 491; 1935 Oudh 332; 1940 Pat. 310 are not good law). The word 'sister' in S. 2 of the Act includes half-sister. Consequently the son of the half-blood and the son of the full-blood both fall within the class referred to as 'sister's son' in the Act. It does not, however, follow that in contest between the son of a sister of the full-blood and the son of a sister of the half-blood the two would be deemed equal. 172 I.C. 858=1938 Nag. 97. The object of the Act was to legalise the position of certain heirs including the sister and it was not intended to change for the worse the position which the sister holds in the Bombay Presidency. *Held*, that the sister was the preferential heir to the brother's widow. 35 Bom.L.R. 397=1933 B. 272=57 B. 377.

SISTER—RIGHT TO SUCCEED TO MOTHER'S ESTATE.—A sister is an heir and is entitled to succeed to the estate inherited by mother, as such, after her death. 1934 A. 469.

"SISTER'S SON"—MEANING OF—IF INCLUDES SON OF HALF-SISTER.—The term "sister" in S. 2 includes a half-sister, (*i.e.*) a sister by the same father even though the mother is different; but cannot be extended beyond that to include one who has not the same father. By parity of reasoning the term "sister's son" includes a half-sister's son. Accordingly a half-sister's son is entitled under the Act to preference as heir over the father's uncle's son and on his death his mother is entitled to succeed him under the ordinary law. 67 I.A. 145=1943 P.C. 10=(1943) 1 M.L.J. 180 (P.C.).

SEC. 3 (*a*).—A custom in its legal sense is some established practice at variance with the general law. The practice by which sisters were excluded from inheritance in Oudh is merely in accordance with Hindu Law as interpreted there and hence it is not a special custom within the meaning of S. 3 (*a*) of Act II of 1929 so as to exclude sisters from inheritance after the passing of the Act. 10 O.W.N. 424=1933 O. 231. Whether or not the custom referred to in S. 3 (*a*) must be one in derogation of the law of the school governing the parties, it is clear that judicial decisions based either on inferences drawn from the texts or on the principle of *stare decisis* cannot constitute a custom within the meaning of the Act. I.L.R. (1941) Bom. 250=43 Bom.L.R. 114=1941 Bom. 233. The position of the father's sister as a preferential heir as a *gotraja sapinda* is not saved by S. 3 (*a*) of the Act. I.L.R. (1941) Bom. 250=43 Bom.L.R. 114=1941 Bom. 233.

Short title and extent.

1. (1) This Act may be called THE HINDU MARRIED WOMEN'S RIGHT TO SEPARATE RESIDENCE AND MAINTENANCE ACT, 1946.

(2) It applies to the whole of British India.

Grounds for claiming separate residence and maintenance.

2. Notwithstanding any custom or law to the contrary a Hindu married woman shall be entitled to separate residence and maintenance from her husband on one or more of the following grounds, namely,—

(1) if he is suffering from any loathsome disease not contracted from her;

(2) if he is guilty of such cruelty towards her as renders it unsafe or undesirable for her to live with him;

(3) if he is guilty of desertion, that is to say, of abandoning her without her consent or against her wish;

(4) if he marries again;

(5) if he ceases to be a Hindu by conversion to another religion:

(6) if he keeps a concubine in the house or habitually resides with a concubine;

(7) for any other justifiable cause:

Provided that a Hindu married woman shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by change to another religion or fails without sufficient cause to comply with a decree of a competent Court for the restitution of conjugal rights.

Amount of maintenance.

3. When allowing a claim for separate residence and maintenance under section 2, the Court shall determine the amount to be paid by the husband to the wife therefor, and in so doing shall have regard to the social standing of the parties and the extent of the husband's means.

THE HINDU WIDOWS' RE-MARRIAGE ACT (XV OF 1856).

Short title given, Act XIV of 1897.

Declared in force—

Throughout British India, except as regards the Scheduled Districts Act, XV of 1874, S. 3;

In the Sonthal Parganas, Reg. III of 1872, S. 3, as amended by Reg. III of 1899, S. 3;

In the Angul District, Reg. III of 1913, S. 3.

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7. Consent to re-marriage of minor widow

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Consent to re-marriage of major widow.

[25*th July*, 1856.

An Act to remove all legal obstacles to the marriage of Hindu widows.

Preamble.

WHEREAS it is known that, by the law as administered in the Civil Courts established in the territories in the possession and under the Government of the East India Company, Hindu widows with certain exceptions are held to be, by reason of their having been once married, incapable of contracting a second valid marriage, and the

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LEG. REF.

[1] Short title: "The Hindu Widows' Re-marriage Act 1866". *See* The Indian Short Titles Act (XIV of 1897).

offspring of such widows by any second marriage are held to be illegitimate and incapable of inheriting property; and

Whereas many Hindus believe that this imputed legal incapacity, although it is in accordance with established custom, is not in accordance with a true interpretation of the precepts of their religion, and desire that the civil law administered by the Courts of Justice shall no longer prevent those Hindus who may be so minded from adopting a different custom, in accordance with the dictates of their own conscience; and

Whereas it is just to relieve all such Hindus from this legal incapacity of which they complain, and the removal of all legal obstacles to the marriage of Hindu widows will tend to the promotion of good morals and to the public welfare; It is enacted as follows:—

Marriage of Hindu widows legalised.

1. No marriage contracted between Hindus shall be invalid, and the issue of no such marriage shall be illegitimate, by reason of the woman having been previously married or betrothed to another person who was dead at the time of such marriage, any custom and any interpretation of Hindu law to the contrary notwithstanding.

Rights of widow in deceased husband's property to cease on her re-marriage.

2. All rights and interests which any widow may have in her deceased husband's property by way of maintenance, or by inheritance to her husband or to his lineal successors, or by virtue of any will or testamentary disposition conferring upon her, without express permission to re-marry, only a limited interest in such property, with no power of alienating

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SEC. 1: SCOPE AND APPLICATION OF ACT. —Act is not retrospective. 28 Bom.L.R. 431=94 I.C. 704=1926 B. 381. All cases of re-marriage of Hindu widows are governed by Act XV of 1856. Customs can only take effect within the four walls of that Act. 12 I.C. 623. But *see also* 65 I.C. 117=24 O.C. 297. The Act applies to all Hindu widows irrespective of caste regulations concerning re-marriage. 17 I C. 133=8 N.L. R. 128. The Act was intended to render re-marriage valid and to secure the legitimacy of children. It conferred a benefit on those who could not re-marry, but at the same time imposed a restriction on them. It was not intended to deprive those who already possessed the right to re-marry, of whatever rights they enjoyed in their deceased husband's properties. 1932 A.L.J. 941 =1932 A. 617 (F.B.). Neither the conversion of a widow into Mahomedanism nor her marriage with a Mahomedan husband after con version could divest her of her interest in her deceased Hindu husband's estate. 35 A. 466=20 I.C. 335=11 A.L.J. 678. But *see also* 59 B. 417=37 Bom.L.R. 150=1935 B. 298.

CUSTOM.—Act does not apply where by custom, a widow is permitted to re-marry and does not forfeit the property inherited by her from her former husband. 65 I.C. 117= 24 O.C. 297. *See also* 55 A. 24= 140 I. C. 631=1932 A. L. J. 941= 1932 A. 617; 19 C. 289; 11 A. 330; 11 B. 119; 31 A. 161; 15 C.W.N. 579; 32 A. 489; 11 A.L.J. 683; 12 I.C. 623; 7 O.W.N. 206=121 I.C. 899; 12 L. L.J. 196; 122 I.C. 512. But *see also* 3 Luck. 610; 1929 M. 765=57 M.L.J. 253. Act does not override the customs prevailing in Punjab as regards non-forfeiture of widow's rights over her deceased husband's property by virtue of S. 7 of Act IV of 1872 (Punjab Laws Act, 1924), S. 17.

OBJECT OF THE ACT.—It is not the object of the Act to deprive a Hindu widow upon her re-marriage of any right or interest which she had at the time of her re-marriage. 4 Pat.L.T. 650=1924 P. 233.

RIGHT OF INHERITANCE.—When after the re-marriage of a widow her son dies and the question is of her right of succeeding to him, the Act must be held not to affect her rights. 4 Pat.L.T. 650=1924 P. 233. A Hindu widow can inherit from her son by a former marriage, though she had re-married at the date of her son's death. 26 C.W.N. 925= 1922 C. 140 (11 W.R. 82, Ref.; 29 B. 91, Ref.). A re-married Hindu widow succeeds to the property of her son by her first husband, whether or not the Act applies. 70 I. C. 479=79 I.C. 1048=1922 C. 140=26 C.W. N. 925=39 C.L.J. 88 (11 W.R. 82, Foll.).

SEC. 2: RIGHT OF WIDOW RE-MARRYING ACCORDING TO CASTE CUSTOM—FORFEITURE— CONFLICT OF RULINGS.—S. 2 applies not only to widows who could not re-marry before the passing of the Act but also to those who were not so precluded from re-marrying either by law or custom. In either case, the widow forfeits the estate inherited by her from her former husband. 50 C. 727=27 C.W.N. 669 =1924 C. 98. But *see also* 4 Pat.L.T. 650. S. 2 does not apply to the case of those widows who are entitled under the custom of their caste to re-marry

the same, shall upon her re-marriage cease and determine as if she had then died; and the next heirs of her deceased husband, or other persons entitled to the property on her death, shall thereupon succeed to the same.

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and are not bound to take advantage of the provisions of the Act. Accordingly there is no forfeiture of the Hindu widow's estate on re-marriage under the Act in such a case, nor can such forfeiture ensue as a matter of equity as it is against natural justice. The proof of mere custom of re-marriage would not be sufficient to involve forfeiture under the Hindu Law and it would be necessary for the party claiming that the estate has been forfeited on account of re-marriage to prove that there is a custom of such forfeiture in such a contingency. 55 A. 24 =140 I.C. 631=1932 A.L.J. 941= 1932 A. 617 (F B.). But *see* 154 I.C. 875=1935 P. 58. A Hindu widow of the Jat community, among whom the custom of re-marriage has existed even before 1856, does not forfeit her rights in her husband's estate on her re-marriage by virtue of S 2 of the Act. 49 A. 203=100 I.C. 734=1927 A. 523. S. 2 of the Act applies also to Hindu castes in which widow re-marriage is permissible and a custom permitting the retention, by the re-marrying widow, of her estate in her first husband's property after re-marriage cannot be pleaded in the face of the express statutory forfeiture of such estate enacted by the section. 1929 M. 765=57 M.L.J. 253. *See also* 122 I C. 512. S. 2 of the Hindu Widows' Re-marriage Act must necessarily apply where the validity of a Hindu widow's re-marriage arises from the statutory provisions of the Act and is not independent of it, and the widow on re-marriage would forfeit her husband's estate. Whether forfeiture should apply as a matter of course or should depend upon proof of a special custom entailing forfeiture on re-marriage depends upon the further question whether the re-marriage has been contracted under the Act or under custom independent of the Act. Where a person claims the estate on the ground that the widow had forfeited the estate by her re-marriage, before he can be called upon to establish a custom entailing forfeiture of the estate on re-marriage, it has to be found that the widow validly contracted a second marriage under a custom independent of the Act. Such a custom should be ancient and must be in existence before the passing of the Act of 1856. 1937 A.L.J. 255=1937 A. 343. A Hindu widow, when she re-marries loses the estate which she had inherited from her deceased Hindu husband, even though, in the particular sect to which she belongs, the re-marriage of a widow is permitted. 154 I.C. 875=1935 P. 58. If a Hindu widow is allowed to re-marry by the custom of her caste, there is no need for recourse to the Act for the validity of her marriage and there is, therefore, no forfeiture, under that Act, of her right to maintenance. (31 A. 161, Foll.); 52 A. 705=125 I.C. 468=1930 A. 593. A Hindu widow's right to retain property inherited from the husband ceases on her re-marriage, and the reversioners have a right to immediate possession of the properties on her re-marriage. 15 I. C. 602=12 M L.T. 158; 29 I.C. 612=11 N L.R 86. Apart from the Act, under the Hindu Law, a widow's right to succession is based on the ground that she is half of the body of her deceased husband and that she is capable of conferring spiritual benefits on him. When she re-marries she ceases to be half of the body of her late husband or to be able to confer spiritual benefits on him and she becomes the wife and half of the body of her new husband. 3 P L T. 551 (11 A. 330; 31 A. 161: 32 A. 489. Diss.: 1 M. 226; 41 M. 1078; 21 C.W. N. 996: 22 C. 589; 14 C.W.N. 346; 8 C. L J. 542, Rel.) An outcaste Hindu widow does not cease to be a Hindu and if she re-marries, the provisions of the Act would apply. An alienation by her of her first husband's property after her re-marriage would be invalid. 54 I.C. 820. A Hindu widow loses all her rights in the property of her first husband even if she is converted and married to a person of another religion. 41 M. 1078=35 M.L.J 317=48 I.C. 50 (F.B.) (overruling 44 I.C. 299=7 L.W. 411=1918 M W N. 274). *See also* 35 A. 466=20 I. C 335=11 A.L.J. 678. Even a Hindu widow who becomes a Mahomedan and re-marries, loses her right to her husband's property. 3 P L.T. 551. The expression "any widow" in S. 2 includes all widows who being Hindus became widows and is wide enough to cover the case of such a widow re-marrying a Hindu or a member of another religion. A Hindu widow who therefore becomes a convert to Mahomedanism and then marries a Mahomedan forfeits whatever interest she has in her husband's property. S 2 would apply to her notwithstanding her renunciation of faith and subsequent marriage with a non-Hindu. 59 B. 417=1935 B. 298 =37 Bom.L.R. 150. Where a Hindu woman becomes a widow and afterwards embraces Mahomedanism and marries a Mahomedan, and where afterwards her Hindu sister devises property to her by will, the right of the devisee to the property is not affected. Similarly when the devisee dies leaving a sister who has also embraced Islam after her widowhood and married a Mahomedan the latter sister can succeed to her property. 87 I.C. 621=1925 M. 861. Gift by father-inlaw to widowed daughter-in-law—Re-marriage—Effect on gift. 1924 M. 600= 47 M.L.J. 1. This Act applies even to widows among whom there is a caste custom permitting re-marriage. This Act operates as a forfeiture not only of property inherited

Guardianship of children of deceased husband on the re-marriage of his widow.

3. On the re-marriage of a Hindu widow, if neither the widow nor any other person has been expressly constituted by the will or testamentary disposition of the deceased husband the guardian of his children the father or paternal grandfather or the mother or paternal grandmother, of the deceased husband. or any male relative of the deceased husband, may petition the highest Court having original jurisdiction in civil cases in the place where the deceased husband was domiciled at the time of his death for the appointment of some proper person to be guardian of the said children, and thereupon it shall be lawful for the said Court, if it shall think fit, to appoint such guardian who when appointed shall be entitled to have the care and custody of the said children, or of any of them during their minority, in the place of their mother; and in making such appointment the Court shall be guided, so far as may be by the laws and rules in force touching the guardianship of children who have neither father nor mother:

Provided that, when the said children have not property of their own sufficient for their support and proper education whilst minors, no such appointment shall be made otherwise than with the consent of the mother unless the proposed guardian shall have given security for the support and proper education of the children whilst minors.

Nothing in this Act to render any childless widow capable of inheriting.

4. Nothing in this Act contained shall be construed to render any widow who, at the time of the death of any person leaving any property, is a childless widow, capable of inheriting the whole or any share of such property, if before the passing of this Act, she would have been incapable of inheriting the same by reason of her being a childless widow.

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rights at the time of re-marriage. 31 I.C. 290=11 N.L.R. 116. But *see contra* 61 I. C. 303=24 O.C. 11: 32 I C. 338; 40 I.C. 783=21 C W N. 900. She will also forfeit her right to maintenance out of the deceased husband's property. 40 I.C. 783=21 C.W. N. 906. But *see* 48 L.W. 592=1938 Mad. 994=(1938) 2 M L.J. 701. Act merely enables widows of those castes to re-marry, who by their custom are prevented from doing so and declares the consequences entitled thereon; it does not alter any customs relating to re-marriage or its legal incidents. 61 I.C. 303 =24 O.C. 11. S. 2 of the Act does not apply to a case where a Hindu widow re-marries according to a custom and such custom allows her to retain the property inherited from her first husband. 61 I.C. 303.

ALIENATION BY HINDU WIDOW.—An alienation by a Hindu widow of the property of her deceased husband for purposes not binding on the estate ceases to be effective on her re-marriage, even if such re-marriage be permitted by the custom of her caste and the next reversioner is entitled, on her re-marriage, to possession of the property as against the alienee. There is no analogy as regards the rights of the alienee between surrender and re-marriage. 1932 M. 120=62 M.L.J. 131.

BURDEN OF PROOF.—A Hindu widow who re-marries and who seeks to escape the operation of S. 2 of the Act, has the onus on her of establishing the existence of a custom, which is ancient and which has not come into existence since 1856, sanctioning the re-marriage of widows. 58 A. 1034=1937 A. L J 251=1937 A. 230.

SEC. 3.—There is nothing in the provisions of the Act that renders obligatory for the Court to remove a re-married widow from the guardianship of her minor sons. 38 C. 862 =15 C.W.N. 579. *See also* 32 P.W R. 1913: 4 A. 195 (as to meaning of "children"); 24 B. 89. S. 3 in no way makes it incumbent upon the Court to appoint a guardian nor does it provide in every case where a Hindu widow re-marries, some one should be appointed in her place. The scheme of the section is to allow any one of the relations named to apply to the Court in case of re-marriage of a widow, to be appointed guardian of the child, so that the Court may consider the position and if it thinks fit, appoint some person other than the mother, preferably from among the named relations in the order given as guardian of the child. If the mother as the result of her second marriage should have renounced her position as guardian, then the paternal grandfather may be appointed, but if when an application has been made, the Court is of the opinion that it is in the best interests of the minor for the time being to remain with the mother, there is nothing in the section which compels it to appoint a guardian of the child. I.L.R. (1942) Kar. 29=A.I.R. 1942 Sind 121. A widow does not cease to be a testamentary guardian of a minor son by re-marriage. 47 P.L.R. 1913=18 I.C. 133. The provisions of S. 3 have no application to a case, where

Saving of rights of widow marrying, except as provided in sections 2 to 4.

5. Except as in the three preceding sections is provided, a widow shall not, by reason of her re-marriage forfeit any property or any right to which she would otherwie be entitled; and every widow who has re-married shall have the same rights of inheritance as she would have had, had such marriage been her first marriage.

Ceremonies constituting valid marriage to have same effect on widow's marriage.

6. Whatever words spoken, ceremonies performed or engagements made on the marriage of a Hindu female who has not been previously married, are sufficient to constitute a valid marriage, shall have the same effect if spoken, performed or made on the marriage of a Hindu widow; and no marriage shall be declared invalid on the ground that such words, ceremonies or engagements are inapplicable to the case of a widow.

Consent to re-marriage of minor widow.

7. If the widow re-marrying is a minor whose marriage has not been consummated, she shall not re-marry without the consent of her father, or if she has no father, of her paternal grandfather, or if she has no such grandfather, of her mother, or failing all these, of her elder brother, or failing also brothers, of her next male relative.

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from her former husband but of all existing the widow belong to a caste in which re-marriage is permitted. Hence where the widow has married under the Customary law the provisions of S. 3 are inapplicable to her and therefore she does not forfeit, her right of guardianship of her children. 183 I.C. 513=1939 Lah. 125. *See also* 61 I.C. 303. Under Hindu Law the mother is, after the father, the natural and legal guardian of her children and she does not lose her right by re-marriage in cases when such re-marriage is recognised as valid by custom. To such cases S. 3 was obviously not intended to apply. And even under the Act the mother is not considered to be physically dead and may, in appropriate cases, be appointed as guardian though not in her own natural right, but where it is for the welfare of the minor to do so. (1 L. 146 and 38 C. 862, Ref.) 1933 L. 817. On this section, *see also* 15 C.W.N. 579; 11 W.R. 82; 24 B. 89; 33 B. 107.

SEC. 5.—[*See also* notes under secs. 1, 2 and 3, *supra*.] The object of the Act is to remove all legal obstacles to Hindu widow re-marriages. S. 5 was never intended to lay down any proposition regarding the inheritance by a Hindu widow. 45 B. 1247=63 I.C. 947. A re-married Hindu widow is not entitled to inherit as a *gotraja sapinda* to the relations of her first husband. 45 B. 1247.

SEC. 6.—The purpose of the Hindu Widows' Re-marriage Act is not to limit but rather to increase the rights of Hindu widows and not to restrict any existing custom of re-marriage among Hindu widow's but to give the right to those to whom it had hitherto been denied. S. 6 of the Act does not apply to a case where the re-marriage is among people among whom widow re-marriage is recognized by custom. Where, therefore, the re-marriage is among sweepers, among whom widow re-mariage is generally recognized, it is not rendered invalid merely because the ceremonies necessary for the first marriage, as required by S. 6, have not been gone through. It is sufficient if the conditions essential by custom to validate the re marriage have been fulfilled and the widow becomes a married wife of the person to whom she is married, within the meaning of Ss. 497 and 498, Penal Code. 30 S.L.R. 421=167 I.C. 366=1937 C. 42. To prove the re-marriage of Hindu widow the same religious rites and ceremonies that are necessary to constitute her first marriage valid should be shown to have been observed in her re-marriage. Where, therefore, a Hindu widow had been validly married in the Brahma form but the observance of the aforesaid rites and ceremonies was not established as regards the re-marriage. *Held*, that the validity of the re-marriage was not established. 7 O.W.N. 753=1930 O. 426.

SECS. 6 AND 7.—There can be no valid marriage in any form without a substantial performance of the requisite religious ceremonies. The performance therefore of the necessary religious rites is necessary for the completion of a marriage even in a gandhrva form, of which re-marriage of a widow is an instance. So, neither the consent of a widow to re-marry herself under last paragraph of S. 7 nor mere talk by a person in the presence of visitors of his intention to take her as his wife is sufficient to constitute a valid marriage in the absence of the performance of some religious or secular rites. (12 Mad. 72, Rel. on). 174 I.C. 342=1938 Rang. 59.

Punishment for abetting marriage made contrary to this section.

All persons, knowingly abetting a marriage made contrary to the provisions of this section shall be liable to imprisonment for any term not exceeding one year or to fine or to both.

Effect of such marriage: Proviso.

And all marriages made contrary to the provisions of this section may be declared void by a Court of law: Provided, that in any question regarding the validity of a marriage made contrary to the provisions of this section, such consent as is aforesaid shall be presumed until the contrary is proved, and that no such marriage shall be declared void after it has been consummated.

Consent to re-marriage of major widow.

In the case of a widow who is of full age, or whose marriage has been consummated, her own consent shall be sufficient consent to constitute her re-marriage lawful and valid.

THE HINDU WOMEN'S RIGHT TO PROPERTY ACT (XVIII OF 1937).

[Amended by Acts XI of 1938 and XXXII of 1940.]

[14*th April*, 1937.

An Act to amend the Hindu Law governing Hindu Women's Rights to Property.

WHEREAS it is expedient to amend the Hindu Law to give better rights to women in respect of property; It is hereby enacted as follows:—

Short title and extent.

1. (1) This Act may be called THE HINDU WOMEN'S RIGHTS TO PROPERTY ACT, 1937.

(2) It extends to the whole of British India, [1][* * * * * *].

LEG. REF.

[1] Omitted by Act XXXII of 1940.

SEC. 7.—The marriage of a minor widow is not valid unless consented to by the persons enumerated in S. 7. But if the first marriage has been consummated, the consent of the minor widow herself is enough. 9 P. L.R. 1912=12 I.C. 633 (2). *See also* 8 A. 143. Power of mother-in-law to get daughter-in-law married. *See* 1929 Cr. C. 305.

SEC. 1: SCOPE—IF *intra vires*.—The provisions of the Hindu Women's Rights to Property Act are *intra vires* the Legislature except in so far as they affect agricultural lands in the Governors' Provinces. I.L.R (1944) Mad. 556=(1944) F.L.J. 33=1944 Mad. 340=(1944) 1 M.L.J. 79; 58 L.W. 108=(1945) 1 M.L.J. 193=1945 Mad. 191.

VALIDITY OF ACT—"PROPERTY"—MEANING OF—ACT IF AFFECTS SUCCESSION TO AGRICULTURAL LAND.—No objection can be taken to the validity of the Hindu Women's Right to Property Act, 1937, on the ground only that it was introduced into the Legislature and passed by the Legislative Assembly before Part III of the Constitution Act came into force, as the Indian Legislature which was in existence immediately before the coming into force of Part III was continued in existence after that date, and was in all respects the same legislature, though its legislative powers were no longer as extensive as they had previously been. Nor can any objection be taken to the validity of the said Act on the ground that the powers of the Legislature changed during the passage of the Bill from the Legislative Assembly to the Council of State. The form, content or

subject-matter of a Bill at the time of its introduction into, or of its consideration by, either Chamber of the Legislature is a matter with which a Court of law is not concerned. The question whether either Chamber has the right to discuss a Bill laid before it is a domestic matter regulated by the rules of the Chamber, as interpreted by its Speaker, and is not a matter with which a Court can interfere, or indeed on which it is entitled to express any opinion. The function of a Court is to pronounce upon the Bill after it has become an Act. Consequently the only date with which the Court is concerned is the date on which the Governor-General's assent was given; and the question whether the Act was or was not within the competence of the Legislature must be determined with reference to that date and to none other. 44 C.W.N. (F.R.) 81=1941 F.C. 72=(1941) 2 M.L.J. 12. *See also* 1937 A.W.R. (H.C.) 655; 195 I.C. 636=1941 Sind 114. The validity of the Hindu Women's Rights to Property Act was impugned and the attack was based upon the date on which the Act was passed through the two chambers respectively of the Indian Legislature and at which the assent to the Bill was declared by the Governor-General. The Bill was passed by the Legislative Assembly on the 4th February, 1937, it was passed by the Council of State on the 6th April, 1937, and the Governor-General declared his assent thereto on the 14th April, 1937. In between the dates of the passing of the Bill by the two chambers, the provisions of the Constitution Act, 1935, other than those of Part II thereof, had come into force on the 1st April, 1937. It was contended that the impugned Act was not a valid enactment under the provisions of the Constitution Act, in that (*a*) the Bill had neither been passed by both chambers and assented to by the Governor-General before 1st April, 1937, nor had been passed by both the chambers and assented to by the Governor-General after the 1st April, 1937; (*b*) that the contents of the Bill as passed by the Council of State were different from the contents of the Bill as passed by the Legislative Assembly, and therefore it could not be said that the Council of State "agreed to" the Bill as passed by the Assembly, or that the agreement, if any, was without "amendment". It was further contended that as the Act purports to deal generally with "property" it was *ultra vires* the Indian Legislature so far as agricultural land could be comprehended within that general term and that it was not open to the Court to give it validity by excluding agricultural land from its operation.

Held (Per *Spens, CJ. and Varadachariar, J., Zafrulla Khan, J.*, dissenting) that the objections to the validity of the impugned Act were untenable and that it was validly enacted by the Indian Legislature. Though the Act could not affect the devolution of agricultural land in the Governor's Provinces it did not follow that the Act was on this account wholly *ultra vires* the Indian Legislature. (1945) 1 M.L.J. 108.

Per *Varadachariar, J.*—The effect of the words "notwithstanding the repeal" of the old Act and "continue to have effect" used in S. 317 of the Constitution Act is to indicate that the provisions relating to the Indian Legislature have been continuous in their operation and hence there is no justification for importing a theory of repeal and re-enactment in respect of those provisions. All that S. 63 of the Ninth Schedule requires is that a Bill should be agreed to by both chambers by each of them successively passing it. This passing is a *fact* in respect of each chamber. There is no warrant for saying that the Bill was not duly passed by the Council of State or that it was amended when it was before it. There is nothing in the language of S. 316 of the Constitution Act to support the contention that any enactment of the Indian Legislature after 1st April, 1937, would have validity only if it had been *initiated* after that date. Though there was one state of law as to the powers of the Legislature at one stage and another state of law as to its powers at another stage with reference to the Hindu Women's Rights to Property Act, that would not preclude the application of the rule in *Macleod's case*, (1891) A.C. 455, which does not rest on any inference as to the *actual* intention of the members who took part in the enactment of the measre but on a legal presumption as to the intention to be attributed to the Legislature as a legal entity. The efficacy and operation of the Act must, in such circumstances, be determined with reference to the point of time when the process of its becoming a law has been completed. (1945) 1 M.L.J. 108.

Per *Spens*, C.J.—When a Court ascertains that a bill has in fact been passed by both chambers of the Indian Legislature in exactly the same words and form and has so been assented to by the Governor-General, it is impossible and improper for the Court further to investigate whether each chamber and the Governor-General gave the same meaning and connotation to the common terms used. Nor can a Court be asked to make presumptions from the powers of the Legislature at the material dates or from any other circumstances as to the meaning or connotation given to or held regarding words or phrases in Bills by the members of the Legislative Chambers who pass it. The powers of the Legislature cannot be used to found any such presumptions. Hence it cannot be presumed that the Council of State and the Governor-General did not legally agree to the Bill as pased by the Legislative Assembly. The effect of S. 317, India Act is *prima facie* to establish the uninterrupted continuation of the Indian Legislature and its legislative procedure, notwithstanding the formal repeal of the existing legislature in S. 321 of the Act. The powers of a Legislature, that is to say, the field within which

it is authorised to legislate may vary from time to time without in any way affecting the validity of the enacting processes of that Legislature. Such variation may well result in a Court having to hold legislation *ultra vires* in part or even in whole, but, that is a different matter from holding that the legislation is invalidly enacted. For the validity of the laws of the Indian Legislature it was not necessary that they should be completely enacted through all their stages either wholly before or wholly after the 1st April, 1937. 1945 F.C.R. 1=A.I.R. 1945 P.C. 25=49 C.W.N. (F.R.) 27=(1945) F.L.J. 8=(1945) 1 M.L.J. 108. The Hindu Women's Rights to Property Act, 1937, and the Hindu Women's Rights to Property (Amendment) Act, 1938, do not operate to regulate succession to agricultural land in the Governors' Provinces; but do operate to regulate devolution by survivorship of property other than agricultural land. When a Legislature with limited and restricted powers makes use of a word of such wide and general import as "property," the presumption must be that it is using it with reference to that kind of property with respect to which it is competent to legislate, and to no other. In the Hindu Women's Rights to Property Act, 1937, the word "property" must accordingly be construed as referring to property other than agricultural land. Though S. 3 of the Act of 1937 does not use the word "survivorship", and it may be that the widow taking a share under the Act does not become a coparcener with the other sharers, yet there can be no doubt that in the cases in which it gives to the widow of a deceased co-parcener a right to a share in the joint property which she did not possess under the pre-existing law, it takes away, to that extent, the benefit of the rule of survivorship which would have accrued to the remaining co-parceners. So far as its effect goes, the Act does legislate "with respect to the law of survivorship. But it is not *ultra vires* the Indian Legislature on that ground, as the subject of devolution by survivorship of property other than agricultural land is included in entry No. 7 of List III of the concurrent list. 45 C.W.N. (F. R.) 81=73 C.L.J. 415=54 L.W. 22 (1941) F.C. 72=(1941) 2 M.L.J. 12. *See also* 1944 N.L.J. 179. The Hindu Women's Rights to Property Act does not operate to regulate succession to agricultural land in the Governors' provinces. Hence the widow of a pre-deceased son has no title except to maintenance according to ordinary Hindu Law. 1941 O.A. (Supp.) 715 (2)=1941 A.W.R. (Rev.) 804 (2)=1941 R.D. 742.

SUCCESSION TO AGRICULTURAL LANDS—AGRICULTURAL LANDS'—WHAT ARE.—A tenure-holder, be he a *nishkar* or a *makarari mourashidar* or a *patnidar* or a non-permanent tenure-holder, is not an *ijardar* or mere farmer of rent. He has a proprietary interest in the land which is comprised in his tenure. If his tenure comprises agricultural land and if he is a Hindu, his rights therein would devolve on his death not in the manner provided for in the Hindu Women's Rights to Property Act but by the rules of Hindu law until they are modified by provincial legislation. If the tenure be of a composite nature consisting of agricultural and non-agricultural lands, the right in the agricultural portion would devolve in accordance with the Hindu law and in the nonagricultural portion according to the provisions of the aforesaid Act. Lands actually used or lands though lying unused, but capable of being used for raising food grains, vegetables and fodder, and other marketable commodities like cotton, jute, hemp, flax, etc., lands used as orchards, or for farming purposes (*i.e.*) for raising or feeding of cattle and other livestock, land containing cattle sheds for plough cattle, as also lands used as accessory to the above purposes (*e.g.*) the threshing floor irrigation tanks, pathways, khals and nullas and sites used for the farmer's residence should be regarded as agricultural lands. Dwelling houses other than those used for residence of cultivators or farmers should be regarded as non-agricultural property. Within the term "dwelling house" must be included not only the structure used for residence and its site, but also adjacent buildings or outhouses, cultilage, garden, courtyard, orchard which is within what can be regarded as the compound of the house, and all that is necessary for the convenient use of the house. Lands which are being actually worked for minerals would be regarded as mines and so non-agricultural property, as also lands covered by forest and also possibly land used for planting trees for being used for fuel. 1944 F.L.J. 231=48 C.W.N. 759=A.I.R. 1944 Cal. 421; 1942 Oudh 216.

BOTH AGRICULTURAL AND NON-AGRICULTURAL PROPERTY LEFT BY DECEASED.—As the Act as amended by Act II of 1938 is *ultra vires* of the Indian Legislature and does not operate to regulate succession to agrisultural land in the Governor's Provinces but operates only to regulate devolution by survivorship of property other than agricultural land, where the property left by the deceased is both agricultural and non-agricultural, the widow would have no right under the Act to succeed her husband even to a limited interest so far as the agricultural property is concerned. 1941 O.A. 1071=1941 O.W.N. 1359=A.I.R. 1942 Oudh 216. *See also* 58 L.W. 108 (1)=1945 M.W.N. 134=I.L.R. (1945) Mad. 781=1945 F.L.J. 67=A.I.R. 1945 Mad. 191=(1945) 1 M.L.J. 193..

ACT (AS APPLIED TO BIHAR BY BIHAR ACT VI OF 1942)—SCOPE AND EFFECT.—Under the Hindu Women's Rights to Property Act, a widow is regarded by legal fiction as the survivor of her husband's *persona*. The Act applies to agricultural property in Bihar by reason of the Bihar Act VI of 1942, which applied it to such land in Bihar with retrospective effect. 10 B.R. 255.

MOVABLES OUTSIDE BRITISH INDIA.—The distribution of the distributable residue of

Application

2. Notwithstanding any rule of Hindu Law or custom to the contrary, the provisions of section 3 shall apply where a Hindu dies intestate [1][* * * *].

[2][3. (1) When a Hindu governed by the Dayabhag School of Hindu Law dies intestate leaving any property, and when a Hindu governed by any other school of Hindu Law or by customary law dies intestate leaving separate property, his widow, or if there is more than one widow all his widows together, shall, subject to the provisions of sub-section (3), be entitled in respect of property in respect of which he dies intestate to the same share as a son]:

LEG. REF.

[1] The words "leaving a widow" omitted by Act XI of 1938.

[2] Substituted by Act XI of 1938.

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the movables wherever they may be situate is ordinarily governed by the law of the domicile of the owner at the time of his death. It can make no difference for this purpose whether the law of the domicile rests on common law or on statute law. It is not right to restrict the application of the Hindu Women's Rights to Property Act to properties lying within British India. 1945 F.C.R. 1=A.I R. 1945 P.C. 25=49 C.W.N. (F.B.) 27=(1945) F.L.J. 8=(1945) 1 M.L.J. 108. On appeal from. I.L.R. (1944) Mad. 556=(1944) F.L.J. 33=(1944) 1 M.L.J. 70.

RIGHT OF HINDU WIDOW TO MAINTENANCE.—The Hindu Women's Rights to Property Act substituted a new and better remedy for the rights which a widow possessed before. But the Act having been declared to be *ultra vires* as regards agricultural land and therefore ineffective as regards such lands, the mere existence of the Act does not put an end to the right of maintenance on the part of a Hindu widow. Obviously, therefore, in so far as Act XVIII of 1937, is still valid, the widow may take advantage of it and so far as it does not take effect upon certain property, the widow's old right of maintenance is restored, the only proviso being that in assessing the amount of maintenance due and proposed to be charged upon agricultural property due allowance should be made for the property which comes to the widow by virtue of Act XVIII of 1937. 56 L.W. 150=1943 M.W.N. 169=A.I.R. 1943 Mad. 417=(1943) 1 M.L.J. 235. *See also* 1942 Oudh 216. A mango grove forming part of an estate is 'agricultural land" in respect of which the Act does not operate to regulate succession. A Hindu widow is entitled to maintenance notwithstanding her right under the Act to a share in the non-agricultural part of the family estate which, however, will be taken into account in determining the amount payable as maintenance. I.L.R. (1945) Mad. 61=1944 F.L.J. 146=1944 M.W.N. 288=57 L.W. 260=A.I.R. 1944 Mad. 401 =(1944) 1 M.L.J. 361.

POSITION AND RIGHTS OF A WIDOW.—Under the Act a widow becomes an heir co-equal with her sons. 1944 A.M.L.J. 58.

SEC. 3.—HERITABLE RIGHTS TO TRUST PROPERTIES.—The Hindu Women's Rights to Property Act would apply only to property beneficially owned by the propositus and not to anything in the nature of trusteeship. 1945 P.C R. 1=A.I.R. 1945 F.C. 25=49 C.W. N. (F.R.) 27=1945 M.W.N. 7=1945 F. L.J. 8=(1945) 1 M.L.J. 108. *See also* (1944) 1 M.L.J. 70.

"PROPERTY"—IF INCLUDES USUFRUCTUARY MORTGAGEE RIGHTS IN AGRICULTURAL LAND.—The word "property" as used in the Hindu Women's Rights to Property Act must be construed as referring only to those forms of property with respect to which the Central Legislature which enacted the Act was competent to legislate, that is to say, property other than agricultural land. The word "property" in S. 3 of the Act does not, therefore, include "agricultural land", which phrase is wide enough to cover usufructuary mortgagee rights in such land.

Per *Abdul Rashid, J.*—The usufructuary mortgagee rights do not constitute a debt so as to fall within the purview of the term "property" as used in S. 3 of the Hindu Women's Rights to Property Act. The principal characteristics of a usufructuary mortgage are that there is no personal liability of the mortgagor to pay nor has the mortgagee a right to have the mortgaged property brought to sale. The essence of a "debt" is the liability of the obligor which the obligee is entitled to enforce by action. Where a transaction neither imports the personal liability of the obligor to pay, nor confers on the obligee the right to recover the amount by the coercive machinery of the law, it cannot be called a "debt". 47 P.L.R. 233=A.I.R. 1945 Lah. 282=1945 F.L.J. 234.

'SEPARATE PROPERTY'—MEANING OF.—The expression "separate property" may be the antithesis of three other expressions; *viz.*, "ancestral property", "co-parcenary property", and "joint family property". The particular sense in which that expression has been used in S. 3 (1) of the Act has to be determined in the light of the scheme of the Act. The property held by a person as the last surviving co-parcener of a joint family cannot be regarded as "separate property" within the meaning of S. 3 (1) of the Act. "Separate property" would be property in respect of which the son of the surviving co-parcener will not be entitled to claim co-parcenary rights but only a right of inheritance on the father's death if he survived him. 49 C.W.N. (F.R.) 27=1945 M.W. N. 57=(1945) F.L.J. 8=(1945) 1 M.L.J. 108. *See also* (1944) 1 M.L.J. 70; 1944 Pat. 87.

Provided that the widow of a predeceased son shall inherit in like manner as a son if there is no son surviving of such predeceased son, and shall inherit in like manner as a son's son if there is surviving a son or son's son of such predeceased son:

Provided further that the same provision shall apply *mutatis mutandis* to the widow of a predeceased son of a predeceased son.

(2) When a Hindu governed by any school of Hindu Law other than the Dayabhag school or by customary law dies[3] [* * *] having at the time of his death an interest in a Hindu joint family property, his widow shall, subject to the provisions of sub-section (3), have in the property the same interest as he himself had.

(3) Any interest devolving on a Hindu widow under the provisions of this section shall be the limited interest known as a Hindu woman's estate, provided however that she shall have the same right of claiming partition as a male owner.

(4) The provisions of this section shall not apply to an estate which by a customary or other rule of succession [4][or by the terms of the grant applicable thereto] descends to a single heir or to any property to which the Indian Succession Act, 1925, applies.

LEG. REF.

[3] The word "intestate" omitted by Act XI of 1938.

[4] Inserted by Act XI of 1938.

MONEY DECREE UNDER U.P. ENCUMBERED ESTATES ACT.—Where a person in whose favour a money decree under the U.P. Encumbered Estates Act has been passed dies, his son's widow is entitled under the Act to share in the decree and this would be so whether the son predeceased his father or not. 1942 A.W.R. (Rev.) 220 (1)=1942 O.A. (Supp.) 246 (1)=1942 O.W.N. (B. R.) 368.

DEVOLUTION OF INTEREST ON WIDOW—IF BY SUCCESSION OR SURVIVORSHIP.—Under S. 3, a widow is clothed with the rights of her husband in the property by succession and not by survivorship. 1944 N.L.J. 179. *See also* (1941) 2 M.L.J. 12; (1943) 2 M.L.J. 172. Death of sole co-parcener leaving widows and widowed daughter-in-law—Succession. *See* (1944) 1 M.L.J. 70; (1945) 1 M.L.J. 108.

SHARE OF WIDOWS WHERE THERE IS MORE THAN ONE.—The Amending Act (XI of 1938) which substituted for the original provisions in S. 3 (1) a clause to the effect that the widow 'or if there is more than one widow, all his widows together" shall be entitled to the same share as a son, has not effected a change in the law as it stood under Act (XVIII of 1937) and hence the widows, where there are more than one, take a unit of share along with the sons. 1945 F.C.R. 1=49 C.W.N. (F.R.) 27=1945 M.W.N. 57=(1945) F.L.J. 8=A.I.R. 1945 F.C. 25 =(1945) 1 M.L.J. 108. *See also* 23 Pat. 508.

SEC. 3 (1): "THE SAME SHARE AS A SON" —"SEPARATE PROPERTY"—MEANING OF.—The words "the same share as a son" in S. 3 (1) mean the same share as if she were a son and "separate property" means property which the intestate held without the participation of other co-parceners. 23 Pat. 508=1944 P.W.N. 465=1944 Pat. 87.

MOTHER AND PREDECEASED SON'S WIDOW—RELATIVE RIGHTS.—The predeceased son's widow would be entitled to the entire property under S. 3 of Act and the mother could not get any share in it. 1944 A.L.J. 319=1944 O.W.N. (H.C.) 80=A.I.R. 1944 A. 224 (2).

HINDU WIDOW SUING FOR PARTITION—POSITION OF—IF TO BE REGARDED AS A PERSON OUT OF POSSESSION.—There is nothing in the Act to suggest that a Hindu widow suing for partition under the terms of the Act is to be treated as a person out of possession. There is no reason why she should not base her plaint on the same position as a male owner, *viz.*, as a co-parcener in possession. Though her estate is limited to a Hindu widow's estate, she acquires full status as a co-parcener for the purpose of filing a suit for partition. 56 L.W. 417=1943 M.W.N. 519 (1) =A.I.R. 1943 Mad. 654=(1943) 2 M.L.J. 172. *See also* 1944 ...L.J. 179.

Joint family—Promissory note in favour of father—Death of father leaving widow and son.—Under the Hindu Women's Rights to Property Act, the effect of the death of a co-parcener with regard to property other than agricultural land is that his widow stands in the shoes of her deceased husband and although she is not a co-parcener she has the rights of her husband who was a co-parcener. She is a member of the joint family. She becomes entitled to her rights by statute and not as heir. Where a person dies leaving his widow and a son, a suit on a promissory note in the name of the deceased has to be brought by the son on behalf of the joint family when it is an asset of the family. It is not necessary that the mother (widow of the deceased) should be joined as co-plaintiff. 56 L.W. 487=1943 M.W.N. 478=A.I.R. 1943 Mad. 708 =(1943) 2 M.L.J. 282. *See also* I.L.R. All. 307=1943 A.L.J. 161.

SEC. 3 (1) AND (2): SCOPE—IF EXHAUS-

Savings.

4. Nothing in this Act shall apply to the property of any Hindu dying intestate before the commencement of this Act.

TIVE.—Secs. 3 (1) and 3 (2) together, are intended to be exhaustive of the possible circumstances in which a Hindu may die intestate. 23 Pat. 508=1944 P.W.N. 465=1945 Pat. 87.

SEC. 3 (2): RIGHTS OF WIDIW IN HUSBAND'S PROPERTY.—The widow of a Hindu is undoubtedly an heir to her deceased husband under S. 3 (2) and has the same interest in his property as her husband had at the time of his death. 23 Pat. 599=(1944) P.W.N. 212=A.I.R. 1944 Pat 298 (F.B.).

SEC. 3 (2): SCOPE AND EFFECT OF.—Whatever inroads the Hindu Women's Rights to Property Act may make on the doctrine of survivorship it does not effect a statutory severance or disruption of the joint family. The widow as a member of the Joint family is to have the same interest in the joint property as the deceased husband had and this devolution does not otherwise affect the Joint family status unless the widow, availing herself of the provisions of sub-sec. (3), claims a partition. As long as she does not do so, the status of a joint Hindu family continues, and though she may not be a co-parcener, it cannot be said that she is not a member of the joint Hindu family. She is therefore capable of being represented by the *karta* of the family in a suit to recover money due to the family. I.L.R. (1943) All. 307=1943 A.L.J. 161=A.I.R 1943 All. 188. *See also* (1943) 2 M.L.J 282.

"INTEREST"—WIDOW OF ADOPTED SON SUING FOR PARTITION.—The widow of an adopted son suing her father-in-law for partition after he has made a second adoption, is entitled to a third and not a half share. 57 L. W. 535=1944 M.W.N. 705=(1944) 2 M. L.J. 262=1945 Mad. 21.

INTEREST TAKEN BY WIDOW—NATURE OF—LIABILITY IN EXECUTION OF DECREE AGAINST HUSBAND'S ASSETS.—Under S. 3 the widow takes the property not as survivor but as heir and her interest can be attached and sold in execution of a decree against her husband's assets, even though it is undivided interest in joint family property. 23 Pat. 769=1945 Pat. 116.

SUIT ON PROMISSORY NOTE IN FAVOUR OF DECEASED HUSBAND—SUCCESSION CERTIFICATE —NOT NECESSARY.—A Hindu widow who is given a right under S. 3 of the Act does not obtain such right by survivorship; she was not a coparcener before her husband's death and is not one after that. It does not, however, follow that she obtains it by inheritance, so as to make it obligatory on her to obtain a succession certificate under S. 214 of the Succession Act in a suit on a promissory note in her deceased husband's favour. As the widow does not inherit no succession certificate is necessary. The effect of S. 3 (2) and (3) of the Act (XVIII of 1937), is a survival of the husband's *persona* in the wife, giving her the same rights as her husband had except that she can alienate the property only under certain circumstances. 55 L.W. 823=1942 M.W.N. 703=(1942) 2 M.L.J. 668. *See also* 1942 Oudh 216.

DEATH OF WIDOW—DEVOLUTION OF HER SHARE.—The provision of S. 3 (3) of the Act making the widow's share the limited interest of a woman's estate has the effect of giving the heirs of the husband a *spes successionis* during the lifetime of the sons under the Hindu Law as administered by the Courts as they would have had in the share given to the widow on a partiion among themselves. Therefore on the death of the widow her share will be taken by all those who would have inherited the estate of her husband had he died at that point of time, irrespective of whether they inherit under the Hindu Law or under the Act. 50 C.W.N. 555.

N died in 1938 leaving his widow *B*, three daughters *R*, *N* and *S*, and the widow of his predeceased son *R.D. Held*, (1) that *B* as *N*'s widow took under S 3 (1) the same share as if she had been a son and *R.D.* the widow of the predeceased son inherited under the first proviso to S. 3 (1) in like manner as a son of *N*; (2) that under S. 3 (3), the interests devolving on them were limited interests but each had the same right of partition as a male owner; (3) the proviso to S. 3 (1) does not extend the scope of the main sub-section and the proviso could only take effect on the death of a male Hindu and not on the death of a woman. Therefore on the death of *B*, her share would pass not to *R.D.* but to the daughters. 23 Pat. 508=1944 P.W.N. 465=1945 Pat. 87.

SEC. 3 (2) AND (3): INTEREST TAKEN BY WIDOW IN JOINT FAMILY PROPERTY—EXTENT OF—LIABILITY FOR DEBTS.—Under S. 3 (2) of the Act, a widow gets the same interest which her husband had in the joint family property, that is the interest of an undivided member of a joint family in the joint family property. The widow takes that interest subject to the rights and obligations attached to that interest and subject to the restrictions placed on her powers by Cl. (3) of S. 3. As the husband's interest could be seized in execution by a creditor for his debt in his lifetime, the creditor of the husband is entitled to the same remedy against the interest of the widow accrued under the Act in respect of non-agricultural land, the property taken by the widow being liable for the debts of her husband. 54 L.W. 651=(1941) 2 M.L.J. 862. Sub-Secs. (2) and (3) of S. 3 of the Act do not contemplate that the sons of a deceased Hindu are to be excluded by the widow upon the death of their father. The right conferred upon the Hindu widow by sub-S. (3) is merely a limited right such as a Hindu widow possesses under the ordi-

[1][5. For the purposes of this Act, a person shall be deemed to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect.]

Meaning of expression "die intestate".

THE ILLUSORY APPOINTMENTS AND INFANTS' PROPERTY ACT (XXIV OF 1841).

Year.	No.	Short title.	Amendments.
1841	X	The Illusory Apdointments and Infants' Property Acs, 1841.	Repealed in part' XXVII of 1866; VII of 1868; XVI of 1874;

CONTENTS.

SECTIONS.
1. [*Repealed.*]
2. Extension of II, Geo. IV and I Wm. IV, Chaps. 46 and 65.
3. [*Repealed.*]
4. Extension of 11, Geo. IV and I Wm. IV, Chap. 47, Ss. 10 and 11.
5. Saving of certain cases and proceedings.

THE ILLUSORY APPOINTMENTS AND INFANTS' PROPERTY ACT (XXIV OF 1841).[1]

An Act for the greater uniformity of the Law administered by Her Majesty's Supreme Courts with that administered in England, in regard to the undisposed residue of the effects of Testators, Illusory Appointments, the transfer of Estates by persons under disabilities pursuant to the direction of Courts, and the better management of the property of such persons and other like matters.

1. [*Extension of* 11 *Geo. IV and* 1 *Will. IV, c.* 46.] *Rep. by the Repealing Act (VIII of* 1868).

2 * * * * * * * The [3]Statute 11, George IV and 1 William IV,

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[1] Short title, "The Illusory Appointments and Infants' Property Act, 1841." *See* the Indian Short Titles Act (XIV of 1897).

The whole Act, except so far as it relates to illusory appointments and infants, and except S. 5 was repealed by the Repealing Act (VIII of 1868).

The Act has been declared, by notification under S. 3 (*a*) of the Scheduled Districts Act (XIV of 1874), to be in force in the following Scheduled Districts, namely:—

The Districts of Hazaribagh, Lohardaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44) and Manbhum, and Pargana Dhalbhum and the Kolhan in the District o fSingbhum, *see* Gazette of India, 1898 Pt. I, p. 870.

[2] The words "And it is hereby enacted that" at the beginning of S. 2 and the words "from the first day of January next" after the word "shall" in the same section were repealed by the Repealing Act (XVI of 1874).

[3] 11 GEO. IV AND WM. IV, CHAP. XLVI.*

An Act to alter and amend the Law relating to Illusory Appointments.

[16*th July*, 1830.]

Preamble.

Whereas, by deeds, wills and other instruments, powers are frequently given to appoint real and personal property amongst several objects, in such manner that none of the objects can be excluded by the donee of the power from a share of such property; and whereas appointments in exercise of such powers whereby an unsubstantial, illusory, or nominal share of the property affected thereby is appointed to or left unappointed to devolve upon any one or more of the objects thereof, are invalid in equity, although the like appointments are good and binding at law: And whereas considerable inconvenience hath arisen from the rule of equity relative to such appointments, and it is expedient that such appointments should be as valid in equity as at law; Be it therefore enacted, etc.

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nary Hindu Law with an additional privilege conferred by the section that she could independently claim partition as a male owner which was denied to her under the Hindu Law. The rights of survivorship in a joint Hindu family possessed by the sons are not taken away by sub-secs. (2) and (3) of sec. 3 of the Act. 1942 O. 216=198 I.C. 443=1943 O.W.N. 1359.

* Short title, "The Illusory Appointments Act, 1830." *See* the Short Titles Act, 1896 (59 & 60 Vict. c. 14).

Extension of 11 Geo. IV & 1 Wm. IV, Chaps. 46 and 65.

Chapter 46, entitled, "An Act to alter and amend the Law relating to Illusory Appointments", and the [1]Statute 11, George IV and I, William IV, Chapter 65, entitled. "An Act for consolidating and amending the Law relating to property belonging to infants, femme-coverts, idiots, lunatics and persons of unsound mind," shall * * * * * be extended to the territories of the East India Company, as far as it is applicable to the same.

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Illusory appointments shall be valid in equity as well as at law.

That no appointment which from and after the passing of this Act shall be made in exercise of any power or authority to appoint any property, real or personal, amongst several objects, shall be invalid or impeached in equity, on the ground that an unsubstantial, illusory, or nominal share only shall be thereby appointed to or left unappointed to devolve upon any one or more of the objects of such power; but that every such appointment shall be valid and effectual in equity as well as at law, notwithstanding that any one or more of the objects shall not thereunder, or in default of such appointment, take more than an unsubstantial, illusory, or nominal share of the property subjected to such power.

Provided always, and be it further enacted, that nothing in this Act contained shall prejudice or affect any provision in any deed, will, or other instrument creating any such power as aforesaid which shall declare the amount of the share or shares from which no object of the power shall be excluded.

Not to affect any deed which declares the amount of the share; not to give any other force to any appointment than the same would have had.

3. Provided also, and be it further enactcd and declared, that nothing in this Act contained shall be construed, deemed, or taken, at law or in equity, to give any other validity, force or effect to any appointment, than such appointment would have had if a substantial share of the property affected by the power had been thereby appointed to or left unappointed to devolve upon any object of such power.

[1] 11GEO. IV, & 1 WM. IV, CHAP. LXV.*

An Act for consolidating and amending the Law relating to Property belonging to Infants, Femme-Coverts, Idiots, Lunatics and Persons of unsound Mind.

[23*rd July*, 1830.]

* * * * * * *

Guardians of minors, etc., in order to the surrender and renewal of leases may apply to the Court of Chancery, etc., and by order may surrender such leases and renew the same, etc.

12. And be it furthere enacted, that in all cases where any person, being under the age of twenty-one years..... is or shall become entitled to aay lease or leases made or grantod or to be made or granted for the life or lives of one or more person or persons, or for any term of years, either absolute or determinable upon the death of one or more person or persons or otherwise, it shall be lawful for such person under the age of twenty-one years, or for his or her guardian or other person on his behalf.... .....to apply to the Court of Chancery in England, the Courts of Equity of the Counties Palatine of Chester, Lancaster and Durham, or the Courts of Great Session of the Principality of Wales respectively, as to land within their respective jurisdiction, by petition or motion in a summary way; and by the order and direction of the said Courts respectively such infant.....or his guardian, or any person appointed in the place of such infant .. ..by the said Courts respectively, shall and may be enabled from time to time, by deed or deeds, to surrender such lease or leases, and accept and take, in the place and for the benefit of such person under the age of twenty-one years.. .....one or more new leases of the premises comprised in such lease surrendered by virtue of this Act, for and during such number of lives, or for such term or terms of years determinable upon such number of lives, or for such term or terms of years absolute, as was or were mentioned or contained in the lease or leases so surrendered at the making thereof respectively, or otherwise as the said Courts shall respectively direct.

* * * * * * *

Charges attending renewal to be charged on the esates as the Court shall direct.

14. And be it further enacted, that every sum of money and other consideration paid by any guardian.....or other person as a fine, premium, or income, or in the nature of a fine, premium, or income, for the renewal of any such lease, and all reasonable charges incident thereto, shall be paid out of the estate or effects of the infant.....for whose benefit the lease shall be renewed, or shall be a charge upon the leasehold premiss, togther with interest for the same, as the said Courts and Lord Chancellor, intrusted as aforesaid, respectively shall direct and determine; and as to leases to be made upon surrenders by femme-coverts, unless the fine or consideration of such lease and the reasonable charges shall be otherwise paid or secured, the same, together with interest, shall be a charge upon such leasehold premises for the.

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*Short title, "The Infants Property Act, 1830". *See* the Short Titles Act, 1896 (59 & 60 Vict., c. 14).

As to the repeal of parts of the Act in England, *see* the Statute Law Revision Act, 1873 (36 & 37 Vict., c. 91).

3. [*Extension of* 11, *Geo. IV and* 1, *Wm. IV, c.* 60.] *Rep. by the Indian Trustee Act (XXVII of* 1866).

Extension of 11, Geo. IV & I, Wm. IV, c. 47, S. 11.

4. [1]* * * * * * Section[2] * * 11 of the 11 [3]George IV and I William IV, Chapter 47, entitled "an Act for consolidating and amending the laws for facilitating the payment of debts out of real Estate. "shall [1]* * * * be extended to the territories of the East India Company, as far as it is applicable in the same.

5. [1]* * * * * * This Act shall not be construed to affect any case

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benefit of the person who shall advance the same.

15. And be it further enacted, that every lease to be renewed as aforesaid shall operate and be to the same uses, and be liable to the same trusts, charges, incumbrances, dispositions, devises, and conditions, as the lease to be from time to time surrendered as aforesaid was or would have been subject to in case such surrender had not been made.

New leases shall be to the same uses;

16. And be it further enacted, that where any person, being under the age of twenty-oee years, ...might, in pursuance of any covenant or agreement, if not under disability be compelled to renew any lease made or to be made for the life or lives of one or more person or persons, or for any term or number of years absolute or determinable on the death of one or more person or persons, it shall be lawful to and for such infant, or his guardian in the name of such infant,.....by the direction of the Court of Chancery, to be signified by an order to be made in a summary way upon the petition of such infant or his guardian..... ....or of any person entitled to such renewal, from time to time to accept of a surrender of such lease and to make and execute a new lease of the premises comprised in such lease, for and during such number of lives, or for such term or terms determinable upon such number of lives, or for such term or terms of years absolute, as was or were mentioned in the lease so surrendered at the making thereof, or otherwise, as the Court by such order shall direct.

Infants empowered to grant renewals of leases.

17 And be it further enacted, that wher any person, being an infant under the age of twenty-one years, is or shall be seized or possessed of or entitled to any land in fee or in tail, or to any leasehold land for an absolute interest, and it shall appear to the Court of Chancery to be for the benefit of such person that a lease or underlease should be made of such estates for terms of years, for encouraging the erection of buildings thereon, or for repairing buildings actualy being thereon, or the working of mines, or otherwise improving the same, or for farming or other purposes, it shall be lawful for such infant, or his guardian in the name of such infant, by the direction of the Court of Chancery, to be signified by an order to be made in a summary way upon the petition of such infant or his guardian, to make such lease of the land of such persons respectively, or any part thereof, according to his or her interest therein respectively, and to the nature of the tenure of such estates respectively, for such term or terms of years, and subject to such rents and covenants as the said Court of Chancery shall direct; but in no such case shall any fine or premium be taken, and in every such case the best rent that can be obtained regard being had to the nature of the lease, shall be reserved upon such lease; and the leases, and covenants and provisions therein, shall be settled and approved of by a Master of the said Court, and a counterpart of every such lease shall be executed by the lessee or lessees therein to be named, and such counterparts shall be deposited for safe custody in the Master's office until such infant shall attain twenty-one, but with liberty to proper parties to have the use thereof, if required, in the meantime, for the purpose of enforcing any of the covenants therein contained; provided that no lease be made of the capital mansion house and the park and grounds respectively held therewith for any period exceeding the minority of any such infant.

Court of Chancery may authorize leases to be made of lands belonging to infants when it is to the benefit of the estate

* * * * * * *

[1] The words 'And whereas it is expedient to adopt the amendments of the English Law touching the delay of action, suits, or other proceedings, by reason of the parol demurring; and touching conveyances made by infants under order of Courts; it is hereby enacted that" and the words "from the first day of January next" in S. 4 and the words "And it is hereby provided, that" in S. 5 were repealed by the Repealing Act (XVI of 1874).

[2] The figures and word "to and" were repealed by the Amending Act (XII of 1891).

[3] 11 GEO. IV & 1 WM. IV., CHAP., XLVII.†‡

An Act for consolidating and amending the Laws of facilitating the payment of debts out of real Estate.

[16*th July*, 1830.]

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‡ Short title, "The Debts Recovery Act, 1830." *See* the Short Titles Act, 1896 (59 and 60 Vic., c. 14).

Saving of certain cases.

which would not have been governed by English law as administered by Her Majesty's Supreme Courts previous to the passing thereof[1] * * * * * * *

THE IMMIGRATION INTO INDIA ACT (III OF 1924).[2]

[*1st March*, 1924

An Act to regulate the entry into and residence in British India of persons domiciled in other British Possessions.

WHEREAS it is expedient to make provision for regulating the entry into and residence in British India of persons domiciled in the British Possessions on a basis of reciprocity; It is hereby enacted as follows:—

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So much of 1 G.I, c. 10, S. 9, as enacts that agreements of guardians shall bind infants, repealed

*25. And whereas by an Act passed in the first year of the reign of King George] the First intituled. *An Act for making more effectual Her late Majesty's gracious Intentions for augmenting the Maintenance fthe poor Clergy* it was enacted that the agreements of guardians for and on behalf of infants or idiots under their guardianship should be as good and effectual to all intents and purposes as if the said infants or idiots had been of full age and of sound mind, and had themselves entered into such agreements. And whereas it is desirable that the said powers should be exercised under proper control, and that the same should be extended to all persons against whom a commission of lunacy shall have issued; Be it further enacted, that so much of the said Act of the first year of the reign of King George the First, as is hereinbefore recited, shall be and the same is hereby repealed.

* * * * * * *

Infants to make convyances nnder order of the Court.

XI. **And be it further enacted that* where any suit hath been or shall be institued in any Court of Equity, for the payment of any debts of any person or presons deceased, to which their heir or heirs, devisee or devisees, may be subject or liable, and such Court of Equity shall decree the estates liable to such debts or any of them, to be sold for satisfaction of such debt or debts, and by reason of the infancy of any such heir or heirs, devisee or devisees, an immediate conveyance thereof cannot, as the law at present stands, be compelled, in every such case such Court shall direct, and, if necessary, compel such infant or infants to convey such estates to be sold (by all proper assurances in tates to be sold (by all proper assurances in the law) to the purchaser or purchasers thereof, and in such manner as the said Court shall think proper and direct; and every such infant shall make such conveyance accordingly, and every such conveyance shall be as valid and effectual to all intents and purposes as if such person or persons, being infant or infants, was or were at the time of executing the same of the full age of twenty-one years.

* * * * * *

Such agreements may be made by guardians with the approbation of the Court.

26. And be it further enacted, that the guardian of any infant, with the approbation of the Court of Chancery, to be signified by an order to be made on the petition of such guardian in a summary way, may enter into any agreement for or on behalf of such infant which such guardian might have entered into by virtue of the said last recited Act, if the same had not been repealed.

* * * * * *

Court of Chancery or Exchequer may order dividends of stock belonging to infants to be applied for maintenance.

32. And be it further enacted that it shall be lawful for the Court of Chancery, by an order to be made on the petition of the guardian of any infant in whose name any stock shall be standing, or any sum of money, by virtue of any Act for paying off any stock, and who shall be beneficially entitled thereto, or if there shall be no guardian, by an order to be made in any cause depending in the said Court, to direct all or any part of the dividends due or to become due in respect of such stocks or any such sum of money, to be paid to any guardian of such infant, or to any other person according to the discretion of such Court, for the maintenance and education or otherswise for the benefit of such infant, such guardian or other person to whom such payment shall be directed to be made being named in the order directing such payment; and the receipt of such guardian or other person for such dividends

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1 The words "or any proceedings at Law or in Equity commenced before the first day of January next," were repealed by the Amending Act (XII of 1891).

2 For Statement of Objects and Reasons, *see Gazette of India*, 1923, Pt. V, p. 406.

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* This section has been repealed in England by the Statute Law Revision Act, 1875 (36 and 37 Vic., c. 91), Schedule.

† "The Queen Anne's Bounty Act, 1716". *See* the Short Titles Act (59 and 60 Vic., c 14).

* The initial words "And be it further enacted that" were repealed in England by the Statute Law Revision Act, 1888 (51 & 52, Vict., c. 57), Schedule.

Short title, commencement and extent.

1. (1) This Act may be called THE IMMIGRATION INTO INDIA ACT, 1924.

(2) It shall come into force on such date as the Central Government may notify in the Official Gazette.

(3) It shall extend to the whole of British India, including British Baluchistan.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "British possession" means any Part of His Majesty's Dominions other than British India, the United Kingdom and Ireland, and includes Protectorates and territories which are or may be administered by a Dominion as a mandatory on behalf of the League of Nations;

(*b*) "entry" includes landing at any port in British India during the period of the ship's stay on her way to destination outside British India.

Rules as regards entry into and residence in British India.

3. The Central Government may make rules for the purpose of securing that persons not being of Indian origin, domiciled in any British Possession, shall have no greater rights and privileges, as regards entry into and residence in British India, than are accorded by the law and administration of such Possession to persons of Indian domicile.

Power to make rules.

4. The Central Government may, without prejudice to the generality of the powers contained in section 3 of this Act, make rules—

(*a*) to provide for the establishment of a suitable agency to administer the rules and to define its functions and powers;

(*b*) to provide suitable penalties for the contravention of such rules or attempt to contravene them, or the abetment of such contravention; and

(*c*) to authorize the arrest of any person contravening or reasonably suspected of contravening any such rule, and to prescribe the duties of public servants and others in regard to such arrests.

Person claiming exemption to establish case.

5. If any person alleged to be domiciled in any British Possession and to be subject to the provisions of this Act raises the plea that he is not so domiciled or that the provisions of the said Act do not apply to him, the onus of proving the truth of such plea shall lie on the aforesaid person.

THE IMPERIAL BANK OF INDIA ACT (XLVII OF 1920).

Year.	No.	Short title.	Amendments.
1920	XLVII	The Imperial Bank of India Act, 1920.	Amended VII of 1924; XVII of 1924; III of 1934;* Repealed in part XII of 1927 and XX of 1937.

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or sum of money, or any part thereof, shall be as effectual as if such infant had attained the age of twenty-one years, and had signed and given the same.

*N.B.—The amendments made by Act III of 1934 shall come into force on such date as the Governor-General in Council may, by notification in the *Gadette of India* appoint. *See* S. 1 of Act III of 1934.

THE IMPERIAL BANK OF INDIA ACT (XLVII OF 1920).

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[19*th September*, 1920.

An Act to constitute an Imperial Bank of India and for other purposes.

WHEREAS it is expedient to constitute an Imperial Bank of India and to transfer to the Bank so constituted the undertaking of each of the Presidency Banks and to dissolve those Banks and to make provision for the regulation and management of the Imperial Bank of India; It is hereby enacted as follows:—

Short title and commencement.

1. (1) This Act may be called THE IMPERIAL BANK OF INDIA ACT, 1920.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "appointed day" means such day as the Central Government may appoint for the commencement of this Act;

SEC. 1.—O. 20, R. 11, C.P. Code, is not in any way controlled by the provisions of the Imperial Bank of India Act (XLVII of 1920) which limit the power of the Bank in the matter of advancing loans for a period exceeding six months. The Courts are not therefore precluded from granting instalments in proper cases simply because such a course would postpone realisation of the dues by the plaintiff (Imperial Bank) for over six months. 16 N.L.J. 78=146 I.C. 1046=1933 N. 330.

..(*b*) "the Bank of Bengal", "the Bank of Madras" and "the Bank of Bombay" mean, respectively, those Banks as constituted by the Presidency Banks Act, 1876.

(*c*) "dividend" includes bonus;

(*d*) "general meeting" means the annual meeting of the shareholders of the Bank;

(*e*) "goods" includes also bullion, wares and merchandise;

(*f*) "local meeting" means the annual meeting of the shareholders whose names are registered in a branch register;

(*g*) "meeting" includes an adjourned holding of a meeting;

(*h*) "prescribed" means prescribed by by-laws made under this Act;

(*i*) "Presidency Banks" means the Bank of Bengal, the Bank of Madras and the Bank of Bombay as constituted by the Presidency Banks Act, 1876, and a "Presidency Bank" means any one of these Banks;

[1][(*ii*) "secretary" and "deputy secretary" mean, respectively, a secretary and treasurer and a deputy secretary and treasurer of the Bank];

(*j*) "special local meeting" means a meeting of the shareholders whose names are registered in a branch register, convened for the transaction of some particular business specified on the notice convening the meeting;

(*k*) "special local resolution" means a resolution passed at a special local meeting;

(*l*) "special meeting" means a meeting of shareholders convened for the transaction of some particular business specified in the notice convening the meeting; and

(*m*) "special resolution" means a resolution passed at a special meeting.

CHAPTER I.

ESTABLISHMENT AND INCORPORATION OF THE IMPERIAL BANK OF INDIA.

Establishment of the Imperial Bank.

3. (1) A Bank to be called the Imperial Bank of India and in this Act referred to as "the Bank" shall be constituted for the purpose of taking over the undertakings of the Presidency Banks and to carry on the business of banking in accordance with the provisions of this Act.

(2) Every person who, immediately before the appointed day, was registered as a shareholder or as a holder of stock in any of the Presidency Banks, together with such other persons as may from time to time become shareholders in the Bank in accordance with the provisions of this Act, shall, as long as they are shareholders in the Bank, constitute a body corporate with perpetual succession and a common seal under the name of the Imperial Bank of India and shall sue and be sued in that name.

(3) Subject to the provisions of this Act, the capital of the Bank shall consist of one hundred and twelve millions and five hundred thousand rupees divided into shares of five hundred rupees each.

(4) The liability of the shareholders of the Bank shall be limited to the amount not fully paid up on their shares.

CHAPTER II.

TRANSFER OF THE UNDERTAKINGS OF PRESIDENCY BANKS TO THE IMPERIAL BANK.

Transfer of assets and liabilities.

4. (1) Subject to the provisions of this Act, as from the appointed day, the undertakings of each of the Presidency Banks shall be transferred to and shall vest in the Bank.

(2) The undertaking of a Presidency Bank shall be deemed to include

LEF. REF.

[1] Inserted by Act III of 1934, S. 2.

all rights, powers, authorities and privileges and all property, movable or immovable, including cash balances, reserve funds, investments and all other interests and rights in or arising out of such property as may be in the possession of that Bank immediately before the appointed day, and all books, accounts and documents relating thereto, and shall also be deemed to include all debts, liabilities and obligations of whatever kind then existing of that Bank.

(3) If, on the appointed day, any suit, appeal or legal proceeding of whatever nature is pending by or against any Presidency Bank, the same shall not abate, be discontinued or be in any way prejudicially affected by reason of the transfer to the Bank of the undertaking of such Presidency Bank or of anything in this Act, but the suit, appeal or proceeding may be continued, prosecuted and enforced by or against the Bank.

(4) All contracts, deeds, bonds, agreements and other instruments of whatever nature subsisting or having effect immediately before the appointed day and to which any Presidency Bank is a party shall be of as full force and effect against or in favour of the Bank, as the case may be, and may be enforced as fully and effectually as if instead of the Presidency Bank the Bank had been a party thereto.

Terms of transfer as regards shareholders in the Presidency Banks.

5. (1) The name of every person who immediately before the appointed day was registered as a shareholder in any of the Presidency Banks shall be registered in accordance with the provisions of this Act hereinafter appearing as holding the same number of shares in the Bank as stood in his name in the register of such Presidency Bank:

Provided that, for the purposes of this section two half-shares standing in the name of any such person in the register of any Presidency Bank shall be taken as the equivalent of one share, and odd half-shares shall be dealt with as hereinafter provided.

(2) The name of every person who immediately before the appointed day was registered as a holder of stock in any of the Presidency Banks shall be registered in accordance with the provisions of this Act hereinafter appearing as holding one share in the Bank for every Rupees five hundred of stock of which he was the registered holder in such Presidency Bank, and odd amounts of stock not amounting to Rupees five hundred shall be dealt with as hereinafter provided.

(3) The Bank shall issue fractional certificates to the holders of odd half-shares and of odd amounts of stock, not amounting to Rupees five hundred, certifying, as the case may be, that the holder is entitled to one-half of one fully paid share or such fraction of a share as the odd amount of stock is of Rupees five hundred.

(4) Holders of fractional certificates shall, if resident in India, within three months and, in any other case, within six months from the date of the certificate either—

(*i*) surrender their fractional certificates with other similar fractional certificates representing in all one fully paid share, in which case the surrenderer shall be entitled to be registered as a shareholder and to have a fresh certificate for a fully paid share in the Bank issued to him and be entitled to an allotment of new shares in the same way as if he had been the holder of one fully paid share, or

(*ii*) at their option surrender the fractional certificates to the Bank, in which case the Bank shall be entitled to sell the shares represented by the fractions so surrendered from time to time in such manner as the Bank deems expedient, and the aggregate net sale proceeds realized by such sale or sales shall be divided proportionately and paid by the Bank to the holders of fractional certificates for whose account the shares may have been so sold.

(5) Every shareholder of the Bank whose name has been registered in accordance with the provisions of this section shall be entitled, in respect of every share of which he is so registered as the holder, to an allotment to himself or to his nominee (provided that such nominee is approved by the Bank) of two shares in the Bank with the sum of rupees one hundred and twenty-five credited as paid up on payment in respect of each share in the case of a former shareholder or stockholder of the Bank of Bengal or the Bank of Bombay, of Rupees one hundred and twenty-five, and of the Bank of Madras of Rupees two hundred and twenty-five.

(6) The Bank shall cause notice to be published in the Official Gazette and in two daily papers in each Presidency, and shall also send by post to every person whose name immediately before the appointed day was entered in the register of shareholders or shareholders of any of the Presidency Banks, a notice giving particulars of the terms hereinbefore set out as to the allotment of new shares and the surrender of fractional certificates, and as to the manner and form in which application for the allotment of new shares and the surrender of fractional certificates is to be made.

(7) If within a period of three months from the date of publication in the Official Gazette of the notice referred to in sub-section (6), any share holder has not made an application for the allotment of new shares to which he is entitled, the Bank may offer such shares for public subscription and allot them to any person applying therefor:

Provided that the Bank in the case of shareholders whose addresses are out of British India may, either generally or in any particular instance, fix an extended period for the admission of applications, but in no case shall that period be later than six months from the date of the publication of the notice in the Official Gazette.

Existing officers and servants of Presidency Banks and existing Provident Funds.

6. (1) Subject to the provisions of this Act, every officer and servant employed immediately before the appointed day by a Presidency Bank shall, from the appointed day, become an officer or servant of the Bank, and shall hold his office or service therein by the same tenure and upon the same terms and conditions and with the same rights and privileges as to pension or gratuity as he would have held the same under the Presidency Bank if this Act had not been passed.

(2) Any person who, on the appointed day, has been granted or is in receipt of a pension or other superannuation or compassionate allowance from a Presidency Bank shall be entitled to be paid by, and to receive from, the Bank the same pension or allowance so long as he observes the conditions on which the pension or allowance was granted. Any question whether he has so observed such conditions shall, in case of any difference arising, be determined by the Central Government.

(3) For the directors and officers of the Banks of Bombay and Madras who are at the commencement of this Act the respective trustees of the following funds, that is to say,—

(*a*) the Bank of Bombay Officers' Pension and Guarantee Fund, and

(*b*) the Bank of Madras Pension and Gratuity Fund, and the Bank of Madras Officers' Provident and Mutual Guarantee Fund,

there shall be substituted as trustees of those funds, respectively, the members for the time being and the corresponding officers of the Local Boards of the Bank at Bombay and Madras; and if any doubt arises as to who are the corresponding officers to the officers who are trustees at the commencement of this Act, the decision of the Central Board shall be final.

Dissolution of Presidency Banks.

7. As from the appointed day the Presidency Banks shall be dissolved, and thereafter no person shall make, assert or take any claims, demands or proceedings against any of the said Banks or against a director or officer thereof, in his capacity as such director or officer, except in so far as may be necessary for enforcing the provisions of this Act.

CHAPTER III.

BUSINESS OF THE BANK.

Business which Bany may transact.

8. Subject to the provisions of this Act, the business which the Bank is authorized to carry on and transact shall be the several kinds of business specified in Schedule I, subject to the limitations therein mentioned.

9. [*Business of London Office.*] *Rep. by the Imperial Bank of India (Amendment) Act (III of* 1934), *S.* 3.

Bank may do Government business.

10. (1) It shall also be lawful for the Bank under any agreement with the [1][Reserve Bank of India]—

(*i*) [2][* *] to pay, receive, collect and remit money, bullion and securities [3][as agent for the Reserve Bank of India] on behalf of [4][any] Government.

(*ii*) to undertake and transact any other business which, [the Reserve Bank of India] may from time to time entrust to the Bank.[1]

(2) [2][* *].

Acquisition of business premises.

11. For the purpose of providing buildings and places in and at which to carry on and manage the business of the Bank and proper residences for its officers and servants the Bank may—

(*a*) acquire any interest in immovable property; and

(*b*) sell. buy, re-sell, exchange, let, furnish, repair; insure against fire and other risks or deal with all or any part of the same as it may consider most conducive to the interest of the Bank.

Establishment of branches and agencies

12. Subject to the provisions of this Act, the Bank may—

(*a*) maintain, as branches or agencies of the Bank, any branches or agencies of the Presidency Banks which were in existence immediately before the appointed day, and may establish branches or agencies at such places, [5][whether in India or elsewhere], as it deems advantageous for the interests of the Bank, and

(*b*) discontinue any branch or agency maintained or established under this section.

Power of Bank to take over business of certain other Banks and for that purpose to increase its capital.

13. (1) With the sanction of the Central Government, the Bank may enter into negotiations for and purchase and take over the business, including the capital, assets and liabilities, of any Banking company carrying on business in India [6][or elsewhere] of which the capital is divided into shares, and may pay the consideration for such purchase either in cash or by the allotment of shares in the capital of the Bank, or partly in one and partly in the other of these ways, and may (subject to the provisions of this Act relating to the increase of capital) for the purpose of any such allotment of shares, increase the capital of the Bank by the issue of such number of shares as may be determined on by the Bank.

LEG. REF.

[1] Substituted by Act III of 1934.
[2] Certain words omitted by *ibid.*
[3] Inserted by *ibid.*
[4] Substituted by A.O.
[5] Inserted by Act III of 1934 S. 5.
[6] Inserted by *ibid.*, S 6

(2) Any business so purchased shall after the purchase be carried on by the Bank subject to the provisions of this Act.

[7][* * *].

[1][13-A. Notwithstanding anything contained in Schedule I, the Bank may either alone or conjointly with other persons, for the purpose of averting the winding up of any company [2 * * *] having a share capital which is expressed in rupees in its memorandum of association or of any society registered under the Co-operative Societies Act, 1912, [3][or any other law for the time being in force in British India [4][or British Burma] relating to co-operative societies] or, where any such company or society is being wound up, of facilitating the winding up, advance or lend money to or open a cash-credit in favour of, such company, or society or the liquidators thereof, as the case may be, for any period upon the security of all or any of the assets whatsoever of such company or society]

Power of Bank to grant loans to certain other Banks.

CHAPTER IV.

SHARES.

Nature of shares.

14. (1) The shares of the Bank shall be movable property.

(2) Each share in the Bank shall be distinguished by its appropriate number.

Certificate of shares

15. A certificate under the common or official seal of the Bank specifying the shares held by any shareholder shall be *prima facie* evidence of the title of the shareholder to the shares therein specified.

Principal register of shareholders.

16. The Bank shall keep in one or more books a register of its shareholders (in this Act referred to as the principal register), and shall enter therein the following particulars so far as they may be available:—

(*i*) the names and addresses and occupations, if any, of the shareholders and a statement of the shares held by each shareholder, distinguishing each share by its number, and of the amount paid on the shares of each shareholder;

(*ii*) the date on which each person is so entered as a shareholder; and

(*iii*) the date on which any person ceases to be a shareholder.

Branch registers.

17. (1) The Bank shall cause to be kept at the local head offices of the Bank in Calcutta, Madras and Bombay branch registers which shall be deemed to be part of the principal register, and may do so at any other local head office which may hereafter be established under this Act.

(2) There shall be entered in the branch register to be kept in Calcutta the name of every person who having been registered as a shareholder or stockholder in the Bank of Bengal is entitled under the provisions of section 5 to be registered as a shareholder in the Bank, with the same particulars appended thereto as required in the case of the principal register, and the same provision shall apply *mutatis mutandis* to the branch registers to be kept in Madras and Bombay.

(3) Any shareholder may apply to the Bank to have his name transferred from one branch register to another in respect of either the whole or any part of the shares standing in his name, and the Bank shall, subject to such conditions as may be prescribed, cause the registers to be amended accordingly.

(4) Subject to the provisions of sub-section (3) no transaction with respect to any share registered in one branch register shall be registered in any other branch register.

LEG. REF.

[1]Inserted by Act XVII of 1924.

[2]Omitted by Act III of 1934, S. 7.

[3]Inserted by *ibid.*

[4]Inserted by A.O., 1937.

[7]Omitted by *ibid.*

Trusts not to be entered on the register.

18. No notice of any trust, express, implied or constructive, shall be entered on the principal or any branch register or be receivable by the Bank.

Power to close register.

19. The Bank may close the principal register or any branch register for any time or times, not exceeding in the whole thirty days in each year.

Inspection of register of shareholders.

20. (1) The principal register of shareholders shall be kept at such places as the Bank, by notification in the Official Gazette, may appoint and, except when closed under the provisions of this Act, that register or any branch register shall during business hours (subject to such reasonable restrictions as the Bank may impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any shareholder gratis.

(2) Any shareholder may require a copy of any such register, or of any part thereof, on pre-payment therefor at the rate of six annas for every hundred words or fractional part thereof required to be copied.

[1][(3) A copy of the principal register of shareholders shall be complied within 30 days after the date of the first ordinary general meeting in each year and shall be filed forthwith with the officer performing the duty of registration of companies under the Indian Companies Act, 1913.]

CONTRACTS.

Form of contracts.

21. (1) Contracts on behalf of the Bank may be made as follows:—

(*i*) any contract, which if made between private persons, would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the Bank, in writing signed by any person acting under its authority, express or implied, and may in the same manner be varied or discharged;

(*ii*) any contract which, if made between private persons, would by law be valid although made by parol only and not reduced to writing, may be made by parol on behalf of the Bank, by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.

(2) All contracts made according to the provisions of this section shall be effectual in law, and shall bind the Bank and all other parties thereto and their legal representatives.

REGULATIONS OF BANK.

Regulations of the Bank.

22. The provisions contained in Schedule II shall be the regulations of the Bank in regard to the matters to which they relate.

CHAPTER V.

MANAGEMENT.

Officers of the Bank.

23. The Bank shall have local head offices in Calcutta, Madras and Bombay, and at such other places in British India [2][or British Burma] as the Bank, [3][* * *] may determine [3][* * *].

Offices of the Bank.

24. The general superintendence of the affairs and business of the Bank shall be entrusted to a Central Board of [4][Directors] (hereinafter in this Act referred to as the "Central Board"), who may exercise all powers and do all such acts and things as may

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LEG. REF.

[1] Inserted by Act III of 1934, S. 8.

[2] Inserted by A.O., 1937.

[3] In section 23 the words "with the previous sanction of the Governor-General in Council," and the words "The Bank may also, subject to the provisions of this Act as to the business to be transacted there, established an office in London," have been omitted by Act III of 1934, S. 9.

[4] Substituted by *ibid.*, S. 10.

be exercised or done by the Bank and are not by this Act expressly directed or required to be done by the Bank in general meeting.

Local Boards.

25. Local Boards shall be established at Calcutta, Madras and Bombay, and may be established at such other places in British India [1][or British Burma] as the Central Board [2][* * *] may determine.

Powers of Local Boards.

26. Without prejudice to the powers conferred by section 24, the Local Boards established at Calcutta, Madras and Bombay shall have power generally to transact all the usual business of the Bank, and shall have power as regards entries in the branch registers, respectively kept at those places, to examine and pass or refuse to pass transfers and transmissions and to approve or refuse to approve transferees of shares and to give certificates of shares.

LOCAL BOARDS AT CALCUTTA, MADRAS AND BOMBAY.

Constitution of first Local Boards.

27. The several persons who were, immediately before the appointed day, respectively the directors of the Presidency Banks shall constitute the first Local Boards of the Bank at Calcutta, Madras and Bombay, respectively, and the persons who were then president, vice-president and secretary, respectively, of the said Banks shall fill the same offices in the respective Local Boards until they vacate office in accordance with the provisions of this Act.

CENTRAL BOARD.

Constitution of Central Board.

[3][28. (1) The Central Board shall consist of the following Directors, namely:—

(*i*) the presidents and vice-presidents of the Local Boards established by this Act;

(*ii*) one person to be elected from among themselves by the members of each Local Board established by this Act;

(*iii*) a Managing Director who shall be appointed by the Central Board for a period not exceeding five years on such terms as the Central Board may direct, and may be continued in his appointment by the Central Board for such further periods not exceeding five years in each case as the Central Board thinks fit;

(*iv*) such number of persons not exceeding two and not being [4][officers of the Crown] as may be nominated by the Central Government. Such persons shall hold office for one year but may be re-nominated;

(*v*) a Deputy Managing Director who shall be appointed by the Central Board;

(*vi*) the secretaries of the Local Boards established by this Act; and

(*vii*) if any Local Board is hereafter established under this Act, such number of persons to represent it as the Central Board may prescribe.

(2) The Directors specified in clauses (*v*) and (*vi*) of sub-section (1) shall be at liberty to attend all meetings of the Central Board and to take part in its deliberations, but shall not be entitled to vote on any question arising at any meeting:

Provided that the Deputy Managing Director shall be entitled to vote in the absence of the Managing Director.

(3) The Central Government shall nominate an [4][officer of the Crown] to attend the meetings of the Central Board, and such officer shall be entitled to attend all meetings of the Central Board and to take part in its deliberations but shall not be entitled to vote on any question arising at any meeting.

LEG. REF.

[1] Inserted by A.O., 1937.
[2] Omitted by Act III of 1934, S. 9.
[3] Substituted by *ibid.*, S. 12.
[4] Substituted by A.O., 1937.

Constitution of other Local Boards.

29. (1) Where the Central Board establishes any additional local head office of the Bank in British India, [1][or British Burma] a Local Board shall be constituted to manage the local business of the Bank.

(2) The number of the members of any such Local Board shall be such number, not less than three, as may be prescribed and shall be appointed in such manner as may be prescribed.

30. [*Power to remove difficulties.*] *Rep. by the Imperial Bank of India (Amendment) Act (III of* 1934), *S.* 13.

CHAPTER VI.

MISCELLANEOUS.

Power of Central Board to make bye-laws.

31. (1) The Central Board shall, with the previous approval of the Central Government make bye-laws consistent with this Act regulating the following matters, namely:—

(*a*) the maximum amounts which may be advanced, or lent to, or for which bills may be discounted for, any individual or partnership, without the security mentioned in sub-clauses (*i*) to (*iv*) of clause (*a*) of Part I of Schedule I, the conditions under which advances may be made on the said security and the extent of the sums to which accounts may be overdrawn without security;

(*b*) the conditions subject to which alone advances may be made to [2][Directors], members of Local Boards, or officers of the Bank, or the relatives of such [2][Directors], members, or officers, or to companies, firms or individuals with which or with whom such [2][Directors], members, officers or relatives are connected as partners, directors, managers, servants, shareholders or otherwise:

Provided that the bye-laws shall provide that no advance without security shall be made to any officer of the Bank without the specific sanction of the Local Board under which he is serving;

(*c*) the particulars to be contained in [2][the annual and half-yearly balance sheets]; and

(*d*) any matter which by this Act is directed to be prescribed.

(2) The Central Board may, with the previous approval of the Central Government, make bye-laws consistent with this Act regulating the following matters or any of them, namely:—

(*a*) the keeping of the register and branch registers of shareholders;

(*b*) the distribution of business amongst the [2][Directors] and their remuneration, if any;

(*c*) the distribution of business amongst the members of a Local Board and their remuneration; if any;

(*d*) the delegation of any powers of the Central Board or of a Local Board to committees consisting of [2][Directors] or members, as the case may be;

(*e*) the procedure to be followed at the meetings of the Central or Local Boards or of any committees thereof;

(*f*) the first appointment and the appointment of members of a Local Board established under this Act;

(*g*) the powers of Local Boards established by or under this Act;

(*h*) the localities in and with respect to which such Local Boards shall exercise their powers;

(*i*) the books and accounts to be kept at the local head offices of the Bank;

(*g*) the powers of Local Boards established by or under this Act;

LEG. REF.

[1] Inserted by A.O., 1937.

[2] Substituted by Act III of 1934, S. 14.

(*h*) the localities in, and with respect to which such Local Boards shall exercise their powers;

(*i*) the books and accounts to be kept at the local head offices of the Bank;

(*j*) the renewal of certificates of shares which have been worn out or lost;

(*k*) the conduct and defence of legal proceedings and the manner of signing pleadings;

(*l*) the constitution and management of pension and provident funds for the officers and servants of the Bank;

(*m*) all matters which are by this Act permitted to be prescribed; and

(*n*) generally the conduct of the business of the Bank.

References to Presidency Banks.

32. (1) The references in sections 188, 189 and 289 of the Indian Companies Act, 1913, and references in any other enactment to the Presidency Banks or any of them shall be deemed to be references to the Bank.

(2) Where by any instrument power is given to invest in, to hold or to exercise any rights in regard to shares or stock in a Presidency Bank, then that power may be exercised as if the same power were given by such instrument in regard to shares in the Bank.

(3) A power of attorney in favour of a Presidency Bank or in favour of a Presidency Bank and its officers shall be deemed, as the case may be, to be a power of attorney in favour of the Bank or of the Bank and its officers.

33. [*Amendment of S.* 11 (3) *of Act VII of* 1913.] *Rep. by the Repealing and Amending Act* (*XX of* 1937), *S.* 3 *and Sch. II.*

34. [*Repeals.*] *Rep. by the Repealing Act* (*XII of* 1927).

SCHEDULE I.

(*See section* 8.)

PART I.

BUSINESS WHICH THE BANK IS AUTHORISED TO CARRY ON AND TRANSACT.

The Bank is authorized to carry on and transact the several kinds of business hereinafter specified, namely:—

(*a*) the advancing and lending money, and opening cash-credits upon the security of—

(i) stocks, funds and securities (other than immovable property) in which a trustee is authorised to invest trust money by any Act of Parliament or by any [1][Indian or Burman Law][2] [* *] any securities of [1][a Provincial Government, the Government of Burma] or the Government of Ceylon, [3][and shares of the Reserve Bank of India].

(ii) such securities issued by State-aided railways as having been notified by the Central Government under section 36 of the Presidency Banks Act, 1876, or may be notified by [1][it] under this Act in that behalf;

(iii) debentures or other securities for money issued under the authority of any Act of a legislature established in British India [4][or British Burma], by, or on behalf of a district board [3][or a municipal board or committee, or, with the sanction of the Central Government debentures or other securities for money issued under the authority of a Prince or Chief of any State in India];

[3][(iii-a) Subject to such directions as may be issued by the Central Board, debentures of companies with limited liability, whether registered in India or elsewhere;]

(iv) goods which, or the documents of title to which, are deposited with, or assigned to, the Bank as security for such advances, loans or credits:

[3][(iv-a) goods which are hypothecated to the Bank as security for such advances, loans or credits, if so authorised by special directions of the Central Board;]

(v) accepted bills of exchange and promissory notes endorsed by the payees and joint and several promissory notes of two or more persons or firms unconnected with each other in general partnership; and

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LEG. REF.

[1] Substituted by A.O., 1937.
[2] Omitted and inserted by Act III of 1934.
[3] Inserted by *ibid.*
[4] Inserted by A.O., 1937.

SCH. I, PART I.—Where debentures which were issued by another Bank in favour of Imperial Bank of India, were only as collateral securities to promissory notes executed by it, on a prior occasion, the Imperial Bank is not prohibited from entering into the transaction by reason of Part 2 of the Schedule to the Act and can enforce the debentures. 1930 C. 536=57 C. 328=127 I.C. 760.

(vi) fully paid shares [1][* *] of companies with limited liability, or immovable property or documents of title relating thereto as collateral security only where the original security is one of those specified in sub-clauses (i) to (iv), [2][subject to such directions as may be issued by the Central Board], where the original security is of the kind specified in sub-clause (v) :

[3][Provided that any advances or loans which, under the law for the time being in force, any of the following Governments or authorities, that is to say, the Secretary of State, any Government in British India, the Federal Railway Authority, the Government of Burma or the Burma Railway Board, may lawfully accept from the Bank may, if the Central Board think fit, be made without any specific security.]

(*b*) the selling and realisation of the proceeds of sale of any such promissory notes, debentures, stock-receipts, bonds, annuities, stock, shares, securities or goods which, or the documents of title to which, have been deposited with, or [2][pledged, hypothecated, assigned or transferred to] the bank as security for such advances, loans or credits, or which are held by the bank or over which the Bank is entitled to any lien or charge in respect of any such loan or advance or credit or any debt or claim of the Bank, and which have not been redeemed in due time in accordance with the terms and conditions (if any) of such deposit [2][pledge, hypothecation, assignment or transfer];

(*c*) the advancing and lending money to Courts of Wards upon the security of estates in their charge or under their superintendence, and the realisation of such advances or loans and any interest due thereon, provided that no such advance or loan shall be made without the previous sanction of the Provincial Government concerned, and that the period for which any such advance or loan is made shall not exceed [2][nine months in the case of advances or loans relating to the financing of seasonal agricultural operations or six months in other cases ;

(*d*) the drawing, accepting, discounting, buying and selling of bills of exchange and other negotiable securities [1][* * *].

(*e*) the investing of the funds of the Bank upon any of the securities specified in sub-clauses (i) to (iii) of clause (*a*) and converting the same into money when required ; and alterting, converting and transporting such investments for or into others of the investments above specified ;

(*f*) the making, issuing and circulating of bank-post-bills and letters of credit [1][* *] to order, or otherwise than to the bearer on demand ;

(*g*) the buying and selling of gold and silver whether coined or uncoined ;

(*h*) the receiving of deposits and keeping cash accounts on such terms as may be agreed on ;

(*i*) the acceptance of the charge of plate, jewels, title-deeds or other valuable goods on such terms as may be agreed on ;

(*j*) the selling and realising of all property, whether movable or immovable, which may in any way come into the possession of the Bank in satisfaction or part satisfaction of any of its claims, [4][and the acquisition and holding of, and generally the dealing with, any right, title or interest] in any property, movable or immovable, which may be the Banks' security for any loan or advance or may be connected with any such security];

(*k*) the transacting of pecuniary agency business on commission [4][and the entering into of contracts of indemnity, suretyship or guarantee with specific security or otherwise] ;

(*l*) [2][the administration of estates for any purpose, whether as an executor, trustee or otherwise] and the acting as agent on commission in the transaction of the following kinds of business, namely :—

(i) the buying, selling, transferring and taking charge of any securities or any shares in any public company ;

(ii) the receiving of the proceeds, whether principal, interest or dividends, of any securities or share ;

(iii) the remittance of such proceeds [5][* *] by public or private bills of exchange, payable either in India or elsewhere ;

(*m*) the drawing of bills of exchange and the granting of letters of credit payable out of India, [5][* *]

(*n*) the buying, [5][* *] of bills of exchange payable out of India at any usance not exceeding [2][nine months in the case of bills relating to the financing of seasonal agricultural operations or six months in other cases] ;

(*o*) the borrowing of money [5][* *] for the purposes of the Bank's business, and the giving of security for money so borrowed by pledging assets or otherwise ;

[2][(*p*) the subsidizing from time to time of the pension funds of the Presidency Banks ; and]

(*q*) generally, the doing of all such matters and things as may be incidental or subsidiary to the transacting of the various kinds of business [4][including foreign exchange business] hereinbefore specified.

PART II.

BUSINESS WHICH THE BANK IS NOT AUTHORISED TO CARRY OUT OR TRANSACT.

The Bank shall not transact any kind of Banking business other than those specified in Part I and in particular—

(1) It shall not make any loan or advance—

(*a*) for a longer period than six months [4][except as provided in Cl. (*c*) and Cl. (*n*) of Part I], or

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LEG. REF.

1 Omitted and inserted by Act III of 1934.
2 Substituted by Act III of 1934.
3 Substituted by A.O., 1937.
4 Inserted by Act III of 1934.
5 Omitted by Act III of 1934.

(*b*) upon the security of stock or shares of the Bank, or

(*c*) save in the case of the estates specified in clause (*c*) of Part I, upon mortgage or in any other manner upon the security of any immovable property, or the documents of title relating thereto.

(2) The Bank shall not (except upon a security of the kind specified in sub-clauses (*i*) to (*iv*) of clause (*a*) of Part I) discount bills for any individual or partnership firm for an amount exceeding in the whole at any one time such sum as may be prescribed or lend or advance in any way to any individual or partnership firm an amount exceeding in the whole at any one time such sum as may be so prescribed.

(3) The Bank shall not discount or buy, or advance and lend, or open cash credits on the security of any negotiable instrument of any individual or partnership firm, payable in the town or at the place where it is presented for discount, which does not carry on it the several responsibilities of at least two persons or firms unconnected with each other in general partnership.

(4) The Bank shall not discount or buy, or advance and lend, or open cash credits on the security of any negotiable security [1][not being a security in which a trustee may invest trust money under S. 20 of the Indian Trusts Act, 1882] [2][or the corresponding provisions for the time being in force in Burma] having at the date of the proposed transaction a longer period to run than [3][nine months if a bill drawn for the purpose of financing seasonal agricultural operations and six months in other cases] or, if drawn after sight, drawn for a longer period than [3][nine months if a bill drawn for the purpose of financing seasonal agricultural operations and six months in other cases:]

Provided that nothing in this Part shall be deemed to prevent the Bank from allowing any person who keeps an account with the Bank to overdraw such account, without security, to such extent as may be prescribed.

SCHEDULE II.

REGULATIONS OF THE BANK.

(See *section* 22.)

1. SHARE CERTIFICATES.—Every person whose name is entered as a shareholder in the register of shareholders shall, without payment, be entitled to a certificate under the common seal of the Bank (or if the certificate relates to shares registered in a branch register under the official seal of the Bank) specifying the share or shares held by him and the amount paid up thereon : Provided that, in respect of a share or shares held jointly by several persons, the Bank shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint-holders shall be sufficient delivery to all.

Lien.

2. BANK'S LIEN ON SHARES.—The Bank shall have a lien on every share (not being a fully paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the Bank shall also have a lien on all shares standing registered in the name of a single person for all moneys presently payable by him or his estate to the Bank. The Bank's lien, if any, on a share shall also extend to all dividends payable thereon.

3. POWER TO SELL FOR DEFAULT.—The Bank may sell in such manner, as it thinks fit, any shares on which it has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or to the person entitled by reason of his death or insolvency to the share.

4. DISPOSAL OF PROCEEDS OF SALES.—The proceeds of the sale shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of sale. The purchaser shall be registered as the holder of the shares, and he shall not be bound to see to the application of the purchase-money nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

Calls on Shares.

5. CALLS.—The Bank may, from time to time, make calls upon the shareholders in respect of any moneys unpaid on their shares, provided that no call shall exceed one-fourth of the nominal amount of the share, or be payable at less than two months from the last calls ; and each shareholder shall (subject to receiving at least two months' notice specifying the time or times of payments) pay to the Bank at the time or times so specified the amount called on his shares.

6. LIABILITY OF JOINT-HOLDERS.—The joint-holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

7. LIABILITY TO PAY INTEREST ON UNPAID CALLS.—If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of ten per cent. per annum from the day appointed for the payment thereof to the time of the actual payment, but the Central Board shall be at liberty to waive payment of that interest wholly or in part.

Transfer and Transmission of shares.

8. EXECUTION OF TRANSFERS.—The instrument of transfer of any share in the Bank shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain holder of the share until the name of the transferee is entered in the register of shareholders in respect thereof.

LEG REF.

[1] Inserted by Act III of 1934.

[2] Inserted by A.O., 1937.

[3] Substituted by Act III of 1934.

9. FORM OF TRANSFERS.—Shares in the Bank shall be transferred in the following Form, or in any usual or common Form which the [1][Bank] shall approve :—

I, *A. B.* of , in consideration of the sum of rupees paid to me by *C. D.* of (hereinafter called "the said transferee") do hereby transfer to the said transferee the share (or shares) numbered in the Imperial Bank of India to hold unto the said transferee, his executors, administrators and assigns, subject to the several conditions on which I held the same at the time of the execution thereof, and I, the said transferee, do hereby agree to take the said share (or shares) subject to the conditions aforesaid.

As witness our hand the day of .

Witness to the signature of, etc.

10. POWER TO DECLINE TO REGISTER TRANSFERS.—The Bank may decline to register any transfer of shares, not being fully paid shares, to a person of whom it does not approve, and may also decline to register any transfer of shares on which the Bank has a lien [2][or any transfer of shares to any person who is a minor or has been found by a Court of competent jurisdiction to be of unsound mind or to or in the name of any firm]. The Bank may also suspend the registration of transfers for any period during which it has under the provisions of this Act directed that the registers shall be closed.

The Bank may decline to recognise any instrument of transfer unless—

(*a*) a fee not exceeding two rupees is paid to the Bank in respect thereof; and

(*b*) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the Bank may reasonably require to show the right of the transferor to make the transfer.

Deceased shareholders.

[1][11. The executors or administrators of a deceased sole holder of a share, the holder of a succession certificate issued under Part X of the Indian Succession Act, 1925, in respect of the share, and the person in whose favour a valid instrument of transfer of the share was executed by the deceased holder during his lifetime, shall be the only persons who may be recognised by the Bank as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, and, on the death of the last survivor, his executors or administrators or any person who is the holder of a succession certificate in respect of such survivor's interest in the share, and a person in whose favour a valid instrument of transfer of the share was executed by such survivor during his lifetime, shall be the only person who may be recognised by the Bank as having any title to the share.]

12. DEATH OR INSOLVENCY OF SHAREHOLDERS.—Any person becoming entitled to a share in consequence of the death or insolvency of a shareholder [3][or in consequence of a transfer by a deceased shareholder during his lifetime] shall, upon such evidence being produced as may be required by the Bank, have the right [3][subject to the provisions of Regulation 10], either to be registered as a share holder in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or insolvent person could have made, [4][* * *]

13. RIGHTS OF PERSONS ACQUIRING SHARES ON DEATH OR INSOLVENCY OF SHAREHOLDER.—Any person becoming entitled to a share in consequence of the death or insolvency of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a shareholder in respect of the share, be entitled in respect of it, to exercise any right conferred on a shareholder in relation to meetings of the Bank.

Forfeiture of shares.

14. FAILURE TO PAY CALL.—If a shareholder fails to pay any call or instalment of a call on the day appointed for payment thereof, the Central Board may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

15. FORM OF NOTICE :—The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.

16. FORFEITURE OF SHARES.—If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Central Board to that effect.

17. DISPOSAL OF FORFEITED SHARES.—A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the Central Board thinks fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the Central Board thinks fit.

18. LIABILITY OF SHAREHOLDERS AFTER FORFEITURE.—A person whose shares have been forfeited shall cease to be a shareholder in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the Bank all moneys which, at the date of forfeiture, were presently payable by him to the Bank in respect of the shares, but his liability shall cease if and when the Bank receives payment in full of the nominal amount of the shares.

LEG. RLF

[1] Substituted by Act III of 1934, S. 16.

[2] Inserted by *ibid.*, S. 17.

[3] Inserted by *ibid.*, S. 19.

[4] Omitted by *ibid.*

Alteration of Capital.

19. POWER TO INCREASE OR REDUCE CAPITAL.—The shareholders of the Bank may, by special resolution [1][* *] increase or [2][and with the previous sanction of the Central Government] reduce the capital of the Bank :

Provided that no such special resolution shall be deemed to have been passed, unless at least one-third in number of the shareholders, holding at least one half of the paid-up capital of the Bank for the time being, be present in person or by proxy, and the majority of such shareholders have voted either by show of hands or by poll, as the case may be, in favour of the said resolution.

20. PROCEDURE ON RESOLUTION TO INCREASE CAPITAL.—When any such special resolution to increase the capital has been passed, the Central Board may, subject to the provisions of this Act and to the special directions (if any) given in reference thereto by the meeting at which such resolution has been passed—

(*a*) make such orders as it thinks fit for the opening of subscriptions by the shareholders towards such increase of capital ;

(*b*) allow to the shareholders such period to fill up the subscription as it thinks fit ;

(*c*) direct the manner in which the shareholders shall subscribe and pay into the Bank the proportions of new capital which they may respectively desire to subscribe ; and

(*d*) make such orders as it thinks fit for the disposal and allotment of the amount of new capital that may not be subscribed for and paid up in the manner aforesaid.

21. NEW SHARES.—Any new shares shall be subject to the same provision with reference to the payment of calls, lien, transfer, transmission, forfeiture and otherwise as the shares in the original capital.

22. PROCEDURE ON RESOLUTION TO REDUCE CAPITAL.—When any such special resolution to reduce the capital has been passed, the Central Board may (subject, as aforesaid) determine the manner in which the reduction shall be carried into effect.

Meetings of Shareholders.

23. (1) ANNUAL GENERAL MEETING.—On the first Monday of the month of August in every year, or as soon after such day as is convenient, a general meeting shall be held at such time and at such town where there is a local head office of the Bank as shall from time to time be prescribed by the Central Board, at which meeting the Central Board shall submit to the shareholders a [3][balance sheet] of the Bank made up to the preceding thirtieth day of June :

Provided that such general meeting shall not be held on two consecutive occasions at any one town in which there is a local head office of the Bank.

(2) A notice convening such meeting, signed by [3][the managing Directors or Deputy Managing Director] shall be published in the Official Gazette and in such manner as the Central Board may direct at least fifteen days before the meeting is held.

[3][24. (1) The Central Board shall convene a special meeting on the requisition of any three Directors or of not less than one hundred shareholders holding shares whether fully paid up or otherwise of the aggregate amount of not less than five hundred thousand rupees, upon which all calls or other sums due have been paid, if such requisition is signed by the requisitionists and addressed to the Managing Director or Deputy Managing Director and contains a statement of the object of the proposed meeting.

Special meetings.

(2) The requisition may consist of several documents in like form, each signed by one or more of the requisitionists.

(3) Sixty days' previous notice of any such meeting shall be given by the Central Board under the hand of not less than three Directors, and such notice shall state the purpose for which the meeting is convened and the time and place of such meeting, and shall be advertised in the Official Gazette and in not less than three daily newspapers, of which one shall be a newspaper published in the vernacular :

Provided that not less than three months' previous notice shall be thus given of any special meeting held for the purpose of increasing or reducing the capital of the Bank.

(4) The place of such meeting shall be the place where the head office of the Bank is situated at the time of the meeting.

(5) If the Central Board does not proceed within 21 days from the date of deposit of the requisition referred to in sub-sections (1) and (2) to cause a meeting to be called, the requisitionists, or a majority of them in value, may themselves call the meeting, but in either case any meeting so called shall be held within three months from the date of deposit of the requisition.]

25. (1) QUORUM.—No business shall be transacted at any meeting, whether general or special, unless a quorum of two hundred shareholders, in person or by proxy, is present at the commencement of such business.

(2) If within one hour from the time appointed for the meeting, a quorum is not present, the meeting, if convened by shareholders not being [3][Directors], shall be dissolved ; in any other case, it shall stand adjourned to the same day in the following week at the same time and place,

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LEG. REF.

[1] Inserted by Act III of 1934.

[2] Omitted by *ibid.*

[3] Substituted by *ibid.*

and if at such adjourned meeting a quorum is not present, those shareholders who are present, shall be a quorum.

26. (1) DECISION BY MAJORITY OF VOTES.—Save as is otherwise provided in this Act in regard to resolutions for the increase or reduction of capital or for the removal of a [1][Director] every election and every matter submitted to a meeting, whether general or special, shall be decided by a majority of votes.

(2) No shareholder shall be allowed to vote at any such meeting in respect of any share acquired by transfer, unless such transfer shall have been completed and registered at least three months before the time of such meeting.

(3) No shareholder shall be entitled to vote at any meeting in respect of any shares held by him alone or jointly, whilst any call due from him alone or jointly remains unpaid.

27. POWER TO DECLARE RESOLUTION CARRIED BY SHOW OF HANDS.—Save as otherwise provided in this Schedule a declaration by the chairman of any meeting, that a resolution has been carried or rejected thereat upon a show of hands, shall be conclusive, and an entry to that effect in the book of proceedings of the Bank shall be sufficient evidence of that fact, without proof of the number or proportion of the votes recorded in favour of, or against, such resolutions, unless, immediately on such declaration, a poll be demanded in writing by ten shareholders present and entitled to vote at such meeting.

28. POLL TO BE TAKEN, IF DULY DEMANDED.—If a poll be duly demanded, it shall be taken either at once or at such time and place and, save as otherwise provided in this Act, either by open voting or by ballot, as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

29. PROCEEDINGS AND RESOLUTIONS AT MEETINGS TO BE BINDING.—The proceedings at any meeting and all resolutions and decisions of such meeting shall be valid and binding on the Bank to far as such proceedings, resolutions and decisions are consistent with the provisions of this Act.

Votes of Members.

30. VOTES.—On a show of hands every shareholder present in person shall have one vote. On a poll every shareholder shall have one vote for every four shares of which he is the holder.

31. VOTES OF JOINT-HOLDERS.—In the case of joint-holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint-holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of shareholders.

32. VOTES ON BEHALF OF LUNATICS AND MINORS.—A shareholder of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other legal guardian, and a shareholder who is a minor may similarly vote by his guardian and any such committee or guardian may, on a poll, vote by proxy.

33. SHAREHOLDERS IN DEFAULT.—No shareholder shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the Bank have been paid.

34. POLL.—On a poll votes may be given either personally or by proxy.

35. FORM OF PROXIES.—The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorized in writing. No person shall act as a proxy unless either he is entitled on his own behalf to be present and vote at the meeting at which he acts as a proxy, or he has been appointed to act at that meeting as proxy for a corporation.

36. DEPOSIT OF PROXIES.—The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a notarially certified copy of that power or authority, [2][or, in the case of a power of attorney previously deposited and registered with any local head office, a certificate of the secretary of such local head office as to such deposit and registration], shall be deposited at the head office of the Bank in the place where the meeting is to be held not less than ninety-six hours before the time for holding the meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

Local Meetings.

37. ANNUAL LOCAL MEETING.—A general meeting of the shareholders on a branch register shall be held once in every year at the local head office of the Bank at which the branch register is kept. It shall be held on such date as the Central Board may direct.

38. PROCEDURE AT LOCAL MEETING.—The foregoing provisions of this Schedule as to the convening of general and special meetings and procedure at meetings shall, so far as may be, apply to local and special local meetings of the shareholders on a branch register:

Provided that references in the said provisions to shareholders shall be deemed to be references to shareholders on the Branch register, and references to [3][Directors, the Managing Director or Deputy Managing Director] and the Official Gazette shall be deemed to be references, respectively, to the members of the Local Board, secretaries and to the local Official Gazette:

LEG. REF.

[1] Substituted by Act III of 1934.

[2] Inserted by Act III of 1934.

[3] Substituted by Act III of 1934.

Provided, further that ten or more shareholders holding shares to the aggregaee amount of fifty thousand rupees may convene a special local meeting and that the number of shareholders to constitute a quorum and to demand a poll in the case of a local meeting shall be, respectively, twenty and five.

Qualifications and disqualifications of [1]*[Directors] and others.*

39. (1) QUALIFICATION AND DISQUALIFICATION OF DIRECTORS AND OF MEMBERS OF LOCAL BOARDS.—No person shall be qualified to serve as a [1][Director] or as a member of a Local Board who is not a holder in his own right of unencumbered shares of the Bank, to the nominal amount of ten thousand rupees at the least:

Provided that this provision shall not apply in the case of a person who is an officer of the Bank or is nominated [2][* * *] by the Central Government.

(2) No person shall be qualified to serve as a [1][Director] or as a member of a Local Board—

if he holds the office of director, provisioal director, promoter, agent or manager of any joint-stock bank established, or having a branch or agency in British India [3][or British Burma] or advertised as about to be established, or to have a branch or agency in British India [3][or British Burma];

Provided that this disqualification shall not apply to any person being a director of a joint-stock bank, who may be nominated as a [1][Director under the provision of clause (*iv*)] of sub-section (1) of section 28; or

if he is a salaried officer of [4][the Crown] not specially authorised by this Act or by the Central Government to serve as a member;

[1][and the office of a Director] or a member of the Local Board shall be vacated—

if the person holding it resigns his office or dies;

if he accepts or holds any other office of profit under the Bank;

if he becomes insolvent or bankrupt, or compounds with his creditors;

if he is declared lunatic, or becomes of unsound mind;

if he is absent from the Central Board or the Local Board, as the case may be, for more than six consecutive months; or

if he ceases to hold in his own right the amount of shares required to qualify him for the office.

(3) No two persons who are partners of the same mercantile firm, or are directors of the same private company, or one of whom is the general agent of, or holds a power of procuration from the other, or from a mercantile firm of which the other is a partner, shall be eligible or qualified to serve as members of the Central Board or [1][of the same Local Board] at the same time.

Removal of [1]*[Directors] and member of Local Boards.*

40. REMOVAL OF DIRECTORS.—The shareholders may, by a special resolution passed by a majority of the votes of shareholders holding in the aggregate not less than one half of the capital, remove any [1][Directors (other than a Director nominated by the Central Government)] before the expiration of his period of office, and appoint, in his stead, a qualified person, who shall in all respects stand in his place.

41. REMOVAL OF MEMBER OF LOCAL BOARD.—The shareholders on a branch register may by a special local resolution passed by the votes of shareholders holding in the aggregate not less than one-half of the capital on the branch register, remove any member of the Local Board before the expiration of his period of office, and appoint, in his stead, a qualified person who shall in all respects stand in his place.

Meetings of Central Board.

42. (1) MEETINGS OF CENTRAL BOARD.—Meetings of the Central Board shall be convened not less than once in every [1][four] months by [1][the Managing Director or Deputy Managing Director] and a meeting of the Central Board shall be held once at least in every year [1][at each of the local head offices established at Calcutta, Bombay and Madras:

Provided that not less than four meetings shall be convened by the Managing Director or Deputy Managing Director in every year].

(2) Any Local Board may require [1][the Managing Director or Deputy Managing Director] to convene a meeting of the Central Board at any time and [1][the Managing Director or Deputy Managing Director] shall forthwith convene a meeting accordingly.

(3) Four [1][Directors] entitled to vote shall form a quorum for the transaction of business.

(4) At each meeting of the Central Board the [1][Directors] present shall elect from among themseives a chairman for such meeting, who, if he is entitled to vote, shall have a second or casting vote in all cases of an equal division of votes.

Local Boards.

43. (1) TERM OF OFFICE AND NUMBER OF MEMBERS OF LOCAL BOARDS.—At the first general local meeting after the commencement of this Act, and at the annual general local meeting thereafter, the two members of the Local Board who have been longest in office as members thereof shall go out of office. The vacancies shall be filed by election at a general or special local meeting.

(2) Any member so retiring may be re-elected, and if any question arises as to which of the members who have been the same time in office shall retire, the question shall be decided by the Local Board by ballot.

LEG. REF.

[1]Substituted by Act III of 1934.

[2] Omitted by Act III of 1934.

[3] Inserted by A.O., 1937.

[4] Substituted for 'Government' by *ibid.*

(3) Subject to any by-laws which may be prescribed, the number of members of any Local Board may be varied by a special local resolution.

(4) Three of the members of a Local Board shall form a quorum for the transaction of business.

(5) Meetings of a Local Board shall be convened by the president, vice-president, or, in their absence, the senior member of the Board, whenever he thinks fit.

44. (1) PRESIDENT, VICE-PRESIDENT AND CHAIRMAN.—[1][(1) At the first meeting of the Local Board which takes place after the first meeting of the Central Board in each year, the Local Board shall elect from among its members a president and a vice-president and the elected Director referred to in clause (*ii*) of sub-section (1) of section 28. They shall continue in their respective offices until the first meeting of the Local Board after the first meeting of the Central Board in the following year, and, whenever the office of president or vice-president or of such elected Director becomes vacant, the Local Board shall at its next meeting elect a successor who shall hold office for the unexpired portion of the period for which his predecessor was appointed.]

(2) The president or, in his absence, the vice-president shall be chairman at all meetings of the Local Board [2][at all general or special meetings held in the town where the Local Board is established] and at all general or special local meetings :

Provided that, if both the president and vice-president be absent at any meeting, the persons present at such meeting shall elect a chairman from among [1][the member of the Local Board present].

(3) The chairman shall have a second or casting vote in all cases of an equal division of votes.

45. (1) VACANCIES.—Any vacancy occurring on a Local Board by the death, resignation or disqualification of any member shall be filled up by the remaining members who shall co-opt a duly qualified person to fill the vacancy.

(2) Any member so appointed shall be considered to have held office from the date on which the member in whose place he is appointed was elected or, when such member was appointed under this clause, from the date on which his mediate or immediate predecessor was elected, as the case may be.

General provisions as to Central and Local Boards.

46. PROCEEDINGS OF BOARDS NOT INVALIDATED BY VACANCIES.—No act or proceeding of the Central Board or of a Local Board shall be invalidated merely by reason of the existence of a vacancy or vacancies among its [1][Directors] or members.

47. ACTS OF MEMBERS OF BOARDS VALID NOTWITHSTANDING SUBSEQUENT DISCOVERY OF DISQUALIFICATION.—All acts done by any person acting in good faith as a [1][Director] or as a member of a Local Board shall be as valid as if he was a member of the Central or Local Board, as the case may be, notwithstanding it be afterwards discovered that there was some defect in his appointment or qualification.

48. (1) INDEMNITY OF MEMBERS OF BOARDS.—Every [1][Director] and every member of a Local Board shall be indemnified by the Bank against all losses and expenses incurred by him in or about the discharge of his duties except such as happen from his own wilful act or default.

(2) A [1][Director] shall not nor shall a member of a Local Board be responsible for any other [1][Director] or member or for any officer or servant of the Bank or for any loss or expense happening to the Bank by the insufficiency or deficiency of value of, or title to, any property or scurity acquired or taken on behalf of the Bank, or by the insolvency, bankruptcy or wrongful act of any customer or debtor of the Bank, or by anything done in the execution of the duties of his office or in relation thereto, or otherwise than for his own wilful act or default.

The Seals.

49. (1) COMMON SEAL.—The common seal of the Bank shall not be affixed to any instrument except in the presence of at least three [1][Directors] including [1][the Managing Director or Deputy Managing Director] who shall sign their names to the instrument in token of their presence, and such signing shall be independent of the signing of any person who may sign the instrument as a witness. Unless so signed as aforesaid, such instrument shall be of no validity.

(2) The Bank shall have for use by the Local Boards at Calcutta, Madras and Bombay, and may have for the use of other Local Boards established under this Act, official seals which shall be fascimilies of the common seal of the Bank with the addition of the name of the local head office where it is to be used.

(3) The official seal shall be affixed to the certificates issued in respect of any shares entered in the branch registeres kept at those places and may be used for such other purposes as may be prescribed.

(4) An instrument to which an official seal is duly affixed shall bind the Bank as if it had been sealed with the common seal of the Bank.

(5) An official seal shall not be affixed to any instrument except in the presence of at least two members of the Local Board and the secretary [2][or Deputy Secretary] who shall sign their names to the instrument in token of their presence, and such signing shall be independent of the signing of any person who may sign the instrument as a witness. Unless so signed as aforesaid such instrument shall be of no validity.

LEG. REF.

[1] Substituted by Act III of 1934.

[2] Inserted by Act III of 1934.

Officers of the Bank.

50. APPOINTMENT, SALARIES, SUSPENSION AND REMOVAL OF OFFICERS.—The Central Board and subject to the provisions of this Act, the Local Boards shall have power—

(*a*) to appoint such officers and servants as may be necessary to conduct the business of the Bank,

(*b*) to grant salaries, pensions and other emoluments to such officers and servants, [1][and to grant gratuities or other financial assistance, either temporary or permanent, to widows, children or other dependents of deceased officers or servants], and

(*c*) to suspend or remove any officer or servant of the Bank.

51. ACCOUNTS, RECEIPTS AND DOCUMENTS OF BANK BY WHOM TO BE SIGNED.—The managing [1][Director and Deputy Managing Director] the secretaries and such other [2][employees] of the Bank as the Central Board may authorise in this behalf by notification in the Official Gazette are hereby severally empowered for and on behalf of the Bank, to endorse and transfer promissory notes, stock receipts, stock debentures, shares, securities and documents of title to goods, standing in the name of, or held by, the Bank and to draw, accept, and endorse bills of exchange, bank post-bills, and letters of credit in the current and authorized business of the Bank, [3][*] to sign all other accounts, receipts and documents connected with such business [1][and to execute proxies to vote at meetings on behalf of shareholders from whom the Bank holds general powers of attorney].

52. OFFICERS FORBIDDEN TO ENGAGE IN OTHER COMMERCIAL BUSINESS.—No managing [2][Director] secretary, inspector, manager or accountant in the service of the Bank and, without the previous sanction of the Board no *khazanchi* cashier, or shroff, in the service of the Bank and no agent, at any branch or agency of the Bank shall, engage in any other banking or commercial business, either on his own account or as agent for any other person or persons, or shall act as broker or agent for the sale or purchase of Government or other securities.

53. SECURITY FROM OFFICERS.—Every person appointed to hold or act in any one or more of the said offices, and every other officer from whom the Central Board may think fit to require it, shall give security to the Bank for the faithful discharge of his duty to the satisfaction of the Central Board in such amount and in such manner as it thinks proper. The security to be given as aforesaid by the person holding or acting in the office of secretary shall not be in a less amount than fifty thousand rupees.

Accounts and Dividends.

54. (1) Books TO BE BALANCED TWICE A YEAR.—The Central Board shall cause the books of the Bank to be balanced on every thirty-first day of December and every thirtieth day of June.

(2) A statement of the balance at every such period, signed by a majority of the [2][Directors] shall be forthwith sent to the Central Government.

[2][(3) The statement of the balance shall contain the particulars and shall be in the form required by section 132 of the Indian Companies Act, 1913, and the provisions of that section and of section 136 of the same Act, shall apply to the Bank in like manner as they apply to a banking company.]

55. (1) DIVIDENDS TO BE DETERMINED HALF-YEARLY.—An Account of the profits of the Bank during the previous half-year shall be taken on or immediately after every thirty-first day of December and every thirtieth day of June, and a dividend shall be made as soon thereafter as conveniently may be and the amount of such dividend shall be determined by the Central Board.

(2) No unpaid dividend shall bear interest as against the Bank.

56. TRANSFER TO RESERVE.—The Central Board may, before declaring any dividend, set aside out of the profits of the Bank such sums as it thinks proper as a reserve or reserves which shall at the discretion of the Central Board, be applicable for meeting contingencies, or for equalizing dividends, or for any other purpose to which the profits of the Bank may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the Bank or be invested in any of the securities specified in sub-clauses (i) to (iii) of claues (*a*) of Part I of Schedule I.

57. JOINT-HOLDERS.—If several persons are registered as joint-holders of any share, any one of them may give effectual receipts for any dividends payable on the share.

Audit.

58. (1) AUDITORS.—Three auditors shall be elected and their remuneration fixed at the annual general meeting. The auditors may be shareholders, but no [2][Director] or member of a Local Board or other officer of the Bank shall be eligible during his continuance in office. Any auditor shall be eligible on quitting office for re-election.

LEG. REF.

[1] Inserted by Act III of 1934.

[2] Substituted by Act III of 1934.

[3] The word 'and' omitted by Act III of 1934.

SCH II, S. 50 : CONSTRUCTION—SERVANT of BANK—TENURE OF—DISMISSAL WITHOUT NOTICE —IF JUSTIFIED.—It cannot be held that a servant of the Imperial Bank of India holds his office at pleasure and is liable to be dismissed withou notice. Servants even of a statutory body do not hold office at pleasure, merely because the statute provides the body or person by whom they may be dismissed. It is not right to assume that the power of dismissal is a power of summary dismissal. Where no stipulation exists as to notice, a hired servant can be dismissed only on reasonable notice. 1939 M. 580=(1939) 1 M.L,J. 615.

(2) The first auditors of the Bank may be appointed by the Central Board before the annual general meeting and if so appointed shall hold office only until the first annual general meeting. All auditors elected under this clause shall severally be and continue to act as auditors until the first general meeting after their respective elections :

Provided that, if any casual vacancy occurs in the office of any auditor elected under this section [1][the vacancy may be filled by the Central Board].

59. GOVERNMENT AUDITORS.—Without prejudice to anything contained in the foregoing provisions, the Central Government may appoint such auditors as it thinks fit to examine and report upon the accounts of the Bank.

60. (1) RIGHTS AND DUTIES OF AUDITORS.—Every auditor shall be supplied with a copy of the half-yearly balance-sheet, and it shall be his duty to examine the same, with the accounts and vouchers relating thereto. Every auditor shall have a list delivered to him of all books kept by the Bank, and shall at all reasonable times have access to the books, accounts and other documents of the Bank, and may, at the expense of the Bank if appointed by it and at the expense of the Central Government if appointed by it, employ accountants or other persons to assist him in investigating such accounts, and may, in relation to such accounts, examine any [1][Director] or any member of a Local Board, or any officer of the Bank.

(2) The auditors shall make a report to the shareholders or to the Central Government, as the case may be, upon the annual balance sheet and accounts and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet containing the prescribed particulars and properly drawn up so as to exhibit a true and correct view of the state of the Banks' affairs, and in case they have called for any explanation or information from the Central Board, whether it has been given and whether it is satisfactory. Any such report made to the shareholders shall be read together with the report of the Central Board at the annual general meeting.

[2][60-A. Notwithstanding anything contained in this Act or in section 271 of the Indian Companies Act, 1913, if the shareholders of the Bank pass a special resolution that the Bank be wound up voluntarily under the provisions of the Indian Companies Act, 1913, the Bank shall be wound up in accordance with the provisions of that Act with regard to the voluntary winding up of a company :

Liquidation.

Provided that, for the purposes of this section, no such special resolution shall be deemed to have been passed, unless at least one-third of the shareholders holding at least one-half of the paid-up capital of the Bank for the time being be present in person or by proxy and a majority poll by open voting in favour of the said resolution and such resolution is thereafter confirmed by a majority of the shareholders at a subsequent special meeting held at an interval of not less than two months or more than three months from the date of the meeting at which the resolution was first passed.]

Notices.

61. (1) SERVICE.—A notice may be given by the Bank to any shareholder either personally or by sending it by post to him to his registered address or (if he has no registered address in British India [3][or British Burma] to the address, if any, within British India [3][or British Burma] supplied by him to the Bank for the giving of notices to him.

(2) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, pre-paying and posting a letter containing the notice and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

[1][62. A shareholder who has no registered address in India [3][or Burma] and has not supplied to the Bank an address for the giving of notice to him shall not be entitled to any notice, notwithstanding anything contained in this Act.]

Absence of registered address.

63. NOTICE ON JOINT-HOLDERS.—A notice may be given by the Bank to the joint-holders of a share by giving the notice to the joint-holder named first in the register in respect of the share.

64. NOTICE TO LEGAL REPRESENTATIVE.—Any notice given in accordance with the foregoing provisions shall be deemed to have been duly given notwithstanding that the shareholder be then deceased and whether or not the Bank had notice of his decease, and shall in that event, be deemed to be a notice to his legal representative.

65. SERVICE OF NOTICE ON BANK.—A notice may be served on the Bank by leaving it at, or sending it by post to, any local head office of the Bank.

[*N. B.*—The following S. 41 of the Act, the Amending Act III of 1934 is to be read along with this Act]

"41. Notwithstanding any amendment made in the said Act by this Act (III of 1934) in regard to the manner in which the Central Board shall be constituted, the Central Board existing at the commencement of this Act, shall, until it has been re-established in accordance with the said Act as amended by this Act, continue to transact business and shall have all the powers of the Central Board under the said Act as so amended."

Temporary saving of existing Central Board.

SCHEDULE III.

ENACTMENTS REPEALED. [*Repealed by Act XII of* 1927).

LEG. REF.

[1] Substituted by Act III of 1934.

[2] Inserted by sec. 39, Act III of 1934.

[3] Inserted by A.O., 1937.

THE INDIAN INCOME-TAX ACT (XI OF 1922).

Act.	How amended.
The Indian Income-tax Act, 1922 (XI of 1922.)	Repealed in part, XII of 1927; Amended, XII of 1922, S. 7; XV of 1923; XXVII of 1923; IV of 1924; VII of 1924; XI of 1924; V of 1925; XIII of 1925; XVI of 1925; XIX of 1926; XXIV of 1926; *see* V of 1927; XXVIII of 1927; III of 1928; V of 1928; XVI of 1928; VI of 1929; XII of 1929; XV, XXI, XXII and XXIII of 1930; IV of 1931; *see* the Indian Finance Act, 1931; VII, XII and XVIII of 1933; XX of 1934; XXIV of 1934; XXIX of 1934; the Indian Finance Act, 1935; XII of 1935 and the Indian Finance Act, 1936; IV of 1937; XX of 1937; the Indian Finance Act, 1938; VII of 1939; the Indian Finance Act, 1939: XXXIV of 1939; XII of 1940; XL of 1940; VII of 1941; XXIII of 1941; Finance Act of 1942; XXV of 1942; XI of 1944; VIII of 1946; Ordinance IX of 1945; see also Ordinance LX of 1942; Finance Act, 1943 to 1946.

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THE INDIAN INCOME-TAX ACT (XI OF 1922).[1]

[5*th March*, 1922.

An Act to consolidate and amend the law relating to Income-tax and Super-tax.

WHEREAS it is expedient to consolidate and amend the law relating to Income-tax and Super-tax; It is hereby enacted as follows :—

Short title, extent and commencement.

1. (1) This Act may be called THE INDIAN INCOME-TAX ACT, 1922.

LEG. REF.

[1] For Statement of Objects and Reasons, *see* Gazette of India, 1921, Pt. V, p. 159; and for Report of Joint Committee, *see ibid.*, 1922 Pt. V, p. 31.

This Act has been declared in force in the district of Khondmals by sec. 3 and Sch. of the Khondmals Laws Regulation, 1936 (IV of 1936) and in the district of Angul by sec. 3 and Sch. of the Angul Laws Regulation, 1936 (V of 1936).

The Act has been applied with certain exceptions to persons in the Chittagong Hill-tacts, by sec. 2 of the Chittagong Hill-tracts Laws Regulation, 1937 (Ben. Reg. II of 1937).

SEC. 1: SCOPE OF THE ACT.—(*Per* Mukerjee.) 52 C. 1=28 C.W.N. 1074=1925 C. 34 (22 C. 788; 23 C. 563, Ref.). *See also* 18 S.L.R. 68=1925 S. 130.

CHARACTERISTIC OF INCOME-TAX— INCOME-TAX AND POOR RATE—DIFFERENCE BETWEEN.—The purpose of the Income-tax Act is to tax a person's total income from all sources; the method of assessing income derived by ownership or occupation of hereditaments is somewhat arbitrarily based on annual value and not on actual income, but that does not alter the essential characteristic of income-tax that it is a tax on income generally. On the other hand, the poor rate is levied in respect of the occupation of hereditaments, irrespective of a person's income generally, and irrespective of whether the rate payer is in fact deriving profits or gains from such occupation. A dwelling-house is a burden, not a source of profit, for the occupier, who pays rent for it. He is rated on the value of the burden, while he remains unrated in respect of his whole profits, be they from business or from investments. This marks the essential difference in character between income-tax and rates. 162 I.C. 479 (P.C.). *Per* Beaumont, C.J., and Broomfield, J.—It is clear that in a statute imposing income-tax, that is a tax on total income, the tax relating to land is none the less income-tax because it is assessed on the annual value of the land and not on the actual income. But it does not follow from that proposition that every statute which charges a tax in relation to annual value of land is charging a tax on income. *Prima facie*, a tax on the annual value of land is not a tax on income. 1940 Bom. 65. Kania, J.—In determining the nature of a tax though consideration may be given to the standard on which the tax is levied, that is not the determining factor. I.L.R. (1940) Bom. 58=42 Bom.L.R. 10=3 F.L.J. 25=1940 Bom. 65 (F.B.).

Krishnaswami Ayyangar, J.—(1) The Income-tax Act, being a taxing statute, should receive a strict construction that is a construction in favour of the subject and not in favour of the Crown. If a case appears to be governed by either of two provisions, it is clearly the right of the assessee to claim that he should be taxed under the one which leaves him with a lighter burden. I.L.R. (1940) Mad. 178=51 L. W. 222=1940 Mad. 366=(1940) 1 M.L.J. 319 (F.B.).

CONSTRUCTION.—On points specially dealt with in the Act it should be interpreted without reference to previous state of law. 28 C. W.N. 1074=52 C. 1=1925 C. 34. Construction most beneficial to the subject should be adopted. 48 C. 161; 43 A. 139. "If the Crown, seeking to recover tax cannot bring the subject within the letter of the law, the subject is free"—(*Per* Lord Cairns in *Partington* v. *Attorney-General*, L.R. 4 H.L. 100). But the Court cannot undertake, out of its notions of what is fair, to adopt or re arrange the machinery of the Act upon a question as to whether a certain payment made by the assessee is allowable or not in computing income-tax. 57 C. 918=1930 C. 641. *Per* Beaumont, C.J.—In construing a taxing Act, the Court is not justified in straining the language in order to hold a subject liable to tax. If the legislature intends to assess the estate of a deceased person to tax charged on the deceased in his lifetime, the legislature must provide proper machinery and not leave it to the Court to endeavour to extract the appropriate machinery out of the very unsuitable language of the Statute. 55 B. 312=33 Bom.L.R. 388=1931 B. 333. *See also* I.L.R. (1940) Mad. 178=1940 Mad. 366=(1940) 1 M.L.J. 319 (F.B.). It is obviously undesirable that in construing an All Andia Act like the Income-tax Act different constructions should be placed upon the Act in different provinces. 1940 I.T.R. 1. As to mode of keeping accounts for income-tax, *see* 7 Mys. L.J. 287. Income of previous year as basis of income-tax, *see* 1929 M. 35=55 M.L.J. 844 (F.B.). A man who is liable to pay a tax is entitled to take shelter under all devices which he may adopt within the law to avoid payment of the tax. 1929 A. 919=1930 A. L.J. 26. *See also* 26 A.L.J. 280=50 A. 495 (F.B.); 1940 Mad. 366=(1940) 1 M.L.J. 319 (F.B.); 43 Bom.L.R. 258=1941 Bom. 205= I.L.R. (1941) Bom. 384; 1938 Lah. 194. The amounts received from the sale of timber trees are income and as such liable to income-tax. 54 M. 21=1930 M. 764=59 M.L.J. 265 (F.B.).

INTERPRETATION.—Where a statute has been punctuated, the punctuation marks must be

[1][(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas and applies also, within the Indian States and the tribal areas, to British subjects who are in the service of the Crown or of a local authority established in the exercise of the powers of the Crown Representative or the Central Government in that behalf, and to all other servants of the Crown in the said States and areas.]

LEG. REF.

[1] Substituted by A.O., 1937.

taken as part of the Statute. 46 M.L.J. 42 =1924 M. 455.

INCOME-TAX MANUAL.—The Income-tax Manual merely contains departmental instructions for administering the Act and for guidance of officials and is not authoritative of the statute which is binding on the Courts. 131 I.C. 193=1931 L. 320 (2) (F.B.); 49 M. 22=1926 M. 287=50 M.L.J. 63. *See also* 12 L. 757=1931 L. 441 (as to the effect of R. 25 of the Income-tax Manual).

OPERATION AND COMMENCEMENT.—Where the proceedings, such as issue of notice, etc., were taken under the Income-tax Act of 1918, the subsequent coming into force of the Act of 1922 does not make the latter applicable. 80 I.C. 362.

ENGLISH AND INDIAN LAW.—The English and Indian Income-tax Acts, not being in *pari materia* decisions of the English Courts are not as a rule useful guides on the construction of the Indian enactment. 59 I.A. 206=59 C. 1343=36 C.W.N. 653=63 M.L.J. 124 (P.C.); 52 C. 1=28 C.W.N. 1074. *See also* 67 I.A. 239=I.L.R. (1940) 2 Cal. 215= 1940 P.C. 124=(1940) 2 M.L.J. 577 (P.C.). But on some fundamental concepts reference may be to some extent usefully made to English decisions, in particular as to the meaning of the word "income". 70 I.A. 180=22 Pat. 713=1943 P.C. 153=(1943) 2 M.L.J. 410 (P. C.). *See also* 1946 All. 306 (F.B.). English decisions are not decisions of "foreign Courts" and the decisions of English Courts on the English Income-tax Act are the best guides to the interpretation of the Indian Act. 44 M. 718=41 M.L.J. 177; 52 C. 1= 28 C.W.N. 1074; 1933 P.C. 145=65 M.L.J. 285=60 C. 1029=60 I.A. 196 (P.C.). Extreme care must be taken in applying English decisions to cases under the Burma Income-tax Act, because the Scheme of the English Income-tax Act, 1918, and the Schemes of the Burma Income-tax Act, 1922 are entirely different. 1938 Rang.L.R. 346=175 I. C. 287=1938 Rang. 151 (S.B.). An assessment is valid in law when the source of income is non-existent in the year of assessment but had been in existence in the previous year. *Per* Rankin, C.J.—The general scheme of the Income-tax Law in England is that tax is payable in respect of a source of income existing in the year of assessment, though the amount is often measured by the results of previous years. But under the Indian Income-tax Act the income of the previous year is not merely the standard by which the next year's income is to be computed but is itself the subject-matter of the tax. 54 C. 630=31 C.W.N. 557=1927 C. 553. The Indian Law bases the liability of a person to taxation on the place where the income accrues or arises, or is received, but not on the place of his residence. 10 L. 657=1929 L. 609 (F.B.). The invocation of Imperial Income-tax Code and of decisions pronounced upon it is apt to be very misleading in the interpretation of Indian Income-tax legislation which is framed on other and fortunately much simpler lines. 60 I.A. 196=1933 P. C. 145=65 M.L.J. 285 (P.C.).

DEBATES IN THE LEGISLATIVE ASSEMBLY are not admissible in construing this Act. 20 Luck. 212=1945 Oudh 35.

LEGAL OPINIONS.—It is not proper for the Income-tax Officer to ask the assessee to produce opinions of legal practitioners in support of his contention. Where such opinions are annexed by the assessees to their petitions the proper course is for the tribunal to state that the petitions cannot be received until the statements as to opinions are removed. 12 P. 5=14 Pat.L.T. 171=1933 P. 123.

INCOME, WHAT IS.—The word 'income' is not defined in the Act. It connotes a periodical monetary return "coming in" with some sort of regularity or expected regularity from definite source. The source is not necessarily one which is expected to be continuously productive, but it must be one whose object is the production of a definite return, excluding anything in the nature of a mere windfall. 59 I.A. 206=59 C. 1343= 1932 P.C. 138=63 M.L.J. 124 (P.C.).. *See also* 37 Bom.L.R. 126; 1933 P.C. 145=60 I. A. 196=65 M.L.J. 285 (P.C.), cited under sec. 3.

APPEAL TO PRIVY COUNCIL—LIMITATION.— An application for leave to appeal to Privy Council in a case under the Income-tax Act is governed by Art. 179 rather than by Art. 181 of the Limitation Act and the date of the judgment is the starting point of limitation. 59 C. 251=36 C.W.N. 127=1932 C. 587. The Commissioner of Income-tax preferring an appeal to Privy Council is entitled in computing the period of limitation to deduct the period taken for copies of judgment. 59 C. 251.

PRESUMPTION OF GOOD FAITH OF ASSESSEE.— The normal presumption is in favour of good faith and not of bad faith on the part of the assessee. To start with, the assessee is entitled to the presumption that an entry in his accounts is made in the ordinary course and not with an intention to conceal the real income. 12 Mys.L.J. 245=39 Mys. H. C. R. 772. Where a system of accountancy has been adopted by an assessee and recognised by the Income-tax authorities in previous years as correct, and on that basis a particular item has been allowed as deductible in the computation of profits in previous years,

(3) It shall come into force on the first day of April, 1922.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) " agricultural income " means—

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the income-tax authority will not be justified in subsequent years to turn round and refuse to accept that system of accountancy; a party cannot both approbate and reprobate. 12 Mys.L.J. 245=39 Mys.H.C.R. 772.

DOUBLE TAXATION, RELIEF AGAINST—INCOME-TAX ACT.—In order to claim relief afforded in respect of double taxation it is necessary to prove (*i*) payment of or liability to pay United Kingdom income-tax for a year of assessment or a part of the year's income, and (*ii*) payment of dominion tax for that year in respect of the same part of the assessee's income; those parts had to be ascertained by excluding from the statutory incomes in the two countries items which do not satisfy the conditions according to the true construction of the section; and it is the smaller of these two incomes in respect of which relief is afforded; (*iii*) the word "income" in the section meant not real income, but "statutory" or "notional income," by means of which tax is calculated; (*iv*) an analysis of the two incomes, for the purpose of comparing, for example, the respective allowances for repairs or depreciation, is inadmissible; (*v*) that nothing need be regarded except the two statutory incomes of the business, taking care, of course, to see that neither includes income from any other source; (*vi*) that the rules which determine in the United Kingdom or in a Dominion the allowances or deductions which are permissible for the purpose of assessing a tax-payer to income-tax in either country must be disregarded in determining the comparable incomes, provided that the incomes are derived from the same source; (*vii*) that actual payment, and not ultimate incidence, was the criterion both of the right to relief and of the right to deduct. 1939 I.T.R. 59.

CLAIM, ALLOWANCE OF—EFFECT FOR SUBSEQUENT YEARS.—The fact that in a previous year an Income-tax Officer had allowed a certain claim does not bind the Income-tax Officer in a subsequent year. 154 I.C. 191=1935 L. 81 (S.B.). As to application of principle of *res judicata*, *see* 1941 P. 527=194 I.C. 464. As to estoppel, *see* 1938 Cal. 557.

"OFFICER OF CROWN"—MEANING OF.—The expression "officer of the Crown", covers a Collector. The latter is in one sense an officer of the Provincial Government, but there can be no doubt that in India he is also an "officer of the Crown." 20 Pat. 573=1941 I. T.R. 386=194 I.C. 663=22 Pat.L.T. 863=1941 Pat. 306 (S.B.). The proceedings before the Income-tax Officer are not judicial proceedings in the sense in which this term is ordinarily used, and all that is required of him is to proceed without bias and give sufficient opportunity to the assessee to place his case before him, or in other words, to conduct himself in accordance with the rules of justice, equity and good conscience; and the control exercisable by the High Court on the Income-tax Officer in these circumstances is slight. 39 P.L.R. 1028=1937 Lah. 721.

AVOIDING INCOME-TAX by means not forbidden by law is not unlawful: 26 A.L.J. 280 =1928 A. 81 (F.B.); 1930 A.L.J. 26=126 I.C. 435=1929 A. 919; though it may be an offence by false return or concealment to evade payment of income-tax. 1928 A. 81 (F. B.). Any subject of the State is entitled to escape paying taxes if he can devise a lawful method of doing so but by dividing what is in fact a single transaction between two documents he does not achieve his object nor does he change the nature of the transaction. 9 P. 194=1930 P. 33 (S.B.). *See also* 57 C. 918=1930 C. 641; 1929 A. 919; 1928 A. 81 (F.B.).

SECOND INCOME TAX cannot be imposed without sanction of Governor-General. 9 Lah. 340=106 I.C. 882=1928 L. 53. *See also* 1945 Oudh 35.

SEC. 2 (1): AGRICULTURAL INCOME.—The imposition of income-tax in respect of income other than agricultural income derived from a permanently settled estate would not be a breach of the Madras Permanent Settlement Regulation. 59 L.W. 100=(1946) 1 M.L.J. 120. Forest income is "agricultural income" 45 M. 518=1922 M. 325 (F.B.). Income derived from pasturage is agricultural income. *See* 1924 Rang. 337; 1924 Cal. 668=51 Cal. 504=84 I.C. 31. Where cattle are wholly stall-fed and not pastured upon the land at all, doubtless, it is trade and no agricultural operation is being carried on; where cattle are being exclusively or mainly pastured and are nonetheless fed with small amounts of oil cake or the like, it may well be that the income derived from the sale of their milk is agricultural income. But between the two extremes there must be a number of varying degrees, and the task for the Income-tax Officer is to apply his mind to the two distinctions and to decide in any particular case on which side of the fence the matter falls. The Income-tax Officer has to see whether the cattle derived sustenance to a material extent from the produce of the ground, and whether they did so or not is entirely a question of fact for him and one which cannot be reviewed by the High Court. 176 I.C. 601= 1938 Rang. 260 (F.B.). In order to determine whether certain income is agricultural income or not, regard must be had to the source of such income; an annual sum in the nature of an *ex gratia* payment made by the Bettiah Raj to the assessee in consideration of some services rendered by an ancestor of his in the remote part is not derived from land and could not be regarded as agricultural income within the meaning of sec. 2 (1) of the Act. 1941 Pat. 27=1940 L.T.R. 416. To bring rent or revenue derived from land under the head of agricultural income under sec. 2 (1) (*a*) it is necessary to show not only

(*a*) any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land-revenue in British India or subject to a local rate assessed and collected by [2][officers of the Crown] as such ;

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[1] Substituted for "officers of Government" by A.O., 1937.

that the land from which it is derived is assessed to land revenue, but also that the land is used for agricultural purposes. This shows that double taxation is not legally impossible. 20 Luck. 212=1944 O.W.N. 443=1945 Oudh 35. Agricultural income does not lose its right to exemption because it can be brought under one of the heads of income set out in sec. 6 of the Income-tax Act. 45 C.W.N. 647 =1941 I.T.R. 292=1941 Cal. 598. Profits derived by a money-lender from a usufructuary mortgage is "agricultural income". 62 I.A. 215=69 M.L.J. 474 (P.C.). Where under an arrangement for the liquidation of a debt, a usufructuary mortgage is executed by the debtor and the mortgagee leases back the property to the debtor and the latter engages to pay the creditor definite annual payments, those payments stipulated for being rent reserved by the lease, are agricultural income within the meaning of sec. 2 (1) (*a*) and no portion thereof could be considered to be interest, damage or compensation. 1944 O.W.N. 454=1945 I.T. R. 98=1945 Oudh 44. 'Dharat' which means weighing charges levied by the landlord on the tenants in addition to the rent is also agricultural income and is exempt from assessment. 165 I.C. 141=1936 L. 602. Sec. 2 (1) of the Act applies to the case of a person who gets agricultural income from the use of the land by direct operation. It is not applicable to a lambardar who gets certain fees which constitute his remuneration for the work of the collection of the land revenue. Lambardari fees are not, therefore, within the definition of agricultural income. 38 P.L.R. 402=1936 L. 595. *Avakasam* and additional *avakasam*, renewal fees paid by a tenant to his landlord in respect of agricultural lands under the Malabar Tenancy Act constitute "agricultural income" as defined by sec. 2 (1) (*a*). In the same way any further exactions collected by the landlord from his tenant before his lease is renewed must also be held to be "agricultural income" as the landlord gets the exactions as the owner of agricultural land. 58 L.W. 140=1945 Mad. 207=(1945) 1 M.L.J. 263=I.L.R. 1945 Mad. 837. Where a *malikana* is acquired just as an annuity or maintenance allowance might be acquired in consideration of the relinquishment of all claims to property which though it might have originally borne some relation to the land revenue, had now ceased to do so and which is in the nature of a feudal payment, is not agricultural income within the meaning of the Act. Such a malikana is something outside the ordinary law governing that *malikana* which is payable by an under-proprietor to a superior proprietor and cannot be considered to be rent or revenue derived from land. 1944 O.W.N. 454 =1945 I.T.R. 98=1945 Oudh 44.

Zar-i-chaharum which is one-fourth of the sale price of houses when houses are transferred by one person to another and to which the zamindar is entitled is not agricultural income within the meaning of sec. 2 (1). Nor is *nazarana* which represents the consideration received by the zamindar for granting permission to a person to build a house on a plot of land belonging to the zamindar, agricultural income. I.L.R. (1942) All. 39r=1942 A.L.J. 543=1942 F.L.J. (H.C.). 167=1942 All. 295. The rent of the site of a flour mill cannot be regarded as agricultural income, as the working of a flour mill is not an agricultural purpose. 38 P.L.R. 402=1936 L. 595. The net profit from commission charged to tenants for sale of their produce on their behalf does not fall within the definition of agricultural income. 38 P.L.R. 402=1936 L. 595. Where the tenant had executed a pronote for arrears of rent, interest earned on the pronote is not "agricultural income" and is taxable. 55 M. 830=63 M.L.J. 20. *See also* 1941 Cal. 443. Where the assessee being a usufructuary mortgagee is in the position of a landlord with respect to the actual cultivating tenants, the income derived from such lands must be agricultural income within the meaning of the Income-tax Act and is therefore exempt from taxation. 13 P. 336 =15 P.L.T. 85=1934 P. 178 (S.B.). Simple mortgagee—Rents and profits collected by receiver and deposited in Court—Payment to mortgagee—If not agricultural income. 53 L.W. 714=1941 Mad. 246=(1941) 1 M.L.J. 262. Cash remuneration received by Mutwalli, where wakf properties consisted entirely of agricultural income is taxable. 45 C.W.N. 647=1941 Cal. 598. Income derived from toddy extracted from cocoanut trees situated on lands asssed to Government revenue is agricultural income when it is received by the actual cultivator, whether owner or lessee of the land on which the trees grow. 50 M. 923=53 M.L.J. 666=1927 M. 1038 (F. B.). If the income is obtained by a person who has produced the trees from which the toddy is tapped, or has not done any agricultural operation whereby those trees have been raised, it is not agricultural income. 50 M. 923=1927 M. 1038=53 M.L.J. 666 (F. B.). Income from lease of fishery rights is not "agricultural income" which is exempt from taxation. 1932 M. 757=63 M.L.J. 634 (F.B.). The words "agricultural purposes" in sec. 2 (1) of the Act cannot be held to cover the process of flooding the land occupied by letting in the sea water and then extracting the sodium chloride from it by eliminating the other chemical constituents. A licensee of salt factory is liable to pay income-tax on the profits he makes by the manufacture of salt. 50 M. 763=1927 M. 848=53 M.L.J. 377 (F.B.). Fees received from land used for storing purchases of crops do not come within the definition of

(*b*) any income derived from such land by—
(*i*) agriculture, or
(*ii*) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, or

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"agricultural income" and cannot therefore be exempted from assessment. 31 C.W.N. 1047=1927 C. 793. It is not possible to lay down any general rule that payments in the nature of *salami* or *nazarana* must be regarded as payments of rent and, therefore, income. The question would depend on the facts and circumstances of each case. *Salami* or *nazarana* may in certain cases be payment of rent in advance, but in other cases it may well be a lump payment for the transfer of the leasehold interest. The nature of the payment whether capital or income, cannot be decided as a question of law, but can only be decided after a full investigation of all the facts. It must also be ascertained whether the holdings settled are holdings connected or unconnected with agriculture. If they are connected with agriculture, the payments would be agricultural income. 1940 P.W.N. 702=1941 Pat. 39. *See also* 31 C.W.N. 1047=1927 Cal. 793. *"Selami"* or premium when paid for recognition of a transfer of a holding from one tenant to another is not agricultural income. 1921 C. 262=48 C. 766=25 C.W.N. 80=61 I.C. 112; 53 C. 34=1925 C. 929. Nor does *nazar* paid by tenants to zamindar. 1941 P. 39. As to income received from *Mukarraridars* or permanent leaseholders, *see* 1941 Pat. 39=1940 P.W.N. 702. As to income from quarries, *see* 25 A.L.J. 816=50 A. 98=1927 A. 703. Income derived by letting out land for purposes of stocking timber is not agrigultural income. 86 I.C. 1028=1925 L. 488. *Maintenance allowance* is not agricultural income though paid out of the income from land. *See* 52 M. 827=1929 M. 598=57 M.L.J. 36; 10 O.W.N. 1003=1933 O. 475. *See also* 60 I. A. 196=60 C. 1029=1933 P.C. 145=65 M. L.J. 285 (P.C.). Annuity reserved on a sale of an estate is not "agricultural income". 62 I.A. 207=1935 P.C. 143=69 M.L.J. 190 (P. C.). Whether the rent derived from lands leased out on patni leases is agricultural income or not is to be determined not with reference to the nature of the leases by which they were let out but by reference to the use to which the land has been put. Where a portion of the lands which a zamindar has given on patni lease is used for non-agricultural purpose, the rent paid by the patnidar to the zamindar which is attributable to that portion of the lands is not "agricultural income" within the meaning of the Act. The question whether any portion of the income derived from the patnidar by the zamindar is agricultural or not is one of fact. 1940 I.T.R. 378. *See also* 1941 Pat. 39=1940 P.W.N. 702. Mutation fees paid by transferee of occupancy holding and the landlord's fees paid under sec. 12, Bengal Tenancy Act, are agricultural income exempt from income-tax. 7 P. 550=9 Pat.L. T. 439=1928 P. 468. *See also* 118 I.C. 593 =1929 P. 449=9 P. 1 (F.B.). Profits from the sale of sugar manufactured from sugar cane grown is not "agricultural income". 53 I.C. 301 (F.B.). Interest on arrears of rent collected by a landlord from agricultural tenants under sec. 67 of the Bengal Tenancy Act of 1885 is not agricultural income as defined by sec. 2 (1) (*a*) of the Income-tax Act and is therefore assessable to income-tax. Such interest is neither rent nor revenue derived from land. 1941 Cal. 443=1940 I.T. R. 460.

AGRICULTURAL LAND IN BURMA— INCOME FROM—IF EXEMPT.—Income from agricultural land in Burma is not covered by the definition of "agricultural income" in sec. 2 (1) (*a*). The definition can cover only agricultural income in British India. I.L.R. (1945) Mad. 775=58 L.W. 74=1945 Mad. 314= (1945) 1 M.L.J. 190.

INTEREST ON ARREARS OF RENT OF LAND.— Interest accruing on arrears of rent derived from land is agricultural income. 1944 I.T. R. 428=1944 Pat. 207 (S.B.). *See also* 23 Pat. 374=25 P.L.T. 146=1944 Pat. 198 (S. B.); 21 Pat. 461=1942 Pat. 381; 26 Pat.L.T. 43. Interest on arrears of rent payable by a ryot to the landholder under the Madras Estates Land Act is not agricultural income within the meaning of the Income-tax Act. Such interest is not rent. It is an additional sum payable to the landholder as compensation for the delay in the payment of the rent. Nor can it be classified as reveuue "derived from land." The fact that the landholder may distrain for arrears of rent and interest thereon does not make the interest "rent." The fact that the Madras Estates Land Act makes the rent and interest a first charge on the land does not also alter the character of the interest. In deciding whether it is or is not agricultural income within the meaning of the Income-tax Act, the Court can only have regard to the definition in the Income tax Act. I.L.R. (1944) Mad. 322= 56 L.W. 617=1944 Mad. 76=(1943) 2 M.L. J. 439. Arrears of rent under Bengal Tenancy Act—Interest on—Is not agricultural income and is taxable. 1943 I.T.R. 546. *See also* 199 I.C. 763.

FOREST TREES AND FROEST PRODUCE.—The word "agricultu e" implies something which is achieved with the aid of human agency. Income derived from trees which have grown wild canaot be legitimately described as agricultural income and to describe it as such would involve a distortion of the meaning of the word "agriculture." 59 L.W. 100=1946 I.T.R. 92=(1946) 1 M.L.J. 120. *See also* 1922 Mad. 325; 1946 I.T.R. 356. The term "agriculture" cannot be defined by the nature of products cultivated, but should be defined rather by the circumstances in which the cul-

(*iii*) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in sub-clause (*ii*) ;

(*c*) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator, or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any operation mentioned in sub-clauses (*ii*) and (*iii*) of clause (*b*) is carried on :

Provided that the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator or the receiver of the rent-in-kind by reason of his connection with the land, requires as a dwelling house, or as a store-house, or other out-building ;

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tivation is carried on. The mere fact that an industry has some connection with or is in some way dependent on land is not sufficient to bring it within the scope of the term. The term "agricultural " for purposes of the Act should be construed in its primary sense as meaning the art or science of cultivating the ground. The expression "land used for agricultural purposes" in sec. 2 (1) (*e*) therefore cannot extend to forests of spontaneous growth where nothing is done to prepare the soil for trees to be planted therein, and where the growth of the trees is not fostered by tillage. Accordingly income from the sale of forest trees of spontaneous growth growing on land which is assessed to land revenue is not agricultural income within the meaning of sec. 2 (1) (*a*). 20 Luck. 212=1944 O.W.N. 443=1945 Oudh 35. The income from the sale of forest trees growing on land naturally and without the aid of human agency is not agricultural income and as such is not exempt from income-tax 1944 O.W.N. 451 =1945 L.T.R. 94=1945 Oudh 42.

SECS. 2 (1) AND 4 (3) (*viii*): FIXED REMUNERATION PAID TO MUTWALLI OUT OF AGRICULTURAL INCOME OF WAKF ESTATE.—Although the income received by a wakf estate is agricultural income within the definition of sec. 2 (1), the remuneration paid to the mutwalli out of such income is not agricultural income received by him, when the amount of his remuneration is fixed and does not depend either on the nature of the properties or assets which constitute the wakf estate nor on the amount of the income derived therefrom by it. A different question may arise if the mutwalli's remuneration is by way of a fractional part of the income of the wakf estate or by a percentage commission. 70 I.A. 14=I.L.R. (1943) 1 Cal. 367=1943 P.C. 20=(1943) 1 M.L.J. 494 (P.C.).

Under two deeds, a person was appointed mutwalli and he was to receive both the agricultural and non-agricultural income, and after performing the functions of his office, was allowed to appropriate the residue of the amount received in lieu of his services. The whole of the amount received by him was sought to be assessed on the ground that once the income of the agricultural properties reached the hands of the assessee in his primary character as mutwalli, its character as "agricultural income" was exhausted and therefore when the residue, after satisfying the prior trusts, was appropriated by the assessee in his secondary capacity as beneficiary, it ceased to be 'agricultural income" and had lost the protection of sec. 4 (3) (*vii*): *Held,* that so long as the services were and are performed the assessee was and will be, beneficially interested in the surplus income of the properties and was and will be, a beneficiary in respect of that surplus under the trusts of wakf. And the agricultural income which he received as mutwalli did not change its character when he received the residue as beneficiary. *Held, further,* that in determining the amount of the agricultural income in such residue which would be exempt from assessment, the principle to be applied was that the prior charges on the mixed income fund should be apportioned between the component parts thereof rateably and in consequence the surplus which remains should be rateably attributed to agricultural and non-agricultural income. Therefore the method to apply was to treat the residue in the hands of the assessee as being composed of agricultural and non agricultural income in the same ratio as the total of these two classes of income bore to each other at the time when they passed into the common fund. I.L.R. (1942) All. 425=1942 A.L.J. 358= 1942 All. 194 (S.B.). Where a resident of British India who has business in British India takes a lease of agricultural land in an Indian State and brings the crop into British India where it is sold, the profit is received in British India. But it is not agricultural income in British India within the meaning of sec. 2 (1) (*a*) of the Income-tax Act. 225 I.C. 41=1946 I.T.R. 554.

SEC. 2 (1) (*b*) (*ii*).—*See* 46 L.W. 247= 1937 Mad. 745=(1937) 2 M.L.J. 310 (S.B.).

"MARKET".—The word "market" in the section implies a real centre of economic exchange. The purchase by jails of aloe leaves for preparing fibre out of them through prisoners by crude methods is merely an artificial condition having no relation to a market for agricultural produce. 9 P. 185=123 I.C. 610=1930 P. 44 (S.B.). The process *"ordinarily employed by cultivators"* must mean one in ordinary use amongst cultivators generally. The Income-tax Act so far as agricultural income is concerned only relieves the producer from liability to income-tax so long as he is a *bona*

(2) " assessee " means a person by whom income-tax is payable ;

(3) [1][Appellate] Assistant Commissioner " means a person appointed to be an [1][Appellate] Assistant Commissioner of Income-tax under section 5 ;

(4) " business " includes any trade, commerce, or manufacture or any adventure or concern in the nature of trade, commerce, or manufacture;

[2][(4-A) " the Central Board of Revenue " means the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924 ;]

(5) " Commissioner " means a person appointed to be a Commissioner of Income-tax under section 5 ;

[3][(6) " company " means a company as defined in the Indian Companies Act, 1913, or formed in pursuance of an Act of Parliament or of Royal Charter or Letters Patent, or of an Act of the Legislature of a British possession or of a law of an Indian State, and includes any foreign association, whether incorporated or not, which the Central Board of Revenue may, by general or special order, declare to be a company for the purposes of this Act ;]

[4][(6-A) " dividend " includes—

(*a*) any distribution by a company of accumulated profits, whether capitalised or not, if such distribution entails the release by the company to its shareholders of all or any part of the assets of the company ;

(*b*) any distribution by a company of debentures or debenture-stock, to the extent to which the company possesses accumulated profits, whether capitalised or not ;

(*c*) any distribution made to the shareholders of a company out of accumulated profits of the company on the liquidation of the company :

Provided that only the accumulated profits so distributed which arose during the six previous years of the company preceding the date of liquidation shall be so included ; and

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[1] Inserted by sec. 2 of Act VII of 1939.

[2] Inserted by sec. 4 and Sch. of Act IV of 1924.

[3] Substituted by sec. 2 of Act XL of 1940.

[4] Inserted by sec. 2 of Act VII of 1939.

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fide agriculturist carrying on that business in the ordinary course of good husbandry. Where cotton is first ginned and then sold in market, then, although it may be distinctly advantageous even from the mere point of view of transport to do so, it cannot be said that ginning is essential in order to enable the produce to be fit to be taken to market. 139 I.C. 316=1932 N. 61. Manufacture of *biris* or cigarettes made of tobacco wrapped in tendu leaves—Tendu plant growing wildly without human effort—Profits from business—Not exempt as agricultural income. 1939 I.T.R. 493. The assessees were growers of tobacco, the leaf of which was used for making virginia cigarettes. In order to make the leaf suitable for the market, the assessees dried it by a process called "flue curing" and the question arose whether the process was one ordinarily employed by a cultivator within the meaning of sec. 2 (1) (b) (*ii*). *Held*, (1) that the question was one of fact and no question of law arose under sec. 66 (1) of the Act: (2) that the process of curing employed by the assessees was a process ordinarily employed by a tobacco cultivator to render it fit to be taken to the market when the tobacco grown was of the nature grown by the assessees. (1944) I.T.R. 1=1944 M.W. N. 93=1944 Mad. 248. The assessees, a limited company, were appointed as managing agents of another company (principal company) under a contract which *inter alia* provided for payment to the assessee as managing agents of a commission "at the rate of ten per cent. per annum on the annual nett profits of the principal company. . . provided that such commission shall not in any year amount to a less sum than rupees ten thousand". The principal company derived its income from several sources, one of which was the manufacture of sugar. The cane used in manufacture was partly grown on the company's own farms and partly brought from outside. In assessing the principal company's income to income-tax, the part attributable to the manufacture of sugar from the cane grown on the company's farms was exempted from tax as "agricultural income". The assessees contended that the commission received by them on that part of the nett income which represented the income from the manufacture from cane grown on the farms of the principal company should also be exempted from tax under sec. 4 (3) (*viii*) of the Act as agricultural income within the meaning of sec. 2 (1) of the Income-tax Act. *Held*, that it could not be said that the assessees (managing agents) received any portion of the agricultural income, when they received remuneration for services rendered for managing

(*d*) any distribution by a company on the reduction of its capital to the extent to which the company possesses accumulated profits which arose after the end of the previous year ending next before the 1st day of April, 1933, whether such accumulated profits have been capitalised or not :

Provided that ' dividend ' does not include a distribution in respect of any share issued for full cash consideration which is not entitled in the event of liquidation to participate in the surplus assets, when such distribution is made in accordance with sub-clause (*c*) or (*d*).

Explanation.—The words ' accumulated profits,' wherever they occur in this clause, shall not include ' capital profit '] ;

[1][(6-AA) " earned income " means any income of an assessee who is an individual, Hindu undivided family, unregistered firm or other association of persons not being a company, a local authority, a registered firm or a firm treated as registered under clause (*b*) of sub-sectien (5) of section 23—

(*a*) which is chargeable under thc head " Salaries " ; or

LEG. REF.

[1] Inserted by Ordinance IX of 1945.

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the affairs of the principal company, only one part of which was held to be agriculture. The character of the income of the assessees was not that part of it was rent or revenue from land used for agricultural purposes, and the remuneration was not therefore exempt from tax in any particular. 1945 I. T.R. 391=47 Bom.L.R. 778.

CL. (1) (*c*).—In order that the income derived from any building may be held to be agricultural income, it is necessary that the building must be in the immediate vicinity of the land and it is a building which the receiver of the rent or revenue or the cultivator requires as a dwelling house or as a storehouse or other out-building. It is not open to the Commissioner to decide in the case of a large building of a zamindar, for instance, what portion of the building the assessee does in fact require as dwelling house by reason of its connection with the land. The word "requires" in sec. 2, subsec. 1, cl. (*c*) cannot be interpreted as "needs". The phrase "by reason of his connection with the land" has a qualitative and not a quantitative significance. (7 P. 550, Appr.) 9 P. 1=118 I.C. 593=1929 P. 449 (F.B.). Zamindar having a large house to keep up his social position—Income of house not assessable—Income-tax Officer is not competent to judge of the necessity to the zamindar for such big house. 7 P. 550=9 P.L.T. 439=1928 P. 468. *See also* 158 I.C. 810=1935 O.W.N. 1143 (Maintenance allowance paid out of estate not agricultural income).

SEC. 2, CL. (2).—A registered firm is an assessee within the meaning of the Income-tax Act. 26 N.L.R. 75=1930 N. 183.

CL. (3): ASSISTANT COMMISSIONER.—Powers of appeal limited to subject-matter of assessment. 6 Pat.L.T. 166=4 P. 385=1925 Pat. 408.

CL. (4): "BUSINESS" includes manufacture. 52 C. 1=1925 C. 34=28 C.W. N. 1074. *See also* 1941 I.T.R. 244. The negotiation of the sale of a large mill is "business". 47 A. 372=1925 A. 287 =23 A.L.J. 63. *See also* 52 M. 827=1929 M. 595=57 M.L.J. 36. The word 'business' in sec. 239, Contract Act, is not used in the sense of an undertaking of an industrial or commercial nature. Two doctors may form a partnership to treat patients. I.L.R. (1943) A. 450=1943 A.L.J. 147=1943 O.W.N. (H. C.) 102=1943 A. 192. Adventure or concern in the nature of trade—Test. *See* (1944) I. T.R. 209. A company which is not registered under the Companies Act, although it is a partnership of thirteen unregistered firms composed in turn of individual members, the aggregate number of whom exceeds twenty, is liable to income-tax on the profits. 32 P.L. R. 335=1931 L. 376. *Succession to a trade* means the taking over of a trade and continuing it as that trade. It does not include the incorporation of a wholesale trade in a retail. There is no succession when the trade carried on by the predecessor is merged in the different trade of the successor. 1939 I. T.R. 118.

CL. (6-*A*).—Where in accordance with a resolution passed at a general meeting of a company, its accumulated profits are capitalised and distributed to the shareholders in the form of *bonus shares*, unless the distribution amounts to a "release" of assets by the company to the shareholders, the shareholders cannot claim the value of the shares to be a dividend within the meaning of sec. 2 (6-*A*) of the Income-tax Act. Though the company's profits have been taxed at the maximum rate, a shareholder receiving such bonus shares is not entitled to claim a refund of the difference between the maximum rate, and what he would have paid if the tax had been levied according to the rate appropriate to his income. 1941 Mad. 922=(1941) 2 M.L.J. 900=I.L.R. (1942) Mad. 182 (S.B.).

CLS. (6-*A*) AND (14).—Firm—Partnership between Hindu coparcener in individual capacity and himself as manager of the family not partnership in law—No right to be registered. 1940 Pat. 610=1940 I.T.R. 369.

(*b*) which is chargeable under the head " Profits and gains of business, profession or vocation " where the business, profession or vocation is carried on by the assessee or, in the case of a firm, where the assessee is a partner actively engaged in the conduct of the business, profession or vocation ; or

(*c*) which is chargeable under the head " Other sources " if it is immediately derived from personal exertion or represents a pension or superannuation or other allowance given to the assessee in respect of his past services or the past services of any deceased person ;

and includes any such income which, though it is the income of another person, is included in the assessee's income under the provisions of this Act but does not include any such income which is exempt from tax under sub-section (2) of section 14 or under a notification issued under section 60 ;]

[2][[3] (6-B) " firm," " partner " and " partnership " have the same meanings respectively as in the [4][Indian Partnership Act, 1932] : [5][provided that the expression ' partner ' includes any person who being a minor has been admitted to the benefits of partnership ;]

[6][(6-C) " income " includes anything included in ' dividend ' as defined in clause (6-A) and anything which under *Explanation* 2 to sub-section (1) of section 7 is a profit received in lieu of salary for the purposes of that sub-section and any sum deemed to be profits under the second proviso to clause (*vii*) of sub-section (2) of section 10 and the profits of any business of insurance carried on by a [7][mutual insurance association] computed in accordance with Rule 9 in the Schedule;

(6-D) " Inspecting Assistant Commissioner" means a person appointed to be an Inspecting Assistant Commissioner of Income-tax under section 5] ;

(7) " Income-tax Officer " means a person appointed to be an Income-tax Officer under section 5 ;

(8) " Magistrate " means a Presidency Magistrate or a Magistrate of the first class, or a Magistrate of the second class specially empowered by [8][the Central Government to try offences against this Act ;

(9) " person " includes a Hindu undivided family [9][and a local authority] ;

(10) " prescribed " means prescribed by rules made under this Act ;

(11) " previous year " means [1][in respect of any separate source of income, profits and gains]—

(*a*) the twelve months ending on the 31st day of March next preceding the year for which the assessment is to be made, or, if the accounts of the assessee have been made up to a date within the said twelve months in respect of a year ending on any date other than the said 31st day of March, then at the option of the assessee the year ending on the day to which his accounts have so been made up :

[2][Provided that where an assessee has once been assessed in respect of a particular source of income, profits and gains, he shall not in respect of that source exercise this option so as to vary the meaning of the expression ' previous year ' as then applicable to him except with the consent of the Income-tax Officer and upon such conditions as the Income-tax Officer may think fit ; or]

(*b*) in the case of any person, business or company or class of person, business or company, such period as may be determined by the [3][Central Board of Revenue] or by such authority as the Board may authorise in this behalf ; [4][or

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I.EG. RLF.

2 Inserted by sec. 2 of Act XXI of 1930.

3 The original cl. (P-*A*) was re-lettered (6-*B*) by sec. 2 of Act VII of 1939.

4 Substituted for the words and figures "Indian Contract Act, 1872", by Act VII of 1939.

5 Added by Act VII of 1939.

6 Inserted by Act VII of 1939.

7 Substituted by Act XXIII of 1941.

8 Substituted for "the Local Government" by A.O., 1937.

9 Inserted by Act VII of 1939.

1 Inserted by sec. 2 of Act VII of 1939.

2 Substituted by Act VII of 1939.

CL. (9).—"Hindu undivided family"—Meaning—Existence of coparcenary property —If an essential ingredient—Property not ancestral nor thrown into common stock — Income from—If income of undivided family. '40 C.W.N. 517.

(*c*) where a business, profession or vocation has been newly set up in the financial year preceding the year for which assessment is to be made, the period from the date of the setting up of the business, profession or vocation to the 31st day of March next following or to the last day of the period determined under sub-clause (*b*), or if the accounts of the assessee are made up to some other date than the 31st day of March and the case is not one for which a period has been determined by the Central Board of Revenue under sub-clause (*b*), then at the option of the assessee, the period from the date of the setting up of the business, profession or vocation to such other date :

Provided that when such other date does not fall between the setting up of the business, profession or vocation and the next following 31st day of March, it shall be deemed that there is no previous year ; and

when the assessee is a partner in a firm, ' previous year ' in respect of his share of the income, profits, and gains of the firm means the previous year as determined for the assessme t of the income, profits and gains of the firm ;]

(12) " principal officer ", used with reference to a local authority or a company or any other public body or [5][any] association, means—

(*a*) the secretary, treasurer, manager or agent of the authority, company, body or association, or

(*b*) any person connected with the authority, company, body or association upon whom the Income-tax Officer has served a notice of his intention of treating him as the principal officer thereof;

(13) " public servant " has the same meaning as in the Indian Penal Code ;

[9][(14) " registered firm " means a firm registered under the provisions of section 26-A] ;

(15) " total income " means total amount of income, profits and gains [1][referred to in sub-section (1) of section 4] computed in the manner laid down in [2][this Act], and

[3][" total world income " includes all income, profits and gains wherever accruing or arising except income to which under the provisions of sub-section (3) of section 4, this Act does not apply ; and]

(16) " unregistered firm " means a firm which is not a registered firm.

CHAPTEF I.

CHARGE OF INCOME-TAX.

Charge of income-tax.

3. Where any [4][Act of the Central Legislature] enacts that income-tax shall be charged for any year at any rate or rates [5]* * * * * * tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this

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LEG. REF.

3 Substituted for "Board of Inland Revenue" by Act IV of 1924.

4 The word "or" and sub-cl. (*c*) added by sec. 2 of Act VII of 1939.

5 Inserted by sec. 2 of Act XI of 1924.

6 Substituted by sec. 2 of Act XXI of 1930.

1 Substituted for "from all sources to which this Act applies" by sec. 2 of Act VII of 1939.

2 Substituted for "sec. 16" by Act VII of 1939.

3 Added by sec. 2 of Act VII of 1939.

4 Substituted for "Act of the Indian Legislature" by A.O., 1937.

5 The words "applicable to the total income of an assessee" omitted by sec. 3 of Act VII of 1939.

CL. (11).—*See* 7 L. 223=96 I.C. 368=1926 L. 421; 60 B. 679=38 Bom.L.R. 450=1936 B. 225. It does not rest with the assessee to say when he could write off a bad debt. It must be written off within a reasonable time. Where a debt was twelve years old and the debtor had been adjudged an insolvent five years previously and the assessee sought to have the same taken into account after the expiry of that long period, *held*, that the old debt which had become by that time irrecoverable could not be so taken into account. The Commissioner has not got an arbitrary discretion to say that a bad debt should be written off in a particular year; he or the Assistant Commissioner has to hear the evidence in each particular case. It is for the assessee in each case to establish by evidence that a debt became irrecoverable during the year in which the income, profits

Act in respect of [1][the total income] of the previous year of every [2][individual, Hindu undivided family [3][company and local authority, and of every firm and other association of persons or the partners of the firm or members of the association individually].

LEG. REF.

[1] These words substituted for "all income, profits and gains," by Act VII of 1930.

[2] Substituted for the words "individual, company, firm and Hindu undivided family" with effect from 1st April, 1923, by secs. 3 and 11 of Act XI of 1924.

[3] These words substituted for "company, firm and other association of individuals" by sec. 3 of Act VII of 1939.

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or gains are to be ascertained, the same being a question of fact. 54 B. 430=32 Bom.L. R. 309=1930 B. 201.

CL. (12): PRINCIPAL OFFICER—OFFICIAL LIQUIDATOR OF COMPANY.—The Official Liquidator of a company can be treated as its principal officer and if he is managing the business of the company he comes within the definition of principal officer under sec. 2 (12). 1934 A.L.J. 221=1934 A. 170=56 A. 685.

CL. (14).—Sale of whole concern shown as at a profit—Profit not taxable in all cases. *See* 102 I.C. 17=1927 P.C. 76 (P.C.). It cannot be said that it is implied that a complete instrument only is intended to be valid for registration under sec. 2, that is an instrument which does not require supplementing by other evidence, but contains in itself the complete agreement constituting the partnership and by itself solely operates to create the partnership. It is not impossible that a firm should be constituted under an agreement, although the agreement has not been executed by all the partners. 58 C. 1005 =1931 C. 682 (S.B.). It is essential that an application for registration should be signed by at least one of the partners of the firm. An application made in that behalf by an agent of the partners would not comply with the statutory rules and the registration by the Income-tax Officer of such an application would be *ultra vires* and void. 1933 R. 229= 11 R. 380. *Held*, (1) that the Income-tax Officer has power to refuse an application for registration made in the prescribed manner with partnership deed prior to assessment; (2) that the law gives the Income-tax Officer power to call for evidence of dissolution of the joint family for the purpose of registration under sec. 2 (14) over and above the documentary evidence adduced by the partnership deed. 57 Cal. 1336=34 C.W.N. 363 =1930 C. 449. As to the competence of Income-tax authorities to refuse to register or recognize a firm, *see* 1930 S. 301. A firm or partnership which cannot be recognized as such by sec. 239, Contract Act, can be defined to be registered as a "firm" under this Act. 137 I.C. 903=34 Bom.L.R. 100=1932 B. 116. The certificate to be given in the form prescribed in the Income-tax Rules is not that the profits will be divided or credited within some fixed period. Thus, where a certificate is given in good faith and the persons constitute a firm and intend to divide the assets whenever it may be necessary or convenient for them to do so, that firm is entitled to be registered. 121 I.C. 38=1930 N. 6. *See also* 139 I.C. 497=1932 C. 409 (S.B.).

CL. (15): PARTNER DRAWING MONEY IN COURSE OF BUSINESS—IF PROFITS.—Where a partner draws money in the course of business, that will be taken into consideration at the end of the year, and, if there are any overdrawings by one partner, they will be debited to the account of that partner or set-off against his profits and because a partner draws some moneys during the year of account, it cannot be said at once that represents his share of the profits. 31 L.W. 215 =1930 M. 119 (S.B.). "Total income"—If includes unrealised decree. *See* 57 All. 737 =1935 A.L.J. 374=1935 A. 378. *See also* 62 I.C. 394; 63 M.L.J. 124=59 I.A. 206 (P. C.); 48 B. 504.

SEC. 3.—Income signifies what comes in. The entire income of land is "income" within sec. 3. 62 I.C. 394. *See also* 59 I.A. 206 =59 C. 1343=63 M.L.J. 124=1932 P.C. 138 (P.C.). Sec. 3 does not limit Chap. III of the Act. *See* 41 C.W.N. 46=I.L.R. (1937) 2 Cal. 36.

LEVY OF INCOME-TAX IN AREAS EXCLUDED UNDER SEC. 92 (1) INDIA ACT.—Unless a Finance Act has been passed which applies to an excluded or partially excluded area in the manner provided by sec. 92 (1) of the India Act (1935), the Income-tax authorities have no jurisdiction to impose a tax under the Income-tax Act on the assessable income of an assessee in such areas. 23 Pat. 5=(1944) I. T.R. 76=1944 Pat. 194.

SCHEME OF TAXATION.—The scheme of taxation under the Income-tax Act, 1922, is a definite departure from the system prevailing under the previous Income-tax Act of 1918. By sec. 3 of the Act of 1922, the tax to be charged for any year is in respect of income of the previous year. The intention of sec. 3 is not to treat the income of the previous year merely as a measure of the unascertained income of the year of assessment, but to tax the assessee in the year of assessment upon the income received by him in the previous year. 61 I.A. 1=56 A. 1=66 M.L.J. 127 (P.C.). The total income for the purpose of sec. 16 means the total amount of income, profits or gains from all sources including (1) certain receipts on which an assessee is exempt from paying income-tax and (2) the amount of tax deducted at the source by companies when paying dividends. 26 Bom. L.R. 366=48 B. 504=1924 Bom. 361. When the Act by sec. 3 subjects to charge "all income" of an individual, it is what reaches the individual as income which it is intended to charge. Where, therefore, a decree of the Court charges the assessee's whole resources with a specific payment to his step-mother, it to that extent diverts his income from him,

and directs it to his step-mother; to that extent what he receives for her is not his income. It is not a case of the application by the assessee of part of his income in a particular way; it is rather the allocation of a sum out of his revenue before it becomes income in his hands. 1933 P.C. 145=60 I.A. 196 =60 C. 1029=65 M.L.J. 285 (P.C.). In the case of assessment of a Hindu undivided family, the whole of the income of the family is liable to assessment, and sums paid to the widow of a deceased coparcener by way of maintenance under a decree of Court cannot be deducted from the assessable income. The decree for maintenance does not amount to a severance or take the widow out of the family, and does not in any way alter the character of the sum which the widow receives as maintenance as a widow in the joint family, though the amount is fixed by the decree. She gets it in her capacity ultimately as a member of the family and the amount paid to her is a share of the income going to one of the members of the family. I.L.R. (1937) Bom. 827=39 Bom.L.R. 907=1937 B. 479. *See also* 23 Pat.L.T. 323=1942 Pat. 456. An allowance received by the Lord Bishop of Lucknow as such from the Colonial Bishopric Fund in England is an income within the meaning of sec. 3. 54 A. 223 =1932 A. 151. The tax is charged on profits "accruing, arising or received" in British India. It is immaterial if the work was done and money-spent abroad to earn it. So, a non-resident company assessed under sec. 42 in respect of a business in which the manufacture of a commodity takes place in a foreign country and the sale thereof takes place in British India, is not entitled, in computing the profits and gains of such business, to make a deduction representing the proportion of profits earned by manufacture in the country of origin. 59 C. 1226=36 C.W.N. 563=1932 C. 626. *See also* 62 I.A. 207= 1935 P.C. 143=69 M.L.J. 190=14 Pat. 552 (P.C.). In the case of a business of buying in one place animals for human consumption and selling them in another place, the profit would arise only at the place of sale: the profit made by the assessee could only be calculated on what the goats and sheep actually cost the assessee and the amount at which they were actually sold in Colombo, and the figures in the invoices whether inflated or not, would not matter. 194 I.C. 76=1940 I. T.R. 619=1941 Mad. 229=(1941) 1 M.L.J. 99. Rate of income-tax on salaries is on estimated income for year of payment. 1 R. 335=1924 R. 30. Liability of mutuation nazarana to income-tax. 53 Cal. 34=29 C. W.N. 969=89 I.C. 997=1925 C. 929 (F.B.). Income to be taxable, must come in from outside and not from within. 1923 M. 684=47 M. 1 (F.B.). "Uttarayam" being a voluntary payment made by tenants at a particular season of the year for a particular purpose, is not exempt from assessment. 25 C.W.N. 80 =61 I.C. 1122. A capitalist is not entitled to interest on the money invested for arriving at the net profits of a venture. 14 I.C. 628 =5 Bur.L.T. 15. Money raised by borrowing and remitted to another branch of the firm—Borrowed money paid out of mixed funds—Payment liable to taxation. 1932 M. 573=63 M.L.J. 227 (S.B.). A body of individuals who have agreed to take in auction, work and share the profits from four toddy shops can be taxed under sec. 3 of the Act on the combined profits of the four shops. 1927 M. 1052=53 M.L.J. 719 (S.B.). The fact that in sec. 3 the legislature drew a distinction between a company and a firm or other association of individuals clearly shows that the provisions of the Act do not prevent an association formed for the purpose of doing business from being made liable to income-tax on the profits, even if it has not been registered in accordance with the law relating to the incorporation of companies. *See also* notes under sec. 2, Cl. (4). Association incorporated under sec. 26, Companies Act—Liability to assessment—Non-applicability of sec. 48 to such an association—If relevant consideration. 1936 A.L.J. 1085=1936 A. 764. Selling association of a number of ice firms, if a separate firm. *See* 13 O.L.J. 381 =92 I.C. 257=1926 O. 191. Fund claiming exemption—Essence is mutuality and aim must be not to make profit. 1927 M. 1078= 53 M.L.J. 881 (F.B.). The sum of money allocated by a Life Insurance Company for distribution amongst policy-holders is assessable to income-tax. The "profits of a business" mean the nett proceeds of the concern, after deducting the necessary outgoings without which those proceeds could not be earned and the nett proceeds must be taken to be the basis for the assessment of income tax irrespectively of their subsequent application or allocation. 12 Lah. 704=132 I.C. 861=1931 L. 739. As between preference and ordinary shareholders, the former are not entitled to have their preference dividends paid free of income-tax, in the absence of express words to that effect in the contract regulating the rights of the parties. 42 B. 579=41 I.C. 968 =19 Bom.L.R. 665. An Income-tax Officer of a District in British India has no power to levy income-tax on a resident of Native State, unless there is proof that the profits earned by the assessee in a Native State arose or were received in British India. 27 Bom.L. R. 1507. Undervaluation of opening and closing stocks of previous year—Mode of ascertaining profits. *See* 30 Bom.L.R. 1160.

JOINT HINDU FAMILY.—No partnership can legally be constituted between a firm and an association of a joint Hindu family. 1933 A. L.J. 554=1935 A. 523. Joint Hindu family converted into registered firm—Rate of assessment. 49 A. 611=102 I.C. 189=1927 A. 397. As to liability of joint Hindu family and as to the effect of partition arrangement, *see* 49 M. 833=1926 M. 949=51 M.L.J. 123. The income derived from an ancestral impartible estate by the holder thereof for the time being is not different from the income derived from the personal exertions of the holder or his other self-acquisitions. Though he is a member of a joint Hindu family, the income received by him as holder of the impartible estate is in no sense received by him

as a member of a Hindu undivided family. In respect of such income, the holder must be assessed as an individual under sec. 3 of the Act and not as the representative of a Hindu undivided family. 45 L.W. 573= (1937) 1 M.L.J. 707=I.L.R. (1937) Mad. 797=1937 Mad. 515 (F.B.). Joint family consisting of father and son—Death of father in 1938 leaving widow—Son and widow (step-mother) sole surviving members —Mode of assessment. Whether or not the effect of sec. 3 (1) of the Hindu Women's Rights to Property Act was to make the step-mother a coparcener in the full sense of the word, she obtained an interest in the joint family property and as she was a member of the joint family the income of the property must be regarded as the income of a joint family composed of the assessee and his step mother. The assessment should therefore be made on the assessee and his step-mother as a Hindu undivided family. I.L.R 1941 Mad. 104=52 L.W. 805=1940 M.W.N. 1221=1940 I.T.R. 545=1940 Mad. 942=1940 Mad. 942 (1940) 2 M.L.J. 834 (F.B.).

'FIRM'—MEANING OF.—A firm for the purposes of the Income-tax Act is a collective term for a number of persons who enter into partnership with one another. 1935 L. 100.

"OTHER ASSOCIATION OF INDIVIDUALS".—The expression "association of individuals" in sec. 3 of the Income-tax Act does not include an association of companies. "Individual" must mean a human being, and therefore an association of individuals must be an association of human beings only The Ahmedabad Mill-owners' Association consisting of 61 members, 60 of whom are limited companies and one an individual person, cannot be treated as an association of individuals for purposes of sec. 3 of the Income-tax Act. I.L.R. (1939) Bom. 451=1939 I.T.R. 369= 41 Bom.L.R. 656=1939 Bom. 363. *See also* 1941 Sind 71=1940 I.T.R. 114. The words "other association of individuals" in sec. 3 of the Income-tax Act must be construed according to the *ejusdem generis* rule with reference to the word "firm" preceding it and they do not cover the members of a formerly undivided *Mitakshara* family after a preliminary decree for partition has been made. I.L.R. (1937) 2 Cal. 358=1937 Cal. 583. The words "association of individuals" in sec. 3 of the Income-tax Act have to be construed in their plain, ordinary meaning and cannot be read *ejusdem generis* with the word immediately preceding it, *viz.*, firm. The only limit to be imposed is that the association must be one which produces income, profits or gains. An association of two or more persons for the acquisition of property which is to be managed for the purpose of producing income, profits or gains falls within the words "other association of individuals" in sec. 3 of the Act; and under sec. 9 of the Act, the association is the owner of the property, and as such is assessable. The fact that one of the assessees during the year of assessment is a minor does not affect the question of the libility to assessment. All of them can be rightly assessed as owners under sec. 9 (1). I.L.R. (1937) Bom. 830=39 Bom.L.R. 910= 1938 Bom. 41. Association of individuals— Hindu widows (wives of brothers) carrying on business but not as registered firm—Widows earning income from deposit in joint names —Assessment as association of persons may be made. 1942 I.T.R. 84. The expression "association of individuals" in sec. 3 includes cases of all trustees and does not exclude cases where the beneficiary is not a living person and as such the income of a newspaper and press run by trustees in the hands of the trustees is liable to be assessed. 16 L. 829=1935 L. 570=1940 I.T.R. 501 (F.B.). *See also* 1930 Lah. 929=11 Lah. 724. Bank which can be described as an "association of individuals" within the meaning of sec. 3 could be assessed to income-tax as such; the words "other association of individuals" in sec. 3 would apply to a corporate body which for the most part is composed of Co-operative Societies and would embrace an association of corporate bodies; Where the assessee bank carries on a banking business with non-members it cannot maintain its claim to be a mutual benefit society. I.L.R. (1940) Mad. 627=190 I.C. 388=1940 I.T.R. 269=1940 Mad. 612=(1940) 2 M.L.J. 160 (F.B.). Where a partnership union purports to consist of two firms and one Hindu undivided family and the shares of the members of the firm are not mentioned in the deed of partnership and the partnership is undoubtedly a trading concern it cannot fall within the definition of the word 'firm' as given in the Income-tax Act. It is more appropriate to regard it as 'other association of individuals'. 1936 L. 548. *See also* 1936 A. 817. In cases of trust not covered by secs. 40 to 43 of the Act, the person liable to assessment is neither the trustee nor the beneficiary as such, but the person in actual receipt and control of the income which it is sought to reach. If the beneficiary receives the income or profits, he is liable to be assessed; if the trustee receives and controls them, he is primarily so liable. The trustees of Currimbhoy Ebrahim Baronetcy, having been created a corporation sole by an Act, constituted an "individual" within the meaning of sec. 3 and a taxable unit and as a matter of convenience may be assessed to income and super-tax. 1932 B. 106=33 Bom.L.R. 1549. The term "association of individuals" in sec. 3 has no technical meaning. It merely means a group when the properties of a number of individuals are put together and one business is carried on with the combined resources (for instance by a guardian on behalf of several minors having distinct and specified shares in the properties) it is open to the Income-tax Officer to regard it as one business carried on by an association of individuals within the meaning of sec. 3 and make a single assessment on the guardian as representing that association. He is not bound to assess each minor separately. It may be different if no business is carried on and the trustee or guardian is merely in receipt of the income on behalf of the beneficiaries or minors. 1932 Mad. 378=55 M. 891=62 M.L.J. 600 (F.B.). The words

"association of individuals" in sec. 3 of the Income-tax Act must be construed with reference not merely to the word "firm" immediately preceding them, but with reference to the other associations of individuals, namely, a Hindu undivided family and company which appear in the section. An association of individuals resembling a Hindu undivided family is an association of individuals contemplated by sec. 3 of the Income-tax Act. The question whether certain persons form an association of individuals under sec. 3, is a question which must depend upon the particular facts and circumstances of each case. 1941 Sind 71=1940 I.T.R. 114. Where several persons join together and remain joined together for the purpose of buying, holding or owning, and using property in order to make gain by it, they become and are an "association of individuals" within the meaning of sec. 3 of the Act. 63 C. 538=40 C.W.N. 476. It is the intention of the legislature that the expression "other association of individuals" in sec. 3 should be *ejusdem generis* with the word immediately preceding, *i.e.*, the word "firm,'. Thus, before there can be an association of individuals within the meaning of the section, it must first be shown that the association has at least some of the attributes of a firm or partnership, though not in the strictly legal sense of the term. Accordingly the mere appointment by a body of co-owners of a common collecting agent, will not convert such body of co-owners into an "association of indiviuals" within the meaning of the section. 1936 A. L.J. 1109=1936 A. 817. The assessees were the co-heirs of a deceased Mahomedan from whom they inherited under the Mahomedan Law specific shares in the property left by the deceased. The income of the property was derived from rent deeds which stood in their joint names. A *munshi* was appointed to manage the property and collect the rent and after deducting the cost of collection and other expenses, the net income was distributed among the assessees in accordance with their respective shares. The Income-tax officer sought to assess them as an association of individuals. *Held*, that the assessees did not form an association of individuals, but should be assessed separately on their individual shares. (1943) I.T.R. 443. Fund registered as company—Capital consisting of recurring subscriptions — "Guaranteed interest" thereon, if taxable as profits—Subscriptions if borrowed capital. *See* 1933 M. 347 =64 M.L.J. 260=56 Mad. 415 (F.B.), cited under sec. 10, *infra*.

"COMPANY"—COMPANY IN LIQUIDATION.—A company which has gone into liquidation is a "company" within the meaning of sec. 3 and the Official Liquidators can be assessed as representing the company. 1934 A.L.J. 221=1934 A. 170=56 All. 685. *See also* Notes under sec. 2 (12).

SECS. 3 AND 4: COMPANY—FOREIGN INCOME—LIABILITY TO ASSESSMENT.—In the case of a non-resident, income which neither accrues nor arises nor is received within British India may be liable to tax under the combined operation of secs. 3, 4 and 42. Profits made by an insurance company outside British India on premiums of participating policies collected and sent by its branches in India by investment outside India are profits or gains which are liable to tax in India. 57 B. 519=35 Bom.L.R. 896=1933 B. 427. The assessee, a resident of British India owned a saw-mill in Burma which in the account year commencing from April, 1936, resulted in a loss, and the income of the assessee consisted solely of interest received from investments. For purposes of assessment to income-tax, the assessee sought to set-off the loss sustained in the saw-mill in Burma against the profits derived from the investments. The Income-tax authorities held that as Burma ceased to be part of British India from 1st April, 1937, the loss sustained in Burma which was thus outside British India could not be set-off against the profits from the investments. *Held*, that when the assessee worked the saw-mill Burma was part of British India, and reading secs. 3 and 4 together, the sections should be so read that the loss must be deemed to have been sustained in British India, and therefore the set-off claimed ought to be allowed. I.L.R. (1939) Mad. 388=49 L.W. 21=1939 Mad. 77=(1939) 1 M.L.J. 31 (F.B.).

There is no presumption that a business started or carried on by a member, even though a manager of a joint Hindu family is joint family business. Nor is there any such presumption where a business is carried on by such a member in partnership with a stranger. Where during the lifetime of a Hindu father his sons start a business of their own to the exclusion of the father and without his being associated with it, it cannot be said that any income derived from that business is joint family income or that property owned by them forms a nucleus for further acquisitions. The fact that the sons have been assessed as a Hindu undivided family without objection in previous years cannot operate as estoppel or *res judicata* against them and it is open to them to claim that they should be assessed as individuals in respect of property owned by them individually. (1944) I.T.R. 296.

The Madras Bar Council is an individual or Association of persons within the meaning of sec. 3 of the Act and its income is taxable unless exemption is obtained under sec. 4 (3). The income of the Bar Council derived from investments of the Council, if held by the Council for educational purposes, would be exempt from tax under sec. 4 (1) of the Act; but the income derived from enrolment of members of the profession and examination-fees of apprentices-at-law would be taxable. I.L.R. 1943 Mad. 471=1943 Mad. 137=1942) 2 M.L.J. 782.

SECS. 3 AND 4 (3-vii).—"Income"—Suit by widow for possession of movable and immovable properties left by her husband—Decree in favour of widow awarding certain movable properties and also damages for wrongful detention of movables—Receipt of sums to-

4. [1][(1) Subject to the provisions of this Act, the total income of any previous year of any person includes all income, profits and gains from whatever source derived which—

Application of Act.

LEG. REF.

[1] Sub-secs. (1) and (2) were substituted by sec. 4 of Act VII of 1939.

wards damages not taxable. 19 Pat. 186= 1939 Pat. 662 (S.B.).

SECS. 3, 6 AND 9.—*Held* (1) that a difference must be made between a private wakf created, if not primarily, at least in part, for the maintenance of the settlor's family and a wakf created for charitable or religious purposes falling within the exception in sec. 4 (3) (1) of the Income-tax Act; (2) that so far as the wakf might operate as a wakf for charitable and religious purposes, to that extent immunity from taxation could be claimed, but so far as the wakf operated for the maintenance of the settlor's family, or other quasi-secular purposes, to that extent the income was liable to taxation; (3) that in the case a private wakf the estate is vested in the beneficiaries; (4) that for purposes of secs. 6 and 9 of the Income-tax Act the trustees could not be regarded as the owners of the income; (5) that the income in this case was bound up with the beneficiaries and should be taxed in their hands. 1940 I.T.R. 501. *See also* I.L.R. (1939) Bom. 284=41 Bom.L.R. 232=1939 Bom. 195. The assessees, two brothers, became entitled as residuary legatees under the will of their grandfather to certain house properties in Bombay in the year 1929. They got possession of the properties and managed it as joint owners and derived profit therefrom. Held, that as soon as they elected to retain the properties and manage them as a joint venture producing income, they became an association of individuals within the meaning of sec. 3 of the Income-tax Act, and they were properly liable to be assessed as the owners of the properties under sec. 9. 177 I.C. 447=40 Bom. L.R. 455=1938 Bom. 353. *See also* 1941 Sind 71.

SECS. 3 4 AND 42: FOREIGN MANUFACTURING COMPANY—SALES IN BRITISH INDIA THROUGH SALESMAN AND BROKERS—LIABILITY TO ASSESSMENT.—The profits and gains derived from sales made at Cawnpore by the assessee's salesman of the goods manufactured by the assessee at Ujjain outside British India are liable to assessment under sec. 4 (1) (*a*) as profits actually received as well as accrued and arisen in British India. Sec. 42 (1) of the Act cannot be divorced from secs. 3 and 4 so as to subject a non-resident assessee to a charge of income-tax arising only under sec. 42 and not under secs. 3 and 4. The general charge of tax under secs. 3 and 4 is given a particular application in respect of a non-resident foreigner. The relief under sec. 42 (3) applies only to a case in which profits and gains are deemed under sec. 42 to accrue or arise in British India and not to a case in which they actually so accrue or arise or are received in British India. As regards profits and gains derived from sales made from Ujjain to customers in British India through brokers in British India they cannot be held to be the profits or gains deemed to have accrued or arisen to the assessee company in British India within the meaning of sec. 42 (1) and the same cannot be assessed under sub-sec. (3) of that section. The profits cannot be described as accruing or arising through or from any business connection in British India. (1946) I.T.R. 417.

SECS. 3 AND 9.—The income of an impartible esate to which the assessee has succeeded by the rule of primogeniture prevailing in a Hindu Mitakshara family is not chargeable to income-tax in his hands as that of an individual. The owner of the property for the purposes of sec. 9 of the Income-tax Act is the Hindu undivided family and not its incumbent for the time being. I.L.R. (1959) Lah. 529=1940 Lah. 113=1939 I.T.R. 427.

SECS. 3 AND 16.—Hindu undivided family—Main business in name of head of family and other businesses in names of sons and wife—Assessment of income. *See* 56 L.W. 402= 1943 Mad. 648.

SECS. 3 AND 14 (1): CLAIM TO EXEMPTION —ONUS.—The burden is on the revenue authorities to show that income sought to be taxed is rendered liable to tax by the statute; but the onus of showing that a particular class of income is exempted from taxation lies on the assessee. In a case where the revenue authorities have discharged the onus which lay on them by showing that the assessee is in receipt of income, sec. 3 of the Act renders that liable to taxation; it is for the assessee then to prove that the income is exempted from taxation by the Act. For the purposes of sec. 14 (1) of the Act, what the assessee has to show is (1) that he is a member of a Hindu undivided family, and (2) that he receives the income in question as a member of the family. 14 P. 785 =1935 P. 342 (S.B.).

SCES. 3 AND 25-A.—Where an assessee, who is the father and manager in a joint Hindu family, is the Governing Director of a private company, and gets a sum of money as his remuneration as such Governing Director and the Articles of Association distinctly state that this sum is his personal remuneration, such sum is *prima facie* his own individual income and not that of the joint family. Even assuming that the shares held by him in the company belong to the joint family, the remuneration received by him cannot be held in law to be that of the joint family. 22 Pat. 55=(1943) I.T.R. 16 =1943 Pat. 169.

SECS. 3 AND 26-A.—The object of sec. 26-A is primarily to get a refund for the partner, and secondly, to ensure that the firm is not charged any super-tax. Sec. 26-*A* has nothing to do with a charge to tax or with the liability to pay tax. It is a procedural section and cannot affect the liability of a partner to pay the tax charged on him by

sec. 3 on his total income; nor is there any other section in the Act which prevents the Crown from causing a correct assessment to be made. In assessing an individual partner of a firm which is registered, the Income-tax Officer is not precluded or estopped from inquiring whether the income shown against that partner's name is the true income of the partner or stands in his name as a nominee of another partner or another person. I.L.R. (1945) Bom. 419=47 Bom.L.R. 174=1945 Bom. 238.

SECS. 3, 40 AND 41.—Applicability—Will—Bequest of movables and immovables to minor son and grandsons in specific shares—Provisions for appointment of executors to manage property and to be guardians during minority of legatees—Direction to convert business into cash—Executors, if association of individuals—Allowances—Deduction. *See* 1945 I.T.R. 500.

SECS. 3 AND 55.—"Individual"—"Hindu undivided family"—Widow holding after death of husband—Mother-in-law of widow entitled to maintenance—Daughter and mother-in-law, if undivided Hindu family. 1943 I.T.R. 154.

SECS. 4 AND 6: INCOME LIABLE TO BE TAXED.—The two terms *"arising"* and *"accruing"* denote the same idea or ideas very similar, and the difference only lies in this that one is more appropriate than the other when applied to particular cases. 10 L. 657 =1929 L. 609 (F.B.). *See also* 114 I.C. 296 1929 R. 1 (F.B.). The words *"accruing or arising"* merely refer to the connexion between the income and the country in question and they do not explain what is or is not income. 57 All. 737=1935 A.L.J. 374=1935 A. 378. The words "accruing or arising" in sec. 4 (1) of the Income-tax Act extend the scope of the Act to income which may not be received in British India; and if moneys are earned by carrying on a business by exercising a profession in British India, liability to tax cannot be avoided by arranging that the moneys are to be paid outside India. The question to be determined is the place where the profits accrue or arise, and not the place where the business in which the profits are earned is carried on or where the assessee resides. 59 Bom. 719=37 Bom.L.R. 753=1935 B. 423. *Held*, that in the case of Government of India Promissory Loan Notes repayable at Calcutta, the interest received by the assessee at Hyderabad (Deccan) was liable to be assessed to income-tax and super-tax. Meaning of expression "accruing or arising" in sec. 4 (1) of the Income-tax Act discussed. 54 Bom. 46=1930 Bom. 371 =32 Bom.L.R. 671. *See also* 10 L. 657= 1929 L. 609; 1941 I.T.R. 358; (1941) 1 M.L.J. 262; 1941 I.T.R. 358; (1941) 1 M.L.J. 262; 1941 I.T.R. 610; (1940) 2 M.L.J. 110. It is not just and equitable to treat the unrealised interest, although formally credited to the kasar khata, as income, profits or gains derived accruing or arising or received, for purposes of the Income-tax Act. The test to be applied is whether any profits in the shape of interest have become due to the creditor (assessee) in such a manner as to be immediately available to him in the account year so as to be capable of being received by him at his choice and pleasure. 25 N.L.R. 35=1929 N. 50 (F.B.). The words "accruing and arising" in sec. 4 (2) denote the same idea and are used in contradistinction to the word "receive" and indicate a right to receive. Income cannot be said to have accrued or arisen in a particular country merely by reason of the fact that it is earned in that country. It accrues or arises in the country where there is a right to demand payment of it or where it is in fact paid. Where an assessee receives in the United Kingdom payments of pension granted by the Madras Government under the Civil Service Regulations of the Government of India, such payments, when not brought into British India are not income accruing or arising in British India within the meaning of sec. 4 (1). 38 P.L.R. 911= 1936 L. 713. *See also* 37 Bom.L.R. 753= 1935 B. 423. By an agreement between a Joint Stock Company registered in Indore outside British India and the assessees who were the selling agents of the company and who had shops at Bombay and Indore, the assessees were to be entitled, amongst other things, to be paid by the company a commission of 1 per cent. on the gross sale proceeds of all cloth and yarn of the company and the commission was due to the assessees yearly on the 31st December in each and every year and was to be paid immediately thereafter. The sales were effected in Indore, being on terms F.O.R. Indore; the purchasers who were Bombay merchants paid the purchase money by accepting hundis drawn by the assessees through their Indore shop; the hundis were collected by the assessees in Bombay and after realisation paid to the company in Indore. Thus the position was that sales were effected outside British India the proceeds of such sales were collected by the assessees in British India and the commission payable to the assessees at the end of each year was paid in Indore and not received in British India. *Held*, that the source of the commission paid to the assessees was the sale which took place in Indore and not the receipt of the proceeds of the sale, and it could not therefore be said that the commission which accrued or arose was received in British India within the meaning of sec. 4 (1). (1943) I.T.R. 128=45 Bom.L.R. 115=1943 Bom. 98. All income from 'business' arising or received or deemed so to arise or be received in British India is taxable under the Act. 52 C. 1= 1925 C. 34. *See also* 6 P.L.J. 62=2 P.L.T. 188=60 I.C. 357=1921 P. 81. The ordinary presumption is that money remitted to the headquarters of a firm in British India from a branch situated in a foreign country is presumed to be profit and not capital unless the assessee proved the contrary. 1936 L. 836. *See also* 37 Bom.L.R. 753=1935 B. 423. Interest on foreign investments—Reinvestment abroad—Interest taken into account in determining amount of profits

available for distribution as dividend not to be deemed to be received in British India. 40 Bom.L.R. 980=1938 Bom. 490=I.L.R. 1938 Bom. 803. Revenue free villages situated in Nizam's territory—Rent realized from tenants of—Income from rents brought into Berar is taxable. 107 I.C. 661=1928 N. 146 (1). The profits or gains of a business are generally speaking the difference between the receipts and the expenses incurred in earning them. 21 N.L.R. 175=1926 Nag. 180. The profits or gains arising to the assessee from the buying in of the mortgaged property are deemed to have arisen on the date when the sale is confirmed. Profits cannot be said to have accrued when the Court enters up satisfaction of the decree. 9 P. 48=1929 P. 476 (F.B.). Affirmed in 60 I.A. 133=12 P. 305=1933 P.C. 101=64 M. L.J. 544 (P.C.). When an assessee purchases with the permission of the Court property which is mortgaged to him, the price which he bids for the property is the market value. 60 I.A. 133. When a mortgagee decree-holder with the permission of the Court, bids for and purchases the mortgaged property at a judicial sale, under O. 21, r. 72 (2), C. P. Code to the extent that the purchase price exceeds the principal sum due and the expenses incurred for the sale there is a realization of interest, *i.e.*, a payment of interest and this amount can be taxed. 60 I.A. 133. For purposes of assessment to income-tax, there must be an actually realized or realizable profit or loss. Assessees accepted a new mortgage in discharge of a prior one and the arrears of interest thereon. *Held*, that there was no realization of principal and interest of the original mortgage, that the acceptance of the new mortgage did not amount to receipt of payment of interest and principal, but amounted only to a substituted security for an existing debt and that the assessees were not liable to be assessed on this sum as income received. 60 I.A. 133=12 P. 305=1933 P.C. 101=64 M.L.J. 544 (P.C.).

"INCOME", "PROFITS" OR "GAINS"—MEANING OF.—1935 B. 197=37 Bom.L.R. 126; 11 R. 521=148 I.C. 633=1934 R. 27 (S.B.). *See also* 62 I.A. 207=1935 P.C. 143=69 M. L.J. 190 (P.C.). Where a company passes a resolution by which capital is increased by a new issue of shares and a portion of the accumulated profits standing to the credit of the reserve fund of the company corresponding to the amount payable on allotment of the shares, is transferred to the credit of the share capital account, the new shares being then allotted as fully paid up among the shareholders *pro rata*, the transaction in effect is not a declaration of the dividend and the shareholder cannot be deemed to have received any *income, profits or gains* within the meaning of sec. 4. The personal motive or purpose of the individual shareholders even if they hold a controlling interest in the company, is irrelevant if it is made out that the company has in fact capitalized the accumulated profits. 63 I. A. 457=40 C.W.N. 1181=1936 P.C. 238=71 M.L.J. 525 (P.C.). *See also* 1941 I.T.R. 610.

"INCOME RECEIVED IN BRITISH INDIA".—What constitutes—Liability to tax. 3 L. 349=1923 L. 14 (F.B.). The assessees were a firm carrying on business in Bombay and acting as general agents for a company at Indore. By the terms of the agreement between them, the agents were entitled to a commission on sales effected by them and to retain that commission out of the proceeds. But, as a matter of fact, all the proceeds were sent to Indore by the Bombay firm and the commission was paid only at Indore. On a question arising whether the commission was "money arising or accruing in British India", it was held that the fact that the commission might have been segregated and paid in British India indicated that the income accrued in British India and was assessable accordingly. 33 Bom.L.R. 382=55 Bom. 231=1931 Bom. 236. The assessee, a firm consisted of four brothers who were joint and lived in Muttra in the United Provinces. The firm sold salt which was obtained from a lake in Rajputana outside British India. The head office of the firm was at Rajputana, but it had a branch at *M* in British India, where a business of selling salt to persons in the district was carried on. One of the partners came to *M* at intervals. There was a clerk at *M*. Orders for salt were accepted and contracts for sale and delivery of salt were concluded at *M*, and the orders were sent to the head office at Rajputana for execution, and payments made at the head office. *Held*, (1) that the assessee carried on business in British India; (2) that the assessee was liable to be taxed under sec. 4. 1942 I.T.R. 13=1942 Pat. 313. Non-resident foreigner having business connection in British India is liable to income-tax in British India. 44 M. 773=41 M.L.J. 191 =1921 M. 212=64 I.C. 239; 49 M. 833=1926 M. 949=51 M.L.J. 123. Liability to income-tax of foreign company. 52 C. 1=28 C.W.N. 1074=1925 C. 34. But *see* 44 M. 718=41 M.L.J. 177. The English Income-tax Acts lay down a territorial limit. The Indian legislature appears to have gone beyond that limit. Having regard to the essential difference in language between the English and Indian Acts upon the point under consideration, English cases are of no authority in India. 28 C.W.N. 1074. Where the assessee is a registered firm and the total income includes income accuring or arising without British India, the statutory deduction of Rs. 4,500 allowed by the third proviso to sec. 4 (1) must relate to the total income of the firm and not to the share of the income of each partner, for purposes of sec. 23 (5) (*a*). 1943 I.T.R. 259. The statutory deduction of Rs. 4,500 allowed by proviso (3) to sec. 4 (1) should, be made from the total foreign income of the firm and not from the share of each partner in the income of the firm included in his own total income. I.L.R. (1944) Nag. 721=1944 N.L.J. 311=1944 Nag. 287.

The assessee was the sister of a Ruler of an Indian State residing in British India. In the accounting year she received certain moneys as an allowance from the State. The allowance was made as an annual "ward-robe allowance" and as presents on certain specified days of festival in each year. Each payment was specifically budgeted for in the annual budget of the State and the evidence was that they had been made in each year consecutively for a period of almost twenty years. The assessee was never asked to give any account of her expenditure of these monies and the surplus left at the end of the year was tacitly assumed to be her personal property. 1946 All. 306 (F.B.)=1946 A.L.J. 416=1946 I.T.R. 561 (F.B.).

Per Full Bench.—The moneys received by the assessee during the accounting year do not constitute her personal income assessable under the Income-tax Act. (1946) All. 306 (F.B.)=1946 A.L.J. 416=1946 I.T.R. 561 (F.B.).

Per Braund, J.—The word "income" as used in sec. 4 (1) of the Act not only denotes something larger than profits and gains, but denotes whatever may be properly described as "income" in the ordinary parlance of language, unless expressly exempted from the charge of tax by the Act itself. It is not limited to something which must necessarily have its origin either in a business activity, an investment or an enforceable obligation. A regular payment or a payment expected to be regular may in principle be as much "income" when it is received from a giver who makes it systematically and for a known and rational reason (and *a fortiori* when it is received in accordance with custom) as it is if it is made in pursuance of some binding obligation whether arising out of business dealings, out of an investment or out of some other enforceable obligation. In construing the word "income" in the Act, one has to ask oneself whether, having regard to all the circumstances surrounding the particular payments and receipts in question, what is received is of the character of income according to the ordinary meaning of that word in the English language or whether it is merely a casual receipt or mere windfall. In the present case, what we have is a series of payments made over a period long enodgh to entitle them to be described as habitual, originating in nothing more than the bounty of the Ruler of the State. There may be special circumstances in which payments of this kind, though voluntary in the sense that if discontinued, there is no remedy, might be attributable to some custom, usage or traditional obligation which might invest them with the character of "income" in the hands of the recipient. But if there are, then it is for the Income-tax authorities to show them The burden is on them to show (apart from the mere circumstance of reptition) that there is any origin to account for these payments which could amount in its nature to a definite source so as to render each payment "income" and not merely "casual or a mere annual (though expected) windfall". It has not been proved in this case that there is anything more certain than the mere whim of the Ruler to support them. 1946 All. 306 (F.B.).

Per Malik, J.—The remittances received by the assessee are expressly exempted under sec. 4 (3) (*vii*), being of a casual and non-recurring nature. 1946 A.L.J. 416=1946 I.T.R. 561=1946 All. 306 (F.B.).

PROFITS EARNED OUTSIDE BRITISH INDIA.—Liability to assessment—Same sum of money cannot be received as income twice over once outside British India, and once inside it. 46 M. 706=44 M.L.J. 523=1923 M. 574. Business outside British India—Profits not remitted to British India—Tax. 43 M. 75=37 M.L.J. 663 (F.B.). *See also* 10 L. 657=1929 L. 609 (F.B.). As to foreign firm lending money to resident firm, *see* 30 Bom.L.R. 1172. The profits arising out of the manufactures of a company carrying on its business and distributing a large part of the manufacture outside British India cannot be said to accrue or be received in British India simply because the head office is in British India and the Directors control the business of British India. 45 B. 1286=64 I.C. 9=23 Bom. L.R. 570=1921 B. 159. Under certain circumstances, it is open to the Income-tax Officer to assume that the amount remitted to British India from the branch of the business outside British India represents profits made in such branch, in spite of the fact that the total amount of such remittances is less than what has been sent from British India to such branch. 1935 L. 727. Assessee was carrying on money-lending business in Tinnevelly and also in Penang. Deposits made with him in his Tinnevelly shop were repaid by him by means of hundis on his Penang shop, and the moneys having been paid at Penang, the payments were recorded in the Penang folio of the Tinnevelley books and in the Tinnevelly folio of the Penang books. The profits in Penang were sufficient to cover the payments made. *Held*, that what the assessee did was to use in British India moneys available to him in Penang, and this amounted to a receipt in India by him of gains made outside India and these were therefore taxable under sec. 4 (2). It is not necessary that there should be an actual transfer of the money and the receipt thereof in India to constitute "receipt" sec. 4 (2). 1936 M. 282=59 M. 171=1935 M.W.N. 1191=69 M.L.J. 844 (F.B.). The assessee, a Nattukottai Chetty, carrying on money lending business in the Federated Malay States, instructed his Bank at that place in the year of account to remit to its branch in British India a sum of Rs. 8,000, which the branch in British India was to hold as a fixed deposit of the assessee repayable at the end of 12 months. The money represented profits which the assessee had made in the Malay States. When the deposit matured, the amount was paid to the assessee in British India. *Held*, that the sum of Rs. 8,000 must be treated as profits of the assessee's business outside British India brought

into British India by him in the year of account and was therefore liable to be taxed. I.L.R. 1945 Mad. 845=1945 Mad. 280=(1945) 1 M.L.J. 302. Receipt in British India—What constitutes—Donation to temple in British India paid by hundi drawn on firm outside British India—Hundi cashed and amount paid outside not to be deemed received in British India. 59 M. 385=1936 M. 780=71 M.L.J. 72 (F.B.). Receipt in British India—What constitutes—Purchase by assessee of house-sites in British India with profits arising outside—Payment outside followed by agreement of purchase and completed by sale deed subsequently—Date of receipt of profits—Date of profit or date of sale deed. 59 M. 263=1936 M. 776=71 M.L.J. 35 (F. B.). Appropriation by creditor contrary to agreement with debtor—Income-tax authorities, if can ignore. *See* 1938 Cal. 20.

COMPANY INCORPORATED IN ENGLAND.—Branches in India and elsewhere—Taxable profits in British India. 44 M. 489=1921 Mad. 298=63 I.C. 485=40 M.L.J. 560 (F. B.).

INCOME RECEIVED IN NATIVE STATES.—British subject—Receipt of money in Native State—Money credited with bank. 4 P. 210=85 I.C. 164=1925 P. 281; 92 I.C. 351=1926 B. 50. Under the Income-tax Act, income accruing or arising in British India in the "previous year" is assessable, though the place of accrual has ceased to be part of British India in the year of assessment. The fact that profits are taxed in the place of accrual, Burma, which was since separated from British India, makes no difference and is no answer to the claim of the Government under the Indian Act, because the assessment in Burma is a taxation by a foreign state. 1945 I.T.R. 311=1945 Mad. 513. Bank in British India having branches in Cochin and Travancore—Liability to income-tax. 49 M. 910=1926 M. 1048=51 M.L.J. 403 (F.B.). *See also* 107 I.C. 661=1928 N. 146. Forest officer in the pay of Siamese Government—Remuneration paid at Bangkok—Liability to assessment to income-tax. 6 Rang. 598=114 I.C. 296=1929 R. 1 (F.B.). A lady enjoying an annuity in Mysore State and receiving instalments through her agent while in British India, is liable to be taxed. 39 M. 885=31 I.C. 404. Native State carrying on business in British India—Liability to assessment to income-tax. *See* 1930 A.L.J. 579.

TAXABLE INCOME— ILLUSTRATIVE CASES.—*See* 1937 R. 337 (S.B.). The profits or losses arising from wagering contracts are to be taken into account in an assessment for income-tax purposes. 1925 A. 469=47 A. 368=23 A.L.J. 65. In the case of a permanent lease the landlord or lessor permanently parts with the direct enjoyment of the property by himself and his successors, and the lessee is the purchaser of a large interest therein. The *salami* or premium paid by the tenant to the landlord, which is paid once for all and is not a recurring payment is not "income" within the meaning of sec. 4 of the Income-tax Act, but must be treated as a capital receipt which is not taxable under the Act. 18 Pat. 805=1940 Pat. 24. Manohar Lal, J.—Though it would be impossible to lay down a hard and fast rule that a *salami* can in a case be taxable, which is a question depending on the facts and circumstances of each case, the *salami* paid before the land is put into use by the lessee, and not because of the use of the land is a capital receipt in the hands of the lessor as it was a capital payment on behalf of the lessee. 1940 Pat. 24=18 Pat. 805=1939 P.W.N. 731=1939 I.T.R. 536. Income derived from forests and fisheries in a permanently settled estate are exempted from liability to income-tax. 45 M. 518=1922 M. 325. *See also* 51 Cal. 504=84 I.C. 31=1924 C. 668. Income, from *hats ghasalgi* and *Jalkar*, whether included in the assets of permanent settlement—If liable to income-tax—Illegal dues realised in *hats*—Income of *hats* not specifically mentioned at the time of Permanent Settlement whether assessable—Onus, on assessee or Crown. 92 I.C. 338=6 Pat.L.T. 355=1925 P. 313. *Royalty*—Payment of lump sum—Mining lease—Liability to tax. 5 Pat.L.T. 497=82 I.C. 653=1924 P. 679=4 P. 73. The income of the royalty of a local mine received by its owner is not an income from business but it falls under sec. 5 (*iv*) [now sec. 6 (*vi*)] as one derived from other sources. 6 P.L.J. 62=2 Pat.L.T. 188=60 I.C. 357=1921 P. 103. Joint family property—Impartible estate—Income of. 1924 P. 679=4 P. 73. Mere constitution of the partnership between some members of the family will not preclude the assessment in cases where the partnership is carried on on behalf of and for the benefit of the joint family. 45 M.L.J. 150=46 M. 673=1923 M. 682. Bonus shares issued out of accumulated profits as dividends to a share-holder are in addition to the shareholder's capital and not income taxable by the Crown. 3 Mys.L.J. 65. A club is liable to pay income-tax in respect of its house property. Subscriptions received from the members are not "income" and therefore not liable to income-tax under the Act. 61 I.C. 886=2 L. 109=1921 L. 208. A partnership is, for income-tax purposes, not an entity known to law, and there is, for this purpose, no distinction between registered and unregistered firms. 47 M. 660=77 I.C. 772=1924 M. 474=46 M.L.J. 68. Income—Interest not realised is not taxable. 16 L.W. 174=1922 M. 426. Where a Nattukottai Chetty carrying on money-lending business in British India lends money in the course of such business, to persons outside British India on the *tavanai* system, the interest due and unpaid at the end of each *tavanai* must be taken into account in assessing him to income-tax, although it was not actually received in cash. 1929 M. 675=57 M.L.J. 60 (F.B.). Interest which became due but not actually realised in cash or by adjustment is not liable to tax. 44 M. 65=59 I.C. 482=1921 M. 427=39 M. L.J. 649 (F.B.). Interest does not cease to be an income, profit or gain because at the end of a certain specified period it is added to the capital so that it may bear interest.

9 P. 48=1929 P. 476 (F.B.). When a creditor executes a mortgage decree and puts to sale the mortgaged property in satisfaction of the decree and the total sum realised by the sale is less than the total of principal, interest and costs, the amount realised should be taken first after satisfaction of costs not towards the payment of interest and the balance only to be credited towards the satisfaction of the principal. If the creditor has made a declaration declaring what portion of the amount realised was interest and what portion was principal and has made an appropriation accordingly, the Income-tax Officer cannot insist on appropriating the realisations to interest first. 9 P. 48. The second proviso in sec. 4 (1) of the Income-tax Act does not apply unless there is control in British India of a foreign business. When it is found that there is no act of control in British India of a foreign business owned by a Hindu undivided family, the mere presence of the manager in British India cannot itself justify a finding that control of the foreign business is exercised in British India. Nor would the mere receipt by the manager of copies of the day books of the business be sufficient to justify such a finding. 58 L.W. 170 (2)=1945 M. W.N. 228=1945 I.T.R. 269=1945 Mad. 210 =(1945) 1 M.L.J. 291. On partition on 28-3-1839, the assessee received as his share of the family assets the business which the family had carried on in the Federated Malay States. Between 28-3-1939 and 12-4-1939, the assessee brought to British India Rs. 40,742, of the profits accumulated before the partition. *Held*, that the profits in question accrued to the assessee within the meaning of sec. 4 (1) (b) (*iii*) of the Income-tax Act, by reason of the partition arrangement with his father, and as he brought them into British India, he was liable to tax on it. 57 L.W. 258=1944 M.W.N. 250=1944 I.T.R. 226=1944 Mad. 398 (1)= (1944) 1 M.L.J. 303=I.L.R. (1945) Mad. 125.

SEC. 4: 'INCOME' AND 'PROFITS'—DISTINCTION BETWEEN.—In the wide sense, 'income' when contrasted with 'capital' means and includes not only income in its strict meaning, but also profits and gains. But in the strict sense, 'income' as contrasted, not with 'capital', but with 'profits' or 'gains' means a periodical monetary return coming in, and accruing to the assessee independently, and not as the nett proceeds, of a business carried on by the assessee as defined in sec. 2 (4). In this sense, 'income' connotes incomings without regard to out-goings. Profits are "the surplus by which the receipts from the trade or business exceed the expenditure necessary for the purpose of earning those receipts". 11 R. 521=1934 R. 27 (S.B.). *See also* 37 Bom.L.R. 126=156 I.C. 274= 1935 B. 197 (Assessee paying part of profits to third party under a contract not exempt); I.L.R. (1939) All. 832; 63 I.A. 457; 1936 P.C. 238=71 M.L.J. 525 (P.C.); 62 I.A. 207=1935 P.C. 143=69 M.L.J. 190 (P.C.)=14 Pat. 552.

SALE OF PATENT—PRICE—IF 'INCOME' OR 'CAPITAL RECEIPT'—TEST.—If a transaction is an out-and-out sale of the patent by the patentee for a definite fixed price, even though it is payable in instalments, any such instalment received during the accounting period cannot be treated as taxable 'income', but is a 'capital receipt' exempt from assessment. If, on the other hand, it is merely a 'working licence' granted for an annual payment, it is clearly 'income' and taxable. 1937 Lah. 880. If the assessee has been carrying on the business of acquiring and selling patents as a regular trade, the price received by him by the sale of any particular patent would be income within the meaning of the Income-tax Act and assessable as such. The case would be similar to that of a speculator in immovable properties, who purchases and sells such properties as a regular trade. But this would not be so if a person who had inherited immovable property or had acquired it as an investment, subsequently sold it at a profit. 1937 Lah. 880. If a transaction is a working licence for a number of years in which no fixed sum is to be paid to patentee but he is to receive a royalty on a percentage basis on the nett profits made by the grantee, the amount of the royalty so received would clearly be assessable in the hands of the grantors. 1937 Lah. 880.

MORTGAGEE PURCHASING MORTGAGED PROPERTY IN EXECUTION OF HIS DECREE.—Whatever may be the right of a mortgagee when a sum of money is paid to him in cash by the mortgagor to appropriate it towards principal or interest, when the mortgaged property is purchased in satisfaction of the debt, the mortgagee receives a transfer of the property at the value of the purchase price in satisfaction *pro tanto* of the liability of the mortgagor for principal and interest and to the extent therefore that the purchase price exceeds the principal sum due there is a realisation of interest, that is payment of interest—and such payment is liable to income-tax. 1942 A.L.W. 205=1942 O.W.N. 289=1942 I.T.R. 186.

INTEREST ON ARREARS OF RENT—DEBTOR EXECUTING USUFRUCTUARY MORTGAGE BOND IN FAVOUR OF ASSESSEE FOR INTEREST.—Where a debtor executes a usufructuary mortgage bond in favour of the assessee in respect of interest due to the assessee on arrears of rent derived from land and puts the assesee in possession of certain lands for the purpose of realising his dues, the assessee gets merely a security for his debt which still remains unrealised and therefore the mortgage amount does not constitute taxable income (assuming that the interest on arrears of rent is taxable). 1944 I.T.R. 428=1944 Pat. 207 (S.B.).

COMPANY INVESTING SURPLUS SHARE CAPITAL IN PURCHASE OF SHARES OF SISTER CONCERN—PROFIT MADE BY SALE OF SHARES.—The act of a company in investing the surplus capital in the purchase of shares was part of business in order to make a profit,

and they were business transactions and the profit by sale of such shares is taxable. 22 Pat. 742=1944 Pat. 102. Interest—Appropriation of—Decree obtained by assessee against two persons for principal and interest on handnotes and costs—Payment of lump sum by one debtor in full discharge of his half of liability—Amount to be appropriated as interest. *See* 1942 Pat. 457=203 I.C. 437. The assessee's father who was a partner in a money-lending firm died in 1921, but inspite of his death the business was carried on until 1928. Subsequently the amount payable and due to the assessee's father in respect of his share was ascertained and it was decided that the assessee should be paid the amount together with Rs. 21,153, as interest on the amount and he was paid in 1938. The Income-tax Officer included this amount of Rs 21,153 as the income of the assessee for 1939-40, but the assessee objected and claimed that the amount represented damages paid to him for the wrongful detention of the principal amount due to him. *Held*, that the amount represented interest and not damages and was therefore taxable as income. 56 L.W. 508=(1943) I.T.R. 470 =1943 Mad. 682=(1943) 2 M.L.J. 316.

EXEMPTION FROM TAXATION—RULER OF INDIAN STATE.—Per *Braund, J.*—The test of whether the Ruler of an Indian State can be made the subject of taxation in British India under a British Indian Taxing Act must ultimately rest on whether he is capable of being sued in British Indian Courts As the Ruler of an Indian State is personally immune from proceedings in British Indian Courts, he must necessarily be immune from taxation in British India under the Income-tax Act, which no Court in British India has the power to enforce against him. 1946 All. 306 (F.B.).

EXEMPTION FROM TAXATION—WIFE OF RULING CHIEF OF INDIAN STATE.—The wife of the Ruling Chief of an Indian State is not exempt under the canons of International Law from taxation under the Income-tax Act, in respect of whatever is, or is deemed to be, her income accruing, arising or received in British India. 1946 A.. 306 (F.B.).

"SOURCE".—The source of the income must be considered in its proximate rather than in its ultmate significance. 13 P. 336=1934 P. 178 (F.B.). (Per *Beasley, C.J.* and *Bardswell, J., Cornish, J.*, dissenting).—The rentals derived from properties taken over in discharge of debts in the course of foreign money-lending business and treated as assets of that business can be assessed as part of the profits of that business when remitted to British India under sec. 4 (2) of the Act. 65 M.L.J. 849 (F.B.)=57 Mad. 22=1934 M. 59.

SEC. 4 (1).—*See* 1935 B. 423. Where an agency is not for a fixed period, compensation received by the company as agents of a business concern for determination of the agency, such compensation not being commission in lieu of notice does not lose its character of capitalised value of future annual taxable income, merely by reason of the fact that it is described as commission for the year of receipt. The measure of such compensation is no test of its character as capital or income; whether such payment is enforceable as a claim for damages is immaterial. Also it does not become an *ex gratia* payment merely because the principal has been generous 58 C. 1153=35 C.W.N. 361=1931 C. 376. Goods sold by agent in Europe and money forwarded to India through bank—Agent getting a part of the proceeds by compromise between him and principal in Kabul—Agent is liable to pay tax on such amount. 102 I.C. 298=1927 L. 512=8 Lah. 335. Commission earned by a person in British India for services rendered in British India as an employee there, but actually received by him in the United Kingdom, while on leave, accrues or arises wihtin British India within the meaning of sec. 4 (1) of the Income-tax Act, when by the terms of his agreement he is required to serve his employers only in British India. The words "accruing and arising" in sec. 4 (1) are very wide and mean something different from "being received". I.L.R. (1937) 2 Cal. 327 =41 C.W.N. 823. *See also* 1939 A.L.J. 631 =1939 All. 593=I.L.R. (1939) All. 832; 1939 I.T.R. 160. Railway Company—Receipt of guaranteed interest on capital in England from Secretary of State for India—Amount subsequently recouped out of profits of company in India—Interest received is assessable to Indian Income-tax. I.L.R. (1940) Mad. 889=52 L.W. 208=1940 Mad. 598=(1940) 2 M.L.J. 110 (S.B.).

SECS. 4 (1) (b) (*ii*) AND 4-A (c): SCOPE—IF ULTRA VIRES OR EXTRA-TERRITORIAL IN OPERATION.—Secs. (4) 1 (b) (*ii*) and 4-A. (c) of the Income-tax Act cannot be held to be extra-territorial in their operation, taking the scheme of the Act as a whole; nor are those provisions *ultra vires* the Indian legislature. The legislature has not attempted to relegate, punish or directly deal with any act done beyond the territorial limits of British India nor does it seek to impose a liability on property situate outside its jurisdiction. I.L.R. 1945 Kar. (F.C.) 88=1945 F. L.J. 34=49 C.W.N. (F.R.) 50=47 Bom. L.R. 153=79 C.L.J. 265=1945 F.C. 9=(1945) 1 M.L.J. 359 (F.C.). *See also* (1944) 1 M.L.J. 477 (F.C.); I.L.R. (1944) 1 Cal. 34; The provision in sec. 4 (1) (*c*) and Expl. 3 to sec. 4 (1), which makes liable to tax in British India foreign money measured in a foreign currency paid in a foreign country by one foreign company to another foreign company, in discharge of a debt arising and payable in that country, is not legislation within the extra-territorial powers given in sec. 99 (2) of the Government of India Act, Such legislation is not authorised by any provision. either express or implied, of the Government of India India Act, 1935, and being beyond the law making powers of the Government of India, is *ultra vires* and invalid. Consequently the words "or are deemed to accrue or arise" in sec. 4 (1) of the Income-tax Act and Explanation (3) thereof are of no legal effect. (1943) I.T.R. 393=6 F.L.J.

(H.C.) 133=1943 Comp. C. 265. Control and management of the affairs of a business must be effected through the media of human minds and in dealing with a plurality of persons who either jointly or severally exercise powers of control and management over a particular business, and who may be either generally or from time to time in different places and in communication by letter, telephone or telegram, it may be difficult to ascertain where the control and management is situated, especially where it has to be ascertained whether such control is wholly without British India for purposes of sec. 4-A (*b*) of the Act. A liberal meaning is to be given to the words "wholly situated" and it must be ascertained in every case where in fact the control and management of the business is situated apart from the temporary journeyings of the active partners or the residence of the dormant ones. The mere fact that a person resident in India has a power of control, whilst it is a relevant consideration, is no evidence by itself of any fact of control or management and it is the acts and not the powers that are decisive. 1946 I.T.R. 334.

SEC. 4 (1) PROVISO (3) AND SEC. 16 (1).—When the income of a registered firm has had the benefit of statutory rebate of Rs. 4,500 in respect of its foreign income, then the benefit of that rebate cannot again be claimed by each individual partner upon his share in the profits which is liable to taxation for it will amount to a double rebate. Sec. 4 (1) Proviso, deals with the assessment of the tax and sec. 16 (1) deals with the levy. The rebate is allowed when the income-tax is assessed, it is not allowed again upon the levy. 1946 I.T.R. 407.

SEC. 4 (1) AND (2).—(*See also* notes under secs. 3 and 42). Sec. 4 (2) is for the purpose of ascertaining the profits of a partner and got from the business carried on outside British India and when such profits come into British India, that will be taken into consideration in assessing him. If a firm receives such profits from another firm, it is the firm that should be taxed. 31 L.W. 215=122 I.C. 349=1930 M. 119 (S.B.). *See also* 54 A. 223 =1932 A. 151; 59 C. 1226=36 C.W.N. 563= 1932 C. 626. What the Income-tax Act charges with tax is income and nothing but income, whether that income accrues or arises or is received in British India or is deemed so to arise or accrue or be received by reason of being brought into British India. But if income arising or accruing without British India is spent or otherwise so dealt with that it ceases to be income instead of being brought into British India, it is not chargeable under the Act merely because the thing upon which it has been expended or into which it has been turned is subsequently brought into British India. It is not necessary of course, in order to attract the tax, that the income received abroad should be brought into India in the exact form in which it has been received. Where the interest on certain sterling bonds belonging to the assessee company carrying on business in British India was payable in England and was in fact received by an agent of the company and expended on the purchase of certain mill stores and machinery which were later on sent to India and used for the purpose of the business of the company it was contended that the machinery bought with the sterling equivalent of the interest on securities, on their arrival in British India, resulted in so much of foreign income being brought into British India, but it was overruled and held that the income on the securities were not liable to be taxed under sec. 4 (2) of the Act. 67 I.A. 115=I.L.R. (1940) Bom. 332=1940 P.C. 36=(1940) 1 M.L.J. 137 (P.C.). The Court must look at the substance of the transaction and when that is done, the proper conclusion to be drawn should be that there was here a remittance of profits. The test is from where did the money for the remitance come. (1940) 2 M. L.J. 217 (S.B.). *Krishnaswami Iyengar, J.* —It would not be necessary that the assessee should receive the profits in the exact form in which they were made, but he must receive them in British India substantially as profits. The mere existence of an overdraft cannot save foreign income from liability to taxation, as money paid out of the overdraft and remitted to British India is not necessarily the money of the lender, and may be that of the recipient. There is no abstract rule of law to be applied generally to cases of this kind. The question in each case is what is the correct inference to be drawn; and the Court is entitled to get behind appearances in order to discover the truth. I. L.R. (1940) Mad. 715=52 L.W. 108=1940 Mad. 593=(1940) 2 M.L.J. 217 (S.B.). *See also* 1940 I.T.R. 474; *Ibid.* 432; *Ibid* 297; 1940 Mad. 416=(1940) 1 M.L.J. 543. A person in British India carrying on business there and controlling transactions abroad in the course of such business is not by these mere facts liable to tax on the profits of such transactions. If such profits have not been received in or brought into British India, it becomes necessary to consider on the facts of the case where they accrued or arose. It cannot be said that the place of formation of the contract prevails against everything else. In some circumstances it may be so, but other matters—acts done under the contract for example—cannot be ruled out *a priori*. Where the contract is neither framed nor carried out in British India, the profits cannot be said to have accrued or arisen in British India. I. L.R. (1938) Bom. 752=40 Bom.L.R. 916= 48 L.W. 204=42 C.W.N. 1070=67 C.L.J. 554=1938 P.C. 232 (P.C.). A person who is "not ordinarily resident" in British India gets relief in respect of income which had accrued or arisen to him in British India only in respect of such income as he does not bring into British India. If he brought the income which had accrued after the 1st April, 1933, his case would be covered by sec. 4 (1) (*b*) (*iii*) of the Income-tax Act, provided it was income which had accrued before the beginning of the accounting year. If it was income which had accrued during the accounting year his case would be covered by sec. 4

(1) (*b*) (*ii*) and the income would be liable to be assessed only it was brought into British India; otherwise under the main proviso it would be saved. (1945) I.T.R. 376. The assessee, an Insurance Company, resident in British India, had certain securities in a foreign Bank (in England). The assessee recovered interest on those securities, but it was not brought into British India. The assessee claimed exemption in respect of such foreign income under sec. 4 (1). *Held*, that the income fell under sec. 4 (1) (*b*) (*ii*) and not under sec. 4 (1) (*b*) (*i*) and therefore the third proviso to sec. 4 (1) applied to the case, and the assessee could claim exemption under that proviso. Sec. 42 of the Act did not apply to the case. 1945 I.T.R. 405=47 Bom.L.R. 795. An assessee who is resident but not ordinarily resident in British India, and who earns income which accrues to him after 1st April, 1933, gets relief in respect of such income only if he does not bring it into British India during the accounting year. But if he brings such income accrued before the year of account into British India during the year of account, he is liable to be assessed upon such income. 48 Bom.L.R. 304.

Profits made in British India—Railway company—Contract with Secretary of State for Working Railway—Guaranteed interest on company's capital paid by Secretary of State in India and recouped out of earnings in India—If profits made in India—Liability to income-tax. A.I.R. 1943 Mad. 703=(1943) 2 M.L.J. 148. If there are profits in an assessee's foreign business sufficient to cover remittances to British India during the year of assessment, the presumption is that the remittances were from profits, and not from capital, and the onus of showing that they were from capital and not from profits lies upon the assessee, as also the onus of showing that they were profits earned more than three years before the date of the remittances. Where it is shown that the foreign business as a debtor is unable to pay the foreign business's debt and the assessee takes the debtor's land in British India in satisfaction of his claim against his debt, the land so taken in British India is not taxable as foreign profits under sec. 4 (2) of the Indian Income-Tax Act. 1930 M. 457=58 M.L.J. 602 (F.B.). *See also* 1932 M. 573=63 M.L.J. 227 (F.B.). *See also* 1940 Mad. 416=51 L. W. 362=(1940) 1 M.L.J. 543. The presumption that where money is remitted from a business abroad where profits have been made the remittance is a remittance out of profits is rebuttable. Where a partner receives moneys from the general account of the firm before profits are ascertained, the moneys so received cannot be treated as profits received and cannot be taxed, because profits may never accrue and he may have to refund moneys overdrawn. 1939 I.T.R. 40. The assessees who were partners in a money lending firm in foreign territory carried on the same kind of business in British India. The foreign firm was compelled to take over in satisfaction of debts due to it immovable properties which had been mortgaged as security for the debts. The value of these properties were treated as representing in part the return of capital and in part profits. The assessees in the year of account remitted to British India certain amounts and they contended that the profits represented by immovable properties were not capable of remittance, and so the remittances should not be taxed as profits. *Held*, that the withdrawals from the foreign firm and remittances to British India must be treated as withdrawals of profits. I.L.R. (1939) Mad. 480=48 L.W. 957=1939 Mad. 78=(1939) 1 M.L.J. 43 (F.B.).

RECEIVED IN BRITISH INDIA—MEANING OF. —"Received" in sec. 4 (2) cannot be interpreted as amounting to merely "lessening of liability in British India". It means receipt in British India of the amount, or by appropriate book entries, of an asset which can be pointed out as resulting from the receipt. 47 Bom.L.R. 159=1945 I.T.R. 245=A.I.R. 1945 Bom. 258. "Received"—Meaning of—Royalty payable to assessee deposited in bank to his credit and operated upon by the assessee along with his other amounts in the bank constitutes receipt by him and is assessable. 202 I.C. 270=1942 Pat. 491=1942 I.T.R. 177. Receipts of profits by assessee in British India—What amounts to—Loan out of foreign profits to person residing in British India—If receipt of profits in British India not taxable. 1939 I.T.R. 160. It is enough for the purpose of liability to assessment if the profits of a business carried on by the assessee are received in British India and the place where the business is carried on is not material. The Pondicherry Railway Company worked the railway in the French Territory, but they had an office at Trichinopoly in British India where the agent received the gross proceeds of the line from that place; the agent transmitted the nett profits to the London Office. *Held*, the income in question was "received" in British India and liable to be assessed to income-tax. 58 I.A. 239=54 M. 691=61 M.L.J. 251 (P.C.). Dividends received outside British India from sterling companies registered and with their share register in the United Kingdom but satisfying the definition of a company in sec. 2 (6) of the Act and assessed to income-tax in British India are not to be taken into account as part of the total income of the assessee for the purposes of the income-tax assessment. 55 B. 734=33 Bom.L.R. 776 =1931 B. 420; 58 M.L.J. 581. The assessees were a company with their registered office in Calcutta. Their income, profits and gains were derived from the sale of tea grown and manufactured on a tea estate in an Indian State and then sent to Calcutta and sold there. *Held*, that sub-sec. (2) of sec. 4 of the Act contemplates a case where income, profits and gains have assumed their form as such outside British India and are thereafter received in or brought into British India, that no income, profits or gains arose or accrued until the manufactured tea was sold in Calcutta which was, therefore, the

(*a*) are received or are deemed to be received in British India in such year by or on behalf of such person, or

(*b*) if such person is resident in British India during such year,—

(i) accrue or arise or are deemed to accrue or arise to him in British India during such year, or

(ii) accrue or arise to him without British India during such year, or

(iii) having accrued or arisen to him without British India before the beginning of such year and after the 1st day of April, 1933, are brought into or received in British India by him during such year, or

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place where the income, profits and gains arose and accrued and that sec. 4 (2) and the provisos thereto had no application to the case. I.L.R. (1937) 2 Cal. 201. *See also* (1937) 2 M.L.J. 310. In the case of coffee the processes subsequent to the picking of the seed are not treated as in the nature of manufacture, as in the case of tea, but are regarded only as process "ordinarily employed by the cultivator to render the produce fit to be taken to the market" within the meaning of sec. 2 (1) (*b*) (*ii*). 46 L.W. 247=1937 Mad. 745=(1937) 2 M.L.J. 310 (S.B.). The assessee was the owner of and worked coffee estates in the Mysore State outside British India, maintaining an office on the estates for the supervision of the labour which he employed in respect of them. At a place within British India he recruited most of the labour and purchased materials and equipment which he had sent from there to the estate. The crops were brought to the place within British India in their raw state, and he had the raw coffee cured for payment within British India where also he sold through his agents and realised and retained the proceeds. He kept a separate staff in British India for the operations which he conducted there. All the operations connected with the cultivation of the coffee plants and the collection, transport and sale of produce were controlled from within British India and the accounts were incorporated in a consolidated profit and loss account kept in British India. The assessee contested an assessment made upon him on an income which was computed as his profits from the said business of growing, curing and selling coffee for profit. *Held*, that the assessee was carrying on a "business" within the meaning of secs. 2 (4) and 10 of the Act inasmuch as the profit which he derived from his land was derived from the business. It was impossible to regard the green coffee itself as income within the meaning of the Act, or arbitrarily to divide into two parts the business operations which must be regarded as a whole. *Held further*, that assuming that the assessee's income had accrued without British India and the second proviso to sec. 4 (2) was applicable , the assessee must in any case be held liable to tax under sec. 4 (1), by reason of the fact that the income was received by him originally, and as income in British India and that no part of the income in question was exempt from taxation by virtue of the second proviso to sec. 4 (2) of the Act. (69 M.L.J. 474=L.R. 62 I.A. 215=14 Pat. 623 (P.C.) (Dist.) 66 I.A. 23=41 Bom.L.R. 157=43 C.W.N. 225=68 C.L.J. 581=49 L.W. 1=1939 P.C. 1=(1939) 1 M.L.J. 45 (P.C.). An assessee had two shops one in *S*, a place in British India and another at *B*, a place in a Native State. In the usual course of business a consignment of goods was sent from *B* to *S* and the invoice in respect of it included a profit margin equal to the probable profits of sale in *B*. On a question as to whether the profit on the sale of those goods could be included in the income liable to tax: *Held*, that such profits could be included under sec. 4 (1) and not under sec. 4 (2) (prior to its amendment). 1945 A.L.J. 364; I.L.R. 1945 A. 903=1946 A. 8. Income arising in British India—Mercantile basis of accountancy—Amount shown as interest in accounts —Liability to income-tax—Actual receipt of amount if necessary—Assessee adopting mercantile basis of accountancy—Income-tax on cash basis—Plea of, by assessee—Right of. 50 M. 765=1927 M. 841=53 M. L.J. 379 (F.B.). "Person resident in British India"—Meaning of—Date to be considered. 29 L.W. 61=1929 M. 35=55 M.L. J. 844. Bank in British India—Branches in Cochin and Travancore—Profits or gains —"Received or brought in"—What amounts to. *See* 49 M. 910. Profits received in British India—Foreign business having two funds —One alone being taxed—Remittance to British India—Presumption. 36 L.W. 873 =63 M.L.J. 796=1933 M. 14 (F.B.). Business outside British India—Profits earned, more than three years before the year of assessment and profits earned within that period—Remittance of amount to British India — Presumption whether remittance made from earlier profits. 50 M. 853=1927 M. 772=53 M.L.J. 416 (F.B.). *See also* 54 L.W. 101=1941 Mad. 677=(1941) 2 M.L.J. 172 (S.B.)—(Foreign profits—Time of receipt in British India); (1940) 2 M.L.J. 217 (Remittances of foreign income to British India—To find out whether remittance is of profits or capital). The presumption that a remittance made by a foreign business is a remittance from out of the profits of the foreign business, is rebuttable. Where the assessee purchases timber in Burma, converts it into a saleable commodity in Burma and then consigns it to India to be sold, all expenditure incurred up to the stage the timber reaches the sales depots in India must be regarded as a capital expenditure of the Burma business and therefore to the extent of the costs of production of the timber consigned to India all remittances from India must be regarded as remittances of working capital and not remittances of profits. 197

(*c*) if such person is not resident in British India during such year, accrue or arise or are deemed to accrue or arise to him in British India during such year :

Provided that there shall not be included in any assessment for the year ending on the 31st day of March, 1940, both the amount of the income, profits and gains referred to in sub-clause (*ii*) of clause (*b*) and the amount of the income, profits and gains referred to in sub-clause (*iii*) of clause (*b*) but only the greater of these two amounts :

I.C. 42=1941 R. 274 (S.B.). *See also* 194 I.C. 733=(1940) 2 M.L.J. 217 (S.B.). Where money or something equivalent to money, that is something which can forthwith be used as an ascertained sum of money is remitted to British India from a foreign country where a firm does business and profits are available in that country, the onus lies upon the person denying that the remittance is of profits to prove his case, but no such presumption arises that stock in trade brought into India by a firm whose normal business is investing in a commodity, importing it and selling it, is profit. 1937 Lah. 884.

In deciding whether sums which are brought in from a business abroad are income, profits or gains, the Income-tax Officer must have regard to the business as a whole: where an assessee carries two money-lending businesses outside British India in close proximity, both being his sole business having current transactions and controlled by him, and where one of the two businesses has suffered loss and the other has profits, and the assessee has received remittances from both, in determining whether the remittances so received are his income, profits and gains under sec. 4 (2) the results of both the businesses should be considered together, and the assessee is entitled to set off his loss in one business against the profits of the other to arrive at the resultant profit available for remittance to be taxed. 48 L.W. 899 (S.B.). Resident in British India—Company or partnership having several places of business within and outside British India—When can be said to have several residences. 50 M. 847=1927 M. 732=53 M.L.J. 249 (F.B.). *See also* 58 C. 999=134 I.C. 937=1931 C. 727. For purposes of sec. 4 (2) as it stood before its amendment in 1939 there is nothing in law to prevent a firm from having two places of residence as understood in law. Although a firm has a place of business or residence in a Native State, it can also have another residence in British India. Where the firm is registered under the Indian Partnership Act as a partnership and the registration certificate mentions the place in British India as the principal place of business, that must be held to be residence for purposes of sec. 4 (2) even though the firm may also have an other residence in the Native State. 47 Bom. L.R. 159=1945 Bom. 258=I.L.R. 1945 B. 528. On dissolution of a partnership an outgoing partner has the right to receive, not, as in the case of a shareholder in winding up a company, only a share of the assets: but to receive payment of his profits, which were his before dissolution and do not cease to be his on dissolution. The amount of interest on capital which he receives is received by him as payment of profits and not as capital and as such is assessable to income tax. (67 M.L.J. 401=1934 M. 633, Reversed.) 62 I.A. 203=58 M. 881=1935 P.C. 117 = 69 M.L.J. 187 (P.C.). Limited Company in Bombay having income in London—Investment of such income in purchase of stores and machinery in England—Such stores and machinery sent to India but not for sale. *Held*, that the income received in London was capitalised by the purchase of machinery and stores, and the assessees were not therefore liable under sec. 4 (2) to pay income tax on the stores and machinery which represented the income received by them in London. I.L.R. (1938) Bom. 171=40 Bom.L.R. 171=1938 Bom. 207. Where in discharge of certain debts due in respect of a foreign business, a British Indian decree is assigned in British India. *Held*, that the transaction amounts to remittance in British India of money or money's worth even though no money was actually realised in respect of the assigned decree. 46 L.W. 908=1938 Mad. 52=(1938) 1 M.L.J. 14 (F.B.).

SEC. 4 (1) AND 13.—Where an assessee having his head office in British India with branches in British India and Native States contended that the sums credited to the capital account of the head office in the books of the branches in the Native States, but for which there were no corresponding entries in the head office account, could not be said to have accrued or received in British India so as to make him liable to tax in respect of such sums and where the assessee had kept his accounts according to the mercantile system, and had in the prior years treated similar sums as profits of the firm it was held that the profits in question though they did not actually arise or accrue in British India and were not physically transferred to, or received in British India, such profits, however, must be deemed by reason of sec. 13 of the Act to have arisen or accrued in British India. Further as the assessee had in past years treated such profits as having been received in British India and his accounts on that basis had always been accepted by the taxing authorities, by reason of sec. 13 of the Act the assessees could not now seek suddenly to change their method of accounting. 1938 A.L.J. 1015=I.L.R. 1938 A. 1004=1939 A. 7.

SEC. 4 (3) (*i*) AND (*ii*): PROPERTY HELD IN TRUST—WHAT AMOUNTS TO.—*See* 105 I.C. 155=1928 N. 10. *See also* 49 M. 833=1926 M. 949=51 M.L.J. 123. For the purposes of construing the words "religious or charitable purposes" in the Income-tax Act it is quite unnecessary to investigate the meaning of the words in the particular system of jurisprudence that may be followed by the asses-

Provided further that, in the case of a person not ordinarily resident in British India, income, profits and gains which accrue or arise to him without British India shall not be included unless they are derived from a business controlled in or a profession or vocation set up in India or unless they are brought into or received in British India by him during such year :

Provided further that if in any year the amount of income accruing or arising without British India exceeds the amount brought into British India in that year, there shall not be included in the assessment of the income of that year so much of such excess as does not exceed four thousand five hundred rupees.

Explanation 1.—Income, profits and gains accruing or arising without British India shall not be deemed to be received in or brought into British India within the meaning of this sub-section by reason only of the fact that they are taken into account in a balance sheet prepared in British India.

Explanation 2.—Income which would be chargeable under the head ' Salaries ' if payable in British India and not being pension payable without India shall be deemed to accrue or arise in British India wherever paid if it is earned in British India.

Explanation 3.—A dividend paid without British India shall be deemed to be income accruing and arising in British India to the extent to which it has been paid out of profits subjected to income-tax in British India.

(2) For the purposes of sub-section (1), where a husband is not resident in British India, remittances received by his wife resident in British India out of any part of his income which is not included in his total income shall be deemed to be income accruing in British India to the wife.] ;

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see. The proper rule is in the case of such a general Act to construe it according to the jurisprudence of the country wherein it was drafted. (1892 A.C. 531, Rel. on.) 132 I. C. 689=1931 L. 578=12 Lah. 725 (F.B.). The words "religious and charitable purposes" in the Income-tax Act are to be judged not by the personal law of the assessees, but according to the general principles of construction applying to statutes. 165 I.C. 32=1936 P. 532. "Charity" without any further qualification has a recognised meaning in law. It amounts to a general charitable intention for objects well-recognised as charitable in law, and if used generally or without qualifications or limitations, falls within the definition "charitable purpose" in sec. 4. 1946 Bom. 337=48 Bom L R. 63. Sec. 4 (3) (1) requires that the settlement should be wholly for charitable purposes. A charitable purpose which is not of a religious character must contain the element of benefiting the public. So that a trust the object and scope of which is limited to the education of the members of a family would not come within the definition of a charitable purpose contained in the Income-tax Act. Public utility must always be a matter of degree, so that circumstances must be examined to ascertain whether the section or class of the community to be benefited can be said to be public as opposed to being private. A trust for the benefit of the members of a family or for the descendants of a named individual imports a conception or notion of something which is private and not something which is public. 47 Bom.L. R. 786=1945 I.T.R. 465=1946 Bom. 44. The word "charitable" in the Income-tax Act has a technical significance other than the meaning which it bears in common parlance. Every institution whose object is to benefit the public or a section of the public is not necessarily "charitable". Before an institution can be held to be "charitable', there must be an element of altruism; that is to say, the beneficiaries must not be able to *claim* the benefit. This condition is wanting in the case of a mutual association, like the Chamber of Commerce, whose ostensible object is to provide facilities of trade and to improve business and whose whole idea is that the particular members composing it should be benefited. Such an association, therefore, is not a "charitable institution" within the meaning of sec. 4 (3) (*a*) of the Act and is not as such exempt from tax. 1936 A.L.J. 1085=1936 A. 764. An object of "general public utility" within the meaning of the proviso to sec. 4 (3) of the Income-tax Act is an object of public utility which is available to the general public as distinct from any section of the public; in other words the object in question should not be to benefit work of public utility confined to a section of the public, *i.e.*, those interested in commerce. 40 B.L.R. 1227= A.I.R. 1939 B. 45. In order that a trust fund created for the relief of proverty may be a trust wholly for charitable purpose within meaning of sec. 4 (3) (*i*) read with the Explanation, it must be for the benefit of the public or a specified section of it. Private individuals including the employees of a firm are not part of the general public or of any section of the public. The principal deed of trust stated that the income from the fund should be applied for the benefit of any past, present and future officers and other employees of a certain company and its subsidiary concerns who in the uncontrolled discretion of the administrators should be deserving of consideration or help more especially on account of indigence, ill-

(3) [1][Any income, profits or gains falling within the following classes shal not be included in the total income of the person receiving them] :

(*i*) Any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, and in the case of property so held in part only for such purposes, the income applied, or finally set apart for application, thereto.

[2][(*ia*) Any income derived from bsuiness carried on on behalf of a religious or charitable institution when the income is applied solely to the purposes of the institution and—

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[1] Substituted for "This Act shall not apply to the following classes of income" by sec. 4 of Act VII of 1930.

[2] Inserted by Act VII of 1939.

health or other necessitous circumstances on their retirement. The supplemental deed declared that on deciding on payment more regard should be paid to the above circumstances rather than to length of service in this company. *Held,* (*i*) that the two deeds read together, did not preclude the administrators from making a grant to persons for long or faithful service with the companies, whom the administrators considered deserving of recognition, from the fund although in doing so they must pay more regard to poverty rather than the service or the length of service and on this ground the trust was clearly not a trust which was wholly for charitable purposes; (*ii*) that even if the words of the trust were to be construed so as to mean the relief of poverty and nothing else, such poverty must, if it is to come within the beneficial provisions of sec. 4 (3) of the Income-tax Act, be the poverty of some well defined section of the community and not of a fluctuating body of private individuals such as were the present and future officers and other employees of the companies, and that, therefore, the income of the fund was not exempt from the payment of income-tax. 46 C.W.N. 777=1942 I.T.R. 512. Whether a particular object or purpose is of general public utility so as to be a charitable purpose is not to be decided by what the testator or settlor considered to be beneficial to the public. The Court has a responsibility in coming to a finding on the point, and there is nothing in the Income-tax Act to discharge the Court of its responsibility. Where a newspaper is started with the object of supplying the province with an organ of educated public opinion, it should *prima facie* be held to be an object of general public utility. Such an object is not outside the ambit of the exemption clause sec. 4 (3) (i) of the Income-tax Act. 66 I.A. 241=43 C.W.N. 1065=1939 P.C. 208=(1939) 2 M.L.J. 444 (P.C.). Where a Mussalman executed a wakfnama and directed that the property should be in his possession as manager and that he could spend the income according to his wishes for the maintenance of himself and his family and also for religious or charitable purposes and the deed further conferred a similar right on his heirs: *Held,* that the property cannot be said to be in trust wholly for religious or charitable purposes and the income was assessable to income-tax while it was spent wholly for the maintenance of the assessee and his children. 132 I.C. 689=1931 L. 578=12 Lah. 725 (F. B.). Where under a deed of settlement the trustees are given power in their absolute discretion to apply the whole of the income of the properties settled in trust for the benefit of the poor relations of the settlor, though some other purpses are also mentioned, the deed does not fulfil the requirements of sec. 4 (3) (1). If the settlor merely directs that a part of the income of the property should be devoted to a purpose which is charitable within the meaning of the section, such part of the income would be exempt from tax. I.L.R. (1944) Mad. 837=57 L.W. 163=1944 Mad. 292=(1944) 1 M.L.J. 223. The activities of the All India Spinners Association consisted in the acquisition of yarn, and also of raw cotton which was then given out to various poor people to be spun by them into yarn, all of which yarn was then given out to other poor people for hand weaving into cloth. The cloth so produced was then sold by the Association. The monies realised by the Association by such sales were a little more or less than the cost of production and overhead charges. When there was a surplus in the amount realised by the sales of cloth, such surplus was utilised in the same manner as the other funds of the Association, *inter alia* in getting yarn and cloth manufactured and providing wages for the persons engaged in such manufacture. Cl. (*i*) of the constitution of the Association established the Association as an organisation for the development of hand-spinning and khaddar. It was to be a permanent organisation, unaffected and uncontrolled by politics and though established with the consent of the All India Congress Committee as an integral part of the Congress Association, it was to have an independent existence and powers. Under Cl. 3 the funds and assets were to vest in the Board of Trustees who were also to be the executive council and to "hold th same for the purposes of the Association" There was no power to distribute surplus income among the members. On a question as to the applicability of sec. 4 (3) (*i*) of the Income tax Act to the income of the Association.

Held, (*i*) The limits fixed by the section must be strictly observed. (*ii*) The statement of the object in Cl. (*i*) of the constitution which was the constituent and dominant provision excluded any question of profit making or party politics. The primary object of the Association was the relief of the poor and the purposes of the

(*a*) the business is carried on in the course of the carrying out of a primary purpose of the institution, or

(*b*) the work in connection with the business is mainly carried on by beneficiaries of the institution.] :

(*ii*) Any income of a religious or charitable institution derived from voluntary contributions and applicable solely to religious or charitable purposes.

(*iii*) The income of local authorities [1][except income from a trade or business carried on by the authority so far as that income is not income arising from the supply of a commodity or service within its own jurisdictional area.]

LEG. REF.

1 Added by sec. 4 of Act VII of 1930.

Association included the advancement of other purposes of general public utility. [The words "general public utility" would exclude the object of private gain such as an undertaking for commercial profit though all the same it would subserve general public utility.] (*iii*) Though economists might differ about the wisdom of some at least of the Association's purposes the Court could not hold that it was beyond the pale of legitimate charitable trusts. (*iv*) The "property" of the Association consisted of the organisation and the undertaking as well as the fluctuating stock of yarn and was held by the Association in trust. (*v*) Accordingly, the undertaking being a charity, the income of the Association was not liable to income-tax. 49 C.W.N. 1 =1944 I.T.R. 482=1944 P.C. 88=(1944) 2 M.L.J. 310 (P.C.). The expression "charitable purposes" in sec. 4 (3) (*i*) must be construed strictly and can only be applied to a public charity. There is no such thing as a private charitable trust. There may be a private trust for religious purposes and therefore sec. 4 (3) was amended in 1939 in order to put beyond all doubt the intention of the Legislature not to exempt even private trusts for religious purposes. Consequently, the exemption in sec. 4 (3) (*i*) only applies to a trust the object of which is public utility. A provision in a wakf deed for the maintenance, education, marriage, funeral and other necessities of the poor and needy among the descendants of the wakif in the male line cannot be said to constitute a trust for general public utility. The trust being clearly of a private nature, the income allotted under the wakf deed for the purposes mentioned therein which remains unspent for want of beneficiaries is assessable in the hands of the mutawali. I.L.R. (1941) Mad. 862=54 L.W. 167=1941 Mad. 535=(1941) 2 M.L.J. 148 (S.B.). What an assessee has to establish, if he is to avoid liability to income-tax under sec. 4 (3) (*i*) is that the income assessed is derived from property held under trust or other legal obligation for religious or charitable purposes. If the purpose of an association is charitable, such as the relief of the poor, it is nonetheless charitable because some political body may consider that it affords the best method of relieving the poor and may therefore adopt the scheme. The fact that it is intended to advance the purposes of a political party, does not make it a purpose which is not charitable. But unless at the time when the profits were made, the assessee (Association), was under a legal obligation to devote the profits, to a charitable purpose the fact that in practice the profits have been devoted to charitable purposes would not create a legal obligation or trust. If the association is not bound to devote its profits to charitable purposes, and the members are free to apply the profits to any purposes they chose, it cannot be held that the property is held under trust or other legal obligation for charitable purposes, and sec. 4 (3) (*i*) cannot apply so as to exempt the profits from tax. I.L.R. 1941 B. 672=43 Bom. L.R. 742=1941 Bom. 374. Income from fees levied by the Madras Bar Council, is taxable. (1942) 2 M.L.J. 792. "Charitable purposes" in sec. 4 (3) of the Income-tax Act would include relief of the poor, education, medical relief and the advancement of any other object of general public utility. Trusts for the benefit of the inhabitants of a particular locality are regarded as charitable, but trusts for the benefit of a particular political party or for the advancement of particular political purposes are not regarded as charitable. A gift for such purposes as a particular individual or individuals may consider to be charitable is not a good charitable purpose although a gift for such charitable purposes as the managing committee of a trust may think fit would be good, because the commitee would be bound to keep within the ambit of charity and if they go beyond the legal boundary, they can be controlled by the Court. The objects of a trust created by a deed were (1) the advancement of any purpose which might in the uncontrolled opinion of the managing committee be national or of national importance for the inhabitants of British India by any means which in the like opinion of the managing committee be constitutional; (2) the political advancement of India having for its goal the acquisition of complete autonomy or "swarajya" to be attained by all constitutional agitation and means; (3) the diffusion of political education and knowledge as to the political affairs of India and propaganda work both in India as well as in any part of the world outside India having for its aim the acquisition of complete national autonomy or "swarajya" as aforesaid; (4) any object which may conduce to any of the aforesaid objects. *Held*, (1) that the objects specified in the four clauses were clearly distributive and since the whole of the trust fund could be applied for any one or more of the objects specified, the trust could not be regarded as charitable if any of those objects did not fall within the term

(*iv*) Interest on securities which are held by, or are the property of, any Provident Fund to which the Provident Funds Act, [1][1925], applies, [2]* * *

LEG. REF.

[1] Substituted for "1897" by Act VII of 1939.

[2] The words "or any Provident Insurance Society to which the Provident Insurance Societies Act, 1912, is, or but for an exemption under that Act would be applicable" omitted by sec. 4 of Act XI of 1924.

"charity"; (2) that clauses (1) and (2) went too far, and the gift was for a political purpose; (3) that the trust for a national or political purpose could not be regarded as charitable so as to fall within the purview of sec. 4 (3) (i) of the Income-tax Act; (4) that the case fell within the first proviso to sec. 41 (1) of the Income-tax Act and the maximum rate of income-tax was leviable. Although it was rather hard on the trust that was not a matter with which the court could deal. 43 Bom.L.R. 1027. 1942 B. 61. The burden is upon the assessee to establish that the income from the trust is exempt from taxation under sec. 4 (3). 1946 I.T.R. 362=50 C.W.N. 521. The word "wholly" in sec. 4 (3) (*i*) must be read in its ordinary acceptation and is in this respect closely akin to the word "solely". The word does not mean "mainly". 1928 N. 10=105 I.C. 155. *N* who was interested in motor engineering and transport companies created an industrial and educational trust and purported to endow it with immovable properties and shares held by him in six transport companies of which he had the control. He constituted himself the managing trustee and gave himself full power to deal with the assets. The Instrument of Trust provided, *inter alia*, "that the trustees shall as early as they consider it expedient utilise the trust for the purpose of starting an institute for industrial and scientific research and training," and the foundation of the institution was left over until the companies had made sufficient money for the purpose. The founder also reserved to himself a power to revoke the trust at any time, and had powers to utilise the assets for his own purposes or the purposes of his companies. *Held*, that it could not be said that a trust was created wholly for charitable purposes so as to entitle it to the benefit of sec. 4 (3) (*i*). I.L.R. (1942) Mad. 921=1942 Mad. 625=(1942) 2 M.L.J. 230 (F.B.).

Mere credit entries in books of account without allocation or setting apart of specific funds or assets corresponding to such entries cannot operate as valid gifts or trusts of the sums credited in favour of the persons in whose names they are credited so as to give rise to a claim for deduction of such sums in computing the profits of the assessee in whose books the credit entries are made. 1945 I. T.R. 311=1945 Mad. 513. Professional income dedicated to educational objects—No exemption from income-tax. 4 R. 538=1927 R. 95 (F.B.). Where a fund alleged to be for charitable purposes is found completely within assessee's volition no deduction can be allowed. 24 N.L.R. 76=1928 N. 102=3 I.T.C. 57. Stud farm—No trust deed—Officer commanding operating on stud fund given discretion in disbursement—Money spent for non-charitable purposes—Fund, not exempt from income tax. 165 I.C. 141=1936 L. 602. Where a temple has a share in a partnership the income derived from the partnership cannot be said to be income derived from property held under trust for a religious or charitable purpose and hence is not exempt from taxation. 47 A. 68=22 A.L.J. 913=1925 A. 115. Where an assessee carries on business at places within and without British India and remittances are made from the place outside British India and into British India and spent on charitable and religious institutions by the assessee, the money's remitted are liable to assessment to income-tax unless it is shown that they were impressed with a trust before they left the foreign places for British India. The mere fact that they were allotted to a trust after their receipt in British India is not sufficient to secure exemption from liability to assessment. 1928 M. 371=54 M.L.J. 226 (F.B.). Where the property is vested in the head of a community under deeds of trust, but the trust property is applicable to purposes, many of which are neither religious nor charitable, and it is not suggested that any part of the property is set aside for any charitable or religious purposes, so that it can be identified as appropriated exclusively for such purposes, then the income of the whole of the property is assessable to income-tax. 57 I.A. 260=59 M.L.J. 905=1930 P.C. 226 (P.C.).

INCOME DERIVED BY TRUTEES FROM BUSINESS —IF EXEMPT FROM ASSESSMENT.—The word 'property in sec. 4 (3) (i) includes securities or business or share in a business. Clause (1-*a*) as it stands cannot in any way derogate or subtract anything from cl. (i). Viewed in its proper perspective, cl. (1-*a*) can be taken to apply only to such business as is carried on on behalf of religious or charitable institutions which were not held under trust and not to touch such business as was itself held under trust or was conducted by or on behalf of such charitable or religious institutions as were held under trust. It cannot reasonably be urged that something that was already included in cl. (*i*) has been removed by the insertion of an additional clause. Income derived from business by trustees is exempt from assessment to income tax. A.I.R. 1944 Lah. 465.

SEC. 4 (3) (*iv*).—Under sec. 4 (3) (*iv*) of the Act, the accumulated balance at the credit of a subscriber to a Provident Fund to which the Provident Funds Act of 1897 applies is exempt from income-tax. That Act was repealed and partially re-enacted by the Provident Funds Act, 1925, and it applies [Cl. (2) of sec. 2] to any Government Provident Fund "constituted by the authority of Government for any, class of its employees". The officers of the Court of Wards fall with-

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(*vi*) Any special allowance, benefit or perquisite specifically granted to meet expenses wholly and necessarily incurred in the performance of the duties of an office or employment of profit.

(*vii*) Any receipts not being receipts arising from business or the exercise of a profession, vocation or occupation, which are of a casual and non-recurring nature, or are not by way of addition to the remuneration of an employee.

LEG. REF.

1 Omitted by sec. 4 of Act VII of 1939.

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in the class of Government employees and the accumulated balance at the credit of the manager of the Court of Wards in the Bettiah Raj Estate to the Provident Fund is exempted from taxation. 10 P. 315=1931 P. 451.

SEC. 4 (3) (*v*).—The word "injuries" in Cl. (*v*) denotes personal injuries and no other. 1932 M. 424=62 M.L.J. 656 (F.B.). [This clause was omitted by Act VII of 1939].

CL. (3) (*v*) AND (*vii*).—Government servant who was compulsorily retired receiving compensation amount is liable to be assessed as for receipt of salary under sec. 6. 1932 M. 424=62 M.L.J. 656 (F.B.). A capital sum received by the manager of the Court of Wards in commutation of the whole of his pension falls within sec. 4 (3) (*iv*) and is exempt from taxation. That paragraph makes no distinction between pensions which may be demanded as of legal right and those which are granted voluntarily and between those payable by Government and those payable by any private body or individual. In deciding if the payment is pension or a gratuity, the Court has to look into the real nature of transaction and the fact that it is called by one name in the Government letter is not conclusive. But the amount is not exempt under sec. 4 (3) (*vii*) as such payment must be considered to have 'arisen from' his occupation. (56 C. 211, Foll.). 10 P. 315=1931 P. 451. *See also* 12 R. 477=152 I.C. 986=1934 R. 377 (S.B.). The allotments made to the fund in the name of an officer of the company were not in the nature of salary for current services, but were merely the measure of a sum which the company volunteered to pay to him on the termination of his service, and this sum when paid was not "income" and therefore not taxable. The amount received was just as much a capital receipt in the hands of an employee as would be the payment of a lump sum from a provident fund on the employee's retirement. The latter would, apart from the specific exemption in sec. 4 (3) (*v*) of the Income-tax Act, be by its nature, capital and not income. [affirm. 1935 Mad. 953=69 M.L.J. 611 (S.B.); 1932 P. C. 138, Rel. on.] 64 I.A. 323=39 Bom.L.R. 1050=66 C.L.J. 36=41 C.W.N. 1157=46 L. W. 214=1937 P.C. 261 (P.C.). Where the maintenance allowance received by a junior member of a Hindu family possessed of an impartible raj, is not received by him as a member of an undivided Hindu family, his source is not the original source through which the estate received the money and his immediate source is the bounty or gift by the estate, in which case it cannot be considered to be agricultural income and cannot be exempt from income-tax under sec. 4 (3) (*viii*). 56 A. 1009=149 I.C. 306=1934 A. 818. Sec. 4 (3), Cl. (*vii*) can only apply when the receipt is not by way of addition to the remuneration of the employee. 42 L.W. 812=1935 M. 953=69 M.L.J. 611 (S.B.). The principle of sub-cl. (*vii*) is that it is only income from business carried on with the object of producing a definite return that is taxable. Anything in the nature of a windfall is excluded. 59 I.A. 206=59 C. 1343=1932 P.C. 138=63 M.L.J. 124 (P.C.). A mere speculation, not in the nature of trade, cannot, by any process of reasoning, be regarded as an adventure in the nature of trade. Whether a particular transaction of purchase of a commodity with a view to selling at a profit is called a speculation or whether it is called adventure, is of no account; the dividing line between assessability and exemption depends on whether what is done is done in the nature of trade or not. It is erroneous to hold that if an investment is safe and is a lock-up investment made without the intention of resale being in the forefront of the investor's mind, then it may be regarded as an accretion of capital and non-assessable, but that the instant speculation comes in, it is an adventure in the nature of trade. The fact that the assessee employs a business man whether her husband or a stranger to purchase the commodity and later to sell it, falls short of making her an adventurer in trade, when the transaction is an isolated transaction; in order to constitute an isolated transaction an adventure in the nature of trade, there must be some activity of a trading nature between the purchase and the sale, undertaken in order to make the property marketable, *i.e.*, to put it into a saleable state or to attract purchasers. 1939 Rang.L.R. 757=184 I.C. 497=1939 Rang. 337. Profits made by money-lender out of exchange fluctuations—If assessable. 45 M.L.J. 707=1924 M. 208. No general rule can be laid down in cases where a money-lending business takes property in satisfaction of the debts due and sells them. But where, as a matter of fact, in a money-lending business, profits are generally got by taking lands in satisfaction of the debts due and selling them for profits later on, such profits must no doubt be considered as derived from such business and cannot escape taxation by saying that the profits have nothing to do with the business of the firm which was merely money-lending. 31 L.W. 215=1930 M. 119 (S.B.). The mortgagee who carried a money-lending business advanced a loan and the transaction was em-

bodied in indentures. One of these was described as a zarpesagi lease with usufructuary mortgage. 'The mortgagee lessee was to be in possession of the properties, and, in his relation to the cultivators of the soil he stood in the position of landlord, dealing directly with them and collecting the rents. He had moreover to pay the Government revenue, cesses and taxes and his name was registered in the Land Registration Department. He alone was able to sue for rent whether current or arrears, to sue for enhancement or for ejectment and was able to settle lands with raiyats and tenants in all the properties; in fact he was in a position to take all proceedings which the mortgagor would have been able to take in the ordinary course if the lands leased and mortgaged had remained in her khas possession." *Held*, that the thika profits which formed part of the rents were agricultural income within the meaning of sec. 2 (1) (*a*) and as such were exempt from assessment. *Held*, further, that the fact that the recipient was a money-lender did not matter, as the business of money-lending may bring in an income which is exempt from income-tax on the ground that it is derived from agricultural land. The exemption is conferred, and conferred indelibly, on a particular kind of income and does not depend on the character of the recipient. 62 I.A. 215=14 P. 623=1935 P.C. 172=69 M.L.J. 474 (P.C.). *See also* (1937) 1 M.L.J. 351. *Per* Malik, J.—The word "non-recurring" in sec. 4 (3) (*vii*) does not mean that it has, as a matter of accident or as a matter of fact, recurred, but that there was a claim or a right in the assessee to expect its recurrence. A mere voluntary payment not being receipts arising from business or the exercise of a profession, vocation or occupation and not being by way of addition to the remuneration of an employee or not having been made expressly liable is not liable to be taxed. A voluntary payment must be deemed to be of a casual and non-recurring nature unless there is liability on the donor to pay, which liability may arise out of a contract, a custom or some order which is binding on him. A.I.R. 1946 All. 306 (F.B.). The assessee, a merchant carrying on business in hides in Madras was one of five persons chosen as arbitrators to decide a dispute among the heirs of the Nawab and he agreed to do so and to assist in settling differences of the heirs as he was a friend of the family. No stipulation was made for remuneration. The arbitrators did a considerable amount of work in connection with the administration of the estate and in view of the long time taken and amount of work involved, the assessee and the other arbitrators were granted remuneration, as a reward for their services. The Income-tax authorities sought to tax the amount of remuneration received by the assessee. *Held*, that the amount represented a receipt of a casual and non-recurring nature and hence was exempt from assessment. 56 L.W. 676=1943 M.W.N. 717 =1943 I.T.R. 590=A.I.R. 1944 Mad. 63=(1943) 2 M.L.J. 530. Ordinarily profits arising out of an isolated transaction outside the scope of the business are not assessable to income-tax as a business profit and such profits are not taxable unless there is evidence that the income derived from, and the expenses incurred in, the transaction were included and made part of the assessee's business accounts. (*Beynon & Co., Ltd.* v. *Ogg*, 7 Tax Cases 125, Ref. to.) 1930 M. 123=58 M.L.J. 95 (S.B.). The question whether the profit that accrues to a banker and money-lender from an isolated transaction of a purchase and sale of certain property is taxable as profit arising from his business or exempt for taxation as arising from occupation of a casual nature within the meaning of sec. 3 (2) (*viii*) of the Income-Tax Act of 1918, is one of fact. 58 M.L.J. 68=1930 M. 121 (S.B.). A receipt arising from a speculative or wagering or gaming business arises from the exercise of a profession, vocation or occupation and does not come within the exception. 47 A. 372=23 A.L.J. 65. Purchase by assessee of large area of building site—Sale after several years in small plots to several persons—Profits earned is taxable—Claim to exemption as casual and non-recurring receipts not arising from business is not sustainable. 1939 I.T.R. 154. Where a certain company passed a resolution for voluntary winding up and at the same time voted a certain sum to the assessee company who acted as the managing agents of the former by way of compensation for the loss of their office, *held*, that the amount so received was not exempt from assessment. 56 C. 211=33 C.W.N. 112=1929 C. 212 (F. B.). Compensation received by a company as agent of a business concern, for determination of the agency, is a receipt arising from business, and consequently, if income, it would be taxable under sec. 10 as being an income from business, or at least under sec. 12 as being income from other sources. The circumstances that it is casual or non-recurring does not exempt it from taxation under sec. 4 (3) (*vii*). 58 C. 1153=35 C.W.N. 361=1931 C. 676 (S. B.). If a man claims an interest in the capital of a business and receives a sum of money in satisfaction of all claims he may have in the capital of the business, that income is not liable to income-tax. 34 C.W.N. 788. A remuneration earned by a cotton merchant who is appointed under a power-of-attorney to realize cotton which another merchant had purchased will be "receipts arising from business" and liable to be assessed to income tax. 27 Bom.L.R. 478=1925 B. 318. The phrase, "receipts arising from business" as used in sec. 4 (3) (*vii*) is not confined to receipts arising from a business carried on continuously during the year. Even if they are from a single adventure in business they would be liable to be taxed. 1925 B. 318. The question of the assessability to income-tax of profits realised by a banking concern from the sale of securities and shares must be determined on the facts of each case whether the banking concern had been dealing in securities and shares as part of its business. In this matter the finding of fact arrived at by the Income-tax authorities is conclusive unless it is found that that finding was based

on no material . It does not necessarily follow from the circumstance that such profits have not been utilised in the revenue account and that they have been carried to the reserve capital *en bloc* that they were not trading profits. I.L.R. (1938) Lah. 526=1938 Lah. 852. *See also* 45 M.L.J. 707=1924 M. 208. A solicitor who was employed by a shareholder of company interviewed the managing agents of the company and came to an arrangement with them which benefited substantially his client and the other shareholders for which he was duly paid for by his client. The arrangement incidentally benefited two firms of stock brokers who did not employ the solicitor. One of the firms paid a sum of Rs. 10,000 to the solicitor. *Held*, it was a receipt by him arising from the exercise by him of his profession and was part of his income which was not exempt from tax under sec. 4 (3) (*vii*) of the Act, assuming that it was of a casual or non-recurring nature. The sum received by the solicitor was not a testimonial to his ability or qualities as a solicitor generally, but was directly connected with a particular professional act, namely, the part he played in procuring the new issue of shares by which the payers had derived great benefit. I.L.R. (1941) 1 Cal. 562=1941 I.T R. 261=45 C.W.N. 542=1941 Cal. 666.

SPECULATION IN STOCKS AND SHARES.—A man may either buy shares or securities with the object and intention of making a gain from the sale when those shares or securities have risen to a higher price or he may purchase the shares or securities with the intention of keeping his capital safe and receiving meanwhile a certain amount of dividend or interest. The intention must be deduced from acts and from the circumstances of the case. It is only in the former case that the profits are taxable and the losses deductible. 1934 A.L.J. 61=1934 A. 370. *See also* 1939 Rang.L.R. 757=1939 Rang. 337. As to taxability of gratuity received by employee on termination of service, *see* 12 R. 477=1934 R. 377 (S.B.). Relief granted to decree-holder in respect of auctioneer's commission is exempt from tax. I.L.R. (1938) A. 691=1938 A.L.J. 736=1938 All. 464 (S.B.).

PURCHASE OF MORTGAGED PROPERTIES IN SATISFACTION OF DECREE—SUBSEQUENT SALE FOR PROFIT—PROFITS, IF EXEMPT FROM TAX.—The assessee, a professional money-lender, got an assignment of a mortgage from another, sued on the mortgage and having obtained a decree for a large amount, took possession of the mortgaged properties in satisfaction of the decree. Later on, he sold the properties for cash and made a large profit out of the transaction. On the net profits being assessed to income-tax, the assessee claimed exemption under sec. 4 (3) (*vii*) of the Income-tax Act, on the ground that the transaction was not one in the course of his business, but an isolated venture, speculative and casual in nature. *Held*, that the taking of the assignment was of a nature coming within the ambit of money-lending and not such an isolated transaction as to take it out of the category of his business, though it might be speculative; that the transaction could not be held to have been entered upon otherwise than as a matter of business and hence the profits were liable to be assessed to income-tax. 58 M. 105=1934 M. 539=67 M.L.J. 247 (S.B.). *See also* 1930 M. 119 (S.B.). Where a profit is made out of a single sale transaction the test to be applied in deciding as to whether it is capital assets or gain is to see whether the fact that there was a gain made it an operation of business in carrying out a scheme for making profits. 177 I.C. 630=1938 Rang. 315 (S.B.).

RECEIPT OF CASUAL NATURE.—Assessee financing an appeal—Additional sum received by him on appeal being successful is taxable. 154 I.C. 963=1935 A.W.R. 518=1935 A.L.J. 405=1935 A. 495. The assessee who was a tin mine owner and worker lent certain sums of money to *W* to enable him to work a tin area. Subsequently he again advanced a loan to *W* in order to enable the latter to do certain work and sell the mine and *W* executed an agreement by which he agreed to pay the assessee a third of the consideration which might be realised by the sale. *Held*, that the transaction was a private venture and not part of the assessee's business and was a receipt of a casual nature under sec. 4 (3) (*viii*) and not profits or gains under sec. 10 or sec. 12 (3). 11 R. 454.

SEC. 4 (3) (*vii*) AND (*viii*): ROYALTIES FOR PREPARING BRICKS.—Royalties for preparing bricks are assessable to income-tax. On the assessee's land, there was a quantity of earth suitable for brick-making. He granted licences to brick-makers to erect brick kilns upon the land, to take away brick earth and use it for making bricks. The assessee charged fees at certain rates for the licences. *Held*, the income was not of a casual or non-recurring nature, or agricultural income; it could not be considered as in the nature of a capital sale of the assets of the assessee and that it was assessable to income-tax. 10 P. 275=1931 P. 264. An assessee who owned patent rights which were originally used in his business conveyed the working rights under licence to another person against payment of a share in the profits. He subsequently cancelled this agreement and converted his rights under that conveyance into licence under an agreement against an annual payment during subsistence of agreement. Thus what was transferred by the assessee was not the corpus but the usufruct of the patent for an uncertain period in consideration of an amount which had not been definitely known. *Held*, that the annual receipts under the agreement were income, profits or gains and were not exempted by sec. 4 (3) (*vii*). 1937 Lah. 880.

SECS. 4 (3) (*vii*), 10 AND 66 (5): PROFITS FROM INVESTMENT OF CLIENT'S DEPOSITS IS TAXABLE.—Where an assessee doing business as a produce agent, receives large sums of money from his clients as deposits and invests them in Government securities and realises a profit by the sale of such securities on the

questions whether such an investment was in the nature of fixed capital or of stock-in-trade, and whether such profits were exempt from payment of income-tax under sec. 4 (3) (*vii*) of the Act. *Held*, that if an investment is made with the object of permanently excluding a certain sum from the floating capital of a concern, it might be held to be fixed capital. But if the investment is part of the business and the sum is intended to serve as stock-in-trade, the profits arising therefrom will form part of the income of the concern. *Held*, further on the facts, that the business of the assessee was a *quasi* banking business and it received moneys from clients for the purposes of the business, and that the investments had been made as part of the same business, and hence the receipts therefrom were to all intents and purposes receipts from business. Even if they were of a casual or non-recurring nature they will not be covered by sec. 4 (3) (*vii*). An exemption under sec. 4 (3) (*vii*) if claimed for any item of income it is for the assessee to show that the receipt does not arise from business and is of a casual and non-recurring nature. In matters where the intention of the assessee is the factor to be considered, it is doubtful whether the High Court could go behind such finding of the department. 40 P.L.R. 256=18 Lah. 706=1938 Lah. 44. *See also* I.L.R. (1945) Lah. 43.

SEC. 4 (3) AND (*viii*)—[*See also* Notes under sec. 2 (1)] Usufructuary mortgagee leasing mortgaged property to mortgagor on fixed annual payments—Such payments are agricultural income and should be excluded from income-tax. 26 A.L.J. 280=1928 A. 81 (F.B.). *See also* 160 I.C. 948=43 L.W. 264=1936 M. 144=70 M.L.J. 24 (S.B.); 13 P. 336=147 I.C. 1236=1934 P. 178 (S.B.); 1928 M. 543=54 M.L.J. 524 (F.B.) *Quaere.* —A usufructuary mortgage was created in favour of the assessee at a specified rate of interest. On the same day and as part of the same transaction, the mortgagee gave the property to mortgagor on lease reserving rent exactly equal to the amount of interest on the money advanced at a stipulated rate. The Government revenue was to be paid by the mortgagor and in default the mortgagee was entitled to proceed against mortgagor. In default of payment of the lease rent, the mortgagee was entitled to take possession of the mortgaged property. In the event of any reduction of the principal, the rent payable was also to be reduced in proportion. *Held*, that the interest reserved by the documents in this case and paid to the assessee during such period as he was not in possession of the leased property was assessable to income-tax. 9 P. 194=123 I.C. 617=1930 P. 33 (S.B.). *See also* 13 P. 336=1934 P. 178 (S.B.). *Per* Das, J.—There is a clear distinction between rent and interest. Rent is the return from land for the use of one's land and signifies the sum payable in respect of the use of land. Interest is the return from money for the use of one's money and signifies the sum payable in respect of the use of money. Rent issues out of the land demised, whereas interest is revenue derived from the money lent. 9 P. 194. Arrears of rent under Madras Estates Land Act—Interest on—Is not "rent or revenue derived from land" and so not agricultural Income and is taxable. *See* I.L.R. (1944) Mad. 322=(1943) 2 M.L.J. 439. Interest on arrears of rent is not taxable. 21 Pat. 461 =23 Pat.L.T. 736=1942 Pat. 381; 26 Pat. L.T. 43. The remuneration received by a partner in a firm out of the proceeds of agricultural property owned by the firm for his management of that property, is not exempt from income-tax under sec. 4 (3) (*viii*) because the payment is received not as part of his profit from agricultural property but as remuneration for work done as manager of the property. 23 Pat. 361=1944 P.W.N. 174=A.I.R. 1944 Pat. 287. One may purchase an article for one's own use and without any intention to sell it, and the mere fact that he subsequently sells it at a profit will not make the transaction an adventure in the nature of trade. If, however, at the date of the purchase, the object of the purchase was not to bring the article in his own use but to sell it at a profit—the purchase being for no other purpose except that of resale at a profit—the transaction is a deal or venture in the nature of trade, though it may be wholly insufficient to constitute by itself a trade. 46 P.L.R. 246=A. I.R. 1944 Lah. 287 (F.B.). *See also* (1944) I.T.R. 472. *Per* Kulwant Sahay, J.—If the income is derived from land used for agricultural purposes as rent or revenue, then such income is exempt from assessment. The income cannot be made taxable unless and until it can be brought strictly within the letter of the law. 13 P. 336=1934 P. 178 (S.B.). Income from quarries, if income from agricultural purposes. *See* 50 A. 98. As to what is taxable income in case of royalty in respect of a mortgage and lease of a coal mine, *see* 13 P. 197=1934 P. 116 (S.B.). Where the assessee among other activities of an *agricultural nature* cultivates aloe plants and from them by *means of machinery prepares sisal fibre* which he sells in the market, the whole of the profits are exempt as being purely agricultural income. 9 P. 185=123 I.C. 610=1930 P. 44 (S.B.). But *see also* 48 C. 161. Income from *fisheries* in tanks and supply channels is not agricultural income and is not exempt from income-tax. 140 I.C. 450=1932 M. 757= 63 M.L.J. 634 (S.B.). *See also* 3 P. 470; 53 C. 524. The maintenance allowance obtained by a widow under a compromise though derived from an agricultural estate is not agricultural income within the meaning of sec. 2 (1) (*a*), and hence is not exempt from income-tax under sec. 4 (3) (*viii*). 146 I.C. 651=10 O.W.N. 1003=1933 O. 475. Where the assessee receives certain sum every year under sec. 8-A (*b*), Punjab Laws Act, from his elder brother on whom the im-

[1][(*ix*) Any income received by trustees on behalf of a recognised provident fund as defined in clause (*a*) of section 58-A.]

[2][(*x*) Any income received—

(*a*) by a person accredited as representative in British India for political purposes of an Indian State or the Ruler thereof, as his remuneration from the State or Ruler for service in such capacity;

(*b*) by a Consul General, Consul, Vice-Consul or Consular Agent of a foreign State, as remuneration from such State for service in such capacity;

(*c*) by a person employed by the consulate of a foreign State, not being a British subject or the subject of an Indian State, as remuneration from such foreign State for service in such capacity;

(*d*) by a Trade Commissioner or other official representative in British India of the Government of any other part of the British Empire or of a foreign Government, as his official salary, if the official salary of the corresponding officials, if any, of the Central Government resident for similar purposes in the country concerned enjoy a similar exemption in that country;

(*e*) by a member of the staff of a Trade Commissioner or official representative referred to in sub-clause (*d*), as his official salary, when such member is a subject of the country represented, and the country represented has made corresponding provisions for similar exemptions in the case of members of the staff of the corresponding officials of the Central Government.

(*xi*) With effect from the 2nd day of September, 1939, the income-chargeable under the head "Salaries" of a Nepalese member of the Nepalese Military Force serving with His Majesty's Forces, or of any member of an Indian State Force, so serving, and any other income accruing or arising without British India which is received in or brought into British India by any such member while the Force to which he belongs is serving with His Majesty's Forces.]"

In this sub-section "charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility, [3][but nothing contained in clause (*i*), clause (*i-a*) or clause (*i*) shall operate to exempt from the provisions of this Act that part of the income of a private religious trust which does not enure for the benefit of the public].

LEG. REF.

1 Added by sec. 2 of Act XII of 1929.

2 Cls. (*x*) and (*xi*) inserted by Act XXIII of 1941.

3 Added by Act XII of 1929.

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partible estate devolves under sec. 8, Punjab Laws Act, as maintenance out of the assignment, which is agricultural income and exempt as such, the allowance is a part of the assignment and cannot be taxed. 1937 Lah. 905. *See also* 158 I.C. 810=1935 O.W.N. 1143. The income from the sale of forest trees growing on land naturally and without the aid of human agency is not agricultural income within the meaning of sec. 2 (1) (*a*), and as such not exempt from income-tax under sec. 4 (3) (*viii*). (1946) I.T.R. 356.

SCOPE AND OBJECT.—Sec. 4 (3) (*viii*) read with sec. 2 is designed to protect the producer by giving him exemption from liability to income-tax as a *bona fide* agriculturist carrying on business of a farmer in the ordinary course of good husbandry. 53 I.C. 301 (F. B.). *See also* 25 A.L.J. 816=50 A. 98=1927 A. 703; 1928 M. 543=54 M.L.J. 524 (F.B.); 45 C.W.N. 647=1941 Cal. 598; 1937 Rang. L.R. 191=1937 Rang. 337 (S.B.).

SECS. 4 AND 24.—The assessee purchased shares to the value of a big amount in a limited company. The company afterwards went into liquidation, and out of that liquidation a new company was formed. This company having acquired the assets of the old company agreed to allot certain shares and debentures to the assessee, but the agreement was not fulfilled, with the result that the assesee lost a considerable sum of the money of his original investment made in the old company. *Held*, that the difference between what the assessee has in fact got and what he originally invested was a loss which was clearly a loss of capital and therefore it could not be taken into consideration for the purpose of arriving at the assessable income. 182 I.C. 841=1939 Pat. 107. In the process of preparing tea for the market, the part when the tea is planted and plucked is agriculture, and the part when the leaf is dried, rolled and stored is manufacture. For assessing income-tax, the profits from the agricultural process are exempt and only that from the manufacture is liable to assessment. 48 C. 161=61 I.C. 107. But *see also* 9 P. 185. *See also* 158 I.C. 810=1935 O.W.N. 1143. Income derived from *jalkar* (fishery) *hats* and *ghatlagi* is not agricultural income and is not exempt from income-tax. 3 P. 470=1924 P. 474; 104 I.C. 841. *See also* 53 C. 524=30 C.W.N. 524; 1932 M. 757=63 M.L.J. 634 (F.B.).

[1][(*xii*) Any income chargeable under the head 'Income from property' in respect of a building the erection of which is begun and completed between the 1st day of April, 1946 and the 31st day of March, 1948 (both dates inclusive), for a period of two years from the date of such completion].

Residence in British India.

[2][4-A. For the purposes of this Act—

(*a*) any individual is resident in British India in any year if he—

(i) is in British India in that year for a period amounting in all to one hundred and eighty-two days or more ; or

(ii) maintains or has maintained for him a dwelling place in British India for a period or periods amounting in all to one hundred and eighty-two days or more in that year, and is in British India for any time in that year; or

(iii) having within the four years preceding that year been in British India for a period of or for periods amounting in all to three hundred and sixty-five days or more, is in British India for any time in that year otherwise than on an occasional or casual visit :

[3][or (iv) is in British India for any time in that year and the Income-tax Officer is satisfied that such individual having arrived in British India during that year is likely to remain in British India for not less than three years from the date of his arrival] ;

(*b*) a Hindu undivided family, firm or other association of persons is resident in British India unless the control and management of its affairs is situated wholly without British India : and

(*c*) a company is resident in British India in any year (*a*) if the control and management of its affairs is situated wholly in British India in that year, or (*b*) if its income arising in British India in that year exceeds its income arising without British India in that year.

LEG. REF.

1 Inserted by Act VIII of 1946.

2 Secs. 4-A and 4-B inserted by sec. 5 of Act VII of 1939.

3 Added by Act XXIII of 1941.

SEC. 4-A (*a*) AND (*b*): "ORDINARILY RESIDENT" IN BRITISH INDIA—MEANING OF.—The test of a joint Hindu family being "ordinarily resident" in British India is the ordinary residence in British India of its Manager. In order to be ordinarily resident in British India, that Manager must have been resident in British India within the meaning of sec. 4-A (*a*) of the Act for a period of nine out of the ten preceding years and must also have been in British India for at least two years during the previous seven years. There is nothing in sec. 4-B to indicate that the periods of residence and stay in British India of the successive Managers of a Hindu undivided family during its continued existence should not count for purposes of sec. 4-B. 1945 I.T.R. 186=58 L.W. 214=1945 M.W.N. 260=A.I.R. 1945 Mad. 307=(1945) 1 M.L.J. 352. A partnership to acquire and work a rubber plantation in Malacca provided for two of the partners having control of the partnership business in rotation. During the period of account one of the controlling partners was admittedly resident in British India and it was in evidence that his agent in Malacca had prior to the period of account, written to him for directions in regard to the partnership business. *Held*, that for purposes of the Income-tax Act, the partnership was resident in British India within the meaning of sec. 4-A (*b*). 58 L.W. 322=A.I.R. 1945 Mad. 366=(1945) 2 M.L.J. 93. The assessee was the manager of a Hindu joint family having its residence outside British India, and he too lived outside British India with the family. The family, however, carried on business in British India through agents. The manager visited British India during the accounting year and stayed in a portion of the business premises for two days, but during his stay he did not exercise any act of management or control in respect of the business at that place. The Income-tax Department sought to assess him in respect of family income as a resident under sec. 4-A (*b*). *Held*, that the mere visit of the assessee, the manager of the family to British India and his stay there for two days could not amount to the exercise of control and management of the affairs of the family in British India, in the absence of anything to show that during such stay he actually exercised any act of control or management. 58 L.W. 91=A.I.R. 1945 Mad. 174=(1945) 1 M.L.J. 61.

SEC. 4-A (*b*): CONSTRUCTION—"CONTROL AND MANAGEMENT OF ITS AFFAIRS SITUATED, ETC".—The words "control and management of its affairs" in sec. 4-A (*b*) do not mean the *de jure*, but the *de facto* control and management. The test is not where the control and management could be assumed by a partner by the exercise of power remaining in him under the partnership deed. The section must be construed to ascertain where the actual control and management is situated and not merely where the right to manage can come into existence. It has to be construed as deal-

Ordinary residence.

4-B. For the purposes of this Act—

(*a*) an individual is 'not ordinarily resident' in British India in any year if he has not been resident in British India in nine out of the ten years proceding that year or if he has not during the seven years preceding that year been in British India for a period of, or for periods amounting in all to, more than two years;

(*b*) a Hindu undivided family is deemed to be ordinarily resident in British India if its manager is ordinarily resident in British India;

(*c*) a company, firm or other association of persons is ordinarily resident in British India if it is resident in British India.]

CHAPTER II.

INCOME-TAX AUTHORITIES.

Income-tax authorities.

[1][5. (1) There shall be the following classes of Income-tax authorities for the purposes of this Act, namely :—

(*a*) the Central Board of Revenue;

(*b*) Commissioners of Income-tax;

(*c*) Assistant Commissioners of Income-tax who may be either Appellate Assistant Commissioners of Income-tax or Inspecting Assistant Commissioners of Income-tax;

LEG. REF.

[1] Substituted for the original section by sec. 6 of Act VII of 1939.

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ing with actual events. 47 Bom.L.R. 187=1945 I.T.R. 124=A.I.R. 1945 Bom. 271. *See also* (1945) 1 M.L.J. 65. The assessee, a firm, commenced carrying on business in Colombo in 1932. In 1937, it opened a branch in Kilakarai in British India, and business was carried there by one of the partners of the firm resident at the place. *Held*, that the firm was "resident" in British India under sec. 4-A (*b*) and so liable to be taxed under the Act. 55 L.W. 718 (1)=A.I.R. 1942 Mad. 736 (2)=(1942) 2 M.L.J. 620. Sec. 4-A (*b*) does no more than clarify the existing position by pointing out that in the case of a joint Hindu family business the residence of individual members of the undivided family cannot be material from which it could be inferred that the family resided there if such residence were fortuitous and divorced from control and management of the business. Consequently the family cannot be said to reside in all those places where members of the family live, and the fact that one member of the undivided family eats, drinks and sleeps at a particular place is not necessarily any evidence that the family resides there. 197 I.C. 260=1941 I.T.R. 685=1941 Rang. 273 (S.B.).

SEC. 4-A (AS AMENDED IN 1939), SEC. 4-A (*c*)—SCOPE—IF ULTRA VIRES.—The provisions of sec. 4-A (*c*) introduced by the Amending Act of 1939, are not *ultra vires* in whole or in part. 45 Bom.L.R. 929=A.I.R. 1944 Bom. 1. The assessee was a limited company incorporated in the United Kingdom, the control and management of its affairs being situated wholly in that country. It had no director in India but was a sleeping partner in a firm which carried on, and had a place of, business in Bombay. In the year of account 1938-39 (the assessment year being 1939-40), the total profits of the assessee in British India was over Rs. 17 lacs and its income accruing or arising outside British India in the material year was 7 1/2 lacs. *Held*, that since the income of the assessee in British India exceeded the income in the United Kingdom, the assessee was taxable to income-tax and super-tax in British India in respect of the whole of its income for the assessment year 1939-40, including the income accruing or arising out of British India. 45 Bom.L.R. 929=1943 I.T.R. 559=1943 Comp. C. 315=A.I.R. 1944 Bom. 1=I.L.R. (1944) Bom. 43.

SECS. 4-A (*c*) AND 10 (2) (*iii*).—Income arising without British India"—Amount paid to Railway Company in England by Secretary of State earmarked for a particular debt—If income—"Resident" in British India—Amount paid to company to make up profits for payment of guaranteed dividend—Deductibility under sec. 10 (2) (*iii*). *See* (1943) I.T.R. 578. Assessee carrying on money-lending business outside British India acquiring houses—Rents liable to be assessed on the basis of sec. 9. I.L.R. (1945) Mad. 170. Where the assessee was carrying on money-lending business outside British India and acquired in the course of such business houses from which he received rent, tax in respect of the income derived from such houses is to be levied on the basis of sec. 9 of the Act. 1944 I.T.R. 254=57 L.W. 331=1934 M.W.N. 387=A.I.R. 1944 Mad. 436=(1944) 1 M.L.J. 419.

SEC. 4-B: "SEVEN YEARS"—MODE OF COMPUTING.—The expression "seven years" in sec. 4-B Act should be taken as referring to the period of seven years of twelve calendar months each immeditaely preceding the commencement of the relevant year. 59 L.W. 172=1946 I.T.R. 185=1946 M.W.N. 200=(1946) 1 M.L.J. 297. The term "British India" in sec. 4-B must be read in the light of the definition of that term in sec. 3 (7) of the General Clauses Act. The assessee had immovable property in British India, including a dwelling house at Srirangam, and a business in Ran-

(*d*) Income-tax Officers.

(2) The Central Government may appoint a Commissioner of Income-tax for any area specified in the order of appointment, and may appoint Commissioners of Income-tax, not more than three in all, each to discharge, without reference to area, and to the exclusion of any Commissioner appointed for any area, the functions of a Commissioner in respect of any cases or classes of cases assigned to him by the Central Board of Revenue.

(3) The Central Government may appoint [1]* * * as many Appellate or Inspecting Assistant Commissioners of Income-tax and Income-tax Officers as it thinks fit.

(4) Appellate Assistant Commissioners of Income-tax shall be under the direct control of the Central Board of Revenue and shall perform their functions in respect of such persons or classes of persons [2][or of such incomes or classes of income or] in respect of such areas as the Central Board of Revenue may direct, [3][and, where such directions have assigned to two or more Appellate Assistant Commissioners of Income-tax, the same persons or classes of persons or the same incomes or classes of income or the same area] in accordance with any orders which the Central Board of Revenue may make for the distribution and allocation of the work to be performed.

(5) Inspecting Assistant Commissioners of Income-tax and Income-tax Officers shall perform their functions in respect of such persons or classes of persons

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LEG. REF.

[1] The words "for any area" omitted by sec. 3 of Act XL of 1940 and shall have effect from 1 st April, 1939.

[2] Substituted for "and of such incomes or classes of income and" by Act XL of 1940 and shall have effect from 1st April, 1939.

[3] Substituted for the words "and, where two or more appellate Assistant Commissioners have been appointed for the same area", by Act XL of 1940 and shall have effect from 1st April, 1939.

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goon in Burma. She stayed in the house at Srirangam for sometime in 1934 and 1936 and again 1937, each time making a stay of more than three months. In the assessment year of 1939-1940, the assessee claimed the benefit of the proviso to sec. 4 and contended that as she was and had been in Burma for some periods prior to 1st April, 1937, the date of separation of Burma she was not "ordinarily resident" in "British India" within the meaning of sec. 4-B, and that in defining "British India", regard should be had only to what was "British India" in the year of assessment. *Held*, the assessee should be deemed to have been "ordinarily resident" in British India, and that she was not a person "not ordinarily resident in British India" under sec. 4-B by reason of her stay at Rangoon. I.L.R. (1942) M. 598=5 F.L.J. (H. C.) 94=A.I.R. 1942 Mad. 556=(1942) 2 M. L.J. 158 (F.B.).

SEC. 5.—The Income-tax Officer of the area in which the principal place of business is situated has the duty of assessing the whole of the income derived from the principal place of business as well as the various branches. 47 A. 631=23 A.L.J. 379. Where the Commissioner of Income-tax gave a direction to the effect that he appointed an Income-tax Officer to perform all the functions of an Income-tax Officer in respect of those persons in Calcutta whose cases may be made over to him from time to time, *held*, that that the persons referred to in the direction do not constitute "a class of persons" within the meaning of cl. (4) of sec. 5 of the Act. 33 C.W.N. 1206. Income-tax Officers have to perform very responsible duties and an assessee is entitled to say that he can only be assessed by somebody who is on the relevant date, in the grade of Income-tax Officer, and that he cannot be assessed by somebody who is not in that grade but is merely appointed to perform the function of an officer in that grade. Merely appointing a man to perform the duties of an office does not amount to a substantive appointment to that office. Where an Assistant Income-tax Officer is, by an order of the Commissioner of Income-tax appointed to perform the functions of an Income-tax Officer and posted to hold charge of a section *vice* an Income-tax Officer, granted leave, and he continues to draw the pay of and to sign as, an Assistant Income-tax Officer, it must be held that he is not properly appointed as Income-tax Officer and is therefore not entitled to make an assessment order. 1943 I.T.R. 104=45 Bom.L.R. 168=A.I.R. 1943 Bom. 122. As to transfer of cases of assessment from one officer to another, *see* I. L.R. (1940) Bom. 650=42 Bom.L.R. 414= 1940 Bom. 234; 1941 I.T.R. 679. *See also* 43 Bom.L.R. 1009=1942 B. 64. As to appeal against order on the question of jurisdiction and place of assessment, *see* 45 Bom.L.R. 136 =1943 Bom. 110. Mining lease—Royalty is income taxable under the Act. *See* I.L.R. (1944) Kar. (P.C.) 98=70 I.A. 180=57 L. W. 241=(1943) 2 M.L.J. 410 (P.C.).

[1][or of such incomes or classes of income or] in respect of such areas as the Commissioner of Income-tax may direct, [2][and, where such directions have assigned to two or more Inspecting Assistant Commissioners of Income-tax or Income-tax Officers, the same persons or classes of persons or the same incomes or classes of income or the same area] in accordance with any orders which the Commissioner of Income-tax may make for the distribution and allocation of the work to be performed. The Commissioner may, with the previous approval of the Central Board of Revenue, by general or special order in writing, direct that the powers conferred on the Income-tax Officer and the Appellate Assistant Commissioner by or under this Act shall, in respect of any specified case or class of cases, be exercised by the Inspecting Assistant Commissioner and the Commissioner, respectively, and, for the purposes of any case in respect of which such order applies, references in this Act or in any rules made hereunder to the Income-tax Officer and the Appellate Assistant Commissioner shall be deemed to be references to the Inspecting Assistant Commissioner and the Commissioner, respectively.

(6) The Central Board of Revenue may, by notification in the Official Gazette, empower Commissioners of Income-tax, Appellate or Inspecting Assistant Commissioners of Income-tax and Income-tax Officers to perform such functions in respect of such classes of persons or such classes of income [3][or such area] as may be specified in the notification, and thereupon the functions so specified shall caese [4]** * *to be performed in respect of the specified classes of persons or classes of income [5][or area] by the other authorities appointed under sub-sections (2) and (3).

(7) Assistant Commissioners of Income-tax and Income-tax Officers shall, for the purposes of this Act, be subordinate to the Commissioner of Income-tax for the area in which they perform their functions, or where they perform functions assigned to them by a Commissioner of Income-tax appointed without reference to area, to that Commissioner.

[6][(7-A) The Commissioner of Income-tax may transfer any case from one Income-tax Officer subordinate to him to another, and the Central Board of Revenue may transfer any case from any one Income-tax Officer to another. Such transfer may be made at any stage of the proceedings, and shall not render necessary the reissue of any notice already issued by the Income-tax Officer from whom the case is transferred].

(8) All officers and persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Central Board of Revenue :

Provided that no such orders, instructions or directions shall be given so as to interfere with the discretion of the Appellate Assistant Commissioner in the exercise of his Appellate functions].

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[7][CHAPTER II-A.

APPELLATE TRIBUNAL.]

The Appellate Tribunal.

[8][5-A. (1) The Central Government shall appoint an Appellate Tribunal consisting of not more than ten persons to exercise the functions conferred on the Appellate Tribunal by this Act.

LEG. REF.

1 Substituted for "and of such incomes or classes of income and" by sec. 3 of Act XL of 1940 and shall have effect from 1st April, 1939.

2 Substituted for "and, where two or more Inspecting Assistant Commissioners of Income-tax or Income-tax Officers have been appointed the same area", by Act XL of 1940 and shall have effect from 1st April, 1939.

3 Substituted for "and for such area", by Act XL of 1940 and shall have effect from 1st April, 1939.

4 The words "within the specified area" were omitted, *ibid.*, with effect from 1st April, 1939.

5 Inserted by sec. 3 of Act XL of 1940 and shall have effect from 1st April, 1939.

6 Inserted, *ibid.*

7 Inserted by sec. 4 of Act XL of 1940.

8 Inserted by sec. 85 of Act VI of 1939.

(2) The Appellate Tribunal shall consist of an equal number of judicial members and accountant members as hereinafter defined:

[1][Provided that the Tribunal shall not be deemed to be invalidly constituted merely by reason of a temporary inequality caused by the death, retirement or removal of any member.]

(3) A judicial member shall be a person who has exercised the powers of a District Judge or who possesses such qualifications as are normally required for appointment to the post of District Judge; and an accountant member shall be a person who has, for a period of not less than six years, practised professionally as a Registered Accountant enrolled on the Register of Accountants maintained by the Central Government under the Auditors Certificate Rules, 1932:

Provided that the Central Government may appoint as an accountant member of the Tribunal any person not possessing the qualifications required by this sub-section, if it is satisfied that he has qualifications and has had adequate experience of a character which render him suitable for appointment to the Tribunal.

(4) The Central Government shall appoint a judicial member of the Tribunal to be president thereof.

(5) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted from members of the Tribunal by the president of the Tribunal.

(6) A Bench shall consist of not less than two members of the Tribunal, and shall be constituted so as to contain an equal number of judicial members and accountant members, or so that the number of members of one class does not exceed the number of members of the other class by more than one.

(7) If the members of a Bench differ in opinion on any point the point shall be decided according to the opinion of the majority, if there is a majority; but if the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the president of the Tribunal for hearing on such point or points by one or more of the other members of the Tribunal, and such point or points shall be decided according to the opinion of the majority of the members of the Tribunal who have heard the case, including those who first heard it.

(8) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure, and the procedure of Benches of the Tribunal in all matters arising out of the discharge of its functions, including the [2][places] at which the Benches shall hold their sittings.]

CHAPTER III.

TAXABLE INCOME.

Heads of income chargeable to income-tax.

6. Save as otherwise provided by this Act, the following heads of income, profits and gains, shall be chargeable to income-tax, in the manner hereinafter appearing namely :—

LEG. REF.

1 Added by Act XXIII of 1941.

2 Substituted for "place" by sec. 4 of Act XL of 1940.

CHAP. III.—*See* under sec. 4, Panckridge, J. —The provisions of ch. III of the Act are not limited by sec. 3 of the Act, and must be construed as they stand, and sec. 10 (1) does not require that the business should be carried on by the assesee personally. The assessee must be held to carry on the business, though he may not have any executive control over the conduct of it, and he is consequently liable to be assessed on the full profits and gains of the business which is his business. 41 C.W.N. 46=I.L.R. (1937) 2 Cal. 36.

SEC. 6: CONSTRUCTION OF SECTION—*Per* Courtney-Terrell, C. J.—The words "profits" and "gain" in sec. 6 are an amplification and not a limitation upon the word 'income." The words "other sources" indicate that anything which can properly be described as income is taxable unless expressly exempted. 13 P. 661 =1934 P. 384 (F.B.). *See also* 63 C. 109; 14 P. 552=62 I.A. 207=69 M.L.J. 190 (P.C.). The word "income" is not specifically defined in the Income-tax Act. The word is used along with the words 'profits and gains', and it may be that those words are explanatory of the word "income". Moneys paid to a Railway Company by the State by way of subsidy under the terms of an agreement between the company and the Secretary of State, in order to make up the minimum guaranteed interest payable to the shareholders should properly be

(*i*) Salaries;
(*ii*) Interest on securities;
[1][(*iii*) Income from property;
(*iv*) Profits and gains of business, profession or vocation.
(*v*) Income from other sources.]

LEG. REF.

[1] Substituted for the original clause (*iii*), (*iv*), (*v*) and (*vi*) by sec. 7 of Act VII of 1939.

described and treated as income of the company assessable to income-tax. Moneys which are in the coffers of the company and are available in the same way as earnings for the purpose of payment out as interest or dividend are "income". The subsidy being in lieu of moneys which might have been earned by the company, and having the same nature as moneys earned by the company, as far as liability to income-tax is concerned, once that is paid by the State to the company, it is income and as such comes within the grip of the Income-tax Act, and is liable to income-tax in spite of the fact that it is intended to be paid to the shareholders. Such moneys cannot be deducted under sec. 10 (2) (*iii*) of the Act. 63 C. 109.

SEC. 6, CL. (*i*).—Compensation amount paid to Government servant who had been compulsorily retired is liable to assessment as for salary received. 137 I.C. 557=1932 M. 421=62 M.L.J. 656 (S.B.). (56 C. 211, Ref. to). *See also* 137 I.C. 84, cited under sec. 7.

CL. (*ii*).—The border line between a case where interest is chargeable to tax and a case where it is not so chargeable appears at times to be extremely fine. Where interest is awarded under the provisions of sec. 28 of the Land Acquisition Act, it is in the nature of compensation for the loss of the late owner's right to retain possession of the property acquired. In other words it is damages assessed in terms of interest for loss of possession of property up to date of receipt of its consideration. Further, the awarding of such interest is not mandatory but is discretionary with the Court; and the claimant is not entitled to it as of right under any rule of law. Hence such interest is not income and is not assessable as such to tax. I.L.R. (1941) All. 54=193 I.C. 731=1940 A.L.J. 860=1941 All. 135. Foreign income—Profits actually earned in foreign business—Remittance to British India—Taxability—Subsequent incurring of loss in foreign business in same year—If changes nature of remittances. *See* 197 I.C. 707=1942 M.W.N. 107=(1941) 2 M.L.J. 890 (F.B.).

CL. (*iii*).—Royalty on mines cannot fall within the heading "income from property" in sec. 6 because such income is defined in sec. 9. 1940 I.T.R. 563=21 Pat.L.T. 897=20 Pat. 13 =1940 Pat. 633 (S.B.). Mineral leases must be regarded as leases and not as sales of coal, the annual payments of royalty in such case must be regarded as a rent in the hands of the assessee. They were therefore assessable to income-tax as they constitute "income from other sources." 20 Pat. 13 (S.B.). A sale may be made for a price which could properly be regarded as a capital receipt and therefore not assessible to income-tax. Such a transaction would amount to the exchange of one form of capital for another. The consideration for such a sale, however, need not be in the form of capital. A vendor might secure by the terms of the sale an income for himself, and such would undoubtedly be assessable to income tax. 20 Pat. 13 (S.B.).

The payments which under the mining leases are exigible by the lessor may be classed under three categories (1) the salami or premium; (2) the minimum royalty; (3) the royalties per ton. The salami is a capital receipt. The minimum royalty is "income" and in no sense a payment on capital account. The royalties payable on each ton of coal also constitute income. The royalty is "in substance a rent, it is the compensation which the occupier pays the landlord for that species of occupation which the contract between them allows." They are periodical payments for the continuous enjoyment of the various benefits under the leases. The actual acquisition of the property in a particular ton of coal at the moment when the lessees have cut and taken away the coal is only the final stage. The fact that the mines, which form an element in the consideration for the royalties, are wasting assets is irrelevant. And on this question there is no difference in principle between the effect of the Act of 1922 and the Act of 1886. 22 Pat. 713=1943 A.L.J. 493=48 C.W.N. 59=A.I.R. 1943 P.C. 153=(1943) 2 M.L.J. 410 (P.C.). Receipts from capital which is exhausted in the process of realization may be none the less income. Where a forest was worked as a business by selling trees and subsequently it was decided to commence fellings so as to exhaust the forest and clear it for growing crops, the business is not terminated by the decision to clear the remaining stock-in-trade and for that purpose to sell every year more trees than had been sold each year previously and the receipts from sale of the forest trees would not be capital converted into cash but income liable to income-tax and the fact that receipts from the new business, *i.e.*, of growing crops on the land cleared would not be subject to income-tax is immaterial. Since the sale of the forest trees was a business the sale of the stock-in-trade (forest trees) spread over a number of years cannot make it any the less a business and the proceeds from the sale of the trees cannot come within the purview of sec. 4 (3) (*vii*) so as to make them exempt from income-tax. But if the whole forest is sold in one transaction with the land it would clearly be a sale of the capital and the proceeds would constitute capital and not income. 20 Luck. 212=1944 O.W.N. 443=1945 I.T.R. 74=A.I.R. 1945 Oudh 35.

CL. (*iv*).—Contributions made entirely by members to a Mutual Insurance Company are

not assessable. *See* 56 B. 119=135 I.C. 813 =33 Bom.L.R. 1581=1932 B. 104. *See also* 55 B. 637=33 Bom.L.R. 807=1931 B. 448, 1936 A.L.J. 1085=A. 764; 1941 I.T.R. 627.

CL. (*vi*).—Employee's gratuity — Termination of service on insolvency of employer—Payment of gratuity by stranger not taxable. 12 R. 477=1934 R. 377 (S.B.). Income from Jalkars which were included in the assets of the estate at the time of Permanent Settlement is not liable to assessment to income tax. Such income does not fall under the term "other sources." 53 C. 524=1926 C. 819; 54 C. 863=31 C.W.N. 765=1927 C. 432 (F.B.). (Case-law fully discussed). Foreign firm lending to resident firm, *see* 30 Bom.L.R. 1172. Where the assessee has taken land on lease and has erected on a part thereof temporary houses and shops which are let out on rent and has let out the rest to squatters on rent, the income derived from such rents comes under sec. 6 (*vi*) and must be assessed as income from "other sources". 1930 A.L.J. 643=1930 A. 288. Where the income tax authorities concede, whether rightly or wrongly, that the income of a Chamber of Commerce, which is a mutual concern, derived from its members in the shape of a certain fixed amount on each transaction registered in the Chamber, is not income from business, such income is not taxable as income from "other sources" within the meaning of sec. 6 (*vi*) of the Act. If these payments are not income from business, it is difficult to see from what "other source" a mutual concern can derive profits. 1936 A.L.J. 1085=1936 A. 764.

SECS. 6 AND 7.—A relationship of employer and employee or of principal and agent is essential before a payment from one party to another can be salary within the meaning of secs. 6 (*i*) and 7 of the Income-tax Act. A restrictive covenant whereby a person undertakes for consideration to abstain from doing a particular act or from following a particular course of conduct, is something quite outside an ordinary contract of employment, and the amount so paid as consideration under such a covenant cannot be held to be "salary" under sec. 6 (*i*) of sec. 7 of the Act. Nor would it fall under sec. 6 (*iv*) or sec. 10 of the Act. The amount is not received as the direct consequence of any actual business transacted. On the other hand it is the direct consequence of no business being transacted. To fall under the head business in sec. 6 (*iv*) of the Act, an amount must be the direct result of profits or gains accruing from particular business actually carried on by the assessee. When the object of the transaction in pursuance of which the amount is paid is not to secure an income to the assessee, the amount cannot also fall under Cl. (*vi*) of sec. 6 or sec. 12. The fact that the payment is spread over a number of years would not make it income, because a capital payment is not any the less a capital payment because it is to be paid in equal instalments over a period of years. If the object of the agreement is not the production of an income to the assessee, it is not income within the meaning of sec. 12. 1941 I.T.R. 642. As to allowance for bad debts *see* 1941 Rang. L.R. 529=1941 Rang. 185 (S.B.) and notes under, *see infra.*

SECS. 6 AND 7: MAINTENANCE CHARGE—NATURE.—Where by the decree of a Court, the assessee's step-mother has a charge not only on his zamindari property from which his agricultural income was derived but also on all his other sources of income included in the assessment, the assessee's liability to his step-mother is not of the same kind as his liability to provide for his wives and daughter. The case was not one of a charge created by the assessee for the payment of debts which he has voluntarily incurred and the liability to his step-mother does not fall within any of the exemptions or allowances allowed under secs. 7 and 12. 60 I.A. 196=60 C. 1029=1933 P. C. 145=65 M.L.J. 285 (P.C.). Allowance for children paid to a missionary father is liable to assessment. I.L.R. (1942) All. 472=1942 All. 265. *See also* 10 O.W.N. 1003=1933 O. 475; 57 C. 918=1930 C. 641.

SECS. 6 (*i*) (*iv*) AND (*vi*), 7, 10 AND 12.—Applicability—Payment of fixed sum annually for several years by one to another in consideration of latter undertaking not to do particular act or business not taxable as salary or business profits or otherwise. *See* 1941 I.T.R. 642=I.L.R. (1941) Kar. 512=1942 Sind 53.

SECS. 6 AND 12.—The assessee was the owner of a landed estate known as the "nine annas Tikaraj Raj." He had contracted heavy debts. He executed a deed by which he transferred his entire interest in that estate to the transferee. The consideration for the transfer was the payment by the transferee of the transferor's debts amounting to a considerable sum, the further payment by her of the expenses of the marriage of the daughter of the transferor and life annuity of Rs. 2,40,000. It was contended by the assessee that the life annuity payments must be considered as payment by instalments of a capital purchase sum and secondly, that the payment was derived from the estate and therefore exempt from taxation under sec. 12 as agricultural income. *Held,* (1) that an owner of capital might exchange it for an income which was taxable, or for another form of capital which was not taxable and the question whether what was obtained in exchange should be considered as taxable depended upon the nature of the transaction in the particular case. (*Per* Full Bench). (2) that the annuity cannot be considered as 'revenue derived from land which he used for agricultural purposes." (By majority, (3) that in spite of the use of the word annuity) the sum in question was not capital but was income and was so taxable, and it was immaterial that it was the "price" of the property transferred. (Foley *v.* Fletcher, 3 H. and N. 769; Minister of National Revenue *v.* Spooner, (1933) A. C. 684; Secretary of State *v.* Scobble, (1903) A.C. 209, Expl. 13 P. 661=15 P.L.T. 325=1934 P. 384 (F.B.).

7. (1) The tax shall be payable by an assessee under the head "Salaries" in respect of any salary or wages, any annuity, pension or gratuity, and any fees, commissions, perquisites or profits, [1]* * * in lieu of, or in addition to, any salary or wages,

Salaries.

LEG. REF.

[1] Words "received by him" were omitted by sec. 8 of Act VII of 1939.

SECS. 6 AND 23 (3).—Where an assessee who is required to explain a credit entry in his books under capital, offers an explanation which is false or unbelievable, there is nothing in law which casts the burden of proof on the Income-tax Officer or the appellate authority to prove by positive evidence that it is an item of revenue assessable to tax. The officer can act on circumstantial evidence and is not bound to prove affirmatively the source of such income. 1944 I.T.R. 441=A.I.R. 1945 Cal. 62.

SECS. 6 AND 24.—The maintenance management and running in races of race horses by an assessee, and his betting do not in law constitute the 'business,' 'profession,' 'vocation' or 'occupation' of the assessee, nor any part of such 'business', 'profession', 'vocation,' or 'occupation' and the receipts by the assessee from the said sources or any of them, would not, if a profit had been derived there from have in law, constituted income, profits or gains of the assessee from 'other sources' within the meaning of sec. 6 (*vi*) of the Income-tax Act (1922); and accordingly, the assessee is not entitled under sec. 24 of the Act to set off any loss of profits or gains in any year of assessment in respect of the said maintenance, management and running of his race horses or in respect of betting, against his income, profits or gains in the year under any other head of assessment. I. L.R. (1940) All. 274=1940 A.L.J. 129=1940 All. 154 (F.B.). *See also* 53 L.W. 196=1941 Mad. 249=(1941) 1 M.L.J. 103 (S.B.).

SECS. 7 TO 12: TAXABLE INCOME—EXECUTORS SPENDING AMOUNTS OUT OF INCOME—EXEMPTION.—Where the executors made payments for the *shradh* expenses and for the cost of probate, out of the income of the estate coming into their hands as executors and in pursuance of obligations imposed on them by the testator, it is simply a case in which the executors having received the whole of the income of the estate apply a portion in a particular way pursuant to the direction of the testator and as such no allowance could be made in respect thereof in computing the taxable income. 65 I.A. 150=I.L.R. (1938) 2 Cal. 214=40 Bom.L.R. 780=42 C.W.N. 537=47 L.W. 614=1938 A.L.J. 261=1938 P.C. 118=(1938) 1 M.L.J. 704 (P. C.). The mere fact that a lawyer by reason of his position as a lawyer is engaged in service (*e.g.*, as Official Liquidator) will not convert his salary into professional earnings. Where an advocate of a High Court is appointed Official Liquidator of a company and his remuneraion is fixed at 5 per cent. on assets actually realized by him the commission earned by the advocate could be taxed only under sec. 7 of the Income-tax Act, and he could therefore seek relief under under sec. 60 (2). Neither sec. 11 nor sec. 12 would apply. 1944 I.T.R 193=(1944) Comp. C. 19.

SEC. 7 (1).—Scope of. 6 Pat.L.T. 47=4 P. 210=1925 P. 281; 40 C.W.N. 827; 1935 L. 978. A sum paid to an employee as gratuity not by the employer but by a stranger who was interested in the employer out of charitable motives is not chargeable under the head "salaries" in sec. 7 of the Act, because it is not paid by the employer or any one on behalf of the employer. 12 R. 477=1934 R. 377 (S.B.). "Income" in the Income-tax Act connotes a periodical monetary return coming in which some sort of regularity from definite sources. The source is not necessarily one which is expected to be continuously productive but it must be one whose object is the production of a definite return, excluding anything in the nature of a mere windfall. Where the assessee, after the termination of an agency, is granted by his employer a certain periodical sum of money during the lifetime of the assessee and in the event of his death before expiry of five years from the date of the termination of the agency payment is to be made to his son for the unexpired period of five years, for the services rendered during the agency, provided he does not enter into a competitive business, the periodical sums of money fall clearly within the purview of sec. 7, Income tax Act, and as such taxable income, unless the assessee is able to bring his case within one of the exemptions contained in sec. 4, Cl. (3) of the Act. 31 S.L.R. 432=171 I.C. 375=1937 Sind 234. As to assessment of income tax on salaries, *see* 1 R. 335=1924 R. 30. The annual allowance received at London from a fund by the Lord Bishop of Lucknow as such is a salary within the meaning of sec. 7 (1). 1931 A.L.J. 1107=1932 A. 151. A transfer by the trustees of the shares to the employee at the termination of his employment is not a payment perquisite or profits thereunder received by the employee in addition to his salary or wages, which are paid by or on behalf of the company within the meaning of sec. 7. 11 R. 70=1933 R. 22. The interest paid by a company on the contributions which the company makes to the Provident Fund is a perquisite in addition to the salary or wages of the employees of the company. It is a sum that accrues to the members of the Provident Fund because they are under a contract of service with the company and as such it falls within the ambit of the term "salaries" in sec. 7 (1). But unless and until the salary has been received by the employee and has been paid by the company to him, such aalary is not assessable to income-tax. When therefore the interest of the company's own contributions to the Provident Fund is paid by the company and received by the

[1][which are due to him from, whether paid or not, or are paid by or on behalf of, the Crown], a local authority, a company, or any other public body or association, or [2][any private employer; and for the purposes of this sub-section advances by way of loan or otherwise of income chargeable under this head shall be deemed to be salary due on the date when the advance is received:

Provided that the tax shall not be payable in respect of any sum which the assessee by the conditions of his employment is required to spend out of his remuneration wholly, necessarily and exclusively in the performance of his duties] :

Provided [3][further] that the tax shall not be payable in respect of any sum [4][deducted from the salary payable by or on behalf of the Crown to any individual, being a sum deducted in accordance with the conditions of his service], for the purpose of securing to him a deferred annuity or of making provision for his wife or children, provided that the sum so deducted shall not exceed one-sixth of the salary :

LEG. REF.

[1] Substituted for "which are paid by or on behalf of any private employer" by Act VII of 1939.

[2] Substituted for "by or on behalf of any private employer" by *ibid.*

[3] Inserted by Act *ibid.*

[4] Substituted for "deducted under the authority of Government from the salary of any individual" by A.O., 1937.

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employee, the sum so paid is "salary" within the meaning of that term as used in sec. 7 (1). 1933 R. 45=11 R. 172 (F.B.). "Salary" meaning of. *See* 1941 I.T.R. 642. Deferred salary—Provident Fund not recognised under Act—Employer's contribution and interest thereon—Withdrawal of amount by employee in service—Income not assessable. *See* A.I.R. 1943 Pat. 144. *Per* Panckridge, J.—The word 'due' in sec. 7 (1) as amended in 1939 is not limited to salary due in respect of the accounting year but includes also unpaid salary due in respect of previous years. 46 C.W.N. 489=1942 I.T.R. 199. Company —Provident Fund—Contributions by employee and company—Payment to employee on retirement of total amount in Fund. *Held,* that the payment which the assessee received was not merely deferred salary but was a payment in the nature of a capital bonus paid to a faithful employee of long standing the assessee was therefore not liable to tax on the amounts received by him. 1940 I.T. R. 85. On this section, *see also* 62 I.A. 207 =69 M.L.J. 190 (P.C.). *See* now secs. 58-D to 58-G, *infra.*

SEC. 7 (1): EXPLANATION 2—APPLICABILITY.—Explanation 2 to sec. 7 (1) deals with the case of termination of employment irrespective of the causes governing the termination. Where a sum of money is paid as compensation for termination of employment, the fact that if the appointment had not terminated and if the assessee had continued the amounts would be payable to him for services rendered, would not make the amounts remuneration for past services. 1945 I.T.R. 436.

SECS. 7, 18 AND 60: SALARY OF GOVERNMENT SERVANT—DATE ON WHICH IT BECOMES ASSESSABLE—POSTPONEMENT IN RECEIPT OF SALARY—EFFECT.—Upon a true construction of sec. 7 (1) read with secs. 18 (2) and 60 (2), Income-tax Act, salary is not assessable to income-tax until it has been paid to and received by the employee, the scheme of the Act being to levy income-tax not upon potential but actual profits. An assessee, a Government servant, requested the head of his office to pay him his February salary on 1st April, instead of on 1st March. The head of the office drew the salary in March and paid it to the assessee on 1st April as requested. The Income-tax Officer included the salary for February in the year's assessment on the ground that as it was drawn in March it must be regarded as having been paid in that month, because it was held by the head of the office in trust or bailment for the assessee until it was actually paid to the latter. *Held,* that the head of the office in the circumstances of the case could not be regarded as a bailee or trustee. The obligation to pay a a certain sum of money to the assessee could not make him a bailee, for bailment could be of specific property only. He was clearly not acting as the assesee's agent in drawing the salary for February, for he had not been authorized by the assessee either to draw the February salary in March or to keep it on the assessee's behalf. In these circumstances the February salary received by the assessee in April could not be included in year's assessment. 1937 Lah. 878.

SECS. 7 (1) AND 24-B.—One *C* who was the managing agent of a company and who was remunerated upon a commission basis died in May, 1938, without drawing the commission earned by him prior to 1st April, 1938. After *C's* death, the company paid this commission to his widow as his legal representative during the financial year 1938-39 without any deduction of income-tax. The Income-tax Department assessed the widow under sec. 24-B of the Income-tax Act for the year 1939-40 on the income of the deceased for the previous year 1938-39 and included in that income the total sum due to him for commission at the date of his death. *Held,* that by virtue of sec. 7 as amended in 1939, the commission earned by the deceased which remained undrawn down to the time of his death remained salary at all material times and that by reason of sec. 24-B of the Act the widow as

[1][Provided further that where tax is deductible at the source under section 18, the assessee shall not be called upon to pay the tax himself unless he has received the salary without such deduction] :

[2][*Explanation* [3][1].—The right of a person to occupy free of rent as a place of residence any presmises provided by his employer is a perquisite for the purposes of this sub-section.]

[4][*Explanation* 2.—A payment due to or received by an assessee from an employer or former employer or from a provident or other fund [5][* * *] is to the extent to which it does not consist of contributions by the assessee or interest on such contributions a profit received in lieu of salary for the purposes of this sub-section, unless the payment is made solely as compensation for loss of employment and not by way of remuneration for past services :

Provided that nothing herein contained shall render liable to income-tax any payment from a provident fund to which the Provident Funds Act, 1925, applies, or any payment from a recognised provident fund within the meaning of Chapter IX-A if such payment is exempted from payment of income-tax under the provisions of Chapter IX-A, or any payment from an approved superannuation fund within the meaning of Chapter IX-B made on the death of a beneficiary or in lieu of or in commutation of an annuity, or by way of refund of contributions on the death of a beneficiary or on his leaving the employment in connection with which the fund is established.]

(2) Any income which would be chargeable under this head if paid in British India shall be deemed to be so chargeable if paid to a British subject or any servant of His Majesty in any part of India [5-a][by or on behalf of the Crown] or by a local authority established [6][in the exercise of the powers of the Crown Representative or the Central Government in that behalf.]

Interest on securities.

8. The tax shall be payable by an assessee under the head "Interest on securities" in respect of the interest receivable by him on any security of the [7][Central Government] or of a Provincial Government, or on debentures or other securities for money issued by or on behalf of a local authority or a company :

LEG. REF.

1 Inserted by sec. 8 of Act VII of 1939.
2 Added by sec. 2 of Act XV of 1923.
3 Original explanation was numbered "1" by sec. 8 of Act VII of 1939.
4 Added by Act VII of 1939.
5 Omitted by Act XI of 1944.
5-a Substituted for "by Government" by A.O., 1937.
6 Substituted for the words "by the Governor-General in Council" by A.O., 1937.
7 Substituted for the words "Government of India" by A.O., 1939.

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his legal representative was liable to pay the tax which would have been paid by the deceased on that salary if he had not died. 46 C.W.N. 489=1942 I.T.R. 199.

SEC. 8: INTEREST ON SECURITIES.—*See* 6 P. 29=100 I.C. 897=8 Pat.L.T. 359=1927 P. 133; 1937 L. 435. Section not retrospective. 54 I.A. 421=1927 P.C. 242=53 M.L.J. 819 (P.C.). Money paid by way of commission to banker for collecting interest on securities not liable to be deducted. 9 P. 139=1929 P. 419. Where the assessee purchases Government securities and pays to the vendor the cost of these securities and the interest due from the last date on which interest was paid to the vendor up to the date on which the assessee purchases these securities, he cannot claim that this interest should be allowed as an admissible deduction from the interest drawn by him subsequently on these securities. The interest on Government securities does not accrue from day to day but accrues on certain specified dates. It cannot, therefore, be said to have accrued to the vendors of these securities at all, since they sold these securities to the assessees before any interest accrued on them. 9 P. 194=1930 P. 33 (S.B.). On this section, *see also* 1937 Lah. 435; 41 C.W.N. 905.

SEC. 8 (AS AMENDED BY BURMA ADAPTATION OF LAWS ORDER, 1937): OBJECT AND SCOPE OF.—Sec. 8 is intended to point to the law by which any future issues of securities by the Government of India shall be governed. It is not retrospective and does not affect the exemption from liability to tax of a loan which was issued by the Government of India years ago having regard to the Government of Burma Act and cl. 10, Burma Adaptation of Laws Order. 1940 Rang.L.R. 435=1940 I.T.R. 264=1940 Rang. 123 (S.B.).

[1][Provided that no income-tax shall be payable under this section by the assessee in respect of any sum deducted from such interest by way of commission by a banker realizing such interest on behalf of the assessee] [2][or in respect of any interest payable on money borrowed for the purpose of investment in the securities by the assessee except interest chargeable under this Act which is payable without British India, not being interest on a loan issued for public subscription before the 1st day of April, 1938, unless in respect of interest which is so chargeable tax has been paid or deducted under section 18, or unless there is a person in British India who may be appointed an agent under section 43 in respect of such interest] :

Provided [3][further] that no income-tax shall be payable on the interest receivable on any security of the [4][Central Government] issued or declared to be income-tax free :

Provided further that the income-tax payable on the interest receivable on any security of a Provincial Government issued income-tax free shall be payable by the Provincial Government.

LEG. REF.

[1] Inserted by sec. 3 of Act XVIII of 1933.
[2] Added by sec. 9 of Act VII of 1939.
[3] Inserted by sec. 3 of Act XVIII of 1933.
[4] Substituted for the words "Government of India" by A.O., 1937.

SEC. 8, PROVISO (1) AND 2: SCOPE AND EFFECT OF.—Even if the assessees under protest accepted certain figures as interest on tax free securities, and inserted it in their return, they are free to challenge it in appeal. I.L.R. (1941) Kar. 191=193 I.C. 714 =1941 Sind 17. The mere fact that the accounts of a Life Assurance Company have to be kept under the provisions of the Life Assurance Companies Act and the rules made thereunder in a particular manner or that the income, profits and gains are to be calculated in the manner prescribed in r. 25. Income-tax Rules, does not affect the statutory exemption from income-tax on the interest of certain securities given by the proviso to sec. 8, Income-tax Act. However the income or actuarial surplus be called, however arbitrary be the manner of its calculation, it is an income on which the company is assessed; it is sufficiently real to them, and if the assessee company hold income-tax free securities, they are entitled to a real and not an illusory benefit from such holding, and they are entitled to ask that the whole of the interest of their tax free securities should be deducted from their total income before the tax is assessed, even if that total income be calculated according to statutory rules. I. L.R. (1941) Kar. 191=193 I.C. 714=1941 Sind 17. The assessee, a Provincial Co-operative Bank, Limited, registered under the Co-operative Societies Act, received in the year of account 1938-39, the sum of Rs. 69,975 as interest on tax-free securities. The assessee was entitled under the second proviso to sec. 8 of the Act to deduct this sum when calculating the amount of income for purposes of income-tax. The assessee, however, claimed a further reduction of Rs. 26,729 being the interest which was paid in the year of account on moneys borrowed for the purpose of buying tax-free securities. The assessee had invested money in debentures issued by the Madras Co-operative Central Land Mortgage Bank and these debentures were bought by the assessee in the open market. The assessee claimed exemption from tax in respect of the interest paid on these debentures, on the plea that the debentures represented loans to the Madras Co-operative Central Land Mortgage Bank and therefore represented transactions which were part of the ordinary business of the assessee. *Held*, (1) that the assessee was entitled to the benefit of the first proviso to sec. 8 in respect of interest received from securities which were not tax-free and to the benefit of the second proviso in respect of tax-free securities, but was not entitled to a double exemption in respect of the tax-free securities; the assessee therefore could not get exemption in respect of the amount of Rs. 26,729; (2) that the fact that the assessee went into the open market to purchase the securities (debentures of the Madras Co-operative Central Land Mortgage Bank) showed that the object was investment, and the interest paid on the debentures represented taxable income as interest on investments. (1942) I.T.R. 490=A.I.R. 1943 Mad. 152=(1943) 1 M.L.J. 46=I.L.R. (1943) Mad. 390=56 L.W. 221.

SECS. 8 AND 9.—By Act IV of 1913, for settling certain properties belonging to Sir Currimbhoy Ebrahim, Baronet, appellants were incorporated as trustees for executing the trusts. By sec. 6 the Corporation was to pay out of the income from the properties all rates and taxes and other outgoings. By sec. 7 the Corporation was required to form two funds, called the Sinking Fund, and the Repair Fund, and to carry annually thereto respectively, out of the income of properties, certain sums calculated on percentages of capital sums there specified. By sec. 8 the residue of the income was to be paid to the Baronet for the time being, if of full age, for his own absolute use and benefit. *Held*, that, so far as concerns the money which the appellants employ in maintaining the Sinking Fund and the Repair Fund and in defraying outgoings, they are not exempt from liability to pay tax. [(1921) 1 A.C. 65, Ref.] 61 I.A. 209=58 B. 317=1934 P.C. 116=66 M.L.J. 643 (P.C.).

Property.

9. (1) The tax shall be payable by an assessee [1][under the head "Income from Property"] in respect of the *bona fide* annual value of property consisting of any buildings or lands appurtenant thereto of which he is the owner, other than such portions of such property as he may occupy for the purposes of [2][any business, profession or vocation carried on by him the profits of which are assessable to tax,] subject to the following allowances, namely :—

LEG. REF.

[1] Substituted for "under the head" 'property' by sec. 10 of Act VII of 1939.

[2] Substituted for the words "his business", by Act VII of 1939.

SECS. 8 AND 10.—The objects of the Madras Provincial Co-operative Bank were (*i*) to collect funds for financing Co-operative Societies, (*ii*) * * * * (*iii*) to purchase and sell Government Promissory Notes, and (*iv*) to carry on general business in banking. Its income was derived, *inter alia*, from interest on investments in Government securities. It contended that the purchase and sale of Government Promissory Notes having been found by the Income-tax Authority to be a part of its business, the interest derived therefrom constituted "the profits of a Co-operative Society exempted from income-tax by the Notification" of the Government of India, dated the 25th August, 1925. *Held*, that the word "profits" as subject of taxation, was distinct from, and did not include, interest on Government securities and that such interest was not exempted from income-tax under the Notification. 1933 M. 489=37 L.W. 758=64 M.L.J. 640=56 M. 837 (S.B.).

SECS. 8 AND 12: INCOME OF AN IMPARTIBLE ESTATE—NATURE OF.—The income of an impartible estate is not income of the undivided family but is the income of the present holder notwithstanding that he has undivided sons. Unity of ownership, unaccompanied by joint possession on the part of the sons would not affect the character in which the income is received. Income is not jointly enjoyed by the party entitled to maintenance and the party chargeable. The respective chances of each son to succeed by survivorship does not make them all co-owners of the income with their father, or make the holder of the estate a manager on behalf of himself and them. 1941 P.C. 120=(1941) 2 M.L.J. 972 (P.C.)=I.L.R. (1942) Lah. 1=44 Bom.L.R. 196=1942 A.L.J. 159.

SEC. 9 (1).—Sec. 9 (1) which deals with assessment under the head "property" in respect of the *bona fide* annual value of buildings does not apply to property in a foreign country. 1933 M.W.N. 1362=65 M.L.J. 849 (F.B.). The scheme of the Income-tax is that the income from property which is made liable to tax is not the actual income but an artificial or statutory income as defined in sec. 9 and that is the *bona fide* annual value of the property. The fact that the owner of the property receives no income in fact or even that there is no possibility of his receiving an income is irrelevant. The test and only test is the *bona fide* annual value of the property. The liability arises from the fact that the assessee is the owner of the property;; the Act makes the annual rental value of the property, the income of the owner of that property and it is that income which has to be taxed under the Act. 48 Bom.L.R. 52. Where the whole of the income of an assessee the sole surviving coparcener of a Hindu joint family, is derived from immovable property, but the income is made subject to certain maintenance allowances in favour of widows in the family, such maintenance allowances are a charge on the property. Though these charges do not fall under sec. 9 of the Act and cannot be deducted under that section, yet, the real income of the assessee which is liable ta tax is the income subject to the deductions in respect of the charges. I.L.R. (1939) Bom. 445=41 Bom. L.R. 652=1939 Bom. 362. In order to come within the provision of sec. 9 (1), the person who owns the building need not also be the owner of land upon which it stands. An assessee who takes on long lease a parcel of land from Government and erects buildings thereon with their permission and is entitled under the terms of the said lease to remove the buildings within a stipulated period on the termination of the said lease is assessable in respect of the annual value of the buildings. 151 I.C. 879 (2)=1934 M. 670 (F.B.). Sec. 9 is inapplicable to a case where the assessees have only a limited interest of a lessee for 50 years. 34 C.W.N. 327=1930 C. 1 (F.B.). Before an assessee can be taxed as an "owner" under sec. 9 of the Act it must be decided that he is in fact the owner of the property in question. The mere existence of a dispute as to title, cannot of itself hold up an assessment and the Income-tax Officer has power to decide if the assessee is the owner of the property, without waiting for the determination of any pending suit. I. L.R. (1937) 2 Cal. 358=1937 Cal. 583. "Owner"—Two persons joining together and purchasing property and making profits—Liability to assessment as owners—Minority of one does not affect liability to tax. 39 Bom.L.R. 910=1938 Bom. 41=I.L.R. (1937) Bom. 830. Beaumont, C. J.—The language of sec. 9 (1) does seem to involve that the assessee must be the owner of the property from which the income is derived, but in order to bring the section into conformity with the general scheme of the Act, the words "of which he is the owner" have to be read as meaning "of which annual value" he is the owner. I.L.R. (1939) Bom. 284. But *see* (1941) 2 M.L.J. 972 (P.C.) *contra*. Rangnekar, J.—A departure from a strict grammatical construction of sec. 9 is not unjustified, because the whole object of the Act is to tax the income of the subject where it is found.

(*i*) where the property is in the occupation of the owner, or where it is let to a tenant and the owner has undertaken to bear the cost of repairs, a sum equal to one-sixth of such value ;

(*ii*) where the property is in the occupation of a tenant who has undertaken to bear the cost of repairs, the difference between such value and the rent paid by the tenant up to but not exceeding one-sixth of such value ;

(*iii*) the amount of any annual premium paid to insure the property against risk of damage or destruction ;

[3][(*iv*) where the property is subject to a mortgage or other capital charge, the amount of any interest on such mortgage or charge ; where the property is subject to an annual charge not being a capital charge, the amount of such charge ; where the property is subject to a ground rent, the amount of such ground rent ; and where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital :

LEG. REF.

[1] Substituted by Act VII of 1939.

If the income is found with a beneficiary, then the latter is primarily liable to be taxed; but if the income is formed with the trustee, then the trustee is the person who is liable. I.L.R. (1939) Bom. 284=41 Bom.L. R. 232=1939 Bom. 195. Where bungalows of assessee were kept ready for occupation they cannot escape assessment though in fact they were not lived in by him. 22 L.W. 822. Business premises, (as) shops, officers, godowns, etc., if "house property." *See* 11 L. B.R. 299=67 I.C. 781. Company acquiring lands and building and letting the same for rent—Income assessable under the category "property" and not "business." 113 I.C. 848=55 C. 1057. A loss incurred by a firm by standing surety for another firm is not loss incurred forming a deduction under the Act. 92 I.C. 249=1926 L. 168. When property vests in the Official Assignee under the Presidency Towns Insolvency Act, he becomes the owner of the property within the meaning of sec. 9 and becomes liable to assessment in respect of the income. 41 C. W.N. 683=I.L.R. (1937) 2 Cal. 192. *Wakf* property —*Mutawalli*—If owner— Liability to be taxed in respect of income of wakf property. *Held*, (1) that though the properties were validly given as *wakf*, they may not be held for charitable religious purposes, (2) that the *mutwallis* constituted an association of individuals within the meaning of sec. 3 of the Income-tax Act; (3) that they were not, however, "owners" of the properties within the meaning of sec. 9; (4) that they could not therefore be assessed as regards the income of the *wakf* properties under sec. 9; (5) that according to law the Income tax authorities were bound to assess, so far as the income of the *wakf* properties was concerned, directly the beneficiaries mentioned in the *wakf* deed. See I.L.R. (1939) Bom. 284=41 Bom.L.R. 232=1939 Bom. 195.

SEC. 9 (1) (*iv*).—The property belonging to an estate subject to the rule of primogeniture is still the property of the family and not the sole property of the manager for the time being for the purposes of super-tax. In computing income of the head of an impartible family governed by the law of primogeniture, the allowances paid to junior members thereof should be deducted. They cannot be deemed to be part of the income of the family. They are the separate property of the junior members on which they can be separately assessed. 14 L. 255=1933 L. 284. The words 'property of which he is the owner' in sec. 9 (1) are not to be read as meaning 'of which annual value he is the owner'. However difficult it may be in some cases to apply the phrase 'owner of property' to the facts of each case, it is not permissible to substitute a phrase of dubious and noticeably different meaning. Again the distinction between property owned by an individual Hindu and property owned by a Hindu undivided family must be made by applying the Hindu Law. It cannot be said that because the statute to be interpreted is an Income-tax Act broader or more general notions of ownership than the Hindu Law affords are to determine the matter. The Act is an Indian Act and the distinction takes its meaning from the Hindu Law. Property though impartible may be the ancestral property of a joint family, and in such cases the successor falls to be designated according to the ordinary rule of the Mitakshara. Though the co-ownership of the junior member may be 'in a sense' only, carrying no present right to joint possession, if the question be whether the Hindu undivided family or the present holder is owner of the estate the answer of the Hindu Law is that it is the joint family property. The present holder cannot therefore be charged in respect of it under sec. 9 of the Income-tax Act. 54 L.W. 635= 1941 P.C. 120=(1941) 2 M.L.J. 972 (P.C.). A Hindu undivided family is a single unit for the purpose of income-tax matters and sec. 9 (1) (*iv*) of the Income-tax Act can be applied only when the property, *i.e.*, the property which constituted the taxable property of the undivided Hindu family is subject to a mortgage. The word 'mortgage' in sec. 9 (1) (*iv*) must, when a Hindu undivided family is being assessed as such in respect of the income under sec. 9, be taken to refer only to a mortgage by the Hindu undivided family as such and cannot include a mortgage of the

Provided that no allowance shall be made in respect of any interest or annual charge payable without British India and chargeable under this Act, not being interest on a loan issued for public subscription before the 1st day of April, 1938, except interest or a charge on which tax has been paid or from which tax has been deducted under section 18 or in respect of which there is an agent for the payee in British India who may be assessed under section 43] ;

(*v*) any sums paid on account of land revenue in respect of the property ;

(*vi*) in respect of collection charges, a sum not exceeding the prescribed maximum ;

[1][(*vii*) in respect of vacancies, that part of [2][the annual value] which is proportional to the period during which the property is wholly unoccupied or, where the property is let out in parts, that portion of [2][the annual value] appropriate to any vacant part, which is proportional to the period during which such part is wholly unoccupied] ;

[3][* * * * *]

LEG. REF.

1 Substituted by sec. 10 of Act VII of 1939.

2 Substituted for "the net annual value, after deducting the foregoing allowances" by sec. 5 of Act XL of 1940.

3 Omitted by sec. 10 of Act VII of 1939.

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share of some individual member or members Interest in respect of a mortgage by some members of the undivided family cannot be deducted in computing the profits of the property. 63 C. 1157. The deposit with the creditors of title-deeds relating to property for the purpose of borrowing money for the purchase and extension of property does not constitute a charge on the property within the meaning of sec. 9 (1). Cl. (*iv*) of the Act. 1932 A. 451. *See also* 63 C. 1157.

The words "an annual charge not being a capital charge" in sec. 9 (1) (*iv*) is not intended to cover and does not cover municipal taxes which are made a charge on property and which the assessee has paid to the Bombay Municipality during the accounting period as property tax. Hence an assessee is not entitled to a deduction of the tax so paid by him to the municipality in respect of the property belonging to him. I.L.R. (1943) Bom. 628=45 Bom.L.R. 584=1943 I.T.R. 320=A.I.R. 1943 Bom. 311. Limited company owning house properties—Issue of debentures covered by trust deed—Properties of company conveyed and transferred in trust as security for benefit of debenture-holders — Company redeeming debentures and raising loan from bank on security of debentures—Interest in respect of debentures—If deductible under sec. 9 (1) (*iv*). 1944 I. T.R. 434=1945 Cal. 53=218 I.C. 457.

SEC. 9 (1) (*iv*) AND (*v*): APPLICABILITY.—Urban immovable property tax of the Bombay Presidency paid under the Bombay Finance Act, is neither an "annual charge" within the meaning of sec. 9 (1) (*iv*), nor "land revenue" within the meaning of sec. 9 (1) (*v*). It is in no way different, so far as the Income-tax Act is concerned, from taxes levied by a municipality, and an assessee is therefore not entitled to claim any deduction in respect of such tax under sec. 9 of the Act. 1943 I.T.R. 484=1943 M.W.N. 551=56 L.W. 526=A.I.R. 1944 Mad. 10=(1943) 2 M.L.J. 364=I.L.R. (1944) Mad. 399.

SEC. 9 (1) AND (2).—The amount of house-tax and water-tax imposed by the Municipal Board and paid by the owner as a lessor, should not be deducted from the gross amount payable as rent by the tenant of that property in determining the *bona fide* annual value of property under sec. 9 (1). Such amount should be deducted as an allowance from the *bona fide* annual value of the property determined under sec. 9 (1) read with sub-sec. (2) of the Act. I.L.R. (1944) All. 780=1945 A.L.J. 130=A.I.R. 1945 All. 147.

SEC. 9 (1) (*vii*).—*'Vacancy'* cannot mean or include occupation. Consequently where an impecunious tenant fails to pay the rent, the house cannot be treated as not having been let at all. Nor can unrealised or unrealisable rent be treated as rent which did not accrue. 32 P.L.R. 418=1931 L. 656. The provision in sec. 9 (1), para. (*vii*) is intended to apply primarily only to those cases in which the house in question is not in the occupation of the owner but is habitually let to tenants and the *vacancies* referred to are vacancies between the different tenancies. It may also be applied to cases where a house though not let is dismantled and shut up by the owner but it has no application to a house kept always furnished and ready for occupation by the owner but never in fact used by him at all. 1931 L. 656. *"Vacancy"* meaning of. *See* 40 M. 22=1936 M. 287=50 M.L.J. 63.

SUB-SEC. (2): "ANNUAL VALUE".—Annual value in sec. 9 (2) does not mean only annual money benefit derivable from property but the sum for which the property might reasonably be expected to let from year to year. In estimating the sum for which the property can reasonably be expected to let from year to year, the amount paid by the tenant on account of the Municipal house-tax should be included, that is, should be treated as part of the rent payable by the tenant to the landlord. 17 L. 494=1936 L. 762 (F.B.). But *see* 131 I.C. 193. The sum for which the property might reasonably be expected to let from year to year is a hypothetical sum into which rates as such do not enter at all and from which they are not to be deducted.

(2) For the purposes of this section, the expression "annual value" shall be deemed to mean the sum for which the property might reasonably be expected to let from year to year:

Provided that, where the property is in the occupation of the owner for the purposes of his own residence, such sum shall, for the purposes of this section, be deemed not to exceed ten per cent. of the total income of the owner.

[1][(3) Where property is owned by two or more persons and their respective shares are definite and ascertainable, such persons shall not in respect of such property be assessed as an association of persons, but the share of each such person in the income from the property as computed in accordance with this section shall be included in his total income.]

LEG. REF.

[1] Added by Act VII of 1939.

time might well lead to the inference that the notional rent included that amount of But if and so far as the actual bargain made by the parties is considered as evidence of the amount which a hypothetical tenant would give or the landlord reasonably expect to get is the figure which represents the *whole* of the consideration exacted by the landlord for the right to use and occupy the property—comprising not merely the rent paid by the tenant as such, but also the tax paid to the Corporation by the tenant. 36 C.W.N. 1144=1932 C. 886 (S.B.) (1930 L. 320, Diss.). The owner's share of Municipal tax payable under this Municipal Act, is not a tenant's tax. It is a liability of the owner and if under the agreement it is paid off by the tenant, it represents part of the consideration received by the landlord and has to be included in the computation of the annual value of the premises. 36 C.W.N. 1144=1932 C. 886 (S.B.). *See also* 1929 L. 503. The phrase "annual value" whether in Income-tax Acts or wherever else it appears with rating or taxation means the same thing, *i.e.*, "the sum at which the property may reasonably be expected to let from year to year". *Per* Addison, J.—What the landlord has been able to collect for past year is a fair measure of what the property may reasonably be expected to let from year to year. The question is one of fact. 131 I.C. 193 (2) (F.B.). *Per* Dalip Singh, J.—The sum for which the property might be expected to let from year to year is a notional amount and has nothing to do with the rent actually received. A good way of arriving at the notional sum would be the correct average of the rents paid for similar and similarly situated buildings in any given area. The sum for which the property might reasonably be expected to let from year to year does not mean the sum that the most grasping landlord can secure from the most necessitous tenant but is the sum which might reasonably be expected to be paid for that building from year to year regard being had to the rents paid for similar and similarly situated buildings in that locality. If circumstances make it impossible or inconvenient to apply this method, other factors may be taken into consideration. One consideration is the length of time for which the landlord had been able to shift the burden to the tenants of the taxation. A long the tax. *Held*, by the majority of the Full Bench (*Addison, J.*, dissenting) that the "annual value" of the property for purposes of sec. 9 of the Act does not include sums paid by tenants to the owner on account of Municipal house-tax. 131 I.C. 193=1931 L. 320. *Per* Tek Chand, J.—Tht question in such cases does not admit of a general answer. The provisions of the Municipal Act in force in a particular locality and the relevant notification under which the taxes are levied have an important bearing on the decision in question. 131 I.C. 193=1931 L. 320 (2) (F.B.). The income and profits from immovable property are to be ascertained by finding out the sum for which the property might reasonably be expected to let from year to year. Where the immovable property consists of a number of market-stalls, this is to be done by ascertaining the annual value of each of the stalls which in the aggregate make up the property to be assessed. In determining what that annual value is, the Income-tax Officer must have regard to the actual daily rent of each of the stalls. 9 R. 154=1931 R. 99 (S.B.). In computing the notional annual value of a house which is not in fact let, the *cost of collecting the rent* if the house was let cannot be deducted from that notional value; because even in the case of a house which is in fact let, the collecting charges may not be deducted unless they have actually been incurred and in that case the sum which may be deducted is limited to a sum "not exceeding the prescribed maximum". 10 P. 261=1931 P. 223. The house-tax is not a part of the rent of the annual income accruing from the house property to the landlord, but is a mere liability of the landlord incidental to his owing the property which he lets out to the tenants on rent. 30 P.L.R. 429=1929 L. 503; 140 I.C. 1=1932 C. 886 (S.B.); 131 I.C. 193=1931 L. 320 (2) (F.B.). Urban immovable property tax under Bombay Finance Act, if tax on income. 42 Bom.L.R. 10 (F.B.). *See also* 1926 M. 368=50 M.L.J. 176 (F.B.). (Professional tax not to be deducted from taxable income).

SEC. 9 (2), PROVISO: "RESIDENCE"—BUILDING OWNED BY COMPANY AND PARTLY USED FOR OFFICERS AND PARTLY LET OUT TO MEMBERS.—The word "residence" in sec. 9 (2), proviso bears the ordinary meaning, *i.e.*, the place where a human being eats, drinks and sleeps or where his family and servants eat, drink or sleep, or where there is some

10. (1) The tax shall be payable by an assessee under the head [5]["Profits and gains of business, profession or vocation"] in respect of the profit or gains of any [6][business, profession or vocation] carried on by him

Buisness.

LEG. REF.

[2] Substituted for "Business" by sec. 11 of Act VII of 1939.

[3] Substituted for "business" by Act VII of 1939.

permanence or continuance of such eating, drinking and sleeping. It does not bear the extended meaning, which it bears in the case of a company, namely, the place where the company keeps house and does business. There is no justification for applying the word to a fictional person, such as that f a limited liability company. Consequently, a building owned by a Stock Exchange Association, which is partly occupied by its offices, and partly let out to its members for their business, but not used by them for their residence, does not constitute "residence" under the proviso to sec. 9 (2). 39 C.W.N. 327=62 C. 547. Though the shares of co-heirs under Mahomedan Law are, ordinarily, definite and ascertainable, so long as the dispute between the heirs *inter se* (whether daughters were excluded by custom) continues, it is impossible to hold that the share of one heir was definite and ascertainable to attract the provisions of sec. 9 (3). (1944) I.T.R. 302.

SECS. 9 AND 6.—Royalties cannot be regarded as "profits or gains" of a business. The sources of the royalties may properly be deemed to be the lessees' covenants to pay them and hence royalties fall under "other sources". 22 Pat. 713=70 I.A. 180 =1943 A.L.J. 493=48 C.W.N. 59=A.I.R. 1943 P.C. 153=(1943) 2 M.L.J. 410 (P.C.).

SECS. 9 AND 10.—Assessment of income from foreign property taken over by an assessee in the course of money-lending business should be made under sec. 9 and not under sec. 10. 58 L.W. 139=1945 M.W.N. 209 (1)=1945 I T.R. 183=A.I.R. 1945 Mad. 186=(1945) 1 M.L.J. 258. Income derived from the ownership of buildings is chargeable to tax under sec. 9 irrespective of whether an individual or a company is the owner and also irrespective of whether one of the company's objects, or its sole object, is to acquire and let out buildings at rents. Ownership itself is the criterion of assessment under that section. The assessees were a limited company, one of its objects being to acquire land by purchase, lease or otherwise and to build houses thereon and let them out. By a deed of lease the lessors let to the assessees a vacant piece of land for a term of 40 years. The assessees were entitled to erect buildings thereon and let them out for rent. After the expiry of 40 years the lessors were entitled to take possession of the entire land together with all the buildings, and the assessees had no right, title or interest thereto. The assessees were to pay a proportionate part of the municipal tax in respect of the land and the entire municipal tax upon the buildings to be erected. In the case of acquisition of the land by the Government the lessors should have the entire compensation in respect of the land, but in respect of the buildings on the land, that was to be divided between the lessors and the assessees. *Held*, that the assessees were the owners of the houses during the currency of the lease and that the rents derived by them from the houses were assessable under sec. 9 and not under sec. 10. 50 C.W.N. 598.

PRACTICE AND PROCEDURE.—In estimating or arriving at a decision as to the *annual value of a building*, the Income-tax Officer is entitled to take into account the actual sum expended in the erection of the building. The *finding of the Income-tax Officer is one of fact* with which the High Court cannot interfere. 146 I.C. 550 (1)=1933 L. 829. No mandamus to be issued when the amount involved is very small. 146 I.C. 551=1933 L. 822.

SECS. 9 AND 12.—Where the assessee having taken land on a long lease under which the land together with the buildings thereon will revert to the possession of the lessor on the expiry of the lease, has erected thereon masonry buildings and has received rents from lessees of the buildings, whether the tax payable by the assessee in respect of the rents is to be determined in accordance with sec. 9 or with sec. 12. 144 I.C. 344=37 C.W.N. 881=1933 P.C. 180=65 M.L.J. 247 =55 A. 452=60 I.A. 307 (P.C.) (*Cf.*) 50 C.W.N. 598. *See also* 1934 M. 670 (F.B.).

SECS. 9 (1) AND 14.—Property of which he is the owner in sec. 9 (1)—Meaning of—Income of impartible estate held by member of joint Hindu family—How chargeable. I.L.R. (1941) Kar. (P.C.) 155=1941 P.C. 120 =1942 M.W.N. 4=74 C.L.J. 508=44 Bom. L.R. 196=(1941) 2 M.L.J. 972 (P.C.) cited under sec. 9 *supra*.

SEC. 10: BUSINESS—MEANING.—*See* 41 C.W.N. 46=I.L.R. (1937) 2 Cal. 36. Carrying on business can exist only when there is a succession of acts and the performance of a single act apart from special circumstances is not enough even though it may result in gains or profits. 57 B. 651=35 Bom.L.R. 914=1933 B. 422. *See also* 1935 L. 53. Sec. 10 of the Act deals only with businesses which are being carried on and not businesses which have ceased to be carried on. A company can carry on several distinct and separate businesses and it must always be a question of fact whether those businesses are separate or so interlocked with the main chief business of the company as to be really one business. If separate businesses are carried on during the year of account, the profits and gains of each of them separately will have to be arrived at under sec. 10 (1) and

(2) of the Act after making the allowances given in sub-sec. (2); and the loss, if any, in any one or more of the businesses would under sec. 24 of the Act, be set-off against the profits and gains of the more successful businesses arrived at in the same way and the aggregate income computed. But an assessee company cannot adopt this course when the businesses in which the losses are incurred have ceased to be carried on in the year of account. 1935 M. 330=68 M.L.J. 379=58 M. 433 (F.B.). The members of the Karachi Chamber of Commerce provide for themselves certain facilities in trade, such as a measurer of merchandise, and pay for these facilities. They combine as a Chamber and provide these facilities for themselves as members of that Chamber and they pay more than is actually necessary for the provision of these services. *Held,* the measurement fees and charges realized by the Karachi Chamber of Commerce from its members are not taxable income. They are not profits of trade within the meaning of sec. 2 (4) and sec. 10 of the Act, but are savings. The fact that the office of public measurer serves not only members of the Chamber but members of the public as well or that the members are incorporated as a Chamber under the Companies Act, does not destroy the mutual basis of the members dealing with the Chamber. 1939 I.T.R. 575=1939 Sind 308. Association of merchants formed for protecting and promoting interests of members trading in grains and seeds—Opening of Produce Exchange Department and clearing house—Charging of fees from members —Income from sale of samplse received for qualitative analysis and penalties levied for trading in breach of rules not taxable as profits and gains of business. 1939 I.T.R. 594.

"INCOME" AND "PROFITS"—DISTINCTION. —52 M. 640=1929 M. 387=56 M.L.J. 481 (F.B.). Term "profits" implies a comparison between the state of a business at two specific dates usually separated by an interval of a year, and if the company is to be regarded as dealing in house property by letting out for premium and rent in the course of and for purpose of its business, the money value of the extent to which at the end of the year it betters its position by such means will be assessable as profit. If its position is bettered by other means from causes not directly connected with the business of the company, the enhanced value though realised is not part of the profits of the business. Everything depends on what the business is. 34 C.W.N. 327=1930 C. 1 (F.B.). Debt discharged by consideration other than cash. True value of consideration must be looked to. 9 P. 240=1930 P. 81 (S. B.). Sec. 10 deals solely with the profits or gains of any business carried on by the assessee. It does not refer to profits or gains generally from whatsoever source derived. 26 N.L.R. 75=1930 N. 183. Sums received by a firm, in the nature of a *solatium,* for the compulsory cessation of certain agency contracts, are not "income, profits or gains" arising from business *carried on* by them and they are consequently not liable to be assessed to income-tax. 59 I.A. 206=59 C. 1343=1932 P.C. 138=63 M.L.J. 124 (P.C.). *See also* 1941 I.T.R. 642 (business "profits or income", what are). *Per* Kania and Chagla, JJ. (Stone, C.J., (dissenting).—Income or receipts from a business or profession which has been discontinued must be held to be income liable to tax under the Income-Act. The only reservation is that the gross outstanding fees are not chargeable, they being subject to the deductions permitted under sec. 10 of the Act when the method of accounting regularly employed by the assessee is the cash receipts basis. *Per* Kania, J.—The question whether a particular amount is income or not has nothing to do with the time of its receipt. *Per* Stone, C.J.—For a receipt to be assessable to tax under sec. 10, it must be a receipt in respect of an existing business, profession or vocation capable of being processed to profits or gains by the method of computation laid down by sec. 10. 47 Bom.L.R. 742=1945 442 (F.B.). Where there is no Hindu joint family but still on account of the minority of sharers, the sharers have all to be looked after by a common guardian and the business is carried on with the properties of the tenants-in-common put together with the advantages of such condition, the Crown can assess the person carrying on the business under sec. 10 (1). 55 M. 891=1932 M. 378=62 M.L.J. 600 (F. B.). In order that a *payment in kind* may be taxable income, it is essential that what is received in kind should be the equivalent of cash or should be money's worth. 60 I.A. 146=12 P. 318=64 M.L.J. 612 (P.C.). Assessee having more than one business can set off expenses incurred in re-starting business which has to be stopped on account of cyclone as against profits and gains in other business. 1935 M.W.N. 1208=69 M.L.J. 876 (F.B.). The assessee, his father and brother were members of a joint Hindu family carrying on a money-lending business in Malaya. At a partition effected in 1925, the money-lending business fell to the share of the father and thereafter the assessees and his brother started separate money-lending businesses of their own in Burma. In 1939, the father retired from business, and gave his money-lending business in Malaya to the assessee and his brother in equal shares, and also gave each of them a rubber plantation and a cocoanut plantation in Malaya which he had owned in Malaya. The assessee entered in the books of account of his money-lending business, the value of the rubber and cocoanut plantations which he got from his father, and they were treated as part of the capital of the money-lending business; the expenses of running the estates were debited in the accounts of the money-lending business and the profits from the estates were entered as profits of the money-lending business. The assessee sold a portion of the rubber estate in the year of account and entered in the accounts of the business the sale

proceeds, which showed a profit. The Income tax Department sought to tax this profit. *Held,* that the plantation formed part of the assessee's capital of his money-lending business, and the profit made on the sale of a part of the rubber plantation was included in the profits of the business and therefore the profit arising from that sale was liable to income-tax. 1946 I.T.R. 61 =59 L.W. 82=(1946) 1 M.L.J. 96. Where a partition award directs the divided members of a Hindu family to pay certain amounts to their mother and step-mother as maintenance and makes the amounts a charge on the properties allotted to them, it cannot be held that the ladies receiving the allowances receive them as members of a joint Hindu family falling under sec. 14, Income-tax Act; in computing the assessable income, therefore, the amounts of the allowances paid should be deducted. 1946 I.T.R. 66. A debtor who gives his creditor a promissory note for the sum he owes can in no sense be said to pay his creditor. He merely gives him a document or voucher possessing certain legal attributes. The assessee does not receive payment of any taxable income from his debtor. 60 I.A. 146=12 P. 318=64 M. L.J. 612 (P.C.).

APPROPRIATION OF PAYMENT TO INTEREST—OPTION OF TAX-PAYER.—An assessee took over from the debtor in satisfaction of a loan six items of property. Assuming that these six items might be treated as money's worth, it was contended that the sum which far exceeded the total amount of interest due on the loan must be treated as applicable in the first place to the discharge of the debtor's liability for interest. *Held,* that the basis of the presumption, namely, that it is to the creditor's advantage to attribute payments to interest in the first place, leaving the interest bearing capital outstanding, was gone. Moreover, if the question were one between the debtor and the creditor (*i.e.,* assessee), the assessee might at the last moment appropriate the above mentioned amount to capital account, for in a question of the revenue the tax payer is entitled to appropriate payments as between capital and interest in the manner least disadvantageous to himself. 60 I.A. 146=12 P. 318=64 M.L.J. 612 (P. C.).

FOREIGN REMITTANCE—CAPITAL OR PROFITS.—There is no *praesumptio juris* that a sum received from a foreign partnership is remitted out of the profits of that business. 11 R. 397=1933 R. 217.

PAYMENT OF ARREARS OF ROYALTY.—Where an assessee agreed to take a colliery business on the representation that it was free from encumbrances which had accrued due prior to his getting possession. *Held,* that he could not deduct the amount so paid from his income. 60 I.A. 146=12 P. 318=64 M.L.J. 612 (P.C.).

LOSS OF CAPITAL.—The assessee who was carrying on business in piecegoods accepted deposits from various people for the purpose of that business and paid interest on those deposits which were used in his piecegoods business. He had, however, no money-lending business. A sum lost in a dacoity in his premises was sought to be deducted. *Held,* that the amount was neither the stock-in-trade nor expenditure necessary for the carrying on of the 'business', but was clearly a loss of capital and was not deductible. 16 Lah. 494=1935 L. 53. As to what is capital expenditure, *see* 62 C. 87=39 C.W.N. 70.

ISOLATED SPECULATIVE VENTURE—PROFITS FROM.—Assessee who was a landowner and money-lender purchased in Court auction the right- title and interest of a certain person in some legacies which were the subject of litigation and, after several years, he was able to realise a sum in respect of the legacies, far in excess of the purchase-money paid by him. The excess receipt was sought to be assessed to income-tax. *Held,* that the transaction could not be described as an adventure or concern in the nature of trade, but was an isolated transaction, and was not assessable. 68 M.L.J. 222=58 M. 363=1935 M. 387 (F.B.).

BAD DEBT AND TIME-BARRED DEBTS.—The presumption that a debt barred by time is *prima facie* bad is rebuttable by evidence according to the circumstances of the case. A debt becomes actually bad when it becomes irrecoverable and not when it is merely time-barred . It may become bad even before it is time-barred, when it becomes quite irrecoverable by the circumstances of the debtor. (1932 P.C. 178, Ref.) 13 P. 101=1934 P. 46. *See also* 1939 I.T.R. 149; 1938 Pat. 577; 1938 Cal. 636.

WHAT ARE PROPER DEDUCTIONS.—Money embezzled by the clerk of the assessee is a deduction in computing the income or profits of the business; so also the boarding expenses of servants and their transit charges. 4 P. 385=1925 P. 408. *Cf.* 59 M.L.J. 403. A loss, whether by embezzlement or by theft is not one of the allowances which is allowable to the assessee under sec. 10. 17 Pat. 102=19 Pat.L.T. 176=1938 Pat. 159. An assessee is entitled to deduct the freight charges, etc., from the market value at the ports, provided the charges are shown in the accounts as having been incurred. The deductions can be allowed in the following year if the charges are then shown. 1931 L. 759. Firm carrying on business in partnership with other firms—Losses if a deduction—Expenses on accountants and lawyeds can be deducted. 47 Mad. 653=45 M.L.J. 711= 1924 M. 205. The Burma Railways Co., are the owners for the Railway system and all its premises for the purpose of sec. 9 (2) of the Income-tax Act (VII of 1918), but they are owners not by reason of their being partners with the Secretary of State for India. 64 I.C. 801=11 L.B.R. 33. *See also* (1943) I. Tax. Rep. 578. Body of trustees carrying on business—Liability to income-tax. 1930 L. 929. It would be still more difficult to hold that the profits or gains include profits or gains of a member of the firm which carried on the business. 26 N.L.R. 75=1930 N. 183.

The amount of interest due on a mortgage debt but not actually paid is an allowable item of expenditure under head "house property income" under the section. 54 C. 630 =31 C.W.N. 557=1927 C. 553. The mere fact that the debtor of an assessee has made an entry in his books showing a credit to the assessee for the amount of interest due in the accounting period does not necessarily mean that the amount had been received or realised by the assessee and does not justify income-tax assessment. A presumption by itself does not justify assessment. 15 L. 486 =1934 L. 408. But *see* 13 R. 243=1935 R. 171 (S.B.). Where the debtor executed a fresh promissory note for interest due on a prior debt and both in the interest account of the creditor and in the account which they kept, the interest in question was shown as having been received by the assessees during the year of account, and it was so stated in the profit and loss account of the firm. *Held*, that in effect the assessees were investing the old interest as capital in the new loan. Hence such amount was interest upon loans that had accrued to the assessees in the accounting year, and as such was assessable to income-tax for the year. 13 R. 243=1935 R. 171 (S.B.). But *see also* 15 L. 486=1934 L. 408. Banking business at places within British India and at places outside British India—Money borrowed at head office—Part of the borrowing remitted to a place outside British India and used as capital there—Interest paid not allowable as a deduction, 27 L.W. 432=54 M.L.J. 436 (F. B.). *See also* 1932 M. 573=63 M.L.J. 227 (F.B.). Capital borrowed in British India for foreign business—Interest paid in British India towards same—When can be deducted. 1930 L. 92. Where a company acquires lands and buildings and lets the same for rent the income arising therefrom is assessable under the category of 'profits" and not "Business". 32 C.W.N. 413. Loss on "Thavanai" system—Interest on—Deductibility. 115 I C. 485=1929 M. 34=55 M.L.J. 850. *See also* 56 Bom. 92=1932 B. 94=33 Bom.L.R. 1587. Borrowed capital used for a separate branch of the business—Failure of this branch of the business and loss of amount—Assessment for the year following the year of loss—Interest paid on borrowed capital during the year of assessment, deduction of. *See* 55 M.L.J. 600=52 M. 296 (F. B.). Assessee financing an appeal—Additional sum received by him on appeal being successful—Liability to assessment. 1935 A.L. J. 405=1935 A. 495=57 All. 740. Assessee paying part of profits to third party under agretment—Right to deduct out of taxable income. 37 Bom.L.R. 126=1935 B. 197. *See also* 148 I.C. 681=1934 R. 172. Advance of loan to enable borrower to sell property—Agreement to pay portion of consideration—Effect—Such portion not assessable. *See* 11 R. 454=1934 R. 4. Business profits—Company managing railway on behalf of Secretary of State—Computation of profits—Deduction of guaranteed interest—Interest on borrowed capital. 49 C. 815=27 C.W.N. 34. Where a partner as partner lends money beyond the initial capital to the partnership at an agreed rate of interest and the money is used for capital expenditure, the interest paid by the partnership to him in the "previous year" should be deducted in computing the profits or gains of the partnership within the meaning of sec. 10 (2) (*iii*). *See also* 8 R. 277; 12 L. 88=1930 L. 738 (2). Losses suffered by an assessee as a member of a company or firm are to be taken into account in fixing the amount of his taxable income. 1924 N. 153. Under Act VII of 1918, share of a partner's loss in an unregistered firm of which he is a partner can be deducted from his other income for purposes of income-tax. 80 I.C. 362. Business profits—Assessment based on income of the previous year—Deduction for obsolete machinery. 48 B. 389=26 Bom.L.R. 312. Deduction for depreciation—Rice-mill factory lease of—Owner to bear loss due to wear and tear—Deduction if allowable. *See* 50 M. 529=51 M.L.J. 360=I.L.R. 1940 M. 178. *See also* 1940 Mad. 366= (1940) 1 M.L.J. 319=(F.B.); I.L.R. (1938) Bom. 374=40 Bom.L.R. 343=1938 Bom. 241 (S.B.); I.L.R. (1937) Bom. 821=39 Bom.L. R. 903=1937 Bom. 493. The machinery, plant and buildings on which an allowance for depreciation is claimed should be used in the business of the Company. Where the machinery, etc., were used by the constitutent firms and they had obtained allowances in respect of depreciation, *held*, that the main company was not entitled to claim a deduction once again. 32 P.L.R. 335=1931 L 376. As to deductions on account of depreciation of machinery, *see also* 56 B. 129=34 Bom.L. R. 104=1932 B. 216. The expression "used for the purposes of the business" in sec. 10 (2) (*iv*) means used for such purposes during the accounting year and consequently the allowance for depreciation under sec. 10 (2) (*vii*) is inadmissible in respect of buildings machinery, plant, etc., remaining idle and not actually used by the assessee in his business during the account year. Likewise the obsolescence allowance under sec. 10 (2) (*vii*) can be claimed only in respect of machinery or plant actually discarded in the accounting year. 3 I.T.C. 73. Profits—Computation of—Depreciation in the value of securities held by a bank. 46 B. 567=24 Bom.L.R. 118. Minimum royalty of a mining lease is rent and is exempted even if paid in arrears. 9 P. 240=1930 P. 81 (S B). As to payment of royalty, *see* 138 I.C. 273=1932 M. 437=63 M.L.J. 11 (S.B.); 133 I.C. 38=10 P. 275= 1931 P. 264. *See also* 160 I.C. 611=1936 P. 267. Tax on companies levied under sec. 92 of the Madras District Municipalities Act (V of 1920), can be deducted as a business allowance under sec. 10, sub-sec. (2), Cl. (9) of the Indian Income-tax Act in calculating the profits of a company. 81 I.C. 454=47 M. 667= 47 M.L.J. 160. *See also* 50 C.W.N. 240= (1946) 1 M.L.J. 70 P.C. Business resulting in loss—Depreciation can be added on to loss sustained. 26 N.L.R. 75=122 I.C. 689=1930 N. 183. "Obsolete allowance"—Circumstances justifying grant—Machine discarded

and sold as out of repair—Claim for allowance. 26 A.L.J. 1319=114 I.C. 897=1929 A. 70. Machinery sold as obsolete—Loss sustained by sale—Deduction from annual profits—Assessee's right to. 1924 M. 455=79 I. C. 603=46 M.L.J. 42. Where a company is purchased as a going concern by another firm, the latter company is entitled to the deduction of depreciation allowance in respect of machinery, buildings, etc., to which the former was entitled to claim under sec. 10 (2) (vi) of the Indian Income-tax Act, such claim not being personal to the old company. 1929 Mad. 453=56 M.L.J. 451 (F.B.) and the calculation of depreciation allowance must be made on the original cost of the machinery, etc., and not on the value at which the succeeding company purchased. 1929 M. 453= 56 M.L.J. 451 (F.B). *See also* 56 B. 129= 34 Bom.L.R. 101=1932 B. 216. Depreciation on buildings and machinery can be set-off against gains and profits accrued to the owner of those buildings and machinery from any sources such as rental from house property during the year in question. 11 Lah. 38= 116 I.C. 547=1929 L. 556; 53 M. 702=58 M.L.J. 46 (F.B.). The word "obsolete" in sec. 10 (2) must be taken to include cases of unfitness from whatever cause. The question whether the total destruction of machinery which renders it unfit for the purpose it was originally intended for, entitles the owner to claim deduction from inoome-tax is a question on which a reference can be made under sec. 66. 20 L.W. 859=1925 M. 157=87 I.C. 478. The question whether a particular machinery has become obsolete is one of fact. 35 C.W.N. 314 (13 I.C. 205, Rel. on). Where the business of an oil mill was closed down the machinery being old and worn out and not workable at a profit in the face of competition, the assessee could not claim obsolescence allowance as provided in sec. 10 (2). 35 C.W.N. 314 (50 M.L.J. 157, Ref. to.)

BUSINESS PROFITS—DEDUCTION —INTEREST TAKEN BY PARTNERS.—*See* 46 A. 1=21 A.L.J. 703. The question whether there has been an advance of capital by particular partners, or *bona fide* borrowing of money by the firm in which the lender happens to be a partner must be treated as one of fact in each case. 46 All. 1=21 A.L.J. 703; 1933 Sind 192. There is nothing in law to prevent a partnership starting business without capital, and there is nothing to prevent a partner or partners in such a case lending to the partnership money which would bear interest deductable under sec. 10 (2) (*iii*) of the Income-tax Act. Where the instrument of partnership contains a provision to the effect that the net profits of the business after deducting all working expenses and interest paid or payable on capital whether belonging to the partners or depositors or others from whom moneys mgiht have been borrowed shall be divided between the two partners in certain proportion, and it is found that the partners have advanced amounts to the firm by way of loans, the amounts paid as interest to the partners cannot be treated as profits of the firm and liable to assessment, but must be allowed as deductions under sec. 10 (2) (*iii*) of the Act. The fact that there is no instrument to evidence the loans, on which a suit might be based, is immaterial, as it is not necessary that there should be an instrument to evidence a loan. 1939 I.T.R. 662. The Act exempts from the assessment the allowance made to the assessee under sec. 9 (2) on account of the annual value of business premises owned and occupied by him. 43 A. 139 =58 I.C. 836 (F.B.). In computing the income of an assessee, a sum representing a deduction at the rate of two pies in the rupee from the wages paid to the assessee's employees as "charitable levies," must be treated as income liable to assessment when the wages are enered in the accounts in round rupees, that is to say the wages are shown as expenditure whereas something less than the wages are actually paid. I.L.R. (1943) Nag. 650=1943 N.L.J. 458=1943 Nag. 317.

Profits—Computation of coal mining company supplying coal to allied company at special lower rate—Contract evidenced by letter —It to be disregarded—Coal supplied by allied company to Railway—Price received by latter—It to be taken as real price—Carriage expenses—Deduction. 1943 I. T. Rep. 299.

WHAT ARE NOT PROPER DEDUCTIONS.—Remittances from abroad to a firm are presumed to be profits, rather than capital until the contrary is shown by assessee. 49 M. 465 =24 L.W. 343=1926 M. 767=51 M.L.J. 138. Loss incurred by the assessee due to theft by persons unconnected with his business cannot be said to be incidental to the business of a money-lender. It cannot, therefore, be deducted in computing his taxable profits; cases of embezzlement by employees stand on a different footing. 53 Mad. 904=1930 M. 808=59 M.L.J. 403 (F.B.). Compensation received by a company as agent of a business concern for determination of the agency, is a receipt arising from business and consequently if income it would be taxable under sec. 10 as being an income from business or at least under sec. 12 as being income from other sources. The circumstances that it is casual or non-recurring does not exempt it from taxation under sec. 4 (3) (*vii*). 58 C. 1153=35 C.W.N. 361 =1931 C. 676. Assessee claiming deduction of amounts paid as *road cess* in computing profits of colliery assessable to a tax—*Cess "a local rate"*. 89 I.C. 789=29 C.W.N. 923; 4 Pat. 752=91 I C. 476=1926 P. 109. Purchasing of property—Expenditure incurred for taking delivery—If deductible. 9 P. 48=1929 Pat. 476. Mortgagee purchasing mortgaged property in execution of his decree—Another person claiming share therein —Mortgagee depositing security to safeguard the interest of such person—Amount so deposited—Deduction of in computation. 1929 P. 476=9 P. 48. Assignment of mortgage decree in favour of assessee—Assessee in part consideration gaving zarpeshi thika lease to assignor for limited period—Interest in respect of zarpeshgi lease not deductible. 1938 Pat. 567. Purchase of decree— Execution of handnote for part of price—

Zarpeshgi lease for term for balance—Arrangement to wipe off principal and interest within term—Interest on decree—It can be set-off against interest on zarpeshgi amount in shape of rents and profits. 1939 I.T.R. 260. Where a property is purchased by an assessee in execution of a mortgage decree against his debtor, the amount of which the assessee bids at the execution sale must ordinarily be taken to be its market value. It is, however, open to the Income-tax Department, if there is anything before it, to hold that the property was worth either more or less than the price which the assessee bids for it. But in order to hold that the property is worth more than the price fetched at the public sale, the department must have in its possession some tangible evidence. 1942 Pat. 65=1941 I.T.R. 474. Assessee carrying on money lending business and owning immovable property—Advance of money on mortgage of property—Property subsequently purchased by assessee—Assessee selling off property for lesser amount and showing it for first time in subsequent year's account as item of money-lending business—No right to claim a credit for loss. The Income-tax Officer was justified in inferring that the assessee had purchased outright and that having treated it as his own property along with his other immovable property, it was not open to him to treat the purchase as a part of his money-lending business transaction and claim credit for the loss he sustained by the resale of the property many years after its purchase. 183 I.C. 823=1939 Sind 61. *See also* 1942 Pat. 65. Proceeds of sale of assets—Liability to assessment—Capital receipts—Assessee selling mining rights acquired by him—Proceeds of such sale—If chargeable to tax—Assessee's right to deduct cost of acquisition. *See* 223 I.C. 164=1946 P.C. 25 (P.C.). Where remittances have been made by an assessee from a foreign state (Penang) into British India out of profits available for remittance, and such remittances are not in anticipation of profits having been actually earned more than sufficient to cover the remittances, the incurring of losses by the assessee in his foreign business subsequently in the same accounting period cannot change the character of the remittances so as to exclude them from assessment as profits, though such losses were sufficient to wipe out these profits. 1941 I.T.R. 663=54 L.W. 707 =1941 Madfl 928=(1941) 2 M.L.J. 890 (F. B.). In the case of income derived from a *royalty of collieries, local rates and cesses* paid under the Jharia Water Supply Act, or Mining Settlement Act, do not form permissible deductions as they are in no sense expenses incurred for the making of the income. 4 P. 752; 3 P. 295=83 I.C. 920. As to payment of *royalty, see* 1932 M. 437=63 M.L. J. 11 (S.B.). *Royalties* for preparing bricks are assessable to income-tax. 10 P. 275= 1931 P. 264; 130 I.C. 43=1931 P. 15. Deduction on account of payment of road cess. *See* 53 C. 76=1926 C. 396. Business profits —*Profits through brokerage* and profits arising from *wagering contracts* entered into in the course of business are liable to income-tax. 23 A.L.J. 65=47 A. 368; 1925 A. 469. Payments to be made in certain proportion out of the profits on the capital advanced for the purpose of the business cannot be treated as expenditure incurred solely for the purpose of earning such profits or gains within the meaning of cl. (*ix*) of sub-sec. (2) of sec. 10. 49 B. 362=27 Bom.L.R. 219. The *annuity paid by the assessee as maintenance allowance* to his step-mother in pursuance of a consent decree is not deductible in computing the tax payable by him. 57 C. 918=1930 C. 641. *See also* 143 I.C. 145 =1933 P.C. 145; 60 Cal. 1029=65 M.L.J. 285 (P.C). Question whether expenditure incurred in renewing parts of motor-car is capital expenditure is one of evidence—But deduction for loss caused by total damage to car owned by a motor-car company is a question of importance—Reference to High Court. 85 I.C. 478=1925 M. 157. The *commission paid by a company to underwriters* for raising fresh capital is not an expenditure solely incurred with the object of earning profits for the company's business and therefore is not within the scope of sec. 9 (2) (*x*) [now sec. 10 (2) (*ix*) of the Income-tax Act]. 45 B. 1306=23 Bom.L.R. 576. When a question arises whether certain payments made by a company to its directors by way of remuneration for their services, as provided in the Articles of Association, are expenditure incurred solely for the purpose of earning profits or gains, the fact that those sums are such expenditure, and the fact that the sums allotted have been paid and passed by the auditors are also not conclusive. The Income-tax authorities are entitled to look at the resolution, the accounts and the Articles of Association, but are not bound by them. They can go behind the accounts and ascertain for themselves whether or not the payments made were reasonable sums by way of remuneration and then can consider what payments are made for similar services in similar businesses and allow deductions which they consider proper and reasonable. 40 C.W.N. 833. As the profits accrue to the assessee at the date when the sale to him becomes absolute, the expenses incurred by the assessee subsequent to that date for taking delivery of possession and effecting mutations must be entirely ignored. 9 Pat. 48; 10 Pat.L.T. 729=1929 P. 476 (F.B.). An assessee is not entitled to deduct an expenditure (adat, interest, etc.) not actually incurred by him before the close of the account year and a deduction can be claimed only if the expenditure is actually incurred or the liability incurred is satisfied before the close of the year. 1929 N. 243. Firm dissolved—Assets and liabilities divided up between assessee and other partner—Assessee carrying on buiness himself—Certain debts falling to assessee's share of assets—Assessee accepting smaller sums and writing off balance as irrecoverable—Losses, not allowable against

(2) Such profits or gains shall be computed after making the following allowances, namely :—

(*i*) any rent paid for the premises in which such [1][business, profession or vocation] is carried on, provided that when any substantial part of the premises is used as a dwelling-house by the assessee, the allowance under this clause shall be such sum as the Income-tax Officer may determine having regard to the [2][proportional annual value of the part] so used :

(*ii*) in respect of repairs where the assessee is the tenant only of the premises, and has undertaken to bear the cost of such repairs, the amount paid on account thereof, provided that, if any substantial part of the premises is used by the assessee as a dewelling house, a proportional part only of such amount shall be allowed ;

LEG. REF.

[1] Substituted for the word "business" by sec. 11 of Act VII of 1939.

[2] Subs ituted for "proportional part", by Act VII of 1939.

[3] The words "where the payment of interest thereon is not in any way dependent on the earning of profits" omitted by Act VII of 1939.

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income, profits and gains of new firm. 1941 Cal. 142=1940 I.T.R. 408.

PROFITS EARNED ABROAD.—The section contains no hint that part of the profits will be exempted, although they arise or are received in British India, because they have been "earned" elsewhere. 59 C. 1226=36 C.W.N. 563=1932 C. 626.

PAYMENT IN KIND—WHETHER TAXABLE.—In order that a payment in kind may be taxable income, it is essential that what is received in kind, should be the equivalent of cash or should be money's worth. 60 I.A. 146=12 P. 318=64 M.L.J. 612 (P.C.).

PAYMENT OF ARREARS OF ROYALTY.—Where an assessee agreed to take a colliery business on the representation that it was free from encumbrances which had accrued due prior to his getting possession, *held*, that he could not deduct the amount so paid from his income. 60 I.A. 146=12 P. 318=64 M.L.J. 612 (P.C.).

CAPITAL AND REVENUE EXPENDITURE—DISTINCTION.—*See* 46 C.W.N. 6. When an expenditure is made, not only once and for all, but with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade, there is very good reason—in the absence of special circumstances leading to the contrary—for treating such an expenditure as properly attributable not to revenue but to capital. If the money is spent for purposes of the trade, and the expenditure would, if successful, produce a capital asset or an asset of an enduring character, which is of a capital nature, it is equally a capital expenditure if the expenditure is unsuccessful. The question whether the expenditure is a capital or a revenue payment is not to be tested by seeing whether it can be shown to be productive. Nor is the fact that what is produced by the expenditure is impalpable or intangible or incalculable any justification for holding that it must be treated as of a revenue nature. And when the payment in fact creates advantages of an enduring nature, it must be properly treated as capital and not as revenue, and therefore it cannot be charged against the profits for purposes of assessment to income-tax. 1939 I.T.R. 92. *See also* 41 C.W.N. 46; 1933 Cal. 777=60 C. 840.

SEC. 10 (1): "CARRIED ON"—MEANING OF.—The assessee was a partner in a firm carrying on a money-lending business, which was dissolved on 11—1—1939, and the assets of the business were realised between that date and 26—3—1939. No business was transacted after 11—1—1939, beyond that involved in the realisation of the assets. In the assessment of the year of account ending 13—4—1939, the assessee claimed that an aggregate sum of £ 1,38 348 should be treated as trading loss and deducted in assessing his income as a partner. This amount was arrived at by deducting the sums realised in the course of the winding up from the values of the assets as shown in the books of account. *Held*, that the business was not "carried on" after 11—1—1939, within the meaning of sec. 10 (1), that the loss incurred was not incurred either in or for the carrying on of the business of the partnership, and therefore the loss suffered in realisation was not deductible under sec. 10 of the Act. 1943 I.T.R. 540=A.I.R. 1944 Mad. 58=(1943) 2 L.J. 446=I L.R. (1944) Mad. 328.

SEC. 10 (2).—Unless an expenditure can be brought under the clauses of sub-sec. (2) of sec. 10 of the Act, it cannot be allowed as a deduction. 40 C.W.N. 833. There is no presumption that a property standing in the name of a married Hindu lady does in fact belong to her husband. The ordinary presumption of law is that the apparent state of affairs is real unless the contrary is proved. Where the payment of royalty to the assessee's wife is proved, the assessee is entitled to a deduction of the amount in the absence of evidence that the lady was a benamidar of her husband. The absence of evidence one way or the other does not under the law justify the inference that the lady was a benamidar. 160 I.C. 611=1936 P. 267. A payment by the assessee out of profits and conditional on profits being earned cannot be treated as rent. Nor can such payment be described as a payment made to earn profits. Moneys so paid by the assessee cannot, therefore, be deducted either under cl. (*i*) or under cl. (*ix*) of sub-sec. (2) of sec. 10 of the Act. I.L.R. (1938) Lah. 426=40 P.L.R. 228=1938 Lah. 530.

RIGHT TO DEDUCTIONS—BURDEN OF PROOF.

(*iii*) in respect of capital borrowed for the purposes of the [1][business, profession or vocation,,] [3]* * * * the amount of the interest paid :

[4][Provided that no allowance shall be made under this clause in any case for any interest chargeable under this Act which is payable without Birtish India, not being interest on a loan issued for public subscription before the 1st day of April, 1938, except interest on which tax has been paid or from which tax has been deducted under section 18 or in respect of which there is an agent in British India who may be assessed under section 43, or in the case of a firm for any interest paid to a partner of the firm] ;

LEG. REF.

[4] Proviso added by Act VII of 1939.

—It is a well-settled principle that if any deduction is claimed, it is for the assessee to prove that that deduction is legally allowable to him. If he fails to do so, the amount so claimed is liable to be assessed. I.L.R. (1938) Lah. 426=40 P.L.R. 228=1938 Lah. 530

SEC. 10 (2) (*iii*).—A finance company, which as part of its business, invested money in various parts of the world, borrowed in India a sum of thirty-two lacs of rupees, and invested it in foreign securities. The company claimed to deduct from their taxable profits in British India the interest on the borrowed amount notwithstanding the facts that the borrowed money was employed outside British India and that the profits derived therefrom were not brought within British India and therefore did not attract income-tax in India. *Held*, that an allowance cannot be made under sec. 10 (2) (*iii*) in respect of interest on capital borrowed for the purpose of the business—that business should be one that earns or is capable of earning taxable profits, or at least one which is so carried on that taxable profits may be earned whether in fact profits are earned or not. 56 B. 92=33 Bom.L.R. 1587=1932 B. 94. *See also* 1936 Lah. 1001. Sale of its shares and investments by a bank in order to meet withdrawals by depositors is a normal step in carrying on the banking business. It is an act done in "what is truly the carrying on" of the banking business and consequently profits arising from such sales are assessable to income-tax as profits of the banking business. In such a case in order to prove that profits made on sales of investments by the bank are taxable it is not necessary to prove that the bank carries on a separate or severable business of buying and selling investments. 67 I.A. 464=52 L.W. 926=1940 I.T.R. 635=(1941) 1 M.L.J. 130=1940 P.C. 230 (P.C. A *debtor who gives his creditor a promissory note for the sum he owes* can in no sense be said to pay his creditor; he merely gives him a document or voucher. The assessee does not receive payment of any taxable income from his debtor or indeed any payment at all. 60 I.A. 146=12 P. 318=64 M.L.J. 612 (P.C.). There is nothing in subcl. (3), sec. 10, to suggest that *interest paid on the initial capital* invested in a firm cannot be the subject-matter of an allowance. Where therefore a capitalist partner advances money to the firm on condition that interest would be paid to him, whether the business of the firm results in profit or not and is in no way made dependent on the profit, if any, earned, the firm is entitled to claim an allowance for the interest paid on such capital. It is immaterial whether such capital was advanced as initial capital or subsequently. There is no distinction between capital borrowed and capital contributed. Capital contributed by a capitalist partner is capital borrowed from him by the firm. 1933 S. 192. *See also* 1939 I.T.R. 662; 46 All. 1=21 A.L.J. 703. Railway company—Guaranteed interest or dividend on shares out of profits—If deductible. *See* (1943) I.T.R. 578. The Madura Hindu Permanent Fund was incorporated as a limited company under the Companies Act, 1882. Its objects were stated to be (*a*) to enable persons to save money; (*b*) to invest their savings in landed property and Government Promissory Notes; (*c*) to secure loans at favourable rates of interest and to grant loans on sound securities. The capital of the Fund was contributed by two classes of subscribers at the rate of Re. 1 per mensem per share, the A class subscriber for 45 months, the B class subscriber for 84 months. At the end of the period, the former was paid off Rs. 50, the latter Rs. 102-8-0 and the account was closed. The amount so paid to the subscribers in excess of their subscription was called "guaranteed interest" which the Fund claimed to be entitled to deduct from its income in computing its taxable profits. It was assumed for the purpose of the reference that the transactions of the fund were confined to its members though the rules provided for loans also to non-subscribers and to registered Co-operative Societies. *Held*, (*i*) that the ruling in *Styles'* case had no application to the case and the guaranteed interest was part of the profits; but (*ii*) that in view of the explanation to sec. 10 (2) (*iii*) the recurring subscriptions should be deemed borrowing of capital, the interest whereon, not being in any way dependent on the earning of profits, could be deducted under sec. 10 (*iii*). (47 M. 1 and 3 I.T.C. 385, Disc.) 56 M. 415=1933 M. 347=64 M.L.J. 260 (F.B.). When money is borrowed, which would probably not have been borrowed had not the assessee's own capital been invested in an income producing business, the interest paid on such borrowing is not deductible under sec. 10 (2) (*iii*) from the income of that business. 161 I.C. 681=38 P.L.R. 402=1936 L. 595. *See also* 1941 I.T.R. 358. Sec. 10 (2) (*iii*) makes a distinct departure from English law which provides that interest on capital employed in

Explanation.—Recurring subscriptions paid periodically by shareholders or subscribers in such Mutual Benefit Societies as may be prescribed, shall be deemed to be capital borrowed within the meaning of this clause :

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business is not an allowable deduction. Interest paid to a partner on capital borrowed from him is an allowable deduction from the profits earned under sec. 10 (2) (*iii*). 163 I.C. 275=1936 S. 68. Agricultural income is totally excluded from the operation of the Income-tax Act and the sources of income enumerated in sec. 6 cannot include agricultural income. Sec. 10, therefore, applies to "business" assessable under the Act and the "allowance" referred to in sub-sec. (2) of sec. 10 cannot apply to agricultural income but only to interest paid in respect of capital borrowed for the purposes of the "business" assessable under sec. 6 of the Act. Therefore, the money borrowed by the assessees for the purpose of paying land revenue cannot be exempted from income-tax under the provisions of sec. 10 (2) (*iii*). 161 I.C. 681=38 P.L.R. 402=1936 L. 595. In the absence of any express provision in the Act, an assessee is not to be deprived of the advantages conferred by exemptions such as sec. 10 (2) (*iii*) of the Act because the capital benefiting therefrom by means of permissible deductions happens to produce a non-taxable income. Where a person carrying business as a money-lender borrows money for his money-lending business, lends it out to constituents, and is obliged in the course of business to receive agricultural lands in repayment of his debts from such constituents, he is entitled to a deduction of the interest paid by him on so much of the capital borrowed by him for business purposes as is represented by the agricultural lands got in under sec. 10 (2) (*iii*) of the Act, in computing the profits and gains of the banking business for the year of account. The assessee is also entitled to a deduction in respect of the establishment and other charges, such as for managing and cultivating the lands got and the amount spent for obtaining conveyances. I.L.R. 1937 Mad. 734=1937 M. 393=(1937) 1 M.L.J. 351 (F.B.). *See also* 69 M.L.J. 474 (P.C.).

SEC. 10 (2) EXPL. APPLICABILITY—CONDITIONS—"RECURRING".—In order to satisfy the requirements of the explanation to sec. 10 (2) (*iii*) there must be recurring subscription paid periodically and the assessee must be a mutual benefit society. "Recurring" means a happening again and again—not that which occurs only once. Where the shares are paid in one lump sum, and the assessee is an ordinary banking concern whose transactions are not confined to their members only, the allowance under sec. 10 (2) (*iii*) cannot be permissible. 58 M. 8=1934 M. 653 (2)=67 M.L.J. 532 (F.B.). R 31 of the Income-tax Rules clearly applies to the business of a dividing (Insurance) society; when the Memorandum of Association and the Rules of the company show it to be a dividing society, the fact that part of the policy monies are divided among the subscribers cannot make it a mutual benefit society, especially when there is no mutuality between the shareholders of the company, the assessee and the policy holders, the shareholders and policy holders being two separate entities. (1939) 1 I.T.R. 341=1939 Sind 301. *See also* 1939 I.T.R. 575=1939 Sind 308. Before there can be mutuality between an Association and its members, the services must be supplied by the Association to its members as such services for which the members themselves pay from which payments any surplus is saving and not profits or gains. The nature of the services or the purpose of the Association is not the test. The nature of the Association is the test. 1939 I.T.R. 575=1939 Sind 308. A company was floated with members subscribing its capital by way of share. The main source of income was the interest on the loans advanced to the shareholder members. It also derived interest on its securities, etc. In giving the return, the fund did not show the interest derived from the loans to the shareholders as its income. Question was if that income was assessable. *Held*, the fund though a registered company was in fact a Mutual Benefit Fund Society and that the income was not assessable; in enacting the Explanation to sec. 10 (2) and (3) of the Income-tax Act, the Legislature must have intended to recognise the existence of such a Mutual Benefit Society like one in question. 176 I.C. 374=47 L.W. 28=1938 Mad. 57 (F.B.). *See also* I.L.R. (1939) Kar. 779=1939 Sind 293 (Dividing Insurance Co.). A fund which was a company registered under the Indian Companies Act, made considerable profits out of lending money to non-members, and was, on that ground, held to be a banking concern and not a Mutual Benefit Society as it claimed to be. Subsequently it altered its memorandum and articles of association. Under the altered articles, a person who wanted a loan had to become a member, but he could become a member by paying a sum of one rupee for a share which he could withdraw at the end of two years. The membership in many cases was merly nominal; the large profits which the company (fund) made by way of interest on loans granted to those taking one rupee shares were distributed to its real shareholders and the nominal members who had taken one rupee shares invested practically nothing and consequently no hing was paid to them out of the profits either by way of dividend or in reduction of interest. These members by borrowing from the company made for it large profits in which they were not allowed to share. *Held*, (1) that the company was not a Mutual Benefit Society in spite of the altered memorandum and articles of association but was a banking concern, and its income was therefore taxable; (2) that as there was no payment of interest to shareholders or subcribers on the capital subscribed by them, and as the company only paid dividends to its members, which were

(*iv*) in respect of insurance against risk of damage or destruction of buildings machinery, plant, furniture, stocks, or stores, used for the purposes of the [1][business' profession or vocation], the amount of any premium paid ;

(*v*) in respect of current repairs to such buildings, machinery, plant, or furniture, the amount paid on account thereof ;

(*vi*) in respect of depreciation of such buildings, machinery, plant, or furniture being the property of the assessee, a sum equivalent, [2][, where the assets are ships other than ships ordinarily plying on inland waters[to such percentage on the original cost thereof to the assessee as may in any case or class of cases be prescribed [3][and in any other case, to such percentage on the written down value thereof as may in any case or class of cases be prescribed] :

["and where the buildings have been newly erected, or the machinery of plant being new has been installed, after the 31st day of March 1945, a further sum (which shall however not be deductible in determining the written down value for the purposes of this clause) in respect of the year of erection or installation equivalent,—

(*a*) in the case of buildings the erection of which is begun and completed between the 1st day of April 1946 and the 31st day of March 1948 (both dates icclusive), to fifteen per cent of the cost thereof to the assessee ;

(*b*) in the case of other buildings, to ten per cent of the cost thereof to the assessee ;

(*c*) in the case os machinery or plant, to twenty per cent of the cost thereof to the assessee ;] (Inserted by Act XVIII of 1946).

LEG. REF.

1 Substituted for "business" by sec. 11 of Act VII of 1939.

2 Inserted by sec. 11 of Act VII of 1939 as amended by Act XII of 1940.

3 Added by Act VII of 1939.

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dependent on the earning of profits, the company was not entitled to claim a deduction in respect of these sums under sec. 10 (2) (*iii*) of the Act, the sums so paid not being in the nature of interest on borrowed capital, I.L.R. (1938) Mad. 183=47 L.W. 24=1938 Mad. 148=(1938) 1 M.L.J. 130 (F.B.).

SEC. 10 (2) (*vi*).—There is no provision in the Income-tax Act which authorises an apportionment of depreciations on an assessee who sells his machinery or plant during the accounting period. There is no such provision in the Act as would justify the view that if the machinery is not used throughout the year, then the period for which it has worked should be calculated and depreciation should be allowed in proportion to such period. It cannot be held that if the machinery is not the property of the assessee throughout the year, then he cannot get the benefit of the full depreciation allowance. The Court cannot invoke an equitable rule in the construction of a taxing statute (1946) I.T.R. 106=25 Pat. 131=1946 P. 414. The words "original cost" refer to the genuine original cost to the assessee and not to that paid by the predecessor in business of the assessee. 13 Pat.L.T. 618=12 Pat. 12=1933 P. 28. (56 B. 129, Foll.). *See also* 59 Mad. 175=159 I.C. 545=69 M.L.J. 879 (P.C.). The original cost of any particular asset is entirely a question of fact, and, like any other question of fact, depends upon the evidence produced to prove the same. The mere production of documentary evidence showing that a contract has been made for purchasing assets at a certain price does not conclusively establish the correctness of a claim made by an assessee that for the purpose of sec. 10 (2) (*vi*) the original cost is the amount shown in the document. Where the circumstances show that an assessee has arranged to put an entirely fictitious price on his assets, it is open to the Income-tax Authorities to refuse to accept that price and to ascertain what the true value is. I.L.R. 1940 Mad. 985=1940 Mad. 602=(1940) 2 M.L.J. 95 (F.B.). Where a business which had gone into liquidation is taken over by the assessee for the purpose of running it, for a certain price, and he has to advance various sums of money to the liquidators and to invest capital, he cannot claim to include the losses incurred in previous years or the interet on the sums advanced to the liquidators or the interest on the capital invested by him in the working of the business in determining the "original cost" to the assessee of the machinery and buildings, when these items do not form part of the consideration for the sale in his favour. But sums spent by him in making additions to buildings and machinery must be taken into account in calculating the depreciation to which he would be entitled. (1939) I.T.R. 374. The word "assessee" in sec. 10 (2) of the Income-tax Act, in the case of an assessment under sec. 26 (2), based on the profits of a predecessor, must refer to such predecessor. The word

Provided that—

(*a*) the prescribed particulars have been duly furnished ;

(*b*) where full effect cannot be given to any such allowance in any year [4][not being a year which ended prior to the 1st day of April, 1939,] owing to there being no profits or gains chargeable for that year, or owing to the profits or gains chargeable being less than the allowance, [5][then subject to the provisions of clause (*a*) of the proviso to sub-section (2) of section 24], the allowance or part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depreciation for the following year and deemed to be part of that allowance, or if there is no such allowance for that year, be deemed to be the allowance for that year, and so on for succeeding years ; and

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LEG. REF.

[1] Inserted by sec. 11 of Act VII of 1939.

[1] Inserted by Act XXIII of 1941.

"assessee" cannot in such a case be interpreted as meaning the person by whom the income-tax assessed is actually payable. The successor is for the purposes of assessment under sec. 26 (2) to be assumed as his predecessor with respect to the previous year and the profits have to be computed on this assumption. For the purposes of notional assessment under sec. 20 (2), the assessee must be deemed to be his predecessor in the business and allowance for depreciation must be made on that basis. 1939 I.T.R. 374. *See also* 40 Bom.L.R. 343=I.L.R. (1938) Bom. 374=1938 Bom. 241. The word "assessee" in sec. 10 (2) (*vi*) must be read with the definition in sec. 2 (2) in its ordinary and natural meaning as meaning the person by whom income-tax is payable. *Per* Rangnekar, J.—Where the Court is concerned with a hypothetical assessment in the very first year of a successor taking over a business from his predecessor, apart from the fact that the words "original cost" would be inappropriate, it would be difficult to hold that depreciation should be allowed on the original cost to the successor and not on the original cost to the predecessor. I.L.R. (1938) Bom. 374=40 Bom.L.R. 343=1938 Bom. 241 (S.B.). *See also* 45 C.W.N. 681. It is not intended by the legislature that no allowance should be made for depreciation of "buildings, machinery, plant or furniture" belonging to the assessee merely because the assessee had acquired title to the property by bequest and not by purchase. The intention of the legislature in using the words "the original cost thereof to the assessee", is that the owner to be assessed should not receive an allowance for depreciation based on a capital value of the property higher than or different from the value of the property to the assessee at the time when he originally acquired it. If the assessee purchased the property, the best evidence of the value of the property to the assessee would be the price that he paid for it, but where the assessee acquires the property otherwise than by purchase (*e.g.*, by bequest) "the original cost thereof to the assessee's means, and is, the real value of the property at the time when the assessee acquired it less the expenditure (probate charges actually paid) necessary for the purpose of completing the title. *Semble*: the word 'assessee' in sec. 10 (2) (*vi*) means the assessee as defined in sec. 2 (2) of the Act. 11 R. 514=1933 R. 348 (S.B.). *See also* (1940) 2 M.L.J. 95 (F.B.), 1939 L.T.R. 160; 45 C.W.N. 681; 1938 Bom. 241. The letting of a jute press at a rent is as much a business as the letting of a ship to freight or the letting of a motor car or any other kind of machine, or machinery for hire. The fact that the lessor originally intended to work the press himself is immaterial. The lessees are liable only for repairs and not for depreciation, and in no circumstances could they claim an allowance for depreciation under sec. 10 (2) (*vi*) because the buildings, machinery, etc., mentioned in that sub-section must be the property of the owner assessee and hence the owner assessee is entitled to claim allowance for depreciation in respect of buildings, machinery, etc., leased. (1926 M. 1032, Rel. on; 1 I.T.C. 50 and 1028 C. 456, Dist.) 1935 C. 344=62 C. 804=156 I.C. 394. An assessee who succeeds to a business in the middle of the previous year is entitled to have the current depreciation allowance permissible under sec. 10 (2) (*vi*) of the Income-tax Act computed on the original cost of the assets of such business to his predecessor only with regard to that portion of the previous year prior to the succession, and not for the whole of the previous year. For the post-succession period, current depreciation should be computed on the costs of the assets to the assessee, that is to say, on the basis of the price paid for the assets by him. 1941 I.T.R. 539=45 C.W.N. 681; 1941 I.T.R. 568. *See also* 40 Bom. L.R. 343=I.L.R. (1938) Bom. 374=1938 B. 241. To entitle an assessee to claim an allowance under sec. 10 (2) (*vi*) of the Income-tax Act on account of depreciation of buildings, machinery, plant, etc., "used for the purpose of the business", it is not necessary that there should have been an actual working of the machinery in the year of account. The word "used" may be given a wider meaning so as to embrace passive as well as active user. When machinery is kept ready for use at any moment in a factory under an express contract from which taxable profits are earned, the machinery can be said to be used for the purpose of the business which earns the profits, though it is not actually worked. If the contribution of the assessee to the business in question is the obligation to keep his machinery ready for actual use at any moment, and if the profits of the assessee during

(*c*) the aggregate of all such allowances made under this Act or any Act repealed hereby, or under the Indian Income-tax Act, 1886, shall, in no case, exceed the original cost to the assessee of the buildings, machinery, plant, or furniture, as the case may be ;

[1][(*vii*) in respect of any machinery or plant which has been sold or discarded, the amount by which the written down value of the machinery or plant exceeds the amount for which the machinery or plant is actually sold or its scrap value :

Provided that such amount is actually written off in the books of the assessee :

Provided further that where the amount for which any such machinery or plant is sold exceeds the written down value, the excess shall be deemed to be profits of the previous year in which the sale took place ;]

Provided further that where any insurance, salvage or compensation moneys are received in respect of any such building, machinery or plant which has been discarded or demoliseed or destroyed, and the amount of such moneys does not exceed the written down value, the amount allowable under this clause shall be the amount, if any, by which the difference between the written down value and the scrap value exceeds the amount of such moneys ;

Provided further that where any insuranee, salvage or eompensation moneys are received in respect of any sucy bui ding, maceinery or plants as aforesaid, and the amount of such moneys exceeds the difference between the written down value and the scrap value no amount shall be allowable under this cluase and so much of the excess as does not exceed the difference between the original cost and the written down value less the scrap value shall be deemed to be profits of the provious year in which such moneys were receeived ;

Provided further that for the purposes of this clause, the original cost of a building, the written down value of which is determined in accordance with the first proviso to sub-section (5), shall be deemed to be the written down value so datermined as at the date of its being brought into use for the purposes of the business, profession or vocation ;] (Substitused by Act VIII of 1946.)

LEG. REF.

[2] Substituted by sec. 11 of Act VII of 1939.

[3] This clause was originally inserted as cl. (*vii*) (*a*) by sec. 2 of Act III of 1928.

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the year of assessment could not have been earned except by his maintaining his factory and machinery in good working order, that involves the user of the machinery and the factory, entitling the assessee to claim deduction under sec. 10 (2) (*vi*). I.L.R. (1937) Bom. 821=39 Bom.L.R. 903=1937 Bom. 493. Machinery which is kept idle but not actually used, it being kept ready for such use at any moment, may well depreciate, particularly during the monsoon season. The ultimate test is whether, without the particular user of the machinery relied upon, the profits sought to be taxed could have been made. 24 Pat. 630=1945 I.T.R. 415=1946 Pat. 39.

SECS. 10 (2) (*vi*) AND 3.—The allowance for depreciation under sec. 10 (2) (*vi*) of the Income-tax Act is not dependent on a time factor; nor is the sub-section governed by sec. 10 (3) or by sec. 26 (2) of the Act. Sec. 10 (3) cannot deprive an assessee of what he is entitled to under sec. 10 (2) (*vi*) and sec. 26 (2) is not concerned with the computation of tax, but the person upon whom the liability is imposed. Where an assessee, a limited company, worked an oil mill in the year of account only for a period of two months and seven days in all, the assessee, on the wording of sec. 10 (2) (*vi*) would be entitled to a depreciation allowance as if the machinery had been worked throughout the year. Such an interpretation would not affect the Income-tax Authorities detrimentally, as the depreciation can only be allowed to the extent of the cost of the machinery, and the allowance of the full amount for the year of account would mean that the benefit conferred on the assessee by sec. 10 (2) (*vi*) would be more quickly worked out. 1946 Mad. 327=1946 I.T.R. 130=(1946) 1 M.L.J. 220.

SECS. 10 (2) (*vi*) PROVISO (*a*).—Claim to depreciation—Duty to give particulars—Effect of failure to give particulars. Where an assessee claims an allowance in respect of depreciation, he must give the particulars required by proviso (*a*) to sec. 10 (2) (*vi*); if he does not do so, the Income-tax Authori-

[2][3](*viii*) in respect of animals which have been used for the purposes of the [4][business, profession or vocation] otherwise than as stock in trade and have died or become permanently useless for such purposes, the difference between the original cost to the assessee of the animals and the amount, if any, realised in respect of the carcasses or animals] ;

LEG. REF.

4 Original cls. (*vii-a*), (*viii*) and (*viii-a*) re-numbered as (*viii*) (*ix*) and (*x*) respectively by Act VII of 1939.

5 Substituted for the word "business" by Act VII of 1939.

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ties would be justified in rejecting the claim for allowance. I.L.R. (1939) Mad. 397=43 L.W. 305=1939 Mad. 357=(1939) 1 M.L.J. 402.

SECS. 10 (2) (*vi*), 14, 19 AND 20.—The Income-tax Act is concerned with securing revenue to Government, and there can be nothing in it which would justify a company in retaining for itself income-tax in respect of its shares with no obligation to pass the amount on to Government. In the case of a company the tax has to be paid by the company direct and not on behalf of the shareholders. The provisions of sec. 20 of the Act, which are no doubt mandatory, only apply where the company is liable to tax. A company is assessed to income-tax on its profits and pays the tax direct. There is no express provision in the Act enabling a company which has paid tax to deduct from dividends the amount of such tax. But since income-tax has to be discharged out of profits before any distribution can be made, where tax has been paid, the company must apportion the burden amongst the different classes of shareholders, according to their legal rights; sec. 20 recognises a right in the company to deduct tax where tax has been or will be paid on the profits distributed. But where no income-tax is payable by the company there is no burden to adjust, and the company is not therefore entitled to make any deduction in respect of income-tax from the dividends paid. I.L.R. (1940) Bom. 165=42 Bom.L.R. 57=1940 Bom. 97 (F.B.).

SECS. 10 (2) (*vi*), PROVISO (*b*) AND 26 (2). —Accumulated unabsorbed depreciation allowance of owner of business—If available to successor. The depreciation allowance to which an owner of business is entitled to under sec. 10 (2) (*vi*) being a deduction permitted to him in respect of wear and tear of his plant and machinery based on its cost to him, against the profits he may make when carrying on his business, is a statutory privilege personal to him so long as he carries on his business. When he ceases to pay income-tax on his business profits through ceasing to carry on his business, the permission to deduct ceases; it is not a right which passes to his successor under the Act, nor is it a right which he can transfer by agreement. Sec. 26 (2) of the Act says nothing as to any right of the successor to take advantage of the unabsorbed depreciation his predecessor, might have been entitled to. Its effect is simply to provide that as regards the year of assessment, where a succession has occurred in the ownership of the business in the previous year, the successor is made liable to pay income-tax for that year on the total profits actually earned by the business during the previous year (*i.e.*) the one in which the succession occurred—whether earned under the predecessor or the successor. 1941 I.T.R. 539=45 C.W.N. 681. The right to set-off past depreciation under sec. 10 (2) (*vi*), proviso (*b*) of the Act, only exists in the person who continues to derive profits in respect of the business concerned. 1940 Bom. 169. *Per* Kania, J.—The right to claim depreciation is not a personal right of the party who has parted with the ownership of the property in respect of which depreciation is to be assumed. I.L.R. (1940) Bom. 287=42 Bom.L.R. 120=1940 Bom. 169. The allowance under sec. 10 (2) (*vi*), in addition to being given in respect of the depreciation of buildings, etc., being the property of the assessee, is to be calculated on the original cost of the assessee. But once the property has passed to the successor, he is the assessee. The depreciation is, in the words of the Act, to be calculated on the cost to him, and the cost to the predecessor is not thereafter to be adopted as the basis of depreciation. 48 C.W.N. 52= 56 L.W. 772=1943 A.L.J. 300=1943 I.T.R. 328=1943 P.C. 124=(1943) 2 M.L.J. 325 (P.C.). No doubt the word "assessee" in sec. 10 (2) must, when there is a successor to the business charged to tax, be read in certain of the paragraphs as including both predecessor and successor, but it does not follow as a consequence that the unabsorbed depreciation allowance of the predecessor must be added to that of the successor or when the only business concerned is that which is transferred, the business when transferred carries to the purchaser its unabsorbed allowance. The right to the unabsorbed allowance is not transferable by agreement nor does it pass to the successor under the Income-tax Act. 48 C.W.N. 52=1943 P.C. 124=(1943) 2 M.L.J. 325 (P.C.).

SEC. 10 (2) (*vii*).—The question whether a particular machinery has become obsolete is one of fact. 58 C. 985=35 C.W.N. 314= 1931 C. 599. Where the business of an oil mill was closed down for the reason that the machinery being old and worn out, could not be worked at a profit in the face of competition: *held*, that the assessee could not claim obsolescence allowance as provided for in sec. 10 (2) (*vii*). 58 C. 985=1931 C. 599 (50 M.L.J. 157, Ref. to).

SEC. 10 (2) (*viii-a*).—*See* 1937 M. 300= (1937) 1 M.L.J. 182 I.L.R. (1937) Mad. 792. (F.B.); 41 C.W.N. 46. Sec. 10 (2) (*viii-a*)

[3][(*ix*) any sums paid on account of land-revenue, local rates or municipal taxes in respect of such part of the premises as is used for the purposes of the [4][business, profiession or vocation] :

LEG. REF.

[1] *See* foot note 4, p. 2942.

[2] Substituted for "business" by Act 7 of 1939.

of the Income-tax Act does not deal with employees of any p rticular class nor contemplates the exclusion of any class; the business of a company or a corporation does not become an agreement to share profits unless the expenditure incurred in remunerating them falls outside the scope of Cl. (*ix*) of sec. 10 (2), as being either capital expenditure or not incurred for the purpose of earning profits or ga ns. The taxable profits or really net profits can only be discovered when every outlay has been provided for including expenditure out of income which has been incur ed solely for the purpose of earning the profits or gains. Where an outlay incurred in earning the profits of an assessee company is the remuneration payable to the secretaries, treasurers and managers of that company, and it is now disputed that the assessee could not earn profits or gains without secretaries, treaurers or managers, such expenditure has to be deducted from the profits and gains. It is necessary to scrutinize with care the sense in which the word "profits" or even the phrase "net profits" is employed. A sum which is to be regarded as "net profits" for the purpose of ascertaining the remuneration of the agents of a firm or the secretaries, treasurers and managers of a company, is only "net profits" in the different sense of being taxable, when such re muneration can be classed as outside the scope of expenditure, from income which is incurred so'ely for the purpose of earning profits. 1941 Rang.L.R. 181=1941 Rang. 145= 1941 I.T.R. 155. Dunkley, J.—When there is an agreement between the assessee corporation and the secretaries, treasurers and managers under which, before ascertaining the divisible profits of the assessee at all, the ecretaries, treasurers and managers are to receive upon a particular conventional basis a commission as remuneration for their services, there is no agreement for division of profits, because in order that it can be held to be an agreement for division of profi s, there must be a sort of joint venture and there must be one single profit fund for all purposes, not two profit funds to be ascertained for different purposes. Where there is one profit fund which has to be ascertained for the purpose of calculating the remuneration of the secretaries, treasurers and managers, and another and quite distinct profit fund to be ascertained (after the remuneration of the said employees has been fixed) for the purpose of calculating the p'ofits divisible among the shareholders, there is no case for divis'on of profits. In the second the sum payable as such remuneration must of necessity appear as an expenditure or a "revenue charge". Such remuneration is clearly an expenditure incurred by the assessee solely for the purpose of earning such profits or gains, wit.in Cl. (*x*) of sec. 10 (2) of the Income-tax Act. (*Ibid*).

SEC. 10 (2) (*ix*).—*See* 167 I.C. 864=45 L. W. 184=1937 M. 300=(1937) 1 M.L.J. 182 =I.L.R. (1937) Mad. 792 (F.B.); 1937 R. 257 (S.B.). The expression "such profits or gains" in Cl. (*ix*) of sec. 10 (2) does not include "agricultural income" and when the business of an assessee comprises both agricultural income, as defined in the Act, and o.her (taxable) income, the assessee is not entitled, under sec. 10 (2) (*ix*), to deduct from such other income the exptnditure incurred for the special purpose of earning the agricultural income. 1938 Rang.L.R. 346= 175 I.C. 287=1938 Rang.L.R. 346=175 I.C. 287=1938 Rang. 151 (S.B.).

SEC. 10 (2) (*ix*) (BEFORE AMENDMENT OF 1939).—Applicability—Gift to insurance company by promoter and managing director—Deduction from assessable income—Right to —Secs. 7 and 12—Application of. (1943) I. T.R. 142.

SEC. 10 (2) (*ix*) (as amended in 1939—Applicabity.—The assessee, a Hindu father, and sons forming a Hindu joint family, and owning an ancestral firm of printe s and publishers, in order to secure full-time work for the press and in the interests of the business, entered into an arrangement with two competing and rival firms and persuaded them to quote uniform rates with the assessee in the various tenders given to obtain Government orders for printing and publishing works. Under this arrangement not to underbid each other, the assessee agreed to pay to his rivals certain sums of money, which were in the shape of a share in the estimated profits of the assessee in working the orders secured from Government, such estimate of profits being arrived at by deducting certain agreed cost contemplated to be incurred in the execution of the job from the amount of the tendered price. The actual profits or loss that may accrue were not taken into consideration in the estimate, and the payments were to be made when Government paid the bills. The assessee further paid certain amounts by way of subscription to various schools which agreed to prescribe for their classes school books published by the assessee. The amount of subscription to each school was calculated after taking into account the number of boys in each class for which the assessee's books would be prescribed. The assessee sought to deduct the amounts paid to his rival firms and the subscriptions paid to the schools from his taxable income under sec. 10 (2) (*ix*) of the Income-tax Act. *Held*, (1) that the payments made to the assessee's competing firms and the subscriptions paid to the schools were expenditure (not being in the nature of capital expenditure) incur-

red solely for the purpose of earning profits and gains of the business, and as such, allowable under sec. 10 (2) (*ix*), both before and after the amendment of 1939. 1946 I. T.R. 66.

PRINCIPLE OF SUB-SECTION.—It is not possible to lay down any hard and fast rule for determining whether a particular expenditure is capital expenditure or not. The question is one of fact. But the question whether a particular sum is or is not a permissible item of deduction is one of law or at any rate one of mixed law and fact. If it is found that the expenditure in question is or is not made, with a view to bringing into existence some asset or advantage for the enduring benefit of the trade the finding will be one of fact. 62 C. 87=39 C.W.N. 70. Expenses incurred in defending suit, if deductible. 1942 I.T.R. 95; 16 L. 479= 37 P.L.R. 749=1936 Lah. 350. *See also* I. L.R. (1941) Cal. 572=46 C.W.N. 6. When a limited company carrying on the business of editing and publishing a newspaper spends money to defend its editor and printer on a charge of contempt of Court brought against them for publishing an article in its paper: *Held*, such expenditure could not be called as one incurred solely for purpose of earning such profits or gains and cannot be exempted. 174 I.C. 817=1938 Cal. 241 (S. B.). *See also* 1940 I.T.R. 52. Managing agent of comppany arranging with stranger for loan to finance company—Agreement assigning portion of commission to lender in consideration of lender financing company—Portion of commission assigned is deductible. 183 I.C. 780=41 Bom.L.R. 362=1939 Bom. 283. Construction—Money-lending business—Suit against money-lender for damages for breach of agreement to take over management of company and finance—Dismissal of suit—Costs incurred by assessee in defending suit—Claim to deduction of proper. 1940 I.T.R. 52.

LEGAL EXPENSES.—In computing the profits and gains of the business of an assessee as a money-lender, the assessee is entitled to the deduction of money expended by him in defending a suit filed against him for damages for breach of contract in respect of a transaction which is not foreign to his money-lending business. 69 I.A. 15=46 C. W.N. 750=44 Bom.L.R. 778=1942 P.C. 11 =(1942) 2 M.L.J. 261 (P.C.). *See also* 1942 Cal. 297. *See also* 48 Bom.L.R. 141 (Expenses of election proceedings and suit thereon). The legal expenses incurred by the assessee company in connection with a suit brought by them against a rival company to restrain them from using a trade mark, to which the assessee had acquired exclusive right by long user, amount to a revenue expenditure and could properly be deducted under sec. 10 (2) (*ix*) in computing the taxable income of the assessee company from the business. It is indeed difficult to draw a line of demarcation between what is capital expenditure and revenue expenditure. The real test is not whether the money spent once and for all is for the enduring benefit of a trade but whether the money so spent makes an addition to the asset or brings an advantage for the enduring benefit of a trade or it served to remove a particular difficulty and to enable the assessee to continue to carry on the same type and high quality of business or to reserve the status and dividend-earning power of the company. The object of launching legal proceedings against the competitor was to displace a counterfeit trade mark which prejudicially affected the sale of the goods of the assessee company. The threat was not directed against the capital of the company but against its trade. The assessee was hit not as an industrialist but as a trader, and the expulsion of the counterfeit trade mark from the market by means of litigation in Court did not make any addition to the capital of the company or bring any additional advantage but only removed an impediment in the way of earning legitimate profits by sale of the goods produced by the assessee. I.L.R. (1942) Nag. 307=1943 N.L.J. 261= 1942 Nag. 219. *See also* 1942 Cal. 297= 1942 I.T.R. 95. The word "solely in sec. 10 (2) (*ix*) is related to the object of expenditure, the earning of profits and gains, and not to the profits and gains of the particular year in which the expenditure is made and deducted. While a trademark is a capital asset, an attack on a trade mark made by infringement is to be regarded not as an attack on a capital asset but rather on existing and future trade and on the value of stock-in-trade, existing and in course of manufacture and to be manufactured in future. 1943 I.T.R. 266. The costs incurred by an assessee in successfully defending a suit filed by the Government of the Federated Malaya States to recover from the assessee death duty on his father's estate is not an expenditure allowable in computing the foreign business income of the assessee where he was not sued as owner of the business and the amount was not expended wholly or exclusively for the purpose of his business. 1945 I.T.R. 183=1945 Mad. 186 =(1945) 1 M.L.J. 258. It is as necessary for a businessman to protect his business premises as his stock-in-trade. There is no distinction in principle between litigation expenses incurred to defend the business premises and those incurred to defend the stock in-trade. Both are incurred wholly and exclusively for the purposes of the business and do not result in the acquisition, improvement or alteration of a capital asset. Hence, legal expenses incurred in defending a pre-emption or other suit relating to immovable property acquired as a capital asset for business purposes, is expenditure not in the nature of capital expenditure, but a revenue expenditure within the meaning of sec. 10 (2) (*xvi*). 1945 I.T.R. 340=1945 Lah. 217 (F.B.). Litigation expenses—Partnership—Dissolution—Financing partner becoming entitled to receive amounts from other partner—Amount spent in litigation

for recovery of amounts is an allowable deduction in coomputing taxable income. 23 Pat. 398=1944 I.T.R. 344=1944 Pat. 291. The legal expenditure incurred by an assessee in defending a suit against him for damages for infringement of a trade mark, including the costs of the plaintiff paid by him to compromise the suit, is not in the nature of capital expenditure but is a revenue expenditure and as such is an admissible deduction in computing his taxable income under sec. 10 (2) (*xii*). I.L.R. (1945) Nag. 959. Expenditure incurred for payment of death duties and for obtaining probate and letters of administration is non-deductible. I L R. (1944) Mad. 635=1943 I.T.R. 597=1944 154=(1943) 2 M.L.J. 563.

ILLUSTRATIVE CASES.—The share of profits allowed to participating policy holders is conditional on profits being earned and cannot accurately be described as a payment made to earn profits. It assumes that profits have first come into existence. But profits on their coming into existence attract income-tax at that point, and the revenue is not concerned with the subsequent application of the profits. The share of profits so allotted to participating policy holders is not, therefore, a permissible deduction. [(1886) 10 A.C. 438 and 54 M. 691 (P.C.), Rel. on.] 61 I.A. 41=15 L. 224=1934 P.C. 45=66 M.L.J. 391 (P.C.). *See also* 1936 L. 872. An assessee carried on two businesses one of selling goods in his own shop and the other of selling goods on commission. In an accounting year, while submitting a return, through mistake, he entered some items in his shop business which in fact fell under his commission business, where he would have been exempted from tax in respect of those items. In the subsequent year he sought to deduct those items from his income. *Held*, that the proper remedy for the assessee was to move the income-tax authorities and to show to their satisfaction the mistake he had made and to claim a refund for that year and not to ask for its deduction in the current year. 17 Pat. 102 =174 I.C. 580=19 Pat.L.T. 176=1938 Pat. 159. A suit for arrears of rent and royalty was brought by the superior landlord, and the assessees were joined as defendants in the suit as assignees of the original grantees of the mining leases. They successfully defended the suit and incurred a considerable sum as costs which they contended was deductible from the income, profits and gains under sec. 10 (2) (*ix*). *Held*, that the costs incurred were not an expenditure allowable against profits under sec. 10 (2) (*ix*) inasmuch as the assessee's defence in the suit had nothing to do with the earning of any profits or gains in the year previous to assessment or in any year at all prior to the year of assessment, and the suit was fought and the expenditure incurred to prevent a liability for rent and royalty arising in the future. I.L R. (1941) 1 Cal. 572=1941 I.T.R. 573=46 C.W.N. 6. Where the assessee entered into an agreement with the Government for the excavation of lime shells in certain Government lands, and for the exclusive privilege of excavating chunam shells, and agreed to pay a sum of money in twelve equal quarterly instalments payable in advance, the portion of such an amount falling within the year of account payable by the assessee was not deductible in computing the income derived from the excavation and sale of lime, being a capital expenditure. The payment was not made in order to carry on an already existing business and to earn a profits out of it. The payment to be made was merely for the purpose of starting that particular venture. Any expenditure made thereafter would of course be deductible. But this was an initial expenditure without which the assessee could not even have begun winning shells. 1934 M. 617 (2)=67 M.L.J. 350=58 Mad. 1 (F.B.). *See also* 1939 I.T.R. 652. *Per* Aston, A.F.C.—No doubt *expenditure in the nature of charity or presents* can never be deducted in the case of a business, if the gifts are of a voluntary nature; but gifts given to employees may be deducted when they are given as prerequisites in return for services which they have rendered, even though such gifts may not be legally claimable by employee. 145 I.C. 202=1933 S. 145. *See also* 211 I.C. 437=1944 I.T.R. 21. *Per* Rupchand, A. F. C.—In order to bring *Ch istmas presents* within the purview of cl. (9), sec. 10, there must be sufficient material before the Income-tax Authorities to enable them to hold that the expenditure had been incurred solely for the purpose of earning profits. Such presents are, in certain kinds of business, specially when made by non-Christians, necessary for the purpose of securing business and therefore a legitimate item to be considered. 145 I.C. 202=1933 S. 145. Where a company has bought out its agents, with a view to running their own business by their own staff, by mean of a payment, the payment made out of circulating capital is a revenue payment and not a capital expenditure, and is properly deductible by the assessees when arriving at their profits for the purpose of income-tax, as a payment made out of circulating or floating capital, and not resulting in the acquisition of anything by way of a new asset or addition to the fixed capital and not capital expenditure. 62 C. 87=39 C.W.N. 70. A company carrying on a hotel business in Madras and Otacamund and empowered under its Articles of Association to lease its buildings, leased its premises in Ootacamund along with the furniture and fittings to a firm for the purpose of running a hotel, and claimed depreciation on the buildings and furniture leased to the firm. *Held*, that the letting of the premises was part of the business of the company and it was therefore entitled to an allowance for depreciation in respect of the buildings and furniture under sec. 10 (2) (*vi*) of the Income-tax Act. I.L.R. (1940) Mad. 178=51 L.W. 222=1940 Mad. 366=(1940) 1 M.L.J. 319 (F.B.). A claim with regard to *sums spent on furniture for office* cannot be allowed as it is in the nature of capital expenditure. 145

I.C. 202=1933 S. 145. A payment, the making of which is conditional on profits being earned cannot properly be described as an expenditure incurred for the purpose of earning such profits. A company carrying on the business of communication by wireless entered into an agreement with the Communications Company which was carrying on business of communication by cable. It was agreed between them that the Communications Company was to deliver all plant and machinery belonging to them to the Wireless Company, on the Wireless Company agreeing to carry on the business of the Communications Company in India in conjunction with its wireless business. It was also agreed that the Wireless Company was to give one-half of the nett profits of each year in consideration of the use of plant and the business given to it. The consideration money was not described in the agreement as rent for the use of plant. Tht agreement did not also contain several of the clauses which a lease of a plant of such character would naturally contain. The Income-tax Officer assessed the Wireless Company on the total income derived from the business and securities without making any allowance for the one-half profits which were paid by the Wireless Company to the Communications Company under the agreement. *Held*, that it was impossible to presume or infer that the half share of profits was being paid only as rent, or as a similar payment, in consideration merely of the use of plant. The sum was in truth made payable as part of the consideration in respect of a number of different advantages which the Wireless Company derived from the agreement. The *agreement as a whole was much more like one for a joint adventure for a term of years* between the Wireless Company and the Communications Company than one for a lease for that period. The consideration money was not therefore allowable to be deducted for the purpose of income-tax under sec. 10 (2) (*ix*), as it was not in the nature of expenditure solely incurred for the purpose of making or earning 'income, profits or gains'. 41 C.W.N. 869=I.L.R. (1937) Bom. 591=39 Bom.L.R. 1025=1937 P.C. 189 (P.C.). Where a private company consisted of only two shareholders, who were also the sole directors, and where a very large sum was claimed to be deducted as fees for the directors: *Held*, (*i*) that the mere production of a resolution fixing the remuneration of the directors and vouchers for payment did not preclude further enquiry by the Commissioner and entitle the company to the deduction claimed; (*ii*) that having regard to the complete identity of the persons interested as shareholders in fixing the fees and of the persons to whom the fees were to be paid, and to the refusal of the directors to allow themselves to be examined as to how the amount was fixed, the company had failed to discharge the onus cast on them; and (*iii*) that the Magistrate was justified in holding it not proved that the amount was exclusively incurred in the production of the assessable income. 139 I.C. 649=63 M.L.J. 920 (P.C.). Whether a sum is received on capital or revenue account depends or may depend on the character of the business of the payer and upon other factors related thereto. The case of payer and payee must be considered upon an independent statement of the relevant facts proved in his presence, there being no overriding principle of law that the Income-tax Authorities are entitled to tax once at least on every payment. Where the assessees paid to their agents in 1928 a certain amount as compensation for the loss of their office as agents to the assessees and the payment came to be considered by the Income-tax Authorities in 1929-30 and in that year the assessee put forward the payment as a permissible deduction from their gross profits: *Held*, that the claim should be allowed. 37 C.W.N. 430=60 C. 840=1933 C. 777. *See also* 41 C.W.N. 46; 1945 I.T.R. 457. In the case of a brick field, which was very similar to that of a quarry or mine, the proprietor of the land or the lessee was not a mere purchaser of raw materials—in which case the assessee would be entitled to a deduction of the price of such materials from the total income realised by the sale of the bricks during the year—but was a person who had acquired certain rights in the land, and the amount invested by him must therefore be treated as capital expenditure within the meaning of sec. 10 (2) (*ix*) of the Income-tax Act, and therefore the assessee was not entitled to deduct the amount claimed as expenditure incurred solely for the purpose of earning such profits or gains under sec. 10 (2) (*ix*), or otherwise as a depreciation in the value of the land. I.L.R. 1937 All. 908=1937 A.L.J. 827=1937 All. 708 (S.B.). Money paid by firm in respect of shell contract for excavation of shells under Government property for three years—Amount payable in three instalments and described as "annual lease amount"—Capital expenditure or revenue expenditure. 45 L.W. 184=I.L.R. (1937) Mad. 792=1937 Mad. 360=(1937) 1 M.L.J. 182 (F.B.). Profits of brick-kiln—Amounts paid on account of lease of land and compensation for or price of earth cannot be deducted under sec. 10 (2) (*xvii*)—Expenditure is of capital nature. 20 Lusk. 273=1944 I.T.R. 504=1945 Oudh 124. The payments made by the assessee by way of annual instalments to the owners of the forests for the exclusive right to collect *hara* nut and *lac* from the forest trees during the contract periods, is not a revenue expenditure but a capital expenditure and as such it cannot be allowed as a deduction under sec. 10 (2) (*xii*). 1946 Nag. 241=I.L.R. (1946) Nag. 252. *See also* 1939 I.T.R. 92. The assessee, carrying on business in chanks and chank beads, acquired from certain zamindars the exclusive right to collect conch shells from certain conch beds belonging to those zamindars, for a period of years, the consideration fixed for the grant of the right being payable in instalments. The assessee claimed that the moneys paid by him in instalments were in the nature of expenses which he was entitled to deduct under sec. 10

(2) (*ix*) of the Income-tax Act, for the purpose of arriving at his assessable income. *Held*, that the sums paid by the assessee for the right to collect conch shells (the means of obtaining the material for his business and not the material itself), were expenses of a capital nature and were not therefore a permissible deduction. 1939 I.T.R. 652. *See also* 67 M.L.J. 550. The assessee was a manufacturer of saltpetre and common salt and the crude saltpetre that he manufactured at different places was brought to his refinery and analysed into potassium nitrate and sodium chloride. He acquired salt-bearing lands in several places for the purpose of manufacturing crude salt-petre on short term leases varying from one to two years. He employed his own labourers on the sites who scraped and collected the salt-bearing earth and by an elaborate process of evaporation obtained the crude saltpetre which was sent to the refinery. The assessee claimed to deduct the cost of acquiring the sites under sec. 10 (2) (iv) and was allowed to do so as a revenue expenditure for some years, but in 1936-1937, the Income-tax Department disallowed the claim on the ground that it was a capital expenditure, because the sum spent neither represented the price of raw material nor rent of land. *Held*, that the asset acquired was not even a mine in the true sense, and got exhausted in the course of a year or so and was acquired with several other similar assets for the sole purpose of providing raw material for a manufactory and not for the purpose of producing a marketable commodity for sale, and the expenditure incurred was not a capital expenditure but a revenue expenditure. (1945) I.T.R. 157=1945 Lah. 137 (F.B.).

The assessee was a manufacturer of saltpetre. Crude saltpetre was extracted from land, acquired for that specific purpose. The earth containing saltpetre was scraped and brought to the manufactory where it was boiled in water. The earth was allowed to settle down and the water was separated in boxes where it crystallized. The assessee acquired leases of lands from which crude saltpetre was to be extracted and he claimed that the rent paid by him in acquiring the leases should be allowed as a business expenditure under sec. 10 (2) (xii) of the Income-tax Act. The Income-tax Department rejected the claim holding that the expenditure was in the nature of capital expenditure.

Held, that the leases were really contracts for the sale of crude saltpetre deposits that emerged on the soil of the grantor and a licence to the purchaser to enter on the soil to collect those deposits, the purchaser acquiring no rights in the land itself; the moneys spent by the lessee in acquiring the leases of the lands in question were therefore an allowable deduction under sec. 10 (2) (xii). 1946 I.T.R. 277.

Where a saltpetre manufacturer takes leases of land containing deposits of crude saltpetre, on the ground that it is cheaper to remove the deposits from the lands than to purchase crude saltpetre from the market, the amounts spent by him in acquiring the leases of lands must be treated as revenue expenditure allowable as a deduction under sec. 10 (2) (xii). (1946) I.T.R. 181. See also (1946) I.T.R. 277.

The expression "rents, royalties, premiums or any other profits arising from property" in sec. 5 (*f*) of the Income-tax Ordinance of Northern Rhodesia, 1926, implies that the property from which the rents, royalties, premiums or other profits arise, remains in substantially the same condition in the possession of its owner, and is not consistent with the property itself being transferred. 223 I.C. 164=1946 P.C. 25 (P.C.). For the purpose of assessment to income-tax, the proceeds of sale of an asset are brought into account if the sale is in the course of the tax-payer's trade or business. Thus if it is his trade or business to make and to sell, or to acquire and to sell, shoe-making machinery then the proceeds of sale of each machinery are brought into account; if it is his trade to make and sell shoes and for that purpose, he owns and uses shoe-making machinery, then if he sells such machinery, the proceeds of such sale are not brought into account. In the former case, the machinery is sometimes called "floating" or "circulating" capital; in the latter "fixed" capital. In the former case, the gain or profit arising from the sale cannot be ascertained until its cost has been ascertained; in the latter no question of cost arises; the receipts are sometimes referred to as "capital receipts" and no tax is payable. Where the business of the assessee is to acquire and dispose of mining rights, the proceeds of a sale or other disposition of such rights are not chargeable to tax without any deduction for the cost of acquisition. Rather it would seem that the ordinary rule must apply and that no gain or profit can be said to arise under sec. 5 (*a*) of the Income-tax Ordinance of Northern Rhodesia, 1926, unless and until a balance has been struck between the cost of acquisition and the proceeds of sale. Nor is it material that in dealing with the mineral rights the assessee has retained an interest either by way of a possible reverter of the property or by the shareholding in a company to which the assessee made special grant. 223 I.C. 161=1946 P.C. 25 (P.C.). Contribution to Employees' Provident Fund by a bank—Right to deduction. *See* 49 M. 910; I.L.R. (1941) Nag. 240. Provident Fund started by company—Part contributed by deductions of employees' salary—Part contributed by company—Provident Fund subsequently transferred to trustees—There was no obligation on the company to make periodical payments to the trustees—Deductions from salaries or contributions by company not actually paid to trustees—Trustees having power to call on the company to make up shortage of its liabilities—Company held not entitled to deduct from

[5][[3][(c)]] any sum paid to an employee as bonus or commission for services rendered, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission :

Provided that the amount of the bonus or commission is of a reasonable amount with reference to—

(*a*) the pay of the employee and the conditions of his service ;

(*b*) the profits of the [1][business, profession or vocation] for the year in question ; and

(*c*) the general practice in similar [2][businesses, professions or vocations] ;

LEG. REF.

[1] This was originally inserted as cl. (*viii*) (*a*) by sec. 2 of Act XXIII of 1930.

[2] *See* footnote 4, p. 2942.

[3] Substituted for "business" by Act VII of 1939.

[4] Substituted for "businesses", by Act VII of 1939.

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their income sums merely carried forward as a book liability in favour of employees or trustees—C sh payments however could be deducted—Actual payment to trustees so as to lose proprietary right of control was sufficient. 7 R. 608=1928 R. 193 (S.B.). *See also* 197 I.C. 260. Mutual Insurance Company—Contributions entirely by members—Provision for division of profits among certain members—Effect of—Assessability. *See* 56 B. 119=33 Bom.L.R. 1581=1932 B. 104; 55 B. 637=33 Bom.L.R. 807=1931 B. 448. Payment of profits to working partners. 1927 M. 1053=54 M.L.J. 219 (F.B.). Where the assessee firm entered into a partnership with another firm and in that partnership sustained loss, the loss must be treated as the loss suffered by the assessee firm and must be allowed in the course of assessment. Even if the bigger partnership was illegal, the assessee firm is entitled to have the loss sustained by it in the larger partnership taken into account in computing its income for the year in question. Legality or illegality of transaction culminating in profit or loss is foreign to the scope of an enquiry into the income of an individual or of a firm for the purpose of taxing the same. 1939 A.L.J. 419 =I.L.R. (1939) All. 690=1939 All. 341 (F. B.). Loan advanced by partner to partnership business—Interest paid thereon must be deducted in computing the profits of the firm. *See* 55 M.L.J. 416 (F.B.). *See also* 46 All. 1; 1939 I.T.R. 662. [Case. before the Act was amended in 1939. *See* the amendment.] Dissolution of partnership—Payment towards defunct business—Capital loss not payment of interest on capital. *See* 55 M. 818=1932 M. 375=62 M.L.J. 638 (F. B.). Assessee paying money to get out competition in business—Capital expenditure—Liability to income-tax. 3 I.T.C. 44. Company—Agreement to pay royalty to Government otherwise than as shareholder—Expenditure incurred for business—Same whether assessable to income-tax. 26 A.L.J. 1329=1929 A. 118. Where an assessee purchases a property mortgaged to him, he is not entitled to deduct from the profits arising out of the sale, expenses incurred for taking delivery of possession of the property or for getting mutation effected. 60 I.A. 133=12 P. 305=64 M.L.J. 544=1933 P.C. 101 (P.C.). The expenses incurred by a mortgagee in completing his title and entering into possession after the execution sale had become absolute are not deductible by the mortgagee from his taxable profits in respect of the mortgage transaction. 1942 I. T.R. 186=1942 A.L.W. 205=1942 O.W.N. 289. The assessee had obtained a mortgagee decree. A minor sued the assessee for a declaration that his share, *i.e.*, 1/8 in the mortgaged property, was not affected by the decree obtained by the assessee. Pending the decision in the suit, the mortgagee deposited a certain amount, *i.e.*, 1/8 of the purchase-money at which the property was purchased by him in sale, held in execution of his decree. The case was decided only more than two years after the purchase. *Held*, that the assessee was to be assessed on the whole of the purchase-money as being the income in the year of purchase and that it was not permissible for him to deduct from such amount the amount deposited in computing the assesset's profits or gains for the year following the year of purchase. 60 I.A. 133 =12 P. 305=1933 P.C. 101=64 M.L.J. 544 (P.C.). If the purchaser of a business undertakes to the vendor as one of the terms of the purchase that he will pay a sum annually to a third party, irrespective of whether the business yields any profits or not, it cannot be said that the annual payments are made solely for the purpose of earning the profits of the business. It would make no difference that the annual sum should be made payable out of a particular receipt of the business, irrespective of the earning of any profit from the business as a whole. No deduction therefore can be claimed in respect of income-tax for the payment of such amount. 640 A. 215=I.L. R. 1937 Bom. 388=168 I.C. 173=1937 P.C. 137=(1937) 2 M.L.J. 763 (P.C.). Where an assessee, a resident of British India, carries on a money-lending business out of British India and receives profits therefrom in British India, in computing profits for purpose of assessment, allowance must be made for the loss incurred on exchange, as such loss is not a loss of capital but a loss incurred solely for the purpose of earning such profits. 1937 Rang.L.R. 185=170 I.C. 91=1937 Rang. 257 (S.B.). Assessee firm advancing large sums of money to contractor—Accounts between parties settled and

[3][(*xi*) when the assessee's accounts in respect of any part of his business, profession or vocation are not kept on the cash basis, such sum, in respect of bad and doubtful debts, due to the assessee in respect of that part of his business, profession or vocation, and in the case of an assessee carrying on a banking or money-lending business, such sum in respect of loans made in the ordinary course of such business as the Income-tax Officer may estimate to be irrecoverable but not exceeding the amount actually written off as irrecoverable in the books of the assessee :

Provided that if the amount ultimately recovered on any such debt or loan is greater than the difference between the whole debt or loan and the amount so allowed, the excess shall be deemed to be a profit of the year in which it is recovered, and if less, the deficiency shall be deemed to be a business expense of that year] ;

LEG. REF.

[3] Inserted by Act VII of 1939.

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certain amount found to be due—Debtor agreeing to make payments by cheques recovered from Government—Debtor absconding without making full payment—Right to allowance for loss. 1936 Lah. 597=165 I.C. 367. Sale of mills to limited company—Price paid to vendors by allotment of shares in the Company—Contract to under-write borrowing from Bank for taking the shares—Vendors guaranteeing loan to under-writer—Vendors doing business as agents of the limited company as well as other mills—Recovery of loan from guarantors—Alleged loss therefrom, if claimable as a business expense of the guarantors—If capital expenditure. 3 I.T.C. 83.

CL. (xi): BAD DEBT—DEBT—WHEN BECOMES BAD—QUESTION OF FACT.—It is purely a question of fact as to when a debt becomes bad. The onus of proving that a debt has become bad and when it has become bad is on the assessee. 1941 I.T.R. 222. *See also* 1940 I.T.R. 69. A bad debt presupposes the existence of a debt, and if there was no debt due to the assessee at any time there can be no bad debt. A claim to refund of customs duty paid under protest in respect of which a suit is filed cannot be considered to be a debt due to the plaintiff; and if the suit is ultimately dismissed the unsuccessful plaintiff cannot claim that the amount of the claim in the suit should be deducted as a bad debt which became bad when the suit was dismissed. (1945) I.T.R. 336. Although the Act nowhere in terms authorises the deduction of bad debts of a business, such a deduction is necessarily allowable. In order to permit of deduction the loss must be in the nature of a commercial or professional loss which means a loss which it was either reasonable or necessary to incur in carrying on the particular trade or profession concerned. 1941 Rang.L.R. 529=1941 I.T.R. 339=1941 Rang. 185 (S.B.). It is not possible to argue that merely because a debtor had become insolvent therefore the debt was irrecoverable or to what extent it was so irrecoverable. This would be a matter which would turn on a variety of circumstances which would include the amount of property at the disposal of the insolvent, the skill with which the sale was conducted, which in the case of official auctions might be presumed, and on circumstances which nobody could entirely foresee in the future, such as the presence of bidders and the amount of property which could be attached and sold in insolvency proceedings which again might be a varying factor. The market value of a debt in 1933 could not be determined by the amount received as dividend in 1936. 1941 I.T.R. 202. *See also* 67 I.A. 71=44 C.W.N. 373=I.L.R. (1940) Nag. 341=1940 P.C. 33=(1940) 1 M.L.J. 180 (P.C.). Bad debts—Assessee holding two mortgages over same property—Amount due on 1st mortgage exceeding value of property mortgaged—Assessee suing on 1st mortgage and claiming only amount of value of property and giving up second mortgage—Claim to deduct amount of second mortgage as bad debt is sustainable. The substance of the matter as distinguished from the strict legal position cannot be regarded in revenue cases. 53 L.W. 738=1941 Mad. 492=(1941) 1 M.L.J. 776 (F.B.). In 1930 the assessee with a number of other co-creditors seized the property of the debtor and paid themselves to the extent of 8 annas in the rupee. This transaction released the debtor from all further liability. The assessee prepared his account on the mercantile system. In the year of assessment the assesee claimed to deduct Rs. 1,600 which remained unpaid, from the total assessable income as a bad debt. It was found however that subsequent to the year 1930, the assessee did not make return of interest on this debt. *Held,* that the debt ceased to be a liability in the year 1930 and become a bad debt from the point of view of the assessee in that year and hence the assessee subsequently in the year of assessment was not entitled to treat the sum of Rs. 1,600 as a bad debt and claim deduction thereof. 1938 Pat. 577. *A* and *B* who carried on a joint business separated and divided between themselves the assets and liabilities of the joint business. Thereafter each carried on his separate business which had nothing to do with the former joint business. *B* during the year of assessment claimed that an outstanding debt assigned to him in partition with *A* was irrecoverable and hence should be exempted. *Held,* that the loss claimed was in the nature of a capital loss and hence could not be exempted. 1938 Cal. 636. Bad debts—Question as to—Decision on not *res judicata*—Claim to deduction on

bad debts disallowed as premature—Claim in succeeding year—Decision that debts had become bad long before—Legality—Finding of fact not to be interfered by High Court. 1941 Pat. 527=194 I.C. 464. Where the book-debts taken over by an assessee turn out to be irrecoverable, the loss incurred by the assessee is a capital loss and not a trading loss. The determination of this matter is entirely a question of law once the facts have been ascertained. 1941 I.T.R. 685= 1941 Rang. 273 (S.B.). The assessee, the manager of a Hindu joint family trading in timber, etc., and running a money-lending business, carried on before 1933, a separate money-lending business in partnership with a third person. In 1933, the latter business was dissolved and the assets were divided. As part of its share the family of the assessee received certain promissory notes by certain debtors of the dissolved partnership and these debts were entered in the books of the family relating to its own money-lending business. The promissory notes were renewed from time to time, and interest paid to the family by the debtors was included in the profits of the family business and assessed to income-tax. In the year of account 1941-42, the assessee wrote off three of these debts as irrecoverable and claimed to deduct the total amount of the three debts (Rs. 8,855) in calculating his assessable income under sec. 10 (2) (*xi*) of the Income-tax Act. *Held*, that the sum of Rs. 8,855 was allowable as a deduction under sec. 10 (2) (*xi*) of the Act. (1946) I. T.R. 227=59 L.W. 254=1946 Mad. 494= (1946) 1 M.L.J. 362. A money-lending business, in which two brothers were the partners, advanced a sum of 5,000 dollars on a second mortgage to a customer of the firm. As the chances of recovery of the amount were very doubtful, it was written off in the books of the firm to 5 dollars. On dissolution of the partnership in 1939, each brother took a half share of the assets and undertook to pay half the liabilities. Thereafter one of the brothers, who had been the managing partner in the dissolved firm, started the assessee firm in 1940, consisting of himself and his four sons who formed a joint family. In the books of the new firm, a sum of 2.5 dollars, representing the half share of the partner in the assets of the old dissolved firm, was shown as an item. In the assessment in respect of the year of account commencing from 13-4-1940, the assessee firm claimed to deduct the sum of 2,500 dollars as a bad debt in calculating the profits and gains, that amount being a trade loss, being one-half of the mortgage debt of 5,000 dollars, written off in the books of the old firm. *Held*, that the assessee would not be entitled to this deduction unless it represented a trade loss incurred during the year of account. As the assessee was entirely a different entity from the dissolved partnership, and as the value of the asset in question so far as the assessee was concerned was really nil, it had sustained no loss in the year of account in that connection and the assessee was not therefore entitled to the deduction claimed. 1945 I.T.R. 290 =1925 Mad. 365=(1945) 2 M.L.J. 118. By a registered deed of 4—8—1921, the assessee's father entered into an agreement with *K* to do some business. The assessee's father was the principal and *K* agent. Later on when the business was closed all the assets were taken over by the assessee's father and the assessee succeeded to the business of his father including these assets. *S*, a customer of the business, owed a debt in the form of a bill which was assigned by *K* to the assessee on 30-4-1925. The assessee suffered a loss in respect of this transaction, and the loss occurred in the "previous" year, *i.e.*, in August, 1936, the assessment year being 1938-39. *K* as agent of the business had supplied goods to *M* who owed the value of the same and *M* had pledged some shares. The shares were assigned to *K* who assigned them to the assessee on 30—4—1925. The assessee also suffered a loss on this account as the companies whose shares they were, had gone into liquidation and the assessee therefore wrote it off as a bad debt in the year of assessment. *Held*, that the losses were business losses and not capital losses and the assessee was entitled to deduct the same from his total income as bad debts. 22 Pat. 727=(1944) I.T.R. 116=1944 Pat. 107. The assessees were the executors of a deceased who was one of the directors of a Bank which went into liquidation in 1935 and which was placed in charge of an Official Liquidator. In the course of liquidation, misfeasance proceedings were taken out against the directors under sec. 235 of the Companies Act, and the deceased director offered to settle the matter and paid Rs. 35,000 to the Liquidator whereupon the proceedings were dropped. In the return submitted by the executors of the deceased for the assessment year 1939-40, they claimed a deduction of this sum against the income of the corresponding year. *Held*, that the deduction claimed was not permissible under sec. 10 (2) (*xii*) or sec. 12 (2). (1943) I.T. R. 478. A loss or expenditure connected with or arising out of a trade must, at any rate, amount to something in the nature of a loss or expenditure which is contemplatable and in the nature of a commercial loss or expenditure. The assessee who had entered into a contract with other traders in the same line of business under which his goods were to be sold at specified rates committed breach of the contract and sold goods at lower rates to the detriment of the other parties to the contract. Consequently in an action brought by the other parties for breach of the contract the assessee had to pay them damages and costs. The assessee claimed to deduct the amount of damages and costs awarded against him as business expenditure under sec. 10 (2) (*xii*) of the Income-tax Act. *Held*, that the award of damages which followed the assessee's dis-

(*xii*) any expenditure (not being in the nature of capital expenditure) laid out or expended on scientific research related to the business ;

(*xiii*) any sum paid to a scientific research association having as its objects the undertaking of scientinc research related to the class of business carried on, and any sum paid to a university, college or other institution to be used for such scientific research ;

Provided that such association' university, college or institution is for the time being approved for the purposes of this clause by the prescribed authority ;

(*xiv*) in respect of any expenditure of a capital nature on scientific research related to the business, an allowance for each of the five consecutive previous years beginning with the year in which the expenditure was incrred, or where the expenditure was incurred prior to the five consecutive previous years beginnirg with the year in which the business was commenced, equal to one-fifth of such expenditure;

Provided that no allowance shall be made for any expenditure incrred more than three yeare before the commencement of the business :

Provided further, that—

(*a*) where an asset representing scientific expenditure of a capital nature ceases to be used for scientific research related to such business—

(*i*) no allownce shall be made in respect of any previous year after the previous year in which the cessation takes place, and

(*ii*) if the aggregate of the amounts allowed under this clause added to the value of the asset immediately before the cessation is less than the said expenditure, there shall also be allowed in respect of the previous year in which the cessation takes place an additional deduction equal to the difference ;

(*b*) wher such asset is sold without having been used for other purposes, the sale proceeds shall be taken to be the value of the asset immediately before the cessation, and if an additional allowance or a greater additional allowance would have been made in respect of the previous year in which the cessation occurred on the basis of that value, an amount equal to the additional allowance which would have been made or, as the case may be,to the difference between the additional allowance which would have been made and the additional allowance which was made for that year shall be made in respect of the previous year in which the sale occurs;

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honest act in disregarding the undertaking given by him did not constitute an expenditure falling within sec. 10 (2) (*xii*); and hence could not be deducted. 1943 I.T.R. 454=56 L.W. 515=1943 Mad. 670=(1943) 2 M.L.J. 274. Where an assessee makes good as guarantor on default of repayment by the borrower of the amount borrowed, the assessee cannot claim to be entitled to deduct this amount in his assessment under sec. 10 (2) (*xii*). But this does not mean that he is not entitled to the deduction. The amount represents a loss incurred by the assessee in carrying on his money-lending business and therefore he is entitled to the deduction as such. Further, by reason of the practice among Nattukottai Chettiars in the matter of such mutual guarantees the debt can only be regarded as a business loss. 59 L.W. 225 (1)=1946 Mad. 508=(1946) 1 M.L.J. 330.

CL. (*xi*): BAD DEBT—ONUS OF PROOF.—A claim to any of the allowances mentioned in sec. 10 (2) is a claim which the assessee must prove. The same is true of a claim to deduct a bad debt. 35 C.W.N. 589=58 C. 1446=1931 C. 983 (S B.). *See also* 16 L. 416=1935 L. 539; 163 I.C. 629=1936 L. 441: 13 P. 101=151 I.C. 858=1934 P. 46; 56 B. 457=34 Bom.L.R. 1235=1932 B. 609; 59 I.A. 290=1932 P.C. 178=63 M.L.J. 361 (P.C.). Where the assessee claims deduction of an amount as bad debts, he must produce satisfactory evidence (1) of the nature and character of the debts, (2) that they were really and justly due to the assessee firm, and (3) that they became bad in the year of account. If the debt is in respect of another business, the assessee cannot claim deduction of the same as bad debt. 58 C. 1446=1931 Cal. 683=35 C.W.N. 589 (S B).

CL. (*xv*) (OLD CL.) (*xii*).—"Expenditure incurred solely for the purpose of earning such profits": A payment out of profits and conditional on profits being earned cannot accurately be described as a payment made to earn profits. 58 I.A. 239=54 M. 691=61 M.L.J. 251 (P.C.). Deposit by money-lending firm to become organising agents of an oil importing company—Insolvency of latter firm—Amount due to money-lending firm could not be deducted from their profits. *Held*, that the character of the expenditure which the assessee sought to bring within cl. (*ix*) of sec. 10 (2) must be determined with reference to the business of the organising agents in which they

(*c*) where the proceeds of the sale plus the total amount of the allowances made under this clause exceed the amount of the expenditure, the excess or the amount of the allowances so made, whichever is the less, shall be treated as a receipt of the business accruing at the time of the sale;

(*d*) where a deduction is allowed for any previous year under this clause in respect of expenditure represented wholly or partly by any asset,no deduction shall be allowed under clause (vi) or clause (vii) for the same previous year in respect of that asset;

(*e*) where an asset is used in the business after it ceases to be used for scientific research related to that business, and a claim for an allowance under clause (vi) or clause (vii) is made in respect of that asset, the actual cost to the assessee of the asset shall be treated as reduced by the amount of any deduction allowed under this clause;

(*f*) clause (*b*) of the proviso to clause (vi) shall apply in relation to deductions allowable under this clause as it applies in relation to deductions allowable in respect of depreciation;

(*g*) if any question arises under clause (xii, clause (xiii) or this clause as to whether, and if so to what extent, any activity constitutes or constituted or any asset is or was being used for, scientific research, the Central Board of Revenue shall refer the question to the prescribed authority, whose decision shall be final;

Explanation.—In clause (xii), clause (xiii) and this clause—

(*i*) "scientific research" means any activities in the fields of natural or applied science for the extension of knowlege;

(*ii*) references to expenditure incurred on scientific research do not include any expenditure incurred in the acquisition of rights in or arising out of, scientific research, but, save as aforesaid, include all expenditure incurred for the prosecution of, or the provision of facilities for the prosecution of, scientific research;

(*iii*) references to scientific research related to a business or class of business include—

(*a*) any scientific research which may lead to or facilitate an extension of that businessess or, as the case may be, all business of that class:

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engaged since December, 1930. They were entering upon a business different in character from that of money-lenders. The deposit was exacted as a condition of the assessee being given an agency which they hoped to manage profitably. The purpose of being permitted to engage in such a business must be considered to be a purpose of securing an enduring benefit of a capital nature and the deposit could not, upon a true view of the terms of the agreement and the circumstances of the case, be regarded as an expenditure made in the course of carrying on an existing agency or any other business. 67 I.A. 71=I.L.R. (1940) Nag. 341=51 L. W. 129=44 C.W.N. 373=42 Bom.L.R. 323 =1940 P.C. 33=1940 1 M L.J. 180 (P.C.). Preference shares—Dividends payable at seven and half per cent. subject to tax—No tax payable by company—Right to deduct tax at standard rate from dividend payable. I.L.R. (1940) Bom. 165=42 Bom.L.R. 57 =1940 Bom. 97 (F.B.). Assessee speculating in cotton incurring losses in forward contracts—Suit against assessee in respect of such losses—Litigation expenses incurred by assessee in suit—Suit ultimately ending in compromise decree—Right to claim deduction of litigation expenses. 1942 I.T.R. 95. The sum of money allocated by a Life Insurance Company for distribution amongst the participating policy holders must be considered to be a portion of the profits of the company and as such assessable to income-tax and not an expenditure incurred solely for earning the profits within the meaning of sec. 10 (2) (*ix*). 12 Lah. 704= 132 I.C. 861=1931 L. 739. *Per* Bhide, J.— The "profits of a business" mean that the nett proceeds of the concern after deducting the necessary outgoings without which those proceeds could not be earned and the nett proceeds must be taken to be the basis for the assessment of income-tax irrespective of their subsequent application or allocation. 12 Lah. 704=132 I.C. 861=1931 L. 739. *See also* 163 I.C. 629=1936 L. 441. If a particular partner or partners possess special qualifications for which they are paid a salary irrespective of the existence of of profits and over and above their share of profits. the salaries could be allowed as a deduction. The dual capacity of a partner *cum* employee, though suspicious, is possible and to the extent that the person is in truth an employee, the salary is deductible from the profits of the partnership. (1 I.T. C. 176, held stated too broadly and 4 I.T.C. 171, Ref.) 32 P.L.R. 656=1931 L. 341=12 Lah. 663. *See also* 1945 I.T.R. 430; 139 I. C. 290=1932 N. 65.

(*b*) any scientific research of a medical nature which has a special relation to the welfare of workers employed in that business or, as the case may be, business of that class;"

(*b*) in sub-section (5), after the word "provided" in the proviso the word "further" shall be inserted, and before the said proviso the following proviso shall be inserted, namely :—

"Provided that in the case of a building previously the property of the assessee and brought into use for the purposes of the business, profession or vocation after the 28th day of February 1946, 'written down value' means the actual cost to the assessee reduced by an amount equal to the depreciation calculated at the rate in force on that date that would have been allowable had the building been used for the aforesaid purposes or since the date of its acquisition by the assessee and had the provisions of this Act relating to the allowance for depreciation been in force on and from the date of acquisition.] (Inserted by Act VII of 1946].

[4][(*xiv*) any expenditure [5][(not being in the nature of capital expenditure or personal expenses of the assessee] laid out or expended wholly and exclusively for the purpose of such business, profession or vocation] ;

[6]* * * * * * * *

[7][(3) Where any building, machinery, plant or furniture in respect of which any allowance is due under clause (*iv*), clause (*v*), clause (*vi*) or clause (*vii*) of sub-section (2) is not wholly used for the purposes of the business, profession or vocation, the allowance shall be restricted to the fair proportional part of the amount which would be allowable if such building, machinery, plant or furniture was wholly so used.

(4) Nothing in clause (*ix*) or clause (*xii*) of sub-section (2) shall be deemed to authorise the allowance of any sum paid on account of any cess, rate or tax levied on the profits or gains of any business, profession or vocation or assessed at a proportion of or otherwise on the basis of any such profits or gains ; and nothing in clause (*xii*) of sub-section (2) shall be deemed to authorise—

(*a*) any allowance in respect of a payment which is chargeable under the head 'Salaries' if it is payable without British India and tax has not been paid thereon nor deducted therefrom under section 18 ; or

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LEG. REF.

[1] Original cl. (*xii*) was re-numbered (*xv*) by Act VII of 1946.

[2] Substituted for the brackets and words "(not being in the nature of capital expenditure) incurred solely for the purpose of earning such profits or gains" by Act VII of 1939.

[3] The proviso was omitted by Act VII of 1939.

[4] Sub-secs. (3), (4), (5), (6) and (7) substituted for sub-sec. (3) by Act VII of 1939.

[6] Cl. (*xii*) renumbered as cl. (*xv*), and after cl. *xi*) cls. (*xii*) to (*xiv*) by Act VII of 1946.

SEC. 10 (3). The words "not wholly used for the purposes of the business, profession, etc". in sec. 10 (3) do not mean not used throughout the year or during the whole of the year in question. They mean that the building, machinery, etc., have not been used exclusively for the purpose of the profession or vocation, that is to say, they have been used for other purposes also. There is no justification for the view that if the machinery is not used throughout the year, then the period for which it has worked should be calculated and depreciation should be allowed in proportion to such period. 24 Pat. 630=1945 I.T.R. 415=1946 Pat. 3. There is nothing in sub-cl. (3), sec. 10, to suggest that interest paid on the initial capital invested in a firm cannot be the subject-matter of an allowance. Where therefore a capitalist partner advances money to the firm on condition that interest would be paid to him, whether the business of the firm results in profit or not and is in no way made dependent on the profits, if any, earned, the firm is entitled to claim an allowance for the interest paid on such capital. It is immaterial whether such capital was advanced as initial capital or subsequently there is no distinction between capital borrowed and capital contributed. Capital contributed by a capitalist partner is capital borrowed from him by the firm. 144 I.C. 353=1933 S. 192.

SEC. 10 (1) (ix) AND (4): UNION RATE PAID UNDER THE PROVISIONS OF THE BENGAL VILLAGE SELF-GOVERNMENT ACT—IF AN ALLOWABLE DEDUCTION IN COMPUTING PROFITS. —The total assessable income of an assessee as a Hindu undivided family, carrying on business at Tejhati in Birbhum district and also at Nalhati and Lohapur, two other villages there, was assessed at a figure which included a sum as being the profits of the Nalhati business asessable under secs. 6 (iv) and 10 (1). The assessee claimed that a sum

(*b*) any allowance in respect of any payment by way of interest, salary, commission or remuneration made by a firm to any partner of the firm ; or,

(*c*) any allowance in respect of a payment to a provident or other fund established for the benefit of employees unless the employer has made effective arrangements to secure that tax shall be deducted at source from any payments made from the fund which are taxable under the Head ' Salaries.'

(5) In sub-section (2) ' paid ' means actually paid or incurred according to the method of accounting upon the basis of which the profits or gains are computed under this section ; ' plant ' includes vehicles, books, scientific apparatus and surgical equipment purchased for the purposes of the business, profession or vocation ; and ' written down value ' means—

(*a*) in the case of assets acquired in the previous year, the actual cost to the assessee ;

[1][(*b*) in the case of assets acquired before the previous year the actual cost to the assessee less all depreciation actually allowed to him under this Act or any Act repealed thereby or under executive orders issued when the Indian Income-tax Act, 1886, was in force.]]

Provided that where the provisions of the proviso to sub-section (2) of section 26 are applicable, the actual cost to the assessee referred to in clauses [1][(*a*) and (*b*)] shall be the actual cost to the person succeeded in the business, profession or vocation :

[3][* * * * * * *

(6) A trade, professional or similar association performing specific service for its members for remuneration definitely related to those services shall be deemed for the purpose of this section to carry on business in respect of those services, and the profits and gains therefrom shall be liable to tax accordingly.

LEG. REF.

[1] New cl. (*b*) substituted for old cls. (*b*) and (*c*) by Act XXIII of 1941.

[2] Substituted by Act XXII of 1941.

[3] Second proviso omitted by Act XXII of 1941. The omitted proviso ran as follows:—

"Provided further that there shall not be so deducted from the actual cost any depreciation allowance or part of any depreciation allowance which was due for a year which ended prior to the 1st day of April, 1939, but to which full effect was not given owing to the absence of profits or gains chargeable for that year, or owing to the profits or gains so chargeable being less than the allowance".

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paid as a Union Board rate in Nalhati under the provisions of the Bengal Village Self-Government Act in respect of the building within the union occupied by the assessee and used for the purpose of the business, as an allowable deduction in computing the profits of the business under sec. 10. The crown in resisting the claim and while admitting that the Union Board rate was a local rate and that it was not levied on the profits of or gains of the Nalhati business, maintained that the Union Board rate was assessed at a proportion of or otherwise on the basis of the profits or gains of the Nalhati business, business, and as such the case would fall under sec. 10 (4). *Held*, that in the absence of the necessary powers and machinery, which are not provided in the Bengal Village Self-Government Act, the estimate of the annual income from business can only proceed on a rough guess. Hence, the inclusion of this element of business income as part of the "circumstances" of the assessee as referred to in sec. 38 (1) of the Act with a view to the imposition of the union rate does not fall within sub-sec. (4) of sec. 10 of the Income-tax Act. When it is conceded that union rate is not "levied on profits or gains" which clearly implies an ascertainment of such profits or gains, the words "assessed. . . . on the basis of any such profits or gains" in the latter part sub-sec. (4) of sec. 10 must also be so limited. No such ascertainment of the profits and gains of the business can be undertaken for the purposes of the union rate and hence the argument of the crown fails. In any case where the union rate is not wholly referable to premises occupied for the purpose of a business or businesses, the assessee on establishing the portion of the rate which is so referable, would be entitled to deduct such portion be entitled to entitled to deduct such portion under head (ix) of sec. 10 (1). 50 C.W.N. 240=(1946) 6 M.L.J. 70 (P.C.). *See also* 1943 I.T.R. 499=1944 Cal. 125.

SECS. 10 (4) (*b*).—In a joint Hindu family no member is bound to work in the business of the Hindu undivided family, and if an allowance has been made to a junior member on a contractual basis for actual work done as remuneration for his services to the business, the amount so paid can be legitimately deducted in computing the profits of the business if it is found to be a *bona fide* payment to a *bona fide* employee for services actually rendered and is not excessive or unreasonable and is not a device to escape income-tax. If on the other hand the amount

(7) Notwithstanding anything to the contrary contained in section 8, 9, 10, 12 or 18, the profits and gains of any business of insurance and the tax payable thereon shall be computed in accordance with the rules contained in the Schedule to this Act.]

11. *Professional earnings.—Omitted by S. 12 of the Indian Income-tax (Amendment) Act, 1939 (VII of 1939).*

12. (1) The tax shall be payable by an assessee under the head [1][" Income from other sources "] in respect of income, profits and gains of every kind [2][which may be included in his total income] (if not included under any of the preceding heads).

LEG. REF.

[4] Substituted for "Other sources" y sec. 13 of Act VII of 1939.

[5] Substituted for "and from every source which this Act applies", by *ibid.*

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paid to an individual member is unreasonably high and disproportionate to the services rendered by him then it may be treated as part of the profits of the firm distributed in a particular manner. 24 Pat. 630=1945 I.T.R. 410.

SEC. 10 (7) AND SCH., RR. 2 AND 8: "MORE RELIABLE DATA"—MEANING OF.—The scope of the expression "more reliable data" in R. 8 of the Schedule to the Income-tax Act is not confined to the higher of the two computations in Rr. 2 (a) and 2 (b) of the schedule. The "reliable data" referred to in R. 8 is the data necessary to assess the profits and gains of a branch business by some recognised business method which can be applied having regard to the manner in which the insurance company conducts its affairs. The separate actuarial statement for the Indian business of a non-resident life insurance company can be held to contain "more reliable data" for purposes of R. 8. 1945 I.T.R. 141=47 Bom.L.R. 195=1945 Bom. 402.

SECS. 10, 12 AND 26.—Applicability of. *See* 1942 I.T.R. 405.

SECS. 10 AND 13: MONEY-LENDING BUSINESS—PRINCIPLE OF ASSESSMENT.—Where an assessee has herself chosen a "mercantile" bais, then the Income-tax officer is for the purpose of sec. 10 entitled and bound to concede that basis to the assessee, provided the assesee's accounts, regularly kept on that basis, afford a proper and sufficient means of deducing what the profits or gains on that basis have been, notwithstanding that, as a result of computation on that basis, profits and gains of the assessee's business would or might, subject to any allowances proper to be made under the Act, become chargeable to income-tax without having been actually received or deemed by the Act to have been received by the assessee. I.L.R. (1945) All. 577=1945 A.L.J. 168=1945 I.T.R. 224=1945 All. 102 (F.B).

SEC. 12.—Expenses directed by testator to be paid by executor for performance of his Addya Sradh and for obtaining probate of will not exempt from taxation. 40 C.W.N. 827. The allowance for any expenditure incurred must be an allowance for expenditure incurred in the year in respect of which arise the income, profits and gains forming the basis of the assessment. There is no justification for deducting from the profits and gains something in respect of expenditure, whether it be regarded as capital expenditure or not, which occurred many years before. 60 I.A. 307=55 A. 452=65 M.L.J. 247=1923 P.C. 180 (P.C.). The expression "other sources" in sec. 12 of the Act means sources other than the preceding five heads as specified in sec. 6. When there is a specific head for interest on securities the residuary sec. 12 cannot be called in aid. 10 P.L.T. 424=1929 P. 419=9 P. 139. The profits by a resident in France having a branch or agent in British India, which are received and retained in France, are not liable to income-tax in British India. 44 M.L.J. 290=46 M. 360=1923 M. 422.

"OTHER SOURCES."—*See* 54 C. 863=31 C.W.N. 765=1927 C. 432 (F.B.); 1941 I.T.R. 642; 53 C. 524=1926 C. 819=30 C.W.N. 524=6 P. 29=1927 P. 133. If there be any earlier legislation or a treaty between the Sovereign power and the subject for special exemption from future taxation, followed by the introduction by the Sovereign power at a later date of legislation which admittedly, but, for the claim to the earlier exemption, applies to and includes the person who was originally exempted, it follows that by necessary implication the later statute repeals the earlier statute or other Act under which the exemption is claimed. Where certain income of a Raja taxable as "other sources" and not coming under any of the exemptions specified in the Act was taxed, but the Raja claimed exemption by virtue of a treaty negotiated between his ancestors and the East India Company, which provided for exemption from all future taxation: *Held*, that the Income-tax Act, by imposing the tax on all persons in British India without specified exception, by nececcary implication, repealed the provision of earlier exemption and hence the income was taxable. 15 P. 792=18 Pat.L.T. 169=1937 P. 1. Receipt of salami not to be treated as an assessable income. 57 C. 910=34 C.W.N. 327=1930 C. 1 (F.B.). Scope—Employee's gratuity—Employer's insolvency—Payment of stranger—Assessability—Not taxable. 12 R. 477=1934 R. 377. As to payment of royalties, *see* 56 M.L.J. 85=1933 P.C. 211=38 L.W. 621 (P.C.). Compensation received by a company as agent of a business concern for determination of the agency is a receipt arising from business and consequently, if income it would

(2) Such income, profits and gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of making or earning such income, profits or gains, [1][provided that no allowance shall be made on account of—

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be taxable under sec. 10 as being an income from business or at least under sec. 12 as being income from other sources. The circumstances that it is casual or non-recurring does not exempt it from taxation. 58 C. 1153=35 C.W.N. 361=1931 C. 676 (F.B.). *Per* Mohamad Noor. J.—Annuities have not been expressly taxed except as salary and before an annuity can be taxed, it must be shown to come within the purview of "income, profits or gains" as mentioned in sec. 12, Income-tax Act. 13 P. 661=1934 P. 384 (F.B.). *See also* 69 M.L.J. 190 (P.C.). The income derived from a zemindari is assessable after making allowance for the jama assessed and paid. 57 I.A. 228=1930 P.C. 209=59 M.L.J. 184(P.C.). Where an impartible zemindari is held exclusively by the eldest son of each successive Raja and the younger sons are settled with some mauzas in the zemindari in lieu of maintenance, which the Raja was under obligation to provide, the grant being resumable at the will of the Raja, unless he parts with it, the income of the mauza by way of royalty is income assessable to income-tax as part of the Raja's income, irrespective of whether such income reaches him or not. 130 I.C. 43=1931 P. 15; 60 I.A. 196=60 C. 1029=1933 P.C. 145=65 M.L.J. 285 (P.C.). "Expenditure incurred solely for the purpose of making or earning such income." See 11 p. 47=1932 P. 102 (Salary of receiver and manager appointed to manage zemindari estate if and how far can be deducted as expenditure incurred for earning income.) (*Ibid.*) It is not a correct proposition of law that, as soon as a property is mortgaged the realisations from that property no longer wholly belong to its owner, the mortgagor; nor is it correct to say that a portion of the rents and profits legally belongs to the mortgagee on account of interest and that the balance, if any, alone belongs to the mortgagor. In an assessment of *busti* lands under sec. 12 of the Income-tax Act, the incom is not to be computed after deducting the interest on the mortgages on such properties from the gross realisations in cases where the mortgages have not been made for purposes of the said properties, but for raising a loan for some other purposes of the assessee. The interest payable in respect of the mortgages cannot in such a case, by any stretch of language, be accurately described as expenditure incurred solely for the purpose of earning the income which is derived from the *busti* lands: 63 C. 1157=63 C. 1157=1937 Cal. 369.

The assessee granted a mining lease of some colliery lands upon, *inter alia*, these terms:—(1) the lease to be for a period of 20 years; (2) the lessees should be at liberty to abandon the lands at any time before the period of the lease expired, provided they paid up in full the rents and royalty due to the lessor at the time of abandonment. Before the expiration of the lease an agreement was made between the parties by which it was, *inter alia*, agreed that (1) the lessees undertook to continue to hold the lease and to be bound by the terms and conditions thereof so long as any coal remained workable, (2) in the event of any coal remaining unworked for any reason whatsoever, royalty thereof should be payable to the lessor in the same manner as if the coal had been worked, as soon as the said coal should have been abandoned. After some years, the parties disagreed as to the method of working the coal mines, and the lessees proposed to relinquish the coal mines, and the lessor (asessee) assessed the royalty on the coal left unworked at Rs. 2,28,000 and asked the lessees to pay Rs. 1,50,000. Ultimately matter was settled by an instrument of surrender made between the parties by which the lessees paid to the assessee a sum of one lakh of rupees, and relinquished the coal mines. *Held*, the assessee did not receive this sum as consideration for terminating the lease and the agreement, but as royalty on abandoned coal pursuant to a term in the agreement, and as such it was neither a capital receipt nor a casual receipt within the contemplation of sec. 4 (3) (*vii*). 50 C. W.N. 493. *See also* 1945 Pat. 338.

PRIVATE VENTURE—LOAN ADVANCED TO GET SPECIFIC AMOUNT—WHETHER AMOUNTS TO PROFITS OF BUSINESS.—The assessee, who was a tin mine owner and worker, lent certain sums of money to *W* to enable him to work a tin area. Subsequently, he again advanced a loan to *W* in order to enable the latter to do certain work and sell the mine and *W* executed an agreement by which he agreed to pay the assessee a third of the consideration which might be realised by the sale. *Held*, that the transaction was a private venture and not part of the assessee's business and was a receipt of a casual nature under sec. 4 (*iii*) (7) and not profits or gains under sec. 10 or sec. 12. 11 R. 454=1934 R. 4.

SEC. 12 (2).—When an expenditure is made, not only once and for all, but with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade, such expenditure must properly be attributed not to revenue but to capital. But when the expenditure is incurred for the maintenance and preservation of an existing asset, it is not a capital expenditure, but an income or revenue expenditure. The assessee, a well known businessman, who was elected a member of the Local Board for the western area of the Reserve Bank of India, had to defend a suit brought against him to declare his election invalid and he defended it successfully, incurring an expenditure of Rs. 7,500, by way of legal expenses, in the year of accounts. *Held*, that the amount of Rs. 7,500, incurred as legal expenses, should

(*a*) any personal expenses of the assessee, or

(*b*) any interest chargeable under this Act which is payable without British India, not being interest on a loan issued for public subscription before the 1st day of April, 1938, or not being interest on which tax has been paid or from which tax has been deducted under section 18, or

(*c*) any payment which is chargeable under the head 'Salaries,' if it is payable without British India and tax has not been paid thereon nor deducted therefrom under section 18.]

[2][(3) Where an assessee lets on hire machinery, plant or furniture belonging to him, he shall be entitled to allowances in accordance with the provisions of clauses (*iv*) (*v*), (*vi*) and (*vii*) of sub-section (2) of section 10.]

[3][(4) Where an assessee lets on hire machinery, plant or furniture belonging to him and also buildings and the letting of the buildings is inseparable from the letting of the said machinery, plant or furniture, he shall be entitled to allowances in accordance with the provisions of clauses (*iv*), (*v*), (*vi*) and (*vii*) of sub-section (2) of section 10 in respect of such buildings.]

Managing Agency Commission.

[3][12A. Where a managing agent of a company is liable under an agreement made for adequate consideration to share managing agency commission with a third party or parties, the said agent and the said party or parties shall file a declaration showing the proportion in which such commission is shared between them, and on proof to the satisfaction of the Income-tax Officer of the facts contained in such declaration such agent and each such party shall be chargeable only on the share to which such agent or party is entitled under the agreement.]

Method of accounting.

13. Income, profits and gains shall be computed, for the purposes of section 10, [4]* * and 12, in accordance with the method of accounting regularly employed by the assessee :

LEG. REF.

[1] Substituted for "provided that no allowance shall be made on account of any persanal expenses of the assessee" by sec. 13 of Act VII of 1939.

[2] Added by *ibid.*

[3] Added by Act XXIII of 1941.

[4] Substituted by Act VII of 1946.

[5] Inserted by Act VII of 1939.

[1] The "figures" " 11" were omitted by sec. 15, VII of 1939.

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be allowed as a deduction under sec. 12 (2) of the Indian Income-tax Act. 48 Bom.L. R. 141=1946 B. 401.

The assessee, the owner of a Zamindari, was assessed to pay an annual jama or Government revenue. He was sought to be assessed to income-tax in respect of non-agricultural income, *i.e.*, royalty derived from coal-fields situated within the Zamindari. The assessee claimed that in assessing such income he should be permitted to deduct the jama paid by him but the Income-tax Department disallowed the claim on the ground that it was not a permissible deduction under sec. 12 (2). *Held*, that the assessee was entitled to claim deduction on account of the jama paid which could be attributed to the coal-fields from which the royalties included in the assessable income arose. 1945 I. T.R. 17=1945 P.W.N. 406=1945 Pat. 338.

SEC. 12 (3).—A hire purchase system is nothing but a sale or an agreement to sell with an extended period of instalments. It is certainly not a case of hiring in which the lessor is enitled to claim depreciation allowance and the lessee would be excluded from so doing. Motor vehicles which have been disposed of on a hire-purchase system cannot be held to be "machinery let on hire" under sec. 12 (3). (1945) I.T.R. 240.

SEC. 13.—Wholly arbitrary assessment by Income-tax Officer is not justified by the section. 7 L. 201=1926 L. 161. The basis and the manner of computation under sec. 13 of the Income-tax Act have to be obviously judicial and legal, and not arbitrary or capricious. "Local reputation" can hardly be said to be a judicial basis or legal basis under sec. 13, and an assessment which is based entirely on local reputation of the conditions of the business during the year is vitiated, and cannot be said to be based on evidence on which the Income-tax Department is empowered to act and is not in accordance with the provisions of sec. 13. 1939 I.T.R. 607. *See also* 58 A. 200=1936 A. 286. Accounts suspicious and unreliable—Absence of vouchers for purchases, suspicious entries and suppression of proceeds of retail sales—Accounts disregarded and profits estimated on basis of overage profits made by other dealers in similar business and on income of previous years—If justified and legal. 1939 I.T.R. 647. If an assessee does not choose to make an honest statement of account, so that the amounts of profits may be strictly determined, he cannot complain if a random assessment is made upon him. 7 R. 281=1929 R. 102. Decision

of the Income-tax Officer as to method of accounting—Finality of. *See* 94 I.C. 128= 1926 L. 446. *Per* Sulaiman, C.J. and Niamatullah, J.—The Assistant Commissioner is not authorised under sec. 13 of the Income-tax Act or otherwise to make private enquiries and to take the result of such enquiries into account in making the assessment under sec. 13. *Per* Bajpai, J., contra.—The Assistant Commissioner is auhorised under sec. 13 and also otherwise to make private enquiries, but he is not permitted to take the result of such enquiries into account in making the assessment, without giving an opportunity to the assessee to meet them. 38 A. 200=1936 A. 286 (S.B.). *See also* 1939 I. T.R. 607. Sec. 13 relates merely to the method of accounting, and under this section, though the Income-tax Officer may adopt a method of accounting which he prefers where the assessee has no regular or proper method he cannot reject the assessee's books. Nor can the books of the assessee be rejected merely because they do not relate to his foreign business also. I. L.R. (1939) Mad. 397=181 I.C. 97=1939 I. L.R. (1939) Mad. 397=181 I.C. 97=1939 Mad. 357=(1939) 1 M.L.J. 402. The fact that the Income-tax Officer has justifiably proceeded on a basis and in a manner of his own in computing the assessee's income, profits and gains, does not exempt his computation from examination on appeal, and if it appears that he has adopted a wrong method, the assessment may be set aside. 60 I.A. 146=12 P. 318=1933 P.C. 108=64 M. L.J. 612 (P.C.). In order to compute the income in a particular year, the Income-tax Officer was entitled to take into account both the interest entered for that year by transference from deposit register and the interest actually received in that year. 60 I.A. 146=12 Pat. 318=1933 P.C. 108=64 M.L. J. 612 (P.C.). The provisions of sec. 13 to the effect that income, profits or gains shall be computed in accordance with the method of accounting regularly employed by the assessees do not imply that the assessees must necessarily adopt the financial year as the account period or must adopt a method which would avoid two dates of the 31st March falling within one accounting period. 164 I.C. 316=1936 L. 546. Where an assessee keeps his books on a cash basis and the officer accepts that basis the calculation must be based on actual receipt in the year of computation. 1930 A.L.J. 549=1936 A. 279. It is perfectly open to an assessee to change a method of accounting which he has regularly employed for some years at any period in any particular. He can thus change from a mercantile basis to a cash basis, provided that the change is not merely for a sacual period. If a change is made, it must be at some definite moment of time and must be in good faith. 60 B. 1003=38 Bom.L.R. 934 =1936 B. 397. Sec. 13 of the Income-tax Act relates to a method of accounting regularly employed by the assessee for his own purposes and does not relate to a method of making up the statutory return for assessment to income-tax. The section clearly makes such a method of accounting a compulsory basis of computation, unless, in the opinion of the Income tax Officer, the income, profits and gains cannot properly be deduced therefrom. It is not a correct view of the section to say that the Income-tax Officer is *prima facie* entitled to accept the profits shown by the accounts where there is a method of accounting regularly employed by the assessee; it is the duty of that officer, where there is such a method of accounting, to consider whether the income, profits and gains can properly be deduced therefrom, and to proceed according to his judgment on that question. 65 I.A. 1=1 L.R. 1938) Bom. 239=42 C.W.N. 194=40 Bom.L.R. 227=1938 P.C. 1=(1938) 1 M.L.J. 1 (P.C.). When the income-tax authorities had once adopted the method of assessing interest on the accrued or mercantile basis, it would not be open to them to turn round and adopt a cash basis when the interest was subsequently realised by the assessee, so as to get over the period of limitation prescribed by sec. 34. *Per* Manohar Lal, J.—What the law required the Income-tax Officer to see is not a system of account to be kept by the assessee in respect of a particular loan which may have been omitted in that account, but the system of accounting which the assessee regularly adopts for his purposes with respect to all the loans which he discloses. If any loans are deliberately left out from the account regularly kept by the assessee, it would then be open to the Income-tax Department to disbelieve the accounts and to proceed in any way they choose by acting under the proviso to sec. 13, but on exercising a judicial discretion. 1940 P. 239=185 I.C. 83= I.T.R. 522. An assessee is, no doubt, at liberty to adopt any system of account that he likes, but it must be one that clearly reflects his income in respect of the fixed period of the "previous year" and one regularly adopted by him for the purposes of his business. Under the mercantile system, entries are made in the accounts on the date, not of receipt or expenditure of money, but on the date of transaction irrespective of the date on payment; ordinarily as soon as the transaction is entered in account books, the assessee can be said to have received the sum, whether it is actually realized or not. Where, therefore, after entering such transaction, an assessee credits that sum to suspense account, because he is not hopeful of recovering that sum. *Held,* that this crediting to the suspense account is not based on any regularl system and as such the sum credited to suspense account cannot be excluded in computing income that is taxable. 168 I.C. 549=18 Laa. 306=1937 L. 338 (F.B.). Where the assessee, a building rontractor has been maintaining accounts on the mercantile system of accounting, he is liable to be assessed on the profits shown in the accounts even though a portion of the amount spent by him in making the constructions has not been realised. 1939 I.T.R. 513. Where the creditor does not allocate the sum

between principal and interest but records it in a general ledger as suspense, the assessing officer is justified in the absence of any evidence of appropriation to interest, wherein a particular payment did not exceed the amount due in respect of interest, in assuming that the ordinary course of business had been followed and treating it as interest. 9 P. 240=1930 P. 81 (S.B.). Where an assessee receives payment in respect of a mortgage decree, but he does not credit the amount towards outstanding interest due to him, the Income-tax Officer is entitled to treat the amount as first applicable to the outstanding interest and assess on that amount. 60 I.A. 146=12 P. 318=64 M.L.J. 612 (P.C.). When a mortgagee purchases at auction under a decree of the Court the property which was the subject of the mortgage, he can be said to have received the equivalent of the interest due on his mortgage. (1929 P. 476, Ref.) 60 I.A. 146=12 P. 318=1933 P.C. 108=64 M.L.J. 612 (P.C.). Where a method of accounting is accepted by the Income-tax Officer in one transaction, he cannot object to the same method, in similar other transactions. 1928 N. 102. Stock valued at cost price—Market price less in year of assessment—Assessee not claiming loss on that head—Cost price should be considered. 12 P. 318. It is unjust that, in treating the book income as the actual income, the losses which would have been deducted if the book income had been treated as the actual income in a particular year by the assessee, should not be deducted. That being so, the assessee is entitled to deduct from his estimated income the actual losses that may have been suffered in a particular year and the amount of irrecoverable debts that should have been discovered and could have been discovered in a particular year. 1929 A. 819=124 I. C. 467. The procedure of the assessing authority is a judicial one and he ought to act on evidence. But where money is brought into cash account, he has the right to require a satisfactory explanation of how and why it came in; and in the absence of a satisfactory explanation or if he receives an explanation which he cannot believe, the assessing officer is entitled to regard the account as unsatisfactory. If he finds that a money-lender is in the habit of showing in his books that loans carrying interest have been repaid without interest or that a loan secured by a note has been renewed by a new note without any provision for interest, he is at liberty to consider the accounts unsatisfactory. 1937 Lah. 919. In the case of an assessment under the Income-tax Act, the only person who has knowledge of all facts in regard to the maintenance of accounts is the assessee himself. The burden in the first instance is always on his to establish that accounts asked for are not maintained, and his attempt to prove that point may always be met by reliance on circumstances indicating that the evidence given or led by him cannot be relied upon. The Income-tax Officer is entitled to disbelieve improbable statements and to ask for something more to be produced by the assessee which will satisfy him that the accounts demanded are not, in fact, maintained. 16 Luck. 579=1941 I.T.R. 225=1941 Oudh 279. *See also* 1937 Lah. 721.

LANDS TAKEN OVER IN LIQUIDATION OF DEBTS DUE TO ASSESSEE—PROFIT AND GAIN, HOW COMPUTED.—No doubt the value of the land taken over in liquidation of debts due to the assessee as set out in the assessee's books of account may be treated as *prima facie* evidence of its true value, and the assessee normally would have no cause of complaint if the Income-tax Authorities accepted for income-tax purposes the value which the assessee himself had put upon his assets in his books of account. But the Income-tax Officer must find what are the real profits and gains of the business in the accounting year. Thus, if the estimated value of the lands in the accounting year is greater than the principal sum than was lent, the Income-tax Authorities will be entitled to treat the balance, after deducting an amount eqiuvalent to the loan, as representing profits and gains accruing from the transaction, and to assess the same as income chargeable with income-tax. But if the estimated value of the lands is less than the amount of the principal sum that has been lent, no tax will be chargeable in the accounting year in which the lands are transferred, although it may be that the estimated value of the lands in that year exceeds the amount due to the assessee in respect of interest on the loan. But as the assessment is made upon the footing that the transaction has been completed during the accounting year. the assessee is not entitled to have the value of the lands reassessed in any other accounting year except that in which the lands are sold by him, and until the sale takes place the final adjustment of the assessment must necessarily remain in suspense. 12 R. 483=1934 R. 274 (S.B.). If the assessee gives no information whatever of the sources of the credits in his bank accounts, the Income-tax Officer is authorised to act under sec. 13 in making the assessment. As no question of law arises in such case, a reference under sec. 66 (2) cannot be made. 50 C.W.N. 377. On 12—2—1891, *A*, an Oswal Jain, the founder of the assessee's firm, died leaving a widow who on 26—2—1891 adopted a son M. M died on 5—6—1895 without issue but leaving his widow *S*. On 31—8—1896, *S* adopted a boy, under an agreement with father to the effect that she should not be divested of the estate of her husband. The adopted boy died in July, 1915 and on 14—4—1918, *S* gave the business and its assets to her daughter in-law, who in May, 191., adopted the assessee, Mohanmull. He had two sons and two daughters. *S* died in 1923 and in October, 1930, her daughter-in-law gave to each of her grandsons Rs. 1,50,000 and to their mother (the assessee's wife) Rs. 1,00,000. She died in 1931. With the monies given to the sons of the assessee

Provided that, if no method of accounting has been regularly employed, or if the method employed is such that, in the opinion of the Income-tax Officer, the income, profits and gains cannot properly be deduced therefrom, then the computation shall be made upon such basis and in such manner as the Income-tax Officer may determine.

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and to his wife, three businesses were started in their respective names. The assessee succeeded to the main business in 1931 on the death of his adoptive mother. From 1931 to 1939-1940, the four businesses were assessed separately to income-tax, but in that year the Income-tax Officer held that all the four were really one and carried on by the joint family of which the assessee was the head. This was reversed by the Appellate Assistant Commissioner on appeal. There was an appeal to the Appellate Tribunal, who made a reference to the High Court. *Held*, (1) that since the gifts made by the widow *S* were found to be *bona fide* transactions and were accepted as being valid by the family, it followed that the businesses carried on in the names of the two sons and wife of the assessee were genuine businesses and were not parts of the business carried on by the assessee, Mohanmull; (2) that it was open to the members of the family to accept the gifts made as being valid and binding on them and that the assessee who was most concerned not having challenged their validity, it was not open to a third party to do so; (3) that the income of the business in the names of the assessee's sons and wife could not therefore be assessed as the income of a Hindu undivided family in the hands of the assessee. 209 I.C. 472=1943 I.T.R. 352=56 L.W. 402=1943 Mad. 648.

UNREALISED DECREE—ENTRY IN INTEREST KHATA — ITEM NOT TAXABLE.—Unrealised decree entered in the interest *khata*, the amount of which has not been received in fact is not taxable income for the purpose of assessment. There is nothing in sec. 2 (15) or of sec. 16 of the Act, which would imply that the total income is to include an amount which had been decreed but not received. 57 A. 737=1935 A.L.J. 374=1935 A. 378.8 Bad debt—Personal decree obtained in 1928—Appeal dismissed in 1931—Amount due on personal decree—Whether can be claimed to be bad debt during accounting period of 1932-33. 163 I.C. 629=1936 L. 441.

FRESH PROMISSORY NOTE ISSUED BY DEBTOR FOR OLD DEBT INTEREST.—Where the assessees have elected to treat the interest due under the original loans as having been received and paid on the execution and delivery of the fresh promissory notes by the debtor and the interest is entered as having been received both in the interest account and in the personal accounts of the respective debtors, and the creditors have accepted the obligations of the debtors under the fresh promissory notes in substitution for the old debts and the interest due thereon, and in past years were content that the interest accruing in this manner should be assessed to income-tax, it cannot be said that there were no materials before the Income-tax Officer which would justify him in concluding that these sums represented interest liable to assessment, which the assessee has regarded as being liquidated by delivery of fresh promissory notes. In such cases, if the assessees want to escape assessment for such interest, they should so adjust their accounts as to make it clear that the acceptance of a fresh promissory note is not taken as effecting payment of the interest due under the old loan. 13 R. 231=1935 R. 109.

SEC. 13: PROVISO.—No burden is imposed on the Income-tax Authorities to prove by 'positive evidence' that the accounts are unreliable or that the figure at which they assess is the correct figure. The question of unreliability of accounts is a question of fact and primarily falls for the determination of the Income-tax Authorities alone. If, therefore, it is once decided by them that the accounts are fictitious or unreliable, their finding cannot be disturbed, unless of course it is altogether capricious and injudical. Secondly the Income-tax Officer cannot be expected to lead evidence to prove the assessee's transactions for the accounting year. There must be some material before the Income tax Officer on which to base his estimate, but no hard and fast rule can be laid down to define what sort of material is required. The law nowhere contemplates that the Income-tax Officer is a party to the case in the sense in which an ordinary party to a civil litigation is, and he cannot be expected to be in possession of such evidence as would be required from an ordinary litigant to refute the case of his adversary. I.L.R. 1938 L. 10=39 P.L.R. 1028=1937 L. 721. *See also* 16 Luck. 579=1941 Oudh 279; 1943 I.T.R. 525. Under sec. 13, proviso of the Income tax Act the Income-tax Officer is the sole judge on the question of the possibility of deducing the income from the method of accounting employed by the assessee, and if the principle of applying a flat rate is not objected to, its reasonableness cannot be made the subject of a reference to the High Court under sec. 66 (3). 1939 I.T.R. 151. The language of the proviso to sec. 13 makes it clear that discretion is vested in the Income-tax Officer; but obviously it was not the intention of the Legislature that such discretion should be arbitrary. What the Court has to consider is whether the Income-tax Officer exercised his judgment in arriving at the conclusion that the income, profits and gains were not properly deducible from the assessee's regularly kept books of accounts. I.L.R. (1940) All. 805=1941 A.L.J. 79=1941

All. 24. There is nothing in the Act to restrict, in respect to an assessment made under the proviso to sec. 13, the powers which the higher authorities of the Department have under secs. 31 and 32 respectively. The basis and the manner of assessment adopted by the officer can be set aside in appeal by the Assistant Commissioner. 1942 I.T.R. 239=1942 A.L.J. 388=1942 A. 307. It is a question of law, into which the High Court is entitled to inquire, whether there is any evidence on which the Income-tax Officer could come to the decision that the method of accounting adopted by the assessee is such that the gains could not be computed except by the arbitrary method contemplated by the proviso. If there was no evidence to justify the Income-tax Officer's rejection of that method of under first part of sec. 13, and not under the proviso. Where there is no other reason except the fact of reduced profit to justify the assumption that profits cannot properly be deduced, from a method of accounting which admittedly has been regularly employed by the assessee and has been accepted in the past, the use of the proviso to sec. 13 for the purpose of introduction of an arbitrary manner of computing the profits is not justified. 1934 L. 876. Under sec. 13 of the Income-tax Act, the Income-tax Officer has a discretion to accept or reject the assessees' books. If he rejects them, as he is entitled to do and if the principle of flat rate thereby becomes applicable, the amount of such rate is entirely in the discretion of such officer. The mere fact that a high rate of profits has been applied by the department will not by itself warrant the High Court in directing the Commissioner to state a case. 1938 A.L.J. 507=1938 A. 367. When an Income-tax Officer is acting under the proviso to sec. 13 of the Income-tax Act, he must remember that his judgment must be properly exercised. It is misleading to describe this duty of the Income-tax Officer as a discretionary power. The application of a flat rate is not always proper when a truer state of income can be ascertained. 1938 N.L.J. 172=1938 N. 485. Where operating under the proviso to sec. 13, the Income-tax Officer in dealing with a money-lending firm, arrives at an income based upon an ascertainment of the average interest percentage on the whole capital, it cannot be said that it is an arbitrary way, or a mere guess work. Nor is there anything vindictive, capricious or unfair in what the officer has done. 1940 Nag. 88=1939 I.T. R. 613=1939 N.L.J. 553. An assessee has no option of declaring debts bad. Whether a debt is a bad debt and when it becomes bad are questions of fact to be determined in case of dispute not by the assessee but by the appropriate tribunal upon a consideration of all relevant and admissible evidence. The decision of the Income-tax Officer on the question whether a debt is bad or irrecoverable operates only for the particular year under assessment and it would be open to the assessee to repeat his claim in respect of any particular debt in any subsequent year, provided the debt had not been recovered in the interval. 16 L. 416=1935 L. 539. *See also* 163 I.C. 629=1936 L. 441. An assessee whose business was to sell gold and silver was served with notices under sec. 22 (4) and sec. 23 (2) of the Act and the assessee's munim was specifically questioned in respect to the profis from the gold and silver transactions. The Income-tax Officer applied proviso to sec. 13 in respect of transactions in respect of gold alone. *Held*, that the Income-tax Auhorities were justified without giving any other kind of notice to the assessee, in applying the proviso to sec. 13 in respect to transactions in gold while accepting the books of account in respect to transactions in silver. I.L.R. (1940) All. 805=1941 A.L.J. 79=1941 All. 24. The answer to the question whether interest not actually received in cash but debited to accounts of various debtors during the year can be included is the income of that year depends upon the method of accounting employed by the assessee is a question of fact. Where the assessee has not followed a system of accounting from which the correct income for the year can be accurately determined, the Income-tax Officer is justified in computing the income under the proviso to sec. 13. (1945) I.T.R. 198.

METHOD OF ACCOUNTING—ALTERATION—DUTY OF INCOME-TAX OFFICER.—The proviso to sec. 13 gives the Incom-tax Officer full liberty of action if he is satisfied that the method adopted by the assessee does not allow of a correct assessment of the profits. When he is of this opinion it is his bounden duty to adopt another method, a method which he considers will permit of a satisfactory assessment. (1946) 1 M.L.J. 161=1946 M. 314.

INCOME ON PROMISSORY NOTES—TAXATION—BASIS.—Whether the Assistant Commissioner is justified in taxing the income on promissory notes, bonds and mortgage deeds on the basis of interest accrued on the total amount invested in such promisory notes, bonds and mortgage deeds, and not on the basis of interest actually realised by the assessee during the accounting period is a question of law. 1934 L. 43=148 I.C. 228.

ASSESSMENT UNDER SEC. 13—QUESTION OF LAW, IF ARISES.—A finding by the Income-tax Officer and the Assistant Commissioner that no regular method of accounting had been employed by the assessee and that the method employed was defective is a decision on a question of fact. When the Income-tax Officer makes an assessment under the proviso to sec. 13 of the Income-tax Act, it may be shown that he has proceeded on a wrong basis of law; it cannot be said that in every case a question of law arises as to whether the assessment under the proviso to the section is legal or not. 36 Bom.L.R. 818=1934 B. 378. Where the method of accounting is one regularly employed by the petitioner assessee, the proviso to sec. 13 does not come into operation. 1930 L. 197. Proviso does

no apply where genuineness of account is doubtful. Sec. 23 (2) applies in such a case. 7 L. 138=1926 L. 201. An Income-tax Officer does not appear to be empowered by sec. 13 to dispense with a notice under sec. 23 (2) of the Income-tax Act. 10 L. 833=1930 L. 277. Once it is established that no method of accounting has been regularly employed or that the method employed is such that in the opinion of the Income-tax Officer the income, profits and gains cannot properly be deduced therefrom, the proviso to sec. 13 comes into operation and the Income-tax Officer becomes the sole arbiter of the basis on which they shall be computed. Where a colliery proprietor had invested the money in mortgages and loans and had kept regular and proper accounts of his income from the colliery and had not kept any account of his income from his investment in mortgages and loans, *held*, that the Income-tax Officer was justified in making an assessment of his income under the proviso to sec. 13. 132 I.C. 523=1931 L. 432. *See also* 138 I.C. 214=1932 L. 178; 1935 L. 840; 162 I.C. 995. Where the method of accounting regularly employed by the assessee is the so-called mercantile system of accountancy or book profit system, it is upon that basis alone that he is to be assessed to income-tax under sec. 13 of the Income-tax Act. Under this system, entries are made in the account on the date not of the receipt of money or expenditure of money but on the date of the transactions irrespective of the date of cash payment. A profit and loss account prepared on this basis is accepted as evidence of the assessee's income and assessment is made accordingly. If any part of these "book profit" is later on found to have become irrecoverable, it is deducted from the assessment as a bad debt. 1935 L. 12=36 P. L.R. 199=1935 L. 12. Where the principle of asessment at a flat rate is not contested, its amount must be for the Income-tax Officer to determine. 60 I.A. 325=14 L. 682=65 M.L.J. 335=144 I.C. 686=1933 P.C. 198 (2) (P.C.). Procedure of Income-tax Officer must in all cases be governed by judicial considerations. Hearsay evidence is no basis for assessment. 94 I.C. 156=1926 L. 233. Interest due but not collected is not assessable. 24 N.L.R. 176=1928 N. 241 (1927 M. 841, Dist.). When the opening and closing stocks of a business are both under-valued, the real profits of the company (for the purposes of assessing income-tax and super-tax under the Income-tax Act) for a particular year cannot be ascertained by merely raising the valuation of the closing stock without taking into consideration the similar under-valuation of the opening stock. (52 B. 669, affirmed.) 57 I.A. 21=54 B. 213=58 M.L.J. 204=1930 P.C. 56. Where the computation of income, profits and gains for a particular year has been made under the provisions of sec. 13 upon such basis and in such manner as the Income-tax Officer may determine, the assessee is entitled to show that income, profits and gains included in the assessment for a subsequent year were included in that computation, and it is a question of fact to be decided on the evidence in each paticular case. 7 R. 644=1929 R. 248 (F.B.).

SECS. 13 AND 23 (3): RELATIVE SCOPE.—Sec. 13 of the Income-tax Act cannot be divorced entirely from sec. 23 (3) because it is only in an inquiry under sec. 23 (3) that sec. 13 can operate. There is no conflict or divorce between secs. 13 and 23 (3). In proper cases the two sections work together. But the proviso to sec. 13 does not have reference to the manner in which information is obtained either by private inquiries or otherwise. It relates to the manner in which material before an Income-tax Officer shall be used. I.L.R. (1940) Kar. 309=1940 Sind 92. Sec. 23 is concerned with assessment and sec. 13 with computation. It is not quite correct to say that an assessment should be made under the proviso to sec. 13 when the assessee's books are found unreliable and rejected, though it must, in such circumstances, be in accordance with a computation made under the proviso to sec. 13, 1939 I.T.R. 515. All that sec. 13 really says is that if the method of accounting employed by the assessee is one which does not properly disclose the income, profits and gains of the assessee, the Income-tax Officer can adopt his own method. But in doing so he must have reference to the accounts before him as sec. 13 does not contemplate the rejection of the accounts. Sec. 13 adds nothing to, and takes nothing away from, sec. 23 (3), I. L.R. (1939) Mad. 404=1939 Mad. 371=(1939) 1 M.L.J. 451. Where no return has been made at all or if a return has been made and the notice given has not been complied with, then sec. 23 (4) applies and the Income-tax Officer has to make the assessment to the best of his judgment. But where there has been a return and the notice has been complied with and it is found that the books which are put forward to support the return are unreliable, then one goes to sec. 13. Sec. 13 is not an assessment but a computation section. The proviso to sec. 13 gives the Income-tax Officer as wide, if not wider, powers than he is given under sec. 23 (4) and it is not unreasonable, because sec. 23 (4) applies to a case where the assessee does nothing, whereas the proviso applies where the assessee does something positively false. 1939 I.T. R. 613=1939 N.L.J. 553=1940 Nag. 88.

SECS. 13 AND 66: OPINION OF INCOME-TAX OFFICER—QUESTION OF LAW, IF INVOLVED.—Where the Income-tax Officer is of opinion that the assessee's books are not sufficiently well kept and he could not correctly assess the income of the assessee on the method of accounting followed by him, he is justified under sec. 13 in making the assessment in such manner as he might determine. No question of law can be said to be involved in such a case. 201 I.C. 485=1941 I.T.R. 616=1942 Pesh. 47 (1). Assessee furnishing unreliable accounts—Estimation of income under sec. 13, Proviso—Further scrutiny on appeal—Rejection of account books—Pro-

Exemptions of a general nature.

14. (1) The tax shall not be payable by an assessee in respect of any sum which he receives as a member of a Hindu undivided family, [1][where such sum has been paid out of the income of the family.]

LEG. REF.

[1] Inserted by Act XI of 1944.

priety—Application to High Court for order directing statement of case—Maintainability. 1942 I.T.R. 110.

SEC. 14.—[*See also* notes under sec. 4, *supra*.]

CL. (1): APPLICABILITY—CONDITIONS.—The income of an impartible Raj in the hands of the holder is to be assessed on the footing that the income is the income of an individual and not of an undivided family for purposes of assessment to income tax. 19 Pat.L.T. 858=1938 P.W.N. 801=1938 Pat. 611. Sec. 14 (1) can apply only if two conditions are made out. The assessee should establish that he is a member of a Hindu undivided family and that the sum in question has been received by him as such. The relation of cause and effect must exist between the position of the assessee as a member of a Hindu undivided family and the receipt by him of the sum which is a question for the purpose of assessment. If a person who is a member of a Hindu undivided family receives an allowance not because he is such a member but wholly apart from that position, sec. 14 (1) does not apply. 56 A. 1009=149 I.C. 306 =1934 A. 18. *See also* 59 M. 377=1936 M. 67=70 M.L.J. 13 (F.B.). "Receives as a member of a Hindu undivided family"—Hindu joint family—Death of coparcener—Widow suing for partition on ground of alleged separation of husband—Compromise—Widow admitting joint status and receiving maintenance from family and living apart—Amount received at maintenance—Exemption from taxation. *See* 21 Pat. 615=1942 Pat. 458=1946 I.T.R. 134. The Income-tax Act clearly contemplates that, in the case of members of a joint Hindu family, the unit of taxation shall be the family itself and not each individual member, *i.e.*, the entire joint income of the members of the family is taxable only in the hands of the family, and no part of it is taxable in the hands of the individual coparceners. This provides the clue to the meaning of the words "as a member of a Hindu undivided family" occurring in sec. 14 (1) of the Act. Sec. 14 (1) exempts from taxation in the hands of a member of a family income which is liable to taxation in the hands of the family, whether it has been so taxed or not. In this view of the matter, the burden is on the assessee to show that the sum in respect of which he claims exemption is assessable in the hands of the family. *Quaere.*—Whether an allowance paid to a member of an undivided family and not exempted from assessment under sec. 14 (1) may not be exempted on some other ground? 14 P. 785=16 Pat.L.T. 351=1935 P. 342 (S. B.). A sum of money received as maintenance by an assessee entitled, as the brother of the last Zamindar, to receive maintenance out of an ancestral impartible estate is a sum received by him as a member of a Hindu undivided family within the meaning of Cl. (1) of sec. 14 of the Income tax Act, and as such exempt from taxation. 57 M. 1023=1934 M. 608=67 M.L.J. 306 (F.B.). *See also* 14 P. 313=1935 P. 8=(1944) I.T.R. 153. Where the amount of maintenance that the widow of a predeceased coparcener has in the past been receiving as a member of a Hindu undivided family has been fixed by an agreement, the amount received by her under the agreement does not cease to be an amount received by her as a member of an undivided Hindu family. 1945 A.L.J. 227=A.I.R. 1945 All. 286. Income personally derived by an assessee as a member of a joint family is not taxable under sec. 14 of the Act. 3 P. 664=1924 P. 644. *See also* 2 Pat.L.R. 122 (Cr.). 6 P. 20=1926 P. 256. The property belonging to an estate subject to the rule of primogeniture is still the property of the family and not the sole property of the manager for the time being for the purposes of super-tax. In computing the income of the head of an impartible family governed by the law of primogeniture, the allowances paid to junior members thereof should be deducted. They cannot be deemed to be part of the income of the family. They are the separate property of the junior members on which they can be separately assessed. 14 L. 255= 141 I.C. 415=1933 L. 284. For the purposes of the Income-tax Act, an ancestral impartible estate is joint family property, and the mother of the holder of the estate is entitled under the Hindu Law to be maintained out of the revenue of the estate. The allowance for maintenance fixed for her is in satisfaction of the right to be so maintained, and she must therefore be deemed to receive it as a member of the joint family and she is a member of the joint family though she is only estitled to maintenance. Therefore maintenance allowance paid to the mother of the holder of an impartible estate is exempt from tax under sec. 14. 24 Pat. 159=(1945) P.W.N. 75=1945 Pat. 205. Impartible estate—Dispute between holder and widow of last-holder— Compromise—Allowance agreed to be paid to her in adjustment and release of her claim to maintenance—Exemption from tax—Right to. (1944) I.T.R. 489=1944 C.W.N. 459=1945 Oudh 54. The allowances received by an adult son from his father, a taluqdar of Oudh, out of the latter's income from the taluqdari estate which is governed by the Oudh Estates Act, 1869, is not exempt under sec. 14 (1) of the Income-tax Act and is liable to assessment in as much as the property is in no sense joint and the assessee has no claim *qua* member of an undivided Hindu family to maintenance from it and does not receive the maintenance or allowance as a member of a Hindu undivided family. 1943 O.W.N. 433=1944 Oudh 17.

"Received as a member of a Hindu undivided family" — Test— Impartible estate —

Widow surrendering estate to another estate holder and receiving maintenance allowance charged on surrendered esate—Allowance—If exempt from tax. 1945 I.T.R. 134. *See also* 1942 Pat. 458. It was *held* that an assessee, a Hindu widow who was in receipt of an allowance from an owner of an impartible estate regulated by the Oudh Estates Act cannot be presumed to be a member of an undivided Hindu family within the meaning of sec. 14 (1) from the mere fact that the allowance was given by a talukdar to a Hindu widow who would be entitled to an allowance under ordinary law, or that she was in receipt of the allowance in that capacity. It was further *held* that the question whether a person is or is not a member of Hindu undivided family is primarily a question of fact. 1943 O.W.N. 94=1943 I.T.R. 235=1943 Oudh 37. The widow of a deceased coparcener is a member of the undivided family of her husband. Maintenance and arrears of maintenance received by the widow of a deceased member of an undivided family is exempt from taxation under sec. 14 (1). 63 M.L.J. 542=56 M. 1=1932 M. 733 (F.B.). When a member of a Hindu undivided family receives a grant by way of maintainance from the head of the family, it is not necessarily received "as a member of the family." 14 P. 313=1935 P. 8. A person to be a member of an 'undivided Hindu family' under sec. 14 (1), need not have a vested interest in the family property. Hence a mother may be a member of such an undivided Hindu family and when she, by virtue of her right to receive maintenance from her son, receives it from him or his estate, tax is not payable on it. The fact that provision had been made in a will for the payment of this maintenance would not affect the question. 1940 O.W.N. 853=1941 O. 22=16 Luck. 159. Hindu undivided family consisting of two brothers—Death of one—Widow of latter relinquishing life estate in favour of surviving coparcener in consideration of receiving monthly payment as maintenance—Amount received is not received as a member of Hindu undivided family. 1940 I.T.R.L. 404. The widow of a Hindu coparcenar though not herself a member of the coparcenary body, may nevertheless be a member of the undivided Hindu family. Where in settlement of disputes between such a widow and the other members, a sum is agreed to be paid to her monthly as maintenance for her life, and subsequently there is a disruption of the joint family, the widow thereafter continues to be a member of a Hindu undivided family with each of the entities into which the family is disrupted, irrespective of whether any such entity consisted of one male member or of several male members. Upon this view she will be exempted from payment of income-tax under sec. 14 (1). I.L.R. (1941) All. 43=1940 A.L.J. 848=1941 All. 83. The expression "Hindu undivided family" occurring in the Income-tax Act connotes a family restricted to the coparcenary, *i.e.*, a family having coparcenary interest in income or property and not a joint family consisting of several members living together, irrespective of the existence or non existence of any co-parcenary property. A Hindu cannot be considered to be a member of a coparcenary when he has no sons, and when the other members of the family living with him are only females. Even when there are male members who can be coparceners with him, there must be ancestral or joint property or property thrown into the common stock, before there can be a coparcenary or Hindu undivided family as contemplated by the Income-tax Act. The income from property which is neither ancestral nor thrown into the common stock, but which has been treated as separate property by the members of the family concerned cannot be regarded family for purposes of income-tax. A statement by a member of a Hindu family in an affidavit filed by him in assessment proceedings that certain property is joint cannot be taken to be an irrevocable declaration *ipso* facto creating a coparcenary as between him and the other members, so as to entitle the members to claim assessment as a Hindu undivided family. 40 C.W.N. 517. An assessee claiming exemption under sec. 14 (1) of the Income-tax Act should establish that he is a member of a Hindu undivided family and further that the sum in question has been received by him as such. *See also* 1934 A. 818; 1935 Pat. 342 cited under sec. 4, *supra*. A junior member of a joint family possessed of impartible raj is a member of a Hindu undivided family within the meaning of sec. 14 (1), as the custom of impartibility does not supersede the general law so far as his status is concerned, though his rights to demand partition and to participate in the income of the estate is taken away. If such a member is assessed to income-tax on the amount of the maintenance received by him from the holder of the impartible raj, the question for consideration is whether the allowance received by him is a payment made to him as a member of the family. If the assessee is entitled to be maintained, and if the allowance is in satisfaction of his right to be so maintained he should be considered to have received it as a member of a Hindu undivided family. 56 A. 1009=149 I.C. 306=1934 A. 818; 14 P. 785=1935 P. 342 (S. B.). There is a distinction between a customary impartible estate and an estate granted by the Crown subject to descent by primogeniture. While blending may be possible in the former, it is not so in the case of the latter. What sec. 14 (1), Income-tax Act, contemplates is that the receipt should be from the joint income of the family and not otherwise. The unfailing test for the applicability of sec. 14 (1), is to determine whether the allowance would cease if the assessee ceased to be a member of the undivided family, if any, I.L.R. 1938 Lah. 47=40 P.L.R. 1007=1937 Lah. 905=1946 I.T.R. 134. Joint Hindu family—Proof of separation—Individual assessment of members to income-tax. 33 C.W.N. 1190=1930 C. 178. Dividend income—Payment of net dividend after deducting tax—Assessment of gross income—

[1][(2) The tax shall not be payable by an assessee—

(*a*) if a partner of an unregistered firm, in respect of any portion of his share in the profits and gains of the firm computed in the manner laid down in clause (*b*) of sub-section (1) of section 16 on which the tax has already been paid by the firm ; or

(*b*) if a member of an association of persons other than a Hindu undivided family, a company or a firm, in respect of any portion of the amount which he is entitled to receive from the association on which the tax has already been paid by the association.] or

[2][(*c*) in respect of any income, profits or gains accruing or arising to him within an Indian State, unless such income, profits or gains are received or deemed to be received in or are brought into British India in the previous year by or on behalf of the assessee, or are assessable under section 42.]

LEG. REF.

[1] Substituted by sec. 16 of Act VII of 1939.

[2] Added by Act XXIII of 1941.

Subsequent receipt by assessee of amount deducted—Liability to further assessment. 47 Bom.L.R. 281=1945 Bom. 431.

EXEMPTION UNDER SEC. 14 (1)—BURDEN OF PROOF.—Sec. 14 (-) merely relieves the assessee from showing that the sum in respect of which he claims exemption has already been taxed in the hands of the family. It does not relieve him from the necessity of showing that the sum received is a part of income, or property, in which he had a vested right as a member of a Hindu undivided family. 14 P. 313=1935 P. 8. *See also* 14 P. 785=16 Pat.L.T. 351=1935 P. 342 (S.B.).

SEC. 14 (2).—The phrase "where the profits and gains of the company have been assessed to income-tax," must be given its ordinary and natural meaning and cannot be read to include all the profits or gains of the company whether assessable or not or the total profits or gains; and consequently where a company whose profits are found to include specified sums to which, in accordance with sec. 4, the Act did not apply and the said company has been assessed in respect of profits to which the Act did apply, such proportion of dividends as the specified sum bears to the aggregate of all profits disribued among shareholders does not become chargeable to tax in the hands of a shareholder, but is exempted from taxation to ordinary income-tax in accordance with sec. 14 (2). 63 I.A. 359=1936 P.C. 219=71 M.L.J. 405 (P.C.). *See also* I.L.R. (1940) All. 795=1941 All. 15. According to the plain meaning of sec. 14 (2) (*a*) of the Income-tax Act, when there has been an assessment on the profits or gains of a company, even though the dividends received by the shareholder are in fact to some extent paid out of profits or gains in the hands of the company which are free from taxation, the whole of the sum received by the assessee as shareholder, by way of dividends, is exempt from taxation. The section cannot be construed as meaning that the whole income of the company must be assessed or made chargeable to income-tax in order ta make the protection under it available. 62 C. 133=39 C. W.N. 253. Where a husband and wife formed a partnership and the husband took some extra rights in himself of taking new partners and each of them was entitled to take in new partners after the death of the other, *held*, that a partnership was legally formed. 25 Bom.L.R .1225=1924 B. 182. A partner might conceivably do business in his individual capacity and in that capacity might render services to the firm in consideration of which the firm might pay him a remuneration which would be a legitimate deduction from the assessable income of the firm. 139 I.C. 290=1932 N. 65. *See also* 134 I.C. 198 =1931 L. 341=12 L. 663. In order to bring into play sec. 14 (2) (*b*) it must be shown by the assessee that any income in his hands has already been assessed to income-tax in the hands of the firm of which he happened to be a partner. I.L.R. 1940 A. 795=1941 All. 15=1940 A.L.J. 729. The profits of the registered firm should be ascertained as a whole before the assessment is made upon individual partners. But there is nothing in the Act to say that the firm is to be assessed first, still less the assessment on the firm is to operate as a sort of estoppel in favour of the individual partners. 58 C. 1204=35 C. W.N. 534=1931 C. 686 (S.B.). When part of the profits of a registered firm have escaped assessment, assessment can be made under sec. 34 and tax levied upon a partner of the firm in respect of his share of such part, when proceedings under the said section against the firm itself in respect of the said part have failed for lack of jurisdiction and fresh proceedings are time-barred. 58 C. 1204.

SECS. 14 (2) AND 16.—Construction and scope—"Previous year"— Assessee deriving income from different businesses — Different accounting periods—If can be fixed—Income derived after termination of previous year—If to be included in return and if assessable. 60 B. 679=38 Bom.L.R. 450=1930 B. 225. Income—Computation of—Money received by assessee under father's will out of income of estate is to be included in income. 1940 I.T. R. 80.

SECS. 14, 20 AND 48: CONSTRUCTION AND SCOPE.—It may be that there are inconsistencies between sec. 14 and what is implied in secs. 20 and 48. But that cannot entitle the Court to modify or add to the plain words of sec. 14, by reference to the supposed implications of secs. 20 and 48. 62 C. 133=39 C.W.N. 253.

15. (1) The tax shall not be payable [1][in respect of any sums paid by an assessee to effect an insurance on the life of the assessee or on the life of a wife or husband of the assessee or in respect of a contract for a deferred annuity on the life of the assessee or on the life of a wife or husband of the assessee] or as a contribution to any Provident Fund to which the Provinted Funds Act, [2][1925], applies * * * *[3].

Exemption in the case of life insurances.

(2) Where the assessee is a Hindu undivided family there shall be exempted under sub-section (1) any sums paid to effect an insurance on the life of any male member of the family or of the wife of any such member.

[[4](2.A) Nothing in sub-section (1) or sub-section (2) shall apply to so much of any premium or other payment made on a policy other than a contract for a deferred annuity as is in excess of ten per cent, of the actual capital sum assured ; and in calculating any such capital sum no account shall be taken of the value of any premiums agreed to be be returned or of any benefit by way of bonus or otherwise which is to be or may be received either before or after death either by the person paying the premium or by any other person and which is not the sum actually assured.] (Inserted by Act XI of 1944)

(3) The aggregate of any sums exempted under the section shall not, together with any sums exempted under the [4][second proviso] to sub-section (1) of section 7 [5][and any sums exempted under sub-section (1) of section 58F], exceed [6][in the case of an individual, one-sixth of the total income of the assessee, or six thousand rupees, whichever is less, and in the case of a Hindu undivided family, one-sixth of the total income of the assessee or twelve thousand rupees, whichever is less].

[15-A. *Exemption of portion of earned income.*—The tax shall not be payable by an assesse in respect of such portion, if any, of the earned income included in his total income as is directed by the anual Act of the Central Legislature fixing the rate or rates of tax for any year to be deducted in making an assessment for that year, and for the purposes of determining the rates at which income-tax (but not super-tax) is payable by the assessee for that year his total income shall be deemed to be the total income redueed by the said portion] (Inserted by ordinance IXof 1945)

Exemptions and exclusions determining the total income.

16. [7][(1) In computing the total income of an assessee—

LEG. REF.

1 Substituted for the original words by sec. 17 of Act XXIII of 1941.

2 Substituted for the figures "1897", by *ibid.*

3 The words "or to any Provident Fund which complies with the provisions of the Provident Insurance Societies Act, 1912, or has been exempted from the provisions of that Act" omitted by sec. 5 of Act XI of 1924.

4 Substituted for "proviso" by sec. 17 of Act VII of 1939.

5 Inserted by sec. of Act XII of 1929.

6 Substituted for "one-sixth of the total income of the assessee" by sec. 17 of Act VII of 1939.

7 Sub-secs. (1) and (2) submitted by sec. 18, *ibid.*

SEC. 16: TOTAL INCOME—MEANING—UNREALISED DECREE.—See 57 A. 737=1935 A. L.J. 374=1935 A. 378. The scheme of the Income-tax Act is that there is to be a statement of the total income of the assessee from which is to be deducted, for the purpose of assessing income tax, but not of super-tax, nor for the purpose of any graduation of income-tax by reference to total income, the amounts of interest on tax free securities and of dividends and shares of profits already taxed. 61 I.A. 209=58 B. 317=1934 P.C. 116=66 M.L.J. 643 (P.C.). There is no warrant for holding that unless a minor is admitted to the benefits of a partnership without any contribution to the assets, sec. 16 (3) (*a*) (*ii*) (as amended by the Amending Act of 1937) has no application. There is nothing in the section which justifies the Court in drawing a distinction between a case where a minor's property is with a firm and the case where the minor is allocated a share without any contribution to the assets. The section can only be construed in accordance with the words used in it. 1941 Mad. 924=(1941) 2 M.L.J. 891 (S.B.). Where under a deed of wakf executed in 1929 by the assessee the trustees were to pay 21 per cent. of the income of the property transferred to the wife of the settlor, sec. 16 (3) (*b*) applied and the income of the wife could be included in the income of assessee. I.L.R. (1944) Bom. 230=(1944) I. T.R. 8=46 Bom.L.R. 108=1944 Bom. 160.

SEC. 16 (1) (*c*) (AS AMENDED IN 1939): APPLICABILITY.—It is the law in force at the time of assessment which governs the assessment and not the law as it was during the year in which the income was earned. Hence the income of the year 1938-39, accrued before the Amendment Act came into

(*a*) any sums exempted under the second proviso to sub-section (1) of section 7, the second and third provisos to section 8, sub-section (2) of section 14 and the second and third provisos to section 8, sub-section (2) of section 14 and section 15 shall be included ;

["and any sum exempted ander section 15-A shall also be included, except for the purpose of determinig the rates at which income-tax (but not super-tax) is payable by the assessee to whom the exemption is given] (Added by ordinance IX of 1945.)

(*b*) when the assessee is a partner of a firm, then, whether the firm has made a profit or a loss, his share (whether a net profit or a net loss) shall be taken to be any salary, interest, commission or other remuneration payable to him by the firm in respect of the previous year increased or decreased respectively by his share in the balance of the profit or loss of the firm after the deduction of any interest, salary, commission or ther remuneration payable to any partner in respect of the previous year :

Provided that if his share so computed is a loss, such loss may be set off or carried forward and set off in accordance with the provisions of section 24 ;

(*c*) all income arising to any person by virtue of a settlement or disposition whether revocable or not, and whether effected before or after the commencement of the Indian Income-tax (Amendment) Act, 1939, from assets remaining the property of the settlor or disponer, shall be deemed to be income of the settlor or disponer, and all income arising to any person by virtue of a revocable transfer of assets shall be deemed to be income of the transferor :

Provided that for the purposes of this clause a settlement, disposition or transfer shall be deemed to be revocable if it contains any provision for the retransfer directly or indirectly of the income or assets to the settlor, disponer or transferor, or in any way gives the settlor, disponer or transferor a right to reassume power directly or indirectly over the income or assets :

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force, and derived from assets comprised in revocable instruments of trust and settlement deeds executed by the assessee in favour of his daughters in April, 1933, before the Amendment Act, has to be deemed to be the income of the assessee under revocable transfers of assets as contemplated by sec. 16 (1) (*c*) of the Income-tax Act, as amended by Act VII of 1939. 1942 I.T. R. 1=(1942) 1 M.L.J. 16=I.L.R. 1942 Mad. 91=1942 M. 191 (S.B.). *See also* 1941 Pat. 59. It is no doubt true that if there is proper material before the Income-tax Authorities to go behind certain transactions of sales, they may be justified in disregarding the apparent state of affairs and hold that properties acquired in the names of the sons of the assessee are benami for the assessee; but the onus in such cases lies on the Income-tax Authorities to show that the ostensible owner was not the real owner. The fact that benami transactions are common in the country should not be allowed to prejudice an ostensible owner without any evidence to establish that the real beneficiary was not he himself but some other person, especially in the case of Mahomedan families. 1945 I.T.R. 452. The income derived from the assets comprised in a revocable instrument of trust and settlement executed by the assessee before the commencement of the Income-tax (Amendment) Act, 1939, falls within the terms of sec. 16 (1) (*c*), as amended by the Income-tax (Amendment) Act, 1939. 72 I.A. 141=49 C.W.N. 435=58 L.W. 373 =1945 P.C. 89=(1945) 2 M.L.J. 11 (P.C.). On 18-4-1928, the assessee executed a settlement deed transferring certain properties to trustees who were to pay the income thereof to his son *H*, during his life and after the death of *H*, the trustees were to hold the trust funds in trust for his heirs; the settlor reserved to himself a general power of revocation. On 13-12-1938, *i.e.*, during the accounting year, the assessee executed another deed revoking the life-interest to his son under the first deed under the power of revocation and declared fresh trusts during the lifetime of the son. He also reserved a power to revoke, wholly or partially, the trusts, powers and provisions declared by the second deed as the trust deed of 18-4-1928 and to declare such new or other trusts for the benefit of *H*, his children or lineal descendants or for the benefit of any other child or children of the settlor, e.c. *Held*, (1) that the two deeds together involved a revocable transfer of assets, that the case fell within sec. 16 (1) (*c*) and the first proviso, and therefore the income of the trust funds could be aggregated with the income of the settlor (assessee) and could be deemed to be the income of the assessee under sec. 16 (1) (*c*). 1944 I.T.R. 185=46 Bom.L.R. 134=1944 Bom. 164. *See also* 1945 Bom. 254.

Provided further that the expression 'settlement or disposition' shall for the purposes of this clause include any disposition, trust, covenant, agreement, or arrangement, and the expression 'settlor or disponer' in relation to a settlement or disposition shall include any person by whom the settlement or disposition was made :

Provided further that this clause shall not apply to any income arising to any person by virtue of the settlement or disposition which is not recoverable for a period exceeding six years or during the lifetime of the person and from which income the settlor or disponer derives no direct or indirect benefit but that the settlor shall be liable to be assessed on the said income as and when the power to revoke arises to him.

(2) For the purposes of inclusion in the total income of an assessee any dividend shall be deemed to be income of the previous year in which it is paid, credited or distributed or deemed to have been paid, credited or distributed to him, [1][and shall be increased to such amount as would, if income-tax (but not super-tax) at the rate applicable to the total income of a company for the financial year in which the dividend is paid, credited or distributed or deemed to have been paid, credited, or distributed, were deducted therefrom, be equal to the amount of the dividend :]

Provided that when any portion of the profits and gains of the company out of which such dividend has been paid, credited or distributed or deemed to have been paid, credited or distributed was not liable to income-tax in the hands of the company, [2][the increase to be made] under this section shall be calculated upon only such proportion of the dividend as the amount of the profits and gains of the company liable to income-tax bears to the total profits and gains of the company.]

[1][(3) In computing the total income of any individual for the purpose of assessment, there shall be included—

(*a*) so much of the income of a wife or minor child of such individual as arises directly or indirectly—

(i) from the membership of the wife in a firm of which her husband is a partner ;

(ii) from the admission of the minor to the benefits of partnership in a firm of which such individual is a partner ;

(iii) from assets transferred directly or indirectly to the wife by the husband otherwise than for adequate consideration or in connection with an agreement to live apart ; or

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LEG. REF.

[1] Substituted by Act XXIII of 1941.

[2] Added by sec. 2 of Act IV of 1937.

SEC. 16 (1) (*c*), PROVISOS 1 AND 3: APPLICABILITY.—The assessee executed a trust deed in respect of an item of property belonging to him for the benefit of his wife. The property was transferred to trustees, who were to collect the rents and, after paying certain charges, pay the balance to his wife *K* for and during her lifetime and down to her death; if the assessee survived his wife *K*, the trustees were to pay the said income, after meeting the charges, to the assessee for and during his lifetime. In assessing the income of the assessee, the Income-tax Department sought to include the income of this property in his total income under sec. 16 (1) (*c*). The assessee sought the protection of proviso 3 to sec. 16 (1) (*c*). Held, (1) that proviso 3 to sec. 16 (1) (*c*) applied and the income payable to his wife *K* and settled for her benefit during her natural life was not income of the assessee under sec. 16 (1) (*c*); (2) that no direct or indirect benefit in the income, accruing during the lifetime of *K*, was retained by the settlor for himself; (3) that proviso 3 contains a limitation which applies as much to the substantive provisions of sub-cl. (*c*) as to proviso 1. *Per* Kania, J.—That a contingent claim to arise in the future, that if the assessee survived his wife *K*, the income payable to her was to be paid to him, did not amount to a re-transfer of the income or assets or a resumption of the power over the income or assets and was not covered by the first proviso to sec. 16 (1) (*c*). *Per* Chagla, J.—The words of the section were wide enough to cover even a provision for re-transfer which is contingent in its nature. I.L.R. (1945) Bom. 407=1945 I.T.R. 105=47 Bom.L.R. 169=1945 Bom. 254. *See also* 1944 Bom. 164.

SEC. 16 (3) (*iii*).—Sec. 16 (3) (*iii*), as amended in 1937, is not directed towards transactions between husband and wife and

(*iv*) from assets transferred directly or indirectly to the minor child, not being a married daughter, by such individual [1][otherwise than for adequate consideration] ; and

(*b*) so much of the income of any [2][person or association of persons] [3]* * * * * * * as arises from assets transferred [4][otherwise than for adequate consideration to the person or association] by such individual [5][for the benefit of his wife or a minor child or both.]

Determination of tax payable in certain special cases.

[6][17. (1) Where a person is not resident in British India, and is a British subject as defined in [7][section 27] of the British Nationality and Status of Aliens Act, 1914, or a subject of a State in India or Burma [8][or a native State of a Tribal area,] the tax, including super-tax, payable by him or on his behalf on his total income shall be an amount bearing to the total amount of the tax including super-tax which would have been payable on his total world income had it been his total income the same proportion as his total income bears to his total world income ; and in the case of any other non-resident person, the income-tax payable by him or on his behalf on his total income shall be at the maximum rate and the super-tax payable thereon shall be an amount bearing to the total amount of super-tax which would have been payable on his total world income had it been his total income the same proportion as his total income bears to his total world income.

LEG. REF.

1 Inserted by sec. 18 of Act VII of 1939.
2 Substituted for "association of individuals", by *ibid.*
3 The words "consisting of such individual and his wife" omitted by *ibid.*
4 Substituted for "to the association", by *ibid.*
5 Added by *ibid.*
6 Substituted by sec. 19, *ibid.*
7 Substituted for the word and figure "sec. 17" by Act XXXIV of 1930.
8 Inserted by Act XXIII of 1941.

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in no way invalidates such transactions. The transactions are assumed to be valid, and the income arising from the transferred assets is the income not of the husband but of the wife who received the assets from the husband by transfer. The section in no way affects the validity of the transfer, but only provides a method by which the income of the property transferred is to be assessed, and it provides that such income will be included in the husband's income for purposes of taxation and will not be taxed separately. 20 Pat. 202=21 Pat.L.T. 1096 =1941 Pat. 59 (F.B.). There is no reason why sec. 16 (3) (*iii*) should not be held to apply to a wife's income arising from assets transferred to her by her husband before the Amending Act of 1937 came into force. The sub-section is to have effect in respect of any income chargeable to income-tax for any year subsequent to that date. The wording of the sub-section is wide enough to cover not only income from assets transferred by a husband to his wife after the passing of the Act but also income arising from such assets transferred before the passing of the Act. 20 Pat. 202 (F.B.). *See also* (1942) 1 M.L.J. 16. Where an assessee who is proceeded under sec. 16 (3) (*a*) (*iii*) in respect of the income of his wife, makes no effort to prove that moneys appearing in his wife's account in his books, have come from other sources than himself, it is open to the Income-tax Authorities to infer that the moneys were received by her from her husband otherwise than for adequate consideration and treat the interest thereon as part of the assessee's (husband's) income for purposes of sec. 16 (3) (*a*) (*iii*). There is no natural presumption in the case of the assets of a married Hindu lady that they are transferred to her by her husband out of love or affection. It is not an uncommon thing for a husband to put money in the name of his wife without ever intending to give it to her. 1942 I.T.R. 71=55 L.W. 75

SEC. 16 (3) (*iii*) (AS AMENDED BY ACT IV =1942 M. 268=(1942) 1 M.L.J. 164 (S.B.). OF 1937), SEC. (A) (*iii*) AND SEC. 17: APPLICABILITY—TRANSFER BY HUSBAND TO WIFE ON ACCOUNT OF NATURAL LOVE AND AFFECTION. —The word "consideration in sec. 17 (3) (*iii*) of the Income-tax Act, as amended in 1937, is used in its legal sense, and must be given a meaning similar to that which it has in the Contract Act. A transfer by a husband to his wife on account of natural love and affection only without any monetary consideration passing from the wife to her husband, cannot be held to be a transfer for consideration; and in any case it is not a transfer for "adequate consideration" within the meaning of sec. 17 (3) (*iii*). Transfers by a husband to his wife of assets otherwise than for adequate consideration cover all transfers in the nature of gifts or transfers made purely on the ground of natural love and affection; and a transfer on the ground of natural love and affection falls under sec. 16 (3) (*iii*). 20 Pat. 202=21 Pat. L. T. 1096=1941 Pat. 59 (F.B.). There is nothing harsh or unreasonable in the Legislature imposing for the future a tax on income, however its receipt may be manipulated, which under existing legislation is free from tax. A man has no com-

(2) Where there is included in the total income of any assessee any income (including income from a share in an unregistered firm, if assessed as such) exempted from tax by or under the provisions of this Act, the income-tax excluding super-tax payable by the assessee shall be an amount bearing to the total amount of the income-tax excluding super-tax which would have been payable on the total income had no part of it been exempted the same proportion as the unexempted portion of the total income bears to the total income.]

[1][(3) Where there is included in the total income of any assessee, any income exempted from tax under clause (*c*) of sub-section (2) of section 14, the super-tax payable by the assessee shall be an amount bearing to the total amount of the super-tax which would have been payable on the total income had no part of it been so exempted the same proportion as the total income less the portions so exempted bears to the total income.

(4) Where any income exempted from tax under clause (*c*) of sub-section (2) of section 14 which has been taken into account under sub-section (2) or sub-section (3) of this section as part of the total income of an assessee for the purpose of determining the income-tax or supertax payable by him is in a subsequent year brought into or received in British India by the assessee and becomes chargeable with tax accordingly, the tax including super-tax payable by the assessee on his total income of that subsequent year shall be—

(*a*) the amount which bears to the total amount of the tax including super-tax which would have been payable on his total income as reduced by the amount of the income so brought into or received in British India had such reduced income been his total income the same proportion as his total income bears to such reduced income, or

(*b*) the amount which bears to the total amount of the tax including super-tax which would have been payable on the amount of the income so brought into or received in British India had such income been his total income the same proportion as his total income bears to the amount of the income so brought into or recieved in British India,

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LEG. REF.

[1] Sub sec. (3) and (4) of sec. 17 added by Act XXIII of 1941.

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mon law right so to arrange his affairs that the income of his property is for ever to be immune from the charge of income-tax. I. L.R. (1942) All. 455=1942 A.L.J. 404= 1942 All. 238 (F.B.). The assessee made a gift to his second wife of certain properties and cash in order to safeguard her interests, and in assessing the income of the assessee in 1937-38, the Income-tax Department included in the income of the assesee the rent of the property standing in the name of his wife and the interest on the amount standing in her name in a bank (which were gifted to her by him). *Held*, that sec. 16 (3) applied to the case and the rent and interest were therefore rightly included in the assessable income of the assessee. (1943) I.T. R. 448. Hindu undivided family—Amount standing in account in name of karta's wife as interest due to her—Income from property standing in her name—Inclusion in assessable income of family—If justified—Burden of proof. (1944) I.T.R. 110; 1945 Pat. 79.

SECS. 16 (3) AND 26-A: APPLICATION FOR REGISTRATION—REFUSAL.—*Held*, that there was evidence in this case to justify the finding of the Income-tax Authorities that the alleged partnership was not a genuine partnership, and the order refusing registration was therefore justified. *Per* Beaumont, C.J.—That the partnership deed was one prepared only to avoid "proper taxation" would not be a good ground for refusing to register. Any one is entitled so to conduct his affairs within the law as to avoid the incidence of taxation, and if a man finds that he will suffer less in taxation, by carrying on business in partnership with his mother rather than his wife, he is entitled to select his mother. But the partnership must be a genuine partnership. If any subject could so manage his affairs as to pay the least tax which he might be liable for, he may do so provided the whole action is within the law. I.L.R. (1941) Bom. 384=43 Bom.L.R. 258=1941 Bom. 205.

SECS. 16 (3) (*a*) AND 26(1).—Applicability —Partner of firm—Minor son admitted to benefit of partnership—Minor becoming major at date of assessment—Inclusion of son's share of income in assessee's total income—Permissibility—Material date under sec. 26 (1). 1944 I.T.R. 199=46 Bom.L.R. 118=1946 Bom. 148.

SECS. 16 AND 66 (3).—Firm—Minor sons of assessee partners—Assessee not partner —Firm closely connected with another firm in which assessee was partner—Income of minors in firm—If income of assessee on ground of assessee being real partner—Evidence—Sufficiency. (1943) I.T.R. 462.

whichever is the greater."

[5) Where the amount of the total income of any assessee is deemed to be the total income reduced under the provisiens of section 15-A by an allowance for earned income, the expression 'total income' in this section shall for the purpose of determining the amount of income-tax (but not super-tax) payable by the assessee, be deemed to refer to his total income so reduced.] (Added by ordinamcc IX of 1945).

CHAPTER IV.

DEDUCTIONS AND ASSESSMENT.

Payment by deduction at source.

18. [1]* * * * * *

(2) Any person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct income-tax [2][and super-tax] on the amount payable [3][at a rate representing the average of the rates applicable to the estimated total income of the assessee under this head] :

Provided that such person may, at the time of making any deduction, increase or reduce the amount to be deducted under this sub-section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct.

[4][(2*A*) Notwithstanding anything hereinbefore contained for the purpose of making the deduction under sub-section (2), there shall be included in the amount payable any income chargeable under the head "Salaries" which is payable to the assessee out of India by or [5][on behalf of the Crown], and the value in rupees of such income shall be calculated at the prescribed rate of exchange.]

[6][2*B*)(Any person responsible for paying any income chargeable under the head "Salaries" to a person not resident in British India shall at the time of payment deduct income-tax at the maximum rate and also super-tax at the rate or rates applicable to the estimated income of the assessee under this head.]

(3) The person responsible for paying any income chargeable under the head "Interest on securities" shall, [7][unless otherwise prescribed in the case of any security of the [8][Central Government]], at the time of payment, deduct income-tax [7][but not super-tax] on the amount of the interest payable at the maximum rate :

[9][Provided that where the Income-tax Officer gives a certificate in writing (which certificate he shall give in every proper case on the application of the assessee) that to the best of his belief the total income [6][or the total world income] of a recipient will be less than the minimum liable to income-tax or will be liable to a rate of income-tax less than the maximum rate, the person responsible for paying any income [10][referred to in this sub-section or in sub-section (2*B*), as the case may be,] to such recipient shall, until such certificate is cancelled by the Income-tax Officer, pay the income without deduction or deduct the tax at such less rate, as the case may be.

LEG REF.

1 Sub-sec. (1) omitted by sec. 7 of Act XVIII of 1933.

2 Substituted for "but not super-tax" by sec. 20 of Act VII of 1939.

3 Substituted for "at the rate applicable to the estimated income of the assessee under this head", *ibid.*

4 Added by sec. 2 of Act XVI of 1925.

5 Substituted for "on behalf of Government" by A.A., 1937.

6 Inserted by sec. 20 of Act VII of 1939.

7 Inserted by sec. 7 of Act XVIII of 1933.

8 Substituted for "Government of India" by A.O., 1937.

9 This proviso and sub-secs. (3*A* to (3*D*) since renumbered (3*B*) to (3*E*) were inserted by sec. 7 of Act XVIII of 1933.

10 These words, brackets, figure and letter were substituted for the words "herein referred to", by Act VII of 1939.

SEC. 18 (2).—*See also* notes under sec. 7. The deduction of income-tax from salaries under sec. 18 at the time of the payment of the salary must be made at the rate applicable to the estimated income for the year of assessment. 83 I.C. 20=1924 R. 30=1 R. 335. Deductions—Outlays in connection with 're-financing' or 'refunding operations' of a company—Income War Tax Act (Canada, 1927). sec. 6—Scope of the statutory prohibition against deduction. *See* (1945) 1 M.L.J. 410 (P.C.).

[1][(3A) Any person responsible for paying to a person not resident in British India any interest not being 'Interest on Securities,' or any other sum chargeable under the provisions of this Act, shall, at the time of payment, unless he is himself liable to pay income-tax thereon as an agent, deduct income-tax at the maximum rate.]

[2][Provided that where the person so payable is a British subject as defined in section 27 of the British Nationality and Status of Aliens Act, 1914, or a subject of a State in India or Burma, and the Income-tax Officer gives a certificate in writing (which certificate he shall give in every proper case on the application of the assessee) that to the best of his belief the total world income of such person will be less than the minimum liable to income-tax or that his total income will be liable to a rate of income-tax less than the maximum rate, the person responsible for paying any income referred to in this sub-section shall, until such certificate is cancelled by the Income-tax Officer, pay the income without deduction or deduct the tax at such less rate, as the case may be :

Provided further that nothing in this sub-section shall apply to any payment made in the course of transactions in respect of which the person responsible for making the payment is deemed under the first proviso to section 43 not to be an agent of the payee.]

[3][(3B) Where the Income-tax Officer has reason to believe that the [4][total world income] of any person residing out of British India to whom any interest not being "Interest on Securities" [1][or any other sum chargeable under this Act] is payable, will in any year exceed the maximum amount which is not chargeable with super-tax under the law for the time being in force, he may, by order in writing require the person responsible for [5][making such payments] to such person to deduct at the time of payment [6]* * super-tax at the rates determined by the Income-tax Officer to be applicable to the [4][total world income] of such person in that year.

[3][(3C)] Where the person responsible for paying any interest not being "Interest on Securities" [1][or any other sum chargeable under this Act] to any person [7][makes to that person in any year payments] exceeding in the aggregate the maximum amount which is not chargeable with super-tax under the law for the time being in force, the person responsible for [5][making such payments], shall, if he has not reason to believe that the recipient is resident in British India, and no order under [8][sub-section (3B)] has been received in respect of such recipient, deduct at the time of payment [9]* * * * * super-tax on the amount by which [10][the total amount of such payments] exceeds the maximum amount not chargeable with super-tax at the rate applicable to such excess.

[3][(3D)] Where the Income-tax Officer has reason to believe that any person, who is a shareholder in a company, is resident out of British India and that the [4][total world income] of such person will in any year exceed the maximum amount which is not chargeable to super-tax under the law for the time being in force, he may, by order in writing, require the principal officer of the company to deduct at the time of payment of any dividend from the company to the share-

LEG. REF.

1 Inserted by sec. 20 of Act VII of 1939.

2 Added by sec. 6 of Act XL of 1940.

3 Sub-secs. 3A, 3B, 3C and 3D were respectively re-numbered 3B, 3C, 3D and 3E by sec. 20 of Act VII of 1939.

4 Substituted for "total income", *ibid.*

5 Substituted for "paying such interest", *ibid.*

6 The words "income-tax and" omitted by *ibid.*

7 Substituted for "pays to that person in any year an amount of such interest", *ibid.*

8 Substituted for the word, brackets, figure and letter "sub-sec. (3A)" by *ibid.*

9 The words "income-tax on the total amount of such interest at the rate appropriate to such total, and" omitted by *ibid.*

10 Substituted for "such total", *ibid.*

SEC. 18 (3-D).—The total world income of a non-resident has to be considered in order to determine whether sec. 18 (3-D) operates. But when it operates, the rate applicable under that section in respect of the income of the non-resident shareholder in that year means the rate applicable to the assessable income, and in a case falling under sec. 6 (4) (*b*) of the Finance Act of 1939, the rate would be the rate applicable for the year 1938, instead of the year 1939. 1944 I.T.R. 358=46 Bom.LR.R. 129=1944 Bom. 143.

holder in that year super-tax at such rate as the Income-tax Officer may determine as being the rate applicable in respect of the income of the share-holder in that year.

[1][(3*E*)] If in any year the amount of any dividend or the aggregate amount of any dividends paid to any shareholder by a company [2][(increased in accordance with the provisions of sub-section (2) of section 16)] exceeds the maximum amount of the total income of a person which is not chargeable to super-tax under the law for the time being in force, and the principal officer of the company has no reason to believe that the shareholder is resident in British India and no order under [3][sub-section (3*D*)] has been received in respect of such shareholder by the principal officer from the Income-tax Officer, the principal officer shall at the time of payment deduct super-tax on the amount of such excess at the rate which would be applicable under the law for the time being in force if the amount of such dividend or dividends [2][increased as aforesaid)] constituted the whole of total income of the shareholder.]

(4) All sums deducted in accordance with the provisions of this section, shall, for the purpose of computing the income of an assessee, be deemed to be income received.

(5) Any deduction made in accordance with the provisions of this section [4][and any sum by which a dividend has been increased under sub-section (2) of section 16] shall be treated as a payment of income-tax [5][or super-tax] on behalf of the person from whose income the deduction was made, or of the owner of the security [4][or of the shareholder], as the case may be, and credit shall be given to him therefor in the assessment, if any, made for the following year under this Act;

Provided that, if such person or such owner obtains, in accordance with the provisions of this Act, a refund of any portion of the tax so deducted, no credit shall be given for the amount of such refund :

[6][Provided further that where such person or owner is a person whose income is included under the provisions of [7][clause (*c*) of sub-section (1) or sub-section (3) of section 16, section 44*D*, or section 44*E*] in the total income of another person [8][such other person] shall be deemed to be the person or owner on whose behalf payment has been made and to whom credit shall be given in the assessment for the following year.]

(6) All sums deducted in accordance with the provisions of this section shall be paid within the prescribed time by the person making the deduction to the credit of the [9][Central Government] or as the [10][Central Board of Revenue] directs.

(7) If any puch person does not deduct [11][or after deducting fails to pay] the tax as required by [12][or under] this section, [13][he, and in the cases specified in sub-sections (3*D*) and (3*E*) the company of which he is the principal officer] shall, without prejudice to any other consequences which [1][he or it] may incur, be deemed to be [14][as assessee] in default in respect of the tax :

[15][Provided that the Income-tax Officer shall not make a direction under sub-section (1) of section 46 for the recovery of any penalty from such person unless satisfied that such person has wilfully fai to deduct and pay the tax.]

LEG. REF.

1 Sub-sec. 3*D* re-numbered as 3*E* by sec 20 of Act VII of 1939.

2 Substituted by Act XXIII of 1941.

3 Substituted for the word brackets, figures and letter "subsec. (3*C*)", by Act VII of 1939.

4 Inserted by sec. 20 of Act VII of 1939.

5 Inserted by sec. 7 of Act XVIII of 1933.

6 Added by sec. 3 of Act IV of 1937.

7 These words, brackets, letters and figures were substituted for the words, brackets and figures "sub-section (3) of section 16" by sec. 20 of Act VII of 1939.

8 Substituted for "that person", by *ibid*.

9 Substituted for "Government of India" by A.O., 1937.

10 Substituted for "Board of Inland Revenue" by sec. 4 and Sch. of Act IV of 1924.

11 Substituted for "and pay" by sec. 20 of Act VII of 1939.

12 Inserted by sec. 7 of Act XVIII of 1933.

13 Substituted for "he" by sec. 20 of Act VII 1939.

14 Substituted for "personally" by sec. 7 of Act XVIII of 1933.

15 Added by *ibid*.

SEC. 18 (5).—*See* 41 C.W.N. 905, (*Life* Assurance business—Credit for deductions of tax made at sources).

(8) The power to levy by deduction under this section shall be without prejudice to any other mode of recovery.

(9) Every person deducting income-tax [1][or super-tax] in accordance with the provisions of [2][sub-sections (3), (3A), (3B), (3C), [(3D) or][3](3E)], shall, [4][at the time of payment of the sum from which tax has been deducted], furnish to the person to whom [5][such payment is made] a certificate to the effect that income-tax [1][or super-tax] has been deducted, and specifying the amount so deducted, the rate at which the tax has been deducted, and such other particulars as may be prescribed

['18-A. (2) (*a*) In the case of income in respect of which provision is not made under section 18 for deduction of income-tax at the time of payment, the Income-tax Officea may, on or after the 1st day of April, in any financial year, by order in writing, require an assessee to pay qnarterly to the credit of the Central Government on the 15th day of Jnne, 15th day of September, 15th day of Decemder and 15th day of Maich in that year, respectively, an amount equal to one-quarter of the income-tax and super-tax payable on so much of such income as is included in his total income of the latest previous year in respect of which he has been assessed, if that total income exceeded six thousand rupees. Such income-tax and super-tax shall be calculated at the rates in force for the financial year in which he is required to pay the tax, and shall bear to the total amount of income-tax and super-tax so calculated on the said total income the same proportion as the amount of such inclusions bears to his total income or, in cases where under the provisions of sub-section (1) of section 17 both income-tax and super-tax are chargeable with reference to the total world income, shall bear to the total amount of income-tax and super-tax which would have been payable on his total world income of the said previous year had it been his total income the same proportion as the amount of such inclusions bears to his total world income.

Advance payment of tax.

Provided that, where the previous year of the assessee in respect of any sonre of income ends after the 31st day of Decmber and before the 30th day of April, the order in writing issued by the Income-tax Officer requiring the payment of income-tax and super-tax on that source of income shall substitute for the four quarterly payments herein-before specified, three payments of equal amount to be made on the 15th day of September, the 15 day of December and the 15th day of March, respectively ;

Provided further that, if the assessee is a partner of a registered firm and an assessment of the firm has been completed for a previous year later than that for which the assessee's last assessment has been completed, his share in the profits of the firm shall, for the purposes of this sub-section, be included in his total income on the basis of the latest assessment of the firm :

Provided further that, if after the making of an order by the Income-tax Officer and before the 15th day of February of the financial year an assessment of the assessee, or of the registered firm of which he is a partner is completed in respect of a previous year later than that referred to in the order of the Income-tax Officer, the Income-tax Officer may make an amended order requiring the assessee to pay in one instalment on the specified date, or in equal instalments on the specfied dates if more than one, falling after the date of the amended order, the tax computed on the revised basis as reduced by the amount, if any, paid in accordance with the oringinal order; but if the amount already paid exceeds the tax determined on the revised basis, the exceess shall be refunded.

(*b*) If the notice of demand issued under section 29 in pursuance of the order under clause (*a*) of this sub-section is served after any one of the dates on which the instalment scified therein are payable, the tax shall be payable in equal instal-

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LEG. REF.

1 Inserted by sec. 7 of Act XVIII of 1933.

12 Added by *Ibid.*

2 Substituted for the word, brackets and figure "sub-section (3)", by *ibid.*

3 Substituted for the word, brackets, figure and letter "or (3-D)" by sec. 20 of Act VII of 1939.

4 Substituted for "at the time of payments of interest or dividends" by *ibid.*

5 Substituted for "the interest is paid" by sec. 2 and Sch. I of Act XII of 1935.

ments on each of such of those dates as fall after the date of the service of the notice of demand, or in one sum on the 15th day of March it the notice is served after the 15th day of December.

(2) If any assessee who is required to pay tax by an order under sub-section (1) estimates at any time before the last instalment is due that the part of his income to which that sub-section applies for the period which would be the previous year for an assessment for the year next following is less than the income on which he is required to pay tax and accordingly wishes to pay an amount less than the amount which he is so required to pay, he may send to the Income-tax officer an estimate of the tax payable by him calculated in the mannar laid down in sub-section (1) on that part of his income for such period, and, shall pay such amount as accords with his estimate in equal instalments on such of the dates specified in sub-section (1) (*a*) as have not expired or in one sum if cnly the last of such dates has not expried :

Provided that the assessee may send a revised estimate of the tax payable by him before any one of the dates specified in sub section (1) (*a*)and adjust any excess or defiiency in respect of any instalment already paid in a ubsesquent instalment or in subsequent instalments.

(3) Any person who has not hitherto been assessed shall, before the 15th day of March in each financial year, if his total income of the period which would be the previous year for an assessment for the financial year next following is likely to exceed six thousand rupees, send to the Income-tax Officer an estimate of the tax payable by him on that part of his income to which the provisions of section 18 do not apply of the said previous year calculated in the mannar laid down in sub-section (1), and shall pay the amount, on such of the dates specified in that sub-section as have not expired, by instalments which may be revised according to the proviso to sub-section (2).

(4) Where part of the income to which sub-section (1), (2) or (3) applies consists of any income of the nature of commission which is receivable periodically and is not received or adjusted by the payer in the assessee's account before any of the quarterly instalments of tax become due, he may defer payment of tax on that part of his ineome to the date on which such income would be normally received or adjusted and if he does so he shall communicate to the Income-tax Officer the date to which such payment is deferred :

Provided that, if the tax of which the payment is deferred is not paid within fifteen days of the date on which such income or part thereof is received or adjusted by the payer in the assessee's account, the tax shall be payable with six per cent. simple insterest per annum from the date of such receipt or adjustment to the date of payment of the tax.

(5) The Central Government shall pay on any amount paid under this section simple interest at two per cent. per annum from the date of payment to the date of the assessment (hereinafter called the regular assessment') made under section 23 of the income, profits and gains of the previous year for an assessment for the year next following the year in whieh the amount was payable :

Provided that on any portion of such amount which is refunded under the foregoing provisions of this section interest shall be payable only up to the date on which the refund was made.

Where in any year an assessee has paid tax under sub-scction (2) or sub-sec. (3) on the basis of his own estimate, and the tax so paid is less than eighty per cent of the tax. determined on the basis of regular assessments so far as such tax relate to income to which the provisions of section 18 do not apply and so for as it is not due to variations in the rates of tax made by the Finance Aet enated for the year for which the regular asressment is made, simple interest at the rate of six per cent. per annum from the Ist day of January in the financial year in which the tax was paid up to the date of the said assessment shall be payable by the assessee upon rhe amount by which the tax so paid falls short of the said eighty per cent:

Provided that, where, as a result of an appeal under section 31 or section 33 or a revision under section 33-A or a reference to the High Court under section 66, the amount on which interest was payble under this sub-section has been reduced the interest shall be reduced accordingly and the excess interest paid if any, shall be refunded together with the amount of income-tax that is refundable:

Provided further that, where a business or vocation is newly set up and is assessable on the income, profits, and gains of its first previous year in the financial year following that in which it is set up, the interest payable shall be cemputed from the Ist day of April of the said financial year.

(7) Where, on making the regular assessment, the Income-tax Officer finds that any assessee has—

(*a*) under sub-section (2) or sub-section (3) under-estimated the tax payable by him and thereby reduced the amount payable in any of the first three instalments, or

(*b*) under sub-section)4) wrongly deferred the payment of tax on a part of his income,

he may direct that the assessee shall pay simple interest at six per cent. per anuum in the case referred to in clause (*a*) for the period during which the payment was. deficient on the difference between the amount paid in each such instalment and the amount which should have been paid having regard to the aggregate tax actually paid under this section during the year, and in the case referred to in clause (*b*) for the period during which the payment of tax was wrongly deferred on the amount of which the payment was so deferred ;

Provided that for the purposes of this sub-section any instalment due before the expiry of six months from the commencement of the privious year in respect of which it is to be paid shall be deemed to have become due fifteen dayes after tne expiry of the said six months.

(8) Where, on making the regular assessment, the Income-tax Offiicer finds that no payment of tax has been made in accordance wi.h the foregoing provisions of this secton, interest calculated in the manner laid down in sub-section (6) shall be added to the tax as determined on the basis of the regular assessment.

(9) If the Incomme-tax Offiber, in the course of any proceedings in connection with the regular assement, is satisfied that any assessee—

(*a*) has furnished under sub-section (2) or sub-section (3) estimates of the tax payable by him which he knew or had reason to believe to be untrue,or

(*b*) has without ressonable cause failed to comply with the provisions of sub-section (3),

the assessee shall be deemed, in the case referred to in clause (a), to have deliberately furinshed inaccurate partiulars of his income, and in the case referred to in elause (*b*), to have failed to furnish the return of his total income; and the provisions of section 28, so far as may be, shall apply accordingly :

Provided that the amount of penalty leviable shall ,in the case referred to in clause (*a*),be a sum not exceeding one-and-ahalf times the amount by which the tax actually paid during the year under the provisions of this section falls short of the tax that shonld have been paid by the assessee under sub-seetion (1) or eighty per cent. of the tax determined on the basis of the regular assessment as modified in the manner provided in sub-section (6), whichever is the less, and in the cases referred to in clause (*b*), one-a-half times the said eighty per cent.

(10) (*a*) If any assessee does not pay on the specific dates any instalment of tax that he is repuired to pay under sub-section (1) and does not, before the date on which any such instalment as is not paid becomes due, send under sub-section (2) an estimate or a revised estimate of the tax payable by him, he shall be deemed to be an assessee in defaulat in respect of such instalment or instalments.

(*b*) If any assessee has sent under sub-section (2) or sub-sectian (3) an estimate or a revised estimate of the tax payable by him, but does not pay any instalment in accordance therewith on the date or dates specified in sub-section (1), he shall be deemed to be an assessee in default in respect of such instalment or instalments :

Provided that the assessee shall not, under clause (*a*) or (*d*), be deemed to be in default in respect of any amount of which the payment is deferred under sub-section (4) until after the date communicated by him to the Income-tax Officer under that sub-section.

(11) Any sum other than a penalty or interest paid by or recovered from an assessee in pursuance of the provisions of this stction shall be treated as a payment of tax in respect of the income of the period which would be the previous year for an assessment for the financial year next following the year in which it was payable, and credit therefor shall be gixen to the assessee in the regular assessment.] (Inserted by Act XI of 1944)

Payment in other cases.

[1][19. In the case of income in respect of which provision is not made under section 18 for deduction of income-tax at the time of payment, and in any case where income-tax has not been deducted in accordance with the provisions of section 18, income-tax shall be payable by the assessee direct.]

Supply of information regarding dividends.

[2][19A. The principal officer of every company shall, on or before the 15th day of June in each year, furnish to the prescribed officer a return in the prescribed form and verified in the prescribed manner of the names and of the addresses, as entered in the register of shareholders maintained by the company, of the shareholders to whom a dividend or aggregate dividends exceeding such amount as may be prescribed in this behalf has or have been distributed during the preceding year and of the amount so distributed to each such shareholder.]

Certificate by company to shareholders receiving dividends.

20. The principal officer of every company shall, at the time of distribution of dividends, furnish to every person receiving a dividend a certificate to the effect that the company has paid or will pay income-tax on the profits which are being distributed, and specifying such other particulars as may be prescribed.

Supply of information regarding interest.

[3][20A. The person responsible for paying any interest not being "Interest on securities" shall, on or before the fifteenth day of June in each year, furnish to the prescribed officer a return in the prescribed form and verified in the prescribed manner of the names and addresses of all persons to whom during the previous financial year he has paid interest or aggregate interest exceeding such amount not being less than [4][four hundred] rupees as may be prescribed in this behalf, together with the amount paid to each such person.]

Annual return.

21. The prescribed person in the case of every Government office, and the principal officer or the prescribed person in the case of every local authority, company or other public body or association, and every private employer shall prepare, and, within thirty days from the 31st day of March in each year, deliver or cause to be delivered to the Income-tax Officer in the prescribed form [5][and verified in the prescribed manner] a return in writing showing—

(*a*) the name and, so far as it is known, the address, of every person who was receiving on the said 31st day of March, or has received [1][or to whom was due] during the year ending on that date, from the authority, company, body, association or private employer, as the case may be, any income chargeable under the head "Salaries" of such amount as may be prescribed :

LEG. REF.

[1] Substituted by sec. 21 of Act VII of 1939.

[2] Inserted by sec. 2 of Act XXIV of 1926.

[3] Inserted by sec. 9 of Act XVIII of 1933.

[4] Substituted for "one thousand" by sec. 22 of Act VII of 1939.

[5] These words were inserted by sec. 23, *ibid.*

SEC. 20: CERTIFICATES—VALIDITY FOR PURPOSES OF REFURD.—Certificates under sec. 20 signed by the principal officer in the United Kingdom of such companies can be regarded as valid certificates for the purposes of sec. 48 (1) of theAct and refund granted on their production. 55 B. 734=33 Bom.L.R. 776=1931 B. 420.

(*b*) the amount of the income so received [1][or so due] ny each such person, and the time or times at which the same was paid [2][or due, as the case may be] ;

(*c*) the amount deducted in respect of income-tax [1][and super-tax] from the income of each such person.

Return of income.

22. [3][(1) The Income-tax Officer shall, on or before the 1st day of May, in each year, give notice, by publication in the press and by publication in the prescribed manner, requiring every person whose total income during the previous year exceeded the maximum amount which is not chargeable to income-tax to furnish, within such period not being less than sixty days as may be specified in the notice, a return, in the prescribed form and verified in the prescribed manner, setting forth (along with such other particulars as may be required by the notice) his total income and total world income during that year :

Provided that the Income-tax Officer may in his discretion extend the date for the delivery of the return in the case of any person or class of persons.]

(2) In the case of any person [4]* * * * whose total income is, in the Income-tax Officer's opinion, of such an amount as to render such person liable to income-tax, the Income-tax Officer [5][may serve] a notice upon him

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LEG. REF.

1 Inserted by sec. 23 by Act VII of 1939.
2 Added by *ibid.*
3 Substituted by sec. 24 of Act VII of 1939.
4 Words "other than a company" omitted by sec. 24 of Act VII of 1939.
5 Substituted for "shall serve," by *ibid.*

SEC. 22 (1): FOREIGN INSURANCE COMPANY—FAILURE TO MAKE RETURN—PROCEDURE.—Where an Insurance Company (not incorporated in British India) has failed to make a return of the total income under sec. 22 (1), the Income-tax Officer is justified in applying R. 35 of the Income-tax Rules. He must find out what is the total income, profits or gains of the assessee company. Where, for that purpose, the officer had no other reliable data except a triennial valuation, he is entitled to assume that the profits for the year in question could be the average annual profits shown in the triennial valuation after deducting the premiums paid on participating policies. 55 B. 637=33 Bom.L.R. 807=1931 B. 448. Besides owning a firm at Benares, two partners had an interest in numerous firms bearing the same name and carrying on business in different parts of the country. In the year of account it was found that the firm made no profits but the firms in which the partners were interested made considerable profits. The question having been raised whether the firm could be assessed in respect of those profits: *held*, that the partners were members of the other firms only in their individual capacity, the firm itself being incapable of being a partner and that the assessment of the firm with reference to the profits of the other firm did not arise. 54 A. 846=1933 A. 77=1932 A.L.J. 999. *See also* 62 C. 133=39 C.W.N. 253. The assessee is entitled to have two 'previous years', one for the head office and one for the branches, but in his assessment he must add the results of the two, each year, and make his return on this basis. He cannot accumulate the results of two years of the branches and account for them in one year's results of the main office. 1937 L. 308.

SEC. 22 (2).—[*See also* notes under sec. 23.] The effect of the words "within such period, not being less than thirty days." in sec. 22 (2) is that there must be an interval of not less than thirty days, *i.e.*, thirty clear days. In other words, thirty clear days must elapse after the receipt of the notice by the assessee before his obligation to send the return becomes effective. A notice calling on the assessee to send the return "within thirty days" is therefore not a valid notice. I.L.R. (1945) Bom. 432=1935 I.T.R. 154=47 Bom. L.R. 181=1945 Bom. 316. Where an assessee received a notice from the Income-tax Officer under sec. 22 (2) requiring him to make a return in the prescribed form and verified in the prescribed manner, setting forth his total income during the previous year, and the assessee does neither fill the form, nor verify such form in the prescribed manner, but instead writes a letter intimating his non-liability to be taxed under the Act, it must be taken that he has failed to make a return under sec. 22 (2) within the meaning of sec. 23 (4). 12 P.L.T. 915=133 I.C. 758=1931 P. 306 (F.B.). Where an assessee failed to make a return of his income under sec. 22 (2) of the Act and some time later died, an assessment on his estate made by the Income-tax Officer under sec. 23 (4) "to the best of his judgment" is illegal. 55 B. 312=33 Bom. L.R. 388=1931 B. 333. The Income-tax Officer issued by means of registered post, acknowledgment due, a notice under sec. 22 (2). The notice was delivered by the postal peon to the assessee's son who was found to be a minor and possessed of ordinary intelligence. The son was living with his father and when on previous occasions notices had to be served on the assessee they were taken delivery by his son. *Held*, that in proper circumstances a minor son might be an agent of his father and that the service of the notice was good service. 54 A. 548=1932 A.L.J. 409=1932 A. 374. A form is prescribed by statute for the return of income-tax but there

requiring him to furnish within such period, not being less than thirty days, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as may be provided for in the notice) his total income [1][and total world income] during the previous year :

[2][Provided that the Income-tax Officer may in his discretion extend the date for the delivery of the return.]

(3) If any person has not furnished a return within the time allowed by or under sub-section (1) or sub-section (2), or having furnished a return under either

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LEG. REF.

[1] Inserted by Act VII of 1939.

[2] Added by *ibid.*

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is no statutory form for the notice which is issued under sec. 22 (2) and there is nothing whatever in the Act to show that there is any obligation on the income-tax authorities to indicate in what capacity it is proposed to charge the potential assessee the tax. It is the duty of the person receiving the notice to score out the irrelevant capacities in the notice. 1942 I.T.R. 131=1942 O.W.N. 293 =1942 A.L.W. 209. A notice under sec. 22 (2) was issued to the assessee who was an undivided Hindu family and the assessee was required to submit a return and four capacities were indicated one above the other and the notice went to the assessee without any one of these capacities having been scored out. The assessee was in no doubt as to which capacity of his was under investigation. He had been assessed in previous years as an undivided Hindu family and he submitted his return as an undivided Hindu family, and without scoring out any of the four capacities. *Held,* that the notice issued by the department could not be said to be invalid or illegal. 1940 A.L.J. 843=I.L.R. (1940) A. 841=1940 A. 537. Where the Income tax Officer issues a notice in a case which is beyond his jurisdiction, the amount being over Rs. 40,000, and in which, as per Government notification, the notice is to be issued by the Assstant Commissioner, such notice is illegal and the return does not become due in consequence thereof. 139 I.C. 290=1932 N. 65. Where an assessee in a verified return declared he had no income from a particular source, if the authorities disbelieve it, the onus lies on them to prove that there was income from that source and what it was. 50 C. 907=1924 C. 337. The service of notice under the Act need not be personal. It can be made on the authorised or recognised agent of he assessee. In the case of a recognised agent carrying on business in the name of the principal, an authority to accept notices being incidental to the business can be implied. 10 P. 441=1931 P. 282. Where an assessee's return is made before assessment, it is a return made in due time under sec. 22 (3) and before such a return can be disregarded, the assessee is entitled to a reasonable opportunity to produce any evidence upon which he might rely in support of the return. 134 I.C. 1275=1931 C. 729 (S.B.). A return which by sec. 22 (3) is to be deemed to be a return made in due time cannot be treated as still-born because of a previous failure to comply with a notice under sec. 22 (4). 1931 C. 729 (S.B.). Where the question was whether the assessee was prevented by sufficient cause from making the return required by sec. 22: *held,* that the question was one of mixed law and fact and that the question of law should be answered only on the facts as determined by the Commissioner. 1930 A.L.J. 78=1930 A. 209.

FIRM—LIABILITY TO ASSESSMENT—OBJECT OF ENACTMENT.—The object of the Income-tax Act in treating the firm in addition to the individual partners as itself a subject liable to assessment is not to differentiate in respect of the ultimate liability to tax, between the partners in a firm and the sole owner of a business or assessee. The method of double assessment is employed in the case of firms as a device in the nature of taxation at the source which is employed to collect tax upon salaries and interest on securities. The object of the double assessment to tax in the case of partners and their firm is not to get it often but to get it early and to make sure of getting it. 58 C. 1204=35 C.W.N 534=1931 C. 686 (S.B.).

SECS. 22 (2) AND (3).—A return furnished after the assessment order is made but before the service of the demand notice is not a valid return. 38 P.L.R. 848=1936 L. 468.

SEC. 22 (2) AND (4).—*See* 7 P. 852=9 P.L.T. 653=1928 P. 529 (F.B.). The Income-tax Officer is bound to give the proposed assessee at least 30 days' time within which to file a return. Where the minimum is denied, the notice is illegal. The fact that subsequently a further extension of time is granted will not cure the defect that initially lay in the notice issued. 1930 A.L.J. 78=1930 A. 209. *See also* 1935 Lah. 201. Officer of an assessee's principal place of business has jurisdiction to compel such assessee to submit a return and produce accounts in respect of a branch business, even though he has submitted a return, produced accounts, and otherwise complied with all the requirements of the law before the Income tax Officer of the place where he has such a branch business. 1930 A.L.J. 1=1930 A. 49 (F.B.). Where a person is carrying on business at different places, it is not incumbent on the Income-tax Officer of the principal place of business where an assessee is assessed to income-tax, to issue separate notices under sec. 22 (2) requiring returns in respect of the income of each branch of the assessee. 1930 A. 49 (F.B.). The Income-

of those sub-sections, discovers any omission or wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made. [1]* * * * * *

(4) The Income-tax Officer may serve [2]* * * * on any person [3][who has made a return under sub-section (1) or] upon whom a notice has been served under sub-section (2) a notice requiring him, on a date to be therein specified to produce, or cause to be produced, such accounts or documents as the Income-tax Officer may require :

LEG. REF.

[1] The words "any and return so made shall be deemed to be a return made in due time under this section" omitted, by sec. 24 of Act VII of 1939.

[2] The words "on the principal officer of any company or" omitted *ibid.*

[3] These words were inserted, *ibid.*

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tax Officer is entitled to require the assessee to produce the books of his foreign business. Where an Income-tax Officer calls upon an assessee to produce account books which ordinarily would be in his possession and control, the assessee has got to show that he is incapable of producing them. If they would not ordinarily be in his possession and control, the onus would then lie on the Officer to show the assessee could produce them but has failed to do so. 1930 M. 763=59 M. L.J. 220 (F.B.). The assessee was called upon by a notice under sec. 22 (2) to submit a return which he did but the return was not signed or verified. Subsequently the Income tax Officer issued another notice under sec. 22 (4) directing the assessee to produce his accounts. He did not produce the accounts and the Income tax Officer made an assessment to the best of his judgment under sec. 23 (4). *Held*, that no questions of law could possibly arise on the findings of fact of the Income-tax Officer: (1934 A. 929. Where the return under sec. 22 (2) did not bear verification or the signature of the assessee: *Held*, that there was no proper return and the Income-tax Officer could impose best judgment assessment under sec. 23 (4). 56 A. 418=1934 A.L.J. 47=1934 A. 930.

Where in compliance with a notice under sec. 34 read with sec. 22 (2) of the Act, the assessee files a return form blank with the observation that no income escaped assessment duly signed and verified by him, the return is a valid return. When further in answer to a notice under sec. 22 (4) the assessee produces his accounts and commits no default, and the assessee is assessed under sec. 23 (4) without a notice under sec. 23 (2), the assessment under sec. 23 (4) is illegal, though a notice under sec. 23 (2) may not be necessary. 1942 I.T.R. 379. *See also* 1942 I.T. R. 370.

SEC. 22 (3): SCOPE AND APPLICABILITY.—Sec. 22 (3) is intended to enable a person who has made a return to correct a wrong statement or supply an omission discovered in the return subsequent to its submission. It does not apply to a person who has made a false return knowing it to be false. 1939 I. T.R 613=1939 N.L.J. 553=1940 N. 88.

SEC. 22 (3).—"Return"—What amounts to. 1930 A.L.J. 26=1929 Cr. C. 647=1929 A. 919. *See also* 1935 O. 305; 1928 L. 729. There is nothing in Cl. (3) which says that any offence committed with respect to a return made under Cl. (2) must be condoned if the revised return be true. All that Cl. (3) provides is that this return would be treated as a return made in due time, provided it is made before an assessment has been made. 1929 A. 010. Although an assessee is late in filing his return, nevertheless, if he does file it before the assessment is actually made, the return has to be considered and dealt with although out of time. 139 I.C. 593=1932 C. 410 (S.B.). Duty of Income-tax Officer—Right to make private visit to assessee's place of business and act upon the result—Right of assessee to be heard in answer. 158 I.C. 959=16 P.L.T. 429=1935 P. 425 (S.B.).

INCOME-TAX RULES, R. 35—PROCEDURE UNDER— WHEN PERMISSIBLE.—Where the assessee is unable to provide particulars on which assessment can be made, and the commissioner has no more reliable data, he can resort to sec. 35, even though the data are not procurable for no fault of the assessee. 57 B. 519=35 Bom.L.R. 896=1933 B. 427.

Where an assessee files a return on the usual form duly signed and verified and not being in a position to know how much he had spent and how much he had received enters a sum arrived at by rough calculation as his taxable income, the assessee must be taken to have filed a valid return under sec. 22 so as to justify an assessment under sec. 23 (3), although the return may not have supplied all the detailed information required. 1945 Pesh. 18.

SEC. 22 (4) is very wide and gives the Income-tax Officer very wide powers. 101 I.C. 321=1927 L. 5. An Income-tax Officer is entitled to call for documents which in his opinion would furnish him with relevant material for assessment of tax. The word "require" in sec. 22 (4) really means require as a piece of relevant evidence. It does not mean that he should ask for documents which he does not think to be relevant at all. Where the Income-tax Officer directed an assessee to produce his account books in order to make an assessment for the year 1929 to 1930 and the assessee produced some books but not those of the year 1925 to 1926. *Held*, that the books for the years 1925 to 1926, were not "required" within the meaning of sec. 22 (4). 53 A. 451=1931 A.L.J. 345=1931 A. 417. *See also* 64 I.A. 102—I.L.R. 1937 Nag. 191= 1937 2 M.L.J. 43=1937 P.C. 133 (P.C.). It is open to an Income-tax Officer to issue a notice under sec. 22 (4) at any time after he

Provided that the Income-tax Officer shall not require the production of any accounts relating to a period more than three years prior to the previous year.

[1][(5) The prescribed form of the returns referred to in sub-sections (1) and (2), shall, in the case of an assessee engaged in any business, profession or vocation, require him to furnish particulars of the location and style of the principal place wherein he carries on the business, profession or vocation and of any branches thereof, the names and addresses of his partners, if any, in such business, profession or vocation and the extent of the share of the assessee and the shares of all such partners in the profits of the business, profession or vocation and any branches thereof.]

LEG. REF.

[1] This sub-section was added by sec. 24 of Act VII of 1939.

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has called upon the assessee to furnish a return. 55 A. 804=1933 A.L.J. 1474=1933 A. 541. *See also* 1934 N. 183. There is no provision in the Act by which Income-tax Officer can enforce production of account books if the assessee firm declines to comply with the notice. 7 L. 104=1926 L. 326. It is clear that sec. 22 (4) relates only to accounts and documents which are in the possession or under the control of the person making the return. The legislature could not have intended to impose a penalty on a person for non-production of documents which he does not control. Kania, J.—There is no justification in law to call upon one friend to produce the books of another under sec. 22 (4) and then in default to make the party called upon liable under sec. 23 (4). 40 Bom.L.R. 1222=1939 B. 43. Sec. 22 (4). The Income-tax Act, no doubt, standing by itself, is uncontrolled by any time-limit. But a time-limit is imposed by the four words "having made a return", as used in sec. 23 (4). 1930 A.L.J. 1=1930 A. 49 (F.B.). Accounts or documents can be called for by the Income-tax Officer under sec. 22 (4) after issue of notice and before the filing of the return. After the filing of the return, secs. 23 (2), (3) and 37 give ample powers to the Income-tax Officer to call for whatever documtnts he requires. The failure to comply with any of the notices under these sections does not authorise the Income-tax Officer to make a summary assessment to the best of his judgment under Cl. (4) of sec. 23. 8 P.L.T. 686=1927 P. 390. *See contra* 7 . 26=1929 R. 38 (F.B.); 8 R. 587; 52 M. 194=1929 M. 60=56 M.L.J. 141 (F.B.). Where an assessment of super-tax has been completed as if the assessee were a Hindu undivided family and it is subsequently held that the assessee is an individual, if the original assessment was, in the absence of a return, made under sec. 23 (4) and the assessee in answer to a notice under secs. 22 (4) and 34 files a return disclosing a lesser income than that taken in the original assessment, the Income-tax Officer can reopen the assessment and determine the assessee's income *de novo*. 1931 A.L.J. 1109=1932 A. 83. A notice under sec. 22 (4) for producing the account books of the assessee by him, issued after he has submitted a return of his income, is invalid. 1932 C. 411=139 I.C. 599 (S.B.).

PROCEDURE.—It is not sufficient for an assessee to suggest to the Commissioner the questions of law. It is for the Commissioner to find the facts first and then to state the point of law which arises out of those facts and on which he desires an opinion. He may then if he likes give his own opinion on the case. 1927 P. 390. The combined notice under secs. 22 (4) and 23 (2) is not illegal. 1934 N. 183. The issue of a notice under secs. 22 (4) and 23 (2) presupposes the existence of a valid return having been made. 1934 N. 183.

SECS. 22 (4) AND 23 (4): CALLING OF EVIDENCE FOR INQUIRY—POWER OF INCOME-TAX OFFICER.—The final arbiter of what is required is the Income-tax Officer and not the assessee. It is for him to determine what evidence he considers relevant for the purposes of the enquiry. Similarly, if an income-tax Officer calls for all the previous accounts relating to the various businesses conducted by the assessee, but the assessee withholds some of them and the Income-tax Officer utilises the accounts produced by the assessee in making his estimate, it cannot be argued that those accounts which were not produced by the assessee were not required for the purpose of the assessment. The withholding of some of the account books which the assessee had been called upon to produce amounts therefore to a non-compliance with the terms of the notice issued under sub-sec. (4) of sec. 22 and entails all the penalties laid down in sub-sec. (4) of sec. 23. (53 A. 451, Dist.; 52 M. 194 (F.B.). Rel. on.) I.L.R. 1938 Lah. 551=1938 Lah. 551. *See also* 1938 Rang. 287.

SECS. 22 (4), 23 (4) AND 37: POWER TO CALL FOR ACCOUNTS FOR MORE THAN THREE YEARS PRIOR TO PREVIOUS YEAR.—The proviso to sec. 22 (4), when read with sec. 23 (4), of the Act only limits the power to call for accounts for more than three years prior to the previous year, when the income-tax officer has to make the assessment to the best of his judgment, where the conditions mentioned in sec. 23 (4) exist. Where, however, he proceeds to make an enquiry as regards the truth or otherwise of the allegations made by the assessee in his return, in order to determine whether the assessee has made out his allegations, there is nothing to prevent the Income-tax Officer from requiring the assessee to produce any evidence including accounts. No limit of time has been laid down in secs. 23 (3) and 37 of the Act in the matter of calling for accounts. (1945) I.T.R. 198.

Assessment.

23. (1) If the Income-tax Officer is satisfied [7][without requiring the presence of the assessee or the production by him of any evidence that a return made under section 22 is correct] and complete he shall assess the tota. income of the assessee, and shall determine the sum payable by him on the basis of such return.

(2) If the Income-tax Officer [1][is not satisfied without requiring the presence of the person who made the return or the production of evidence that a return made under section 22 is correct and complete, he shall serve on such person], a notice requiring him, on a date to be therein specified, either to attend at the Income-tax Officer's office or to produce, or to cause to be there produced, any evidence on which such person may rely in support of the return.

LEG. REF.

[1] These words were inserted by sec. 25, of Act VII of 1939.

[2] Substituted for the original words by sec. 25 *ibid.*

SECS. 22 AND 25-A: QUAERE.—Whether where notices have been issued to the individual members of the family as such, it is open to the Income-tax Officer without issuing a new notice to the Hindu joint family hough its manager or any adult member of the family to charge the income received by the individuals as income of the joint Hindu family. *See* 1937 Lah. 897=5 I.T.R. 548.

SECS. 22 AND 63 (2).—If the Income-tax Officer comes to the conclusion that a separate individual to whom he had issued notice was really a member of a Hindu joint family, a fresh notice may be issued to the Hindu joint family through the person whom he considers to be its manager or through any other adult member of the family as provided in sec. 63 (2). 1937 Lah. 897.

SEC. 23 (1).—[*See also* Notes under secs. 13 and 22 *supra* sec. 23 deals with matters of assessment and not with 'computation of the income, profits and gains for the purposes of secs. 10, 11 and 12'. It deals with 'return' and not primarily with accounts. If the return is 'correct and complete' then the income-tax officer has to 'assess the total income of the assessee' and determine the sum payable by him 'on the basis of such return'. 1938 N.L.J. 172=1938 Nag. 485. When once the Income-tax Officer has made the assessment under sec. 23 (1), that assessment is settled. On the general principles of law governing estoppels, neither the subject nor the Crown ought to be at liberty to go behind the amount of profits and gains when once determined by any competent authority. The assessment once made according to the provisions of the Income-tax Act can only be re-opened in accordance with the provisions of the Act. 177 I.C. 255=1938 Cal. 557 (S.B.). *See also* 1937 Lah. 721. Ordinarily and apart from the two cases coming within the purview of sec. 34 of the Income-tax Act, 1922, *viz.*, (1) where income has escaped assessment in any year, and (2) where income has been assessed at too low a rate in any year, there is no time-limit, prescribed or necessarily implied in the Act, within which an assessment must be made or completed, and an assessment made after the expiry of the tax year is valid. *Semble.* Even in the two cases to which sec. 34 applies, if a notice is served within one year after the expiry of the tax year, the subsequent assessment or re-assessment may be made at any time and not necessarily within the year following the tax year. 61 I.A. 10=61 C. 285=38 C.W.N. 318=1934 P.C. 30=66 M.L.J. 121 (P.C.). The mere fact that a certain income has not suffered tax because of a device adopted by the assessee would not enable the department to assess the same in subsequent years when the device becomes apparent to the department. It is only when, according to a particular system adopted by the assessee, allocations are made not in the year when the amount is received but in later years, that the income so allocated can be said to be the income liable to be considered in the assessment year. 163 I.C. 324=1936 A.L.J. 549=1936 A. 279. Notice under sec. 22 served in proper time and assessment made—Assessment subsequently set aside by High Court—Fresh assessment in accordance with High Court order, but more than one year after the expiry of the tax year, not barred by limitation. 1936 A. 279. In order to be valid, a demand for super-tax should be made within a reasonable time of the assessment for income-tax. Two years and four months is a wholly unreasonable time. 1934 S. 46=28 S.L.R. 174.

SEC. 23 (2): NOTICE.—Where a notice under sec. 23 (2) was issued to the assessee when the original return was filed, a fresh notice under sec. 23 (2) is not essential after the assessee had submitted an application to the Income-tax Officer mentioning certain omissions. I.L.R. (1940) All. 841=1940 A. L.J. 843=1940 All. 537. When an assessee has made a return which he knows is a *bona fide* return and in which he has put in his total income to the best of his then information, there might yet be some omission on his part due to some cause or other. To such and similar cases sec. 23 (2) would apply but not to a case of deliberate omission to furnish particulars available with the assessee. 1933 A.L.J. 49=1933 A. 197. When an Income-tax Officer is not satisfied with a return made under sec. 22, he has under sec. 23 (2) to serve on the assessee a notice to produce evidence on a specified date. 29 C.W.N. 591=1925 C. 890=88 I.C. 404. The issue of a notice under sec. 23 (2) is mandatory under certain

circumstances. When the Income-tax Officer has reason to believe that the return filed by the assessee is incorrect or incomplete, and if he is not satisfied with the correctness of the assessee's return, the law requires that he shall serve a notice under sec. 23 (2) which then becomes imperative. The Income-tax Officer cannot proceed to make the best judgment assessment on the ground that there has been failure to comply with notice under sec. 23 (4), because if a valid notice under sec. 23 (4) is issued, the assessee might remove suspicions of the officer and satisfy him that his return is correct and complete. I.L.R. (1937) All. 834=1937 A.L.J. 957=1937 All. 770. Under sec. 23 (2), there are three alternatives provided for the assessee. It is not for the Income-tax Officer to decide which of the alternatives he will give to the assessee. If for example he requires only the attendance of the assessee, the latter would lose the valuable right of producing the evidence in support of the return and removing the doubts of the officer. Therefore if the Income-tax Officer in sending a notice under sec. 23 (2) scores out the words 'or to produce, or to cause to be there produced any evidence on which such person may rely in support of the return" from the printed notice containing all the three alternatives, the notice is irregular and illegal. I.L.R. (1937) All. 834=1937 A.L.J. 957=1937 All. 770. Reasonable notice should be given to the assessee before proceeding under Cl. (4). Whether a given time is reasonable time is a question of fact. 134 I.C. 1275=1931 C. 729 (S.B.). As to meaning of "return", *see* 1928 L. 729; 120 I.C. 435. Where an assessee applies for adjournment by post or by telegram of an enquiry in respect of which he has been required by a notice under sec. 23 (2) of the Indian Income-tax Act to produce evidence and the Income-tax Officer grants an adjournment, the letter or the telegram intimating the fact of the adjournment to the assessee is not a notice under sec. 23 (2) or a requisition within the meaning of sec. 63 of the Act. 1930 M. 113=58 M.L.J. 10 (F.B.).

SEC. 23 (2) (4): PROCEDURE.—Proceedings of income-tax Officer are of a judicial nature and he must proceed on judicial principles. 7 L. 201=1926 L. 161; 94 I.C. 156 =1926 L. 233. Where the assessees were never given an opportunity to contest and disprove the allegation that they were members of a joint Hindu family and were liable to be taxed jointly: *Held,* that the procedure was wrong and the assessment was invalid. 52 A. 991=1930 A.L.J. 1548=1931 A. 23. The plea that certain shares have been divided between the members of a joint Hindu family must be raised at the time of making an assessment under sec. 23 and it cannot be raised for the first time on appeal against the assessment. 56 A. 504=1934 A. 217. Value to be attached to account books produced by assessee. 7 L. 201. Prroceedings under Ch. IV of the Act (Assessment Proceedings) are judicial proceedings in the colloquial sense only and not in the strictly scientific sense, so as to raise questions in appeal to some higher tribunal as to whether the authority making the assessment has decided against the weight of evidence, or decided a fact of which there is no evidence or has disregarded evidence which ought to have been taken into account 3 I.T.R. 48. Where the Income-tax Officer found that some of the books of the assessees were not clear as regards the income derived by the owners thereof and assessed the income at a certain figure without stating what was the basis of his computation. *Held,* that the assessment was illegal. 52 A. 991=1933 A.L.J. 1548=1931 A. 23. *See also* 1930 L. 605; 7 R. 669; 8 R. 203. Although, in a previous year of assessment, a decision is arrived at after investigation and inquiry that certain deductions ought to be made, it is still open to the Income-tax authorities to reopen the question in a subsequent year of assessment, if fresh facts come to light. The Income-tax Officers are to be guided by principles of natural justice and cannot arbitrarily change the assessment. 1930 L. 605. *See also* 1930 M. 209=58 M.L.J. 270=53 M. 420 (F.B.); 1933 O. 396. The order of an Income-tax Officer in a particular year allowing the salaries of two of the partners as business deductions does not bind his successors in a subsequent year. 12 L. 663=134 I.C. 198=1931 L. 341. In an ordinary case, particulars in respect of which and the ground of which the Income-tax Officer thinks that the statement was either not genuine or complete ought to be given in a notice, especially in cases where the objection is that the accounts are incomplete. But where the finding is that the accounts of the assessee in previous years as well as in the current year were not genuine but merely cooked for income-tax purposes, the Income-tax Officer is under no obligation either in law or in common fairness to set out all the reasons which led him to come to such a conclusion. 7 . 281=1929 R. 102. 'Evidence'—If confined to direct evidence—Omission of transactions from account books—Rejection of such books by Income-tax Officer—If justified. 40 P.L.R. 585=1938 Lah. 209. (*See also* 60 I.A. 146=12 Pat. 318=1933 P.C. 108 =64 M.L.J. 612 (P.C.). Where the Income-tax Officer makes an assessment to the best of his judgment under sec. 23 (4) of the Act, he must do so according to rules of reason and justice and state in his order the materials or reasons on which his judgment is found. 7 R. 669. *See also* 8 R. 203. *Per* Sulaiman, C. J.—In a proceeding under sec. 23 (3) there can be no objection in the Income-tax Officer or the Assistant Commissioner acting upon the assessment for the previous year if no better evidence is forthcoming, even though that assessment might have been made to the best of his judgment under sec. 23 (4). The fact that during the previous year the income was assessed on a certain figure is certainly some evidence on which he can proceed, even independently of any presumption of continuity. If the assessee fails to produce satisfactory evidence, he fails to displace the previous year's estimate, which is certainly admissible against him. 58 A. 200=1936 A.

(3) On the day specified in the notice issued under sub-section (2), or as soon afterwards as may be, the Income-tax Officer, after hearing such evidence as such person may produce and such other evidence as the Income-tax Officer may require, on specified points, shall, by an order in writing, assess the total income of the assessee, and determine the sum payable by him on the basis of such assessment.

286=1935 A.L.J. 1312 (B.B.). In every case before an *ex parte* assessment is made under sec. 23 (4), the Income-tax Officer must invariably conduct such "local" inquiry to ascertain the income of the proposed assessee for the "previous year" as the circumstances of the case may warrant, and he must place on the record "a note of the details and results of his inquiry" in order that the Commissioner of Income-tax under sec. 33 or the High Court under sec. 66 (2) or (3) may be in a position to see that the assessment "was according to the rules of reason and justice and not arbitrary". [1931 R. 194, Diss.; 1931 L. 87 (F.B.), Foll.] 1934 N. 183 (2). *Per* Sulaiman, C.J.—Enquiries made by the Income-tax Officer from the people of the district, after proceedings under sec. 23 (3) had started, of which no notice had been given to the assessee, are illegal, and not authorised by sub-sec. (3). Similarly enquiries made by the Assistant Commissioner during the hearing of the appeal behind the back of the asseesee are not justified by the provisions of sub-sec. (3) and the result of such private enquiries should not be made the basis of any assessment. 58 A. 200=1936 A. 286=1935 A.L.J. 1342 (S.B.).

SECS. 22 (4) AND 23 (2) AND (4): SERVICE OF NOTICE.—*See also* 57 M.L.J. 854=1930 M. 127. Notice may be served under sec. 23 (2) on any member of the firm as provided for in sec. 63 (2) of the Act. It is not necessary that notice should be served only on the member of the firm who made the return. 48 M. 602=1925 M. 1048=49 M.L.J. 124. (*See also* notes under sec. 63, *infra*.) 8 P. 877=1930 P. 127. Where the Income-tax Officer issued a combined notice under secs. 22 (4) and 23 (2), requiring the assessee to produce the accounts and the notice was served on the *gumasta* of the assessee: *held*, there was sufficient compliance with the law as to notice. The word "person" clearly includes a firm as provided by the General Clauses Act 1897, and when the return is made on behalf of the firm by a partner, it is the firm that is the person who makes the return and any proper service on the firm as authorised by sec. 63 (2) will be a proper service. 48 M. 602=1925 M. 1048=49 M.L.J. 124. A combined notice was served upon the assessee under sec. 22 (4) to produce accounts and under sec. 23 (2) either to attend or to produce or cause to be produced any evidence in support of his return. A certain date was fixed. The assessee obtained an adjournment until a certain date. On the adjourned date the assessee applied for further adjournment on ground of illness. The Income-tax Officer refused the application and proceeded *ex parte* under sec. 23 (4) to make the assessment to the best of his judgment. *Held*, that the officer was not bound to announce beforehand how he proposed to deal with an application for an adjournment. The assessee had already obtained one adjournment until a certain date. It was his duty, if he desired a further adjournment, to apply on a date earlier than the adjourned date. The assessee in fact delayed his application for further adjournment until the very day appointed for compliance with the orders. Even if this could be said to be a case of exercising a judicial discretion, there was no ground for suggesting that it was wrongly exercised. 64 I.A. 102=I.L.R. 1937 N. 191=41 C.W.N. 719=1937 P.C. 133=(1937) 2 M. L.J. 43 (P.C.) *See also* (1945) I.L.R. 198; 1945 Pesh. 18. 1942 I.T.R. 379; 370.

SEC. 23 (3) AND (4).—*See also* Notes under sec. 13 *supra*). Under sec. 23 (3) of the Income-tax Act, if the account books of the assessee are found to be unrealiable and are rejected, and the assessee fails to produce evidence on which the Income-tax Officer can make a proper assessment of the assessee's income, the Income-tax Officer must himself take steps to procure material for the purpose if it is not already in his possession. He can call witnesses and make his own inquiries, and when he has material on which he can assess, he must consider it and make an assessment to the best of his judgment. The only difference between such an assessment under sec. 23 (3) and an assessment under sec. 23 (4) is that the Act contemplates a more summary method when the Income-tax Officer is acting under sec. 23 (4). I.L.R. (1939) Mad. 404=1939 Mad. 371=(1939) 1 M.L.J. 451. In making an assessment under sec. 23 (3), there is nothing in the Act which requiries the Income-tax Officer to disclose to the assessee the material on which he purposes to act or to refer to it in his order, but natural justice requires that he should draw the assessee's attention to any such material and give him a reasonable opportunity to meet the case arising therefrom before making his order. Further an order under sec. 23 (3) is appealable, and hence it should contain the materials on which the assessment is based so that the appellate authority may form its opinion on the fairness of that assessment. The assessee is, however, not entitled to demand copies of the confidential statements in the possession of the Income-tax Officer or to demand that his informants should be called by the Income-tax Officer, so that they may be cross-examined by the assessee, and the Income-tax Officer is not a Court in the usual meaning of the term, when he is holding an inquiry under sec. 23 (3). Under sec. 37, he has merely certain powers of a Civil Court for the purposes of Ch. IV. Sec. 23 (3) is not exhaustive, and there is implicit in the section in its context, the power to collect and act on other "evidence" in a wide sense of the

(4) [1][If any person fails to make the return required by any notice given under sub-section (2) of section 22 and has not made a return or a revised return under sub-section (3) of the same section] or fails to comply with all the terms of a notice issued under sub-section (4) of the same section or, having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of this section, the Income-tax Officer shall make the assessment to the best of his judgment [2][and determine the sum payable by the assessee on the basis of such assessment] [3][and, [4][in the case of a firm, may refuse to register it or may cancel its registration if it is already registered]] :

LEG. REF.

1 Substituted for the original wards by sec. 25 of Act VII of 1939.

2 These words were inserted, *ibid.*

3 Original words were added by sec. 3 of Act XXI of 1930.

4 Substituted for the words "in the case of a registered firm, may cancel its registration" by sec. 25 of Act VII of 1939.

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term; it is not necessary to invoke the proviso to sec. 13 of the Act for that purpose, for that section and the proviso thereto relate to the method of accounting and that alone, though the word "method" has to be given a wide and reasonable construction. 1940 Sind 92; I.L.R. (1939) Mad. 404=1939 Mad. 371=(1939) 1 M.L.J. 451. Where the account books of the assessee were rejected by the Income-tax Officer and he proceeded to assess him at a flat rate, to which method of assessment the assessee objected throughout the proceedings: *Held*, the case was a proper one for reference under sec. 66 of the Act. 39 P.L.R. 563=1937 Lah. 397. Even after the issue of a notice, which is contemplated by sec. 23 (3), an assessment can be made under sec. 23 (4), if there has been a default in complying with a notice under sec. 22 (4) or sec. 23 (2), and it is not necessary that the assessment must be made under sec. 23 (3) of the Act. 1940 A.L.J. 843=I.L.R. (1940) A. 41=1940 A. 537. Pursuant to a notice under sec. 22 (4), the assessee produced his accounts to which no exception was taken. But the books included a suspense account in which entries were made purporting to relate to certain sums deposited and withdrawn by various persons not, however, described specifically. The assessee was unable to identify those persons and the Income-tax Officer, not being satisfied with the entries and the explanation, refused to accept the return and made an estimated assessment under sec. 23 (4). *Held*, that from the mere inability of the assessee to identify the depositors, it did not follow that the whole accounts were either false or incomplete. If the officer had been of opinion that the transactions in suspense accounts were not temporary deposits but loan transactions resulting in profits to the assessees, he might have included such profits under sec. 23 (3) in the assessment made by him. But there were no materials to justify the Income-tax Officer in disregarding the return *in toto* and making the assessment under sec. 23 (4). 10 R. 92=1932 R. 52 (S.B.). *See also* I.L.R. 1938 L. 10=39 P.L.R. 1028=1937 Lah. 721. The assessee, a contractor, who was served with a notice, first under sec. 22 (2), and then under sec. 22 (4) of the Act, appeared before the Income-tax officer and produced a return of his income in the usual form showing his income to be Rs. 10,000. It was duly verified and signed. At the same time he also made a statement which was recorded and which was to the effect that his books were spoiled by fire, that his Munshi was ill and could not write the books correcly and that enquiry should be made about his status and he should be assessed on the payment made to him by the Government. The Income-tax officer made some enquiries, found that the assessee had made a turn over of Rs. 6,69,929, during the year of assessment and assessed him at Rs. 20,047, under sec. 22 (3) of the Income-tax Act. The assessee appealed to the Assistant Commissioner who confirmed the assessments and being of opinion that the assessee had concealed information regarding his income, imposed a penalty of Rs. 14,000, on the assessee under sec. 28 of the Act. The assessee contended that for the purpose of the Act, he had not filed the return, that he had in consequence been assessed under sec. 23 (4), therefore he had no right of appeal and that the Assistant Commissioner had no jurisdiction to impose a penalty. *Held*, that the assessee had filed a valid return so as to justify an assessment under sec. 23 (3) of the Act, that his appeal was competent and the order imposing the penalty was legal. (1944) I.T.R. 498.

"TOTAL INCOME".—Income derived from the dividend paid by a company registered in England but doing business in India cannot be reckoned as part of his total income where the assessee is not resident in India and the item has already paid income-tax when in the hands of the company. 55 B. 734=33 Bom.L.R. 776=1931 B. 420.

SEC. 23 (4).—Even if the power to determine the tax payable by the tax-payer be not given expressly by the directions to "make the assessment", such power is implied, reading the section as a whole. 65 I.A. 236=I.L.R. 1983 Bom. 487=42 C.W.N. 873=1938 P. C. 175=(1938) 2 M.L.J. 115 (P.C.). The officer is to make an assessment to the best of his judgment against a person who is in default as regards supplying information. He must not act dishonestly, vindictivly or capriciously, because he must exercise judgment in the matter. He must make what he honestly believes to be a fair estimate of the proper figure of assessment, and for this purpose he must be able to take into considera-

tion local knowledge and repute in regard to the assessee's circumstances, and his own knowledge of previous returns by, and assessments of, the assessee, and all other matters at a fair proper estimate; and though there must necessarily be guess work in the matter it must be honest guess work. In that sense too, the assessment must be to some extent arbitrary. Sec. 23 (4) places tht officer in the position of a person whose decision as to amount is final and subject to no appeal, but whose decision, if it can be shown to have been arrived at without an honest exercise of judgment, may be revised or reviewed by the Commissioner under the powers conferred upon that official by sec. 33. There is no justification in the language of the Act for holding that an assessment made by an officer under sec. 23 (4), without conducting a local inquiry and without recording the details and results of that inquiry, cannot have been made to the best of his judgment within the meaning of the section. 64 I.A. 102=I.L.R. 1937 N. 191=1937 P.C. 133=(1937) 2 M.L.J. 43 (P.C.). *See also* 1938 Lah. 867. There is no foundation for the suggestion that because an earlier Income-tax Officer was disposed to fasten on one particular default and said that he might possibly accept the explanation given in regard to others, it means that when a recommencement of the whole proceedings has been directed, the subsequent revenue officers are to blind themselves to the obvious facts when the case is taken up again. 177 I.C. 125=1938 Rang. 287. Where the assessee makes a return in the prescribed form but under head five shows the profits or income as, "about Rs. " and none of the details required under note five are given, the Income-tax Authorities can treat the return as no return at all and can ultimately make the assessment under sec. 23 (5), particularly when the assessee does not declare the period to which the income declared relates. 159 I.C. 646=1935 L. 858. The word "assessment" in sec. 23 (4) means determining the total taxable income and the sum payable on it. A notice can be validly issued under sec. 29 when the Income-tax Officer has made a best judgment assessment under sec. 23 (4). 56 A. 418=1934 A.L.J. 47=1934 A. 930. An assessment in default is a very serious thing; and unless it is open to the Court to insist that notices under secs. 23 (2) and 22 (4) are given so as to afford reasonable opportunity to an assessee to comply with their requirements, the honest and diligent tax-payer will have no security for fair treatment and no remedy in the absence of fair treatment. Where a notice is received at 3 P.M. on 18th of a month requiring the assessee to produce any evidence on which he might rely in support of his return on the 19th, the notice is not such a reasonable notice as the law requires, affording the assessee proper opportunity to comply with its return. 134 I.C. 1275=1931 C. 729 (S.B.). Before the Income-tax Officer can obtain jurisdiction to assess summarily under sec. 23 (4), it is not necessary that there must be a failure in each of the cases mentioned in sec. 23 (4). 133 I.C. 753=1931 P. 306 (F. B.). Where an assessee received a notice from the Income-tax Officer under sec. 22 requiring him to make a return in the prescribed form and verified in the prescribed manner setting forth his total income during the previous year, and the assessee does neither fill the form, nor verify such form in the prescribed manner, but instead writes a letter intimating his non-liability to be taxed under the Act, it must be taken that he has failed to make a return under sec. 22 (2) within the meaning of sec. 23 (4). 133 I.C. 753=1931 P. 306 (F.B.). A partial default in complying with notices issued under sec. 22 (4) or sec. 23 (2) involves the same consequences under sec. 23 (4) of the Act as a total default. 38 P.L.R. 812=1936 L. 489. Where the Income-tax Officer comes to the conclusion that the assessee has been withholding books of account which are not produced in accordance with a notice under sec. 22 (4), he is entitled to make an assessment to the best of his judgment under sec. 23 (4). More so when other documents have been withheld by the assessee and there has been deliberate misrepresentation on his part to the Income-tax Authorities. 1936 L. 750. *See also* I.L.R. 1938 L. 551=1938 Lah. 351 =40 P.L.R. 821. A return which deliberately failed to comply with the rule contained in sec. 22 (2) that the return was to be of the total income of the assessee is no return at all within the meaning of sec. 22 (2). So where an assessee who had four branches sent in a return which did not mention two of them and the omission was not corrected in spite of time granted for it, the Income-tax Officer is entitled to make an assessment to the best of his judgment under sec. 23 (4). 1933 A.L.J. 49=1933 A. 197. Assessee attending Income-tax Office with his evidence in obedience to notice issued under sec. 23 (2)—Income-tax Officer not accepting the evidence as conclusive does not bring that case under sub-sec. (4). The assessees were asked by the Income-tax Officer by notice under sec. 22 (4) to produce their books of account on the date fixed in the notice. They entered appearance but produced no account books. An adjournment was given to enable the parties to produce the evidence in their possession. On the date fixed for hearing, on the officer requesting them to produce the evidence, the parties turned round saying that they had no evidence. They did not make any affidavit in support of their statement, nor did they try to convince the officer in any other way of the truth of their statement. *Held*, that there was no compliance with all the terms of the notice and that the assessment under that provision of law was valid. 9 P. 172=1930 P. 14. Notice under sec. 22 (2) read with sec. 34 to partner of firm — Assessee stating that he was only the sleeping partner of the firm and that he knew nothing of its income or profits—Income-tax Officer can make assessment under sec. 23 (4). 1933 L. 290. The mere fact of the denial of the existence of the account books did not absolve

the assessee, if it is found upon the evidence that the books were really in existence, and assessment under sec. 23 (4) is consequently valid. 8 P. 877. Even when the assessee denies the existence of accounts or documents, the Income-tax Officer can presume the existence of such accounts or documents. 1930 A.L.J. 1=1930 A. 49 (F.B.). If an assessee has books and does not produce them he can be assessed in default under sec. 23 (4), whatever other evidence he might choose to put forward in support of his return. Other evidence, in the absence of the books, can hardly satisfy a reasonable man. But it was never intended by the Act that failure to produce books, prior to the filing of a return, should deprive the assessee of his right to have the return duly and properly inquired into. A return, which by sec. 22 (3), is to be deemed to be a return made in due time cannot be treated stillborn because of a previous failure to comply with a notice under sec. 22 (4). 134 I.C. 1275=1931 C. 729 (S.B.). Where the assessee does not produce any vouchers or any other material which may enable a detailed check of his account books, the value of the account books produced by the assessee is, therefore, no higher than his mere word. 1936 L. 856. Where the books of account of the assessee did not give a complete and correct version of the actual business, and though the Income-tax Officer accepted them to a certain extent, he added a certain sum to represent the amount of omissions: *Held*, that in making an assessment, the Income-tax Officer should proceed on judicial principles, but as in the case under consideration there was evidence before him to show that books could not be relied upon, his inclusion of a certain sum for omissions was justifiable. 1936 L. 836. In a case in which an assessee has duly filed a return of the "previous year" and has also on receipt of a notice under sec. 23 (2) produced evidence in support of the return including some, but not all, of his account books, and the Income-tax Officer is not satisfied with such evidence, he can at that stage issue a notice under sec. 22 (4) calling upon the assessee to produce his complete account books for the "previous year" and for three years prior thereto, and on the assessee's failure to do so, assess him under sec. 23 (4). 12 L. 129=1931 L. 87 (F.B.). *Per* Tek Chand and Dalip Singh, JJ.—"The legislature should take the earliest opportunity of reviewing the position and, if possible, of redrafting and re-arranging the same. This seems all the more necessary as the interpretation which the Court has felt bound to put on these sections is likely to work a great injustice in some cases". 12 L. 129. In making the "assessment to the best of his judgment" under sec. 23 (4), the Income-tax Officer does not possess absolutely arbitrary authority to assess at any figure he likes, and the Income-tax Officer, though not bound by strict judicial principles, should be guided by the rules of justice, equity and good conscience. 12 L. 129. *See also* 7 R. 669; 8 R. 203; 1933 O. 396. But *see* 9 R. 281 *contra*. The expression "to the best of his judgment" seems nothing more than "as best as he can". It is incorrect to say that the Income-tax Officer must exercise a "judicial "discretion" in making the assessment. A judicial discretion presupposes that power has been confided to the tribunal to act or refrain from acting in a particular way in certain proved or admitted circumstances, whereas under the section if the assessee has not chosen to state an account, the officer shall make an assessment and he has no discretion in the matter. 9 R. 281=1931 R. 194 (F.B.). *See also* 1932 I.C. 564 (2); 150 I.C. 646=1935 L. 858. Though a Taxing Officer is not entitled to make a guess without evidence, still when the assessee does not give correct returns, the Taxing Officer's estimate holds good, unless the assessee displaces it by adducing evidence. 60 I.A. 146 =12 P. 318=1933 P.C. 108=64 M.L.J. 612 (P.C.). Where an assessee failed to make a return of his income under sec. 22 (2) of the Act and some time later died, an assessment on his estate made by the Income-tax Officer under sec. 23 (4) "to the best of his judgment" is illegal. *Per* Beamount, C.J.—"In construing a taxing Act the Court is not justified in straining the language in order to hold a subject liable to tax. If the legislature intends to assess the estate of a deceased person to tax charged on the deceased in his lifetime, the legislature must provide proper machinery and not leave it to the Court to endeavour to extract the appropriate machinery out of the very unsuitable language of the Statute". 55 B. 312=1931 B. 333=33 Bom.L.R. 388; 6 P.L.T. 555= 1925 P. 694. The assessees, who were a Hindu family of money-lenders, had lent money to a lady to the extent of Rs. 41,342 and in the year of account 1939-40, the loan with interest amounted to Rs. 60,382. By an arrangement with the debtor the assessees took over three properties of the debtor along with the outstanding rents from the tenants for the total sum of Rs. 60,000, remitting the balance of Rs. 382. In their books the assessees valued the three properties separately at Rs. 30,000, Rs. 16,000 and Rs. 4,000 respectively, making a total of Rs. 50,000 and assessed the arrears of rent at Rs. 10,000. In assessing the income of the assessees the Income-tax Officer accepted these figures as the true value and proceeded on that basis to assess the income under sec. 23 (4) of the Income-tax Act. The assessees contended that this did not represent the true value of the properties and that the Income-tax Officer should not have accepted these figures but should have made further inquiries. *Held*, that the Income-tax Officer was amply justified in taking the value placed by the assessees on the properties as the true value. (1944) I.T.R. 327=1945 Cal. 327. "The Income-tax Officer is empowered to call upon the assessee (whether or not he has made a return) to produce such documents and accounts as he may require within the period specified in the notice requiring their production. Sub-sec. (4) of sec. 22 prevents the Income-

tax Officer from calling upon an assessee to produce books of account going back for a period of more than three years prior to the accounting period. There is, however, no such limitation upon the power to call for documents". 50 A. 589=26 A.L.J. 340= 1928 A. 283. Once an assessment has been made to the best of the Income-tax Officer's judgment on a nett income under sec. 23 (4) of the Act, it follows that all expenses incidental to the business must be assumed to have been taken into consideration in arriving at the nett income assessed. Such an assessment is final, conclusive and not open to appeal. 1932 L. 396=136 I.C. 706. In respect of an assessee who has submitted a return of his income under sec. 22 (2), a notice issued under sec. 22 (4) is valid so as to justify an assessment under sec. 23 (4) in the event of non-compliance of the terms of the notice. 57 M.L.J. 854=1930 M. 127 (S. B.). *Also* 52 M. 194=1929 M. 60=56 M.L. J. 141 (F.B.). Where the Income-tax Officer issued a notice to a certain firm under sec. 22 (4) calling upon them to produce the books of the particular branch and the firm did not produce the books stating that they kept no books at that branch but the Income-tax Officer did not believe the statemment and decided for reasons stated by him that the assessee had such books at that branch, that they had failed to comply with the terms of the notice and further made an assessment under sec. 23 (4), *held*, that the Income-tax Officer acted quite properly in making the assessment under sec. 23 (4). 8 R. 587= 1931 R. 53. Where the assessee has deliberately withheld the *pakki rokar* and the ledger, the Income-tax Officer is justified in refusing to allow the assessee to produce *kachchi rokar* which would be of no value as evidence and to pass orders under sec. 23 (4). 10 L. 691=1929 L. 173. The failure to produce books of account required by the authorities by a notice under sec. 34 entails the same consequence as in the case of a failure to make a return under sec. 22 and the Income-tax Officer is entitled in such a case to make the assessment under sec. 23 (4). 34 C.W.N. 1093. The Income-tax Department should not as a rule take a stand on a technical ground under sec. 23 (4) where there is a substantial compliance with the requisition of notice under sec. 22 (4). 9 P. 172=1936 P. 14. Where the Income-tax Officer called on the assessee to produce his account books and the assessee produced some books but not those of an earlier year and thereupon the officer made an assessment under sec. 23 (4) even though the books produced gave the necessary data, *held*, that the books of the earlier year were not really required within the meaning of sec. 22 (4) and that the assessment should under the circumstances be made under cl. (3) and not under cl. (4) of sec. 23. 53 A. 451= 1931 A.L.J. 345=1931 A. 417. It is the duty of an assessee to keep and present his accounts to show the actual income made by him. If he fails to do this he must put up with the estimate by the officers made with the best of his ability, though it is true that the officer is not entitled to make a guess without evidence. 9 P. 240=1930 P. 81 (F. B.). Where the accounts or documents or evidence produced by the assessee do not furnish sufficient material for an assessment and, in particular, if they, far from revealing the income, intentionally falsify the income, it is open to the Income-tax Officer to make an assessment under sec. 23 (4), for the assessee has failed to comply with all the terms of the notice. The question whether there has been a compliance with the terms of the notice is not a question of law but a question of fact. Further, whether the evidence before the Income-tax Officer is sufficient to justify him in rejecting the accounts of the assessee is also a question of fact. 137 I.C. 732=1932 O. 164. Where the books of account of the assessee are not produced and the Assistant Commissioner makes an assessment to the best of his judgment, if the enhancement is based on materials from which he could reasonably conclude, though only on a rough estimate, that the income is of a certain specified amount, such an enhancement is legal. But if on the other hand the enhancement is wholly arbitrary and based on no material, it would be illegal. 7 R. 635. Although a summary assessment was higher than that of the previous year which was based on the returns submitted by the assessee, if it is based on some evidence. it cannot be said it is arbirary and so illegal. 1932 P. 166=140 I.C. 712. But *see also* 9 R. 281. An Income-tax Officer of the principal place of business is not bound to accept the report of the Income-tax Officer of a place where the assessee is carrying on a branch business, nor is he bound to refer the matter back to the latter officer for further inquiry. The former can assess the assessee according to his judgment under sec. 23 (4). 1930 A.L.J. 1=1930 A. 49 (F.B.). *Per* Mokerji, J.—"It is the ordinary privilege of a subject that he shall not be taxed on his income without a proper investigation. It is open to the assessee to prove what his income is before he is assessed on the income. If it had been the intention of the legislature that the mere word of the Taxing Officer should be final, one should find a clear indication of that in the language of the Statute. 1930 A. 49 (F.B.). Where the Income-tax Officer does not get proper material on which to find out the true income of an assessee, it is in the interests of the State to guess the income of the assessee. The assessee cannot complain that he has been over-taxed if owing to his own failure the officer is not able to do justice towards him. But where the proper materials are before the Officer, he should utilise them and make an assessment under sec. 23 (3) which is liable to be re-examined in appeal. When an assessment is made more or less on matters which have been guessed out, there cannot be a proper appeal. There would be no sense in substituting the Income-tax Officer's "guess" by the superior officer's "guess". It is on this

principle that an appeal is shut out in the case of "best judgment assessment". 53 A. 451=1931 A.L.J. 345=1931 A. 417. Assessee filing statement of income—Maintainability of appeal to income-tax authorities—Fine for gross under-statement of income. *See* 49 M. 831=1927 M. 49=24 L.W. 771. Where a notice issued under secs. 22 (4) and 23 (2) of the Income-tat Act was not complied with and an assessment was made under sec. 23 (4). *Held*, that no appeal lay from the order of assessment. 9 P. 172=10 Pat. L.T. 769=1930 P. 14. An appeal is shut out under sec. 30 not by way of punishment to the assessee, but because there are no materials which can be properly placed before an appellatt Income-tax Officer. On reading, therefore, the two secs. 22 and 23, it is abundantly clear that a right to make an assessment to the best of the officer's judgment cannot be made after an enquiry has been started so as to shut out an appeal simply because at any time after the enquiry has been started, the assessee fails to produce an account as asked for. 1930 A.L.J. 1=1930 A. 49 (F.B.). But *see* 12 L. 129 (F.B.), cited *supra*. In the case of an assessment under sec. 23 (4), the only question of law that could arise is whether there were any materials upon which the Income-tax Officer concerned could find that there was no sufficient cause excusing the assessee from complying with the requirements of law as prescribed by sec. 27. In cases of this kind the giving of positive evidence by the department about facts which are within the special knowledge of the opposite party is almost out of question, and the materials which come within the description of circumstantial evidence, or general probabilities which would justify a presumption under sec. 114 of the Evidence Act, are materials upon which the Court can come to a finding just as properly as it could upon positive evidence. 16 Luck. 805=1941 O.W.N. 757=1941 Oudh 445. *See also* I.L.R. (1941) A. 1 =1941 A.L.J. 12=1940 A. 530. The jurisdiction exercised by the High Court under the Income-tax Act is a special jurisdiction and is consequently circumscribed within the limits specified in the Statute. The power of revising, reviewing or interfering in any other manner with an assessment made under sec. 23 (4) being nowhere conferred upon the High Court, expressly or impliedly by the Act, no such power can be exercised merely by virtue of the general inherent jurisdiction of the High Court, if any. I. L.R. (1938) Lah. 477=40 P.L.R. 308=1938 Lah. 545.

STATING CASE TO HIGH COURT.—A point of law would invariably be involved in an *ex parte* assessment which is not shown to have been made to the best of his judgment by the Income-tax Officer, so as to make it the subject of a reference to and decision by the High Court under sec. 66 (2) or (3). 1934 N. 183. *See also* 1941 A.L.J. 12=I.L. R. (1941) All. 1=1940 All. 530; 15 Luck. 723=1940 O. 362. When a person without being called upon under sec. 22 (2) to furnish a return of his income for the previous year, voluntarily files a return of such income in the prescribed form and duly verified in the prescribed manner, the question whether the return voluntarily filed is a valid return or not is an important question of law, and it is necessary to state the case to the High Court. 10 L. 773=31 Punj.L.R. 23 =1929 L. 246 (2). An assessee whose return is disbelieved and who is summarily taxed without being given notice under sec. 23 (2) can apply to the High Court to have a case stated under sec. 66 (2), as the question raised challenges the very foundation of the assessment. 29 C.W.N. 28=1925 C. 173. If an assessee disputes in his statement the authority of the Income-tax Department to adopt a flat rate, then a question of law may arise for consideration of the High Court as to whether, in the absence of other reliable data, as to income of an assessee from a certain source, an Income-tax Officer is justified in making an assessment based on a formula deduced by taking a certain percentage of the gross turnover as representing a fair margin of profit. But if the assessee admits that he has nothing to say if some percentage is adopted to find out income from a particular source, it is not open to him to urge merely the question of the reasonableness of the extent of the percentage adopted. 1929 N. 243. Assessee called upon to attend and produce evidence—Assessment under sec. 13 (proviso)—Appeal rejected—Application to Commissioner to state a case rejected—Application to High Court. 6 Pat.L.T. 555= 1925 P. 694. Although the Act does not specifically provide for *granting adjournments* to comply with the terms of the notice served on the assessees under secs. 22 (4) and 23 (2), in practice, adjournments are generally allowed for sufficient cause on the principle of justice, equity and good conscience. If therefore for any reason, a prayer for adjournment has to be refused, a definite order, either oral or written, must be passed by the officer and communicated to the assessee or his agent, when he is present, before proceeding with the drastic action of summarily assessing him under sec. 23 (4). Failure on the part of the Income-tax Officer in observing the aforesaid elementary principle of judicial procedure does considerably detract from the technical legality of the summary assessment order recorded by him against the non-applicant. [1930 M. 113 (S.B.), Rel. on.] 1934 N. 183 (2). When there is ample evidence upon which the Income-tax Officer can find that there was no sufficient cause preventing the assessee from producing account books requisitioned under sec. 22 (2) and it appears upon that ground he had refused to cancel the assessment made under sec. 23 (4) and his order is upheld by the Assisstant Commissioner on appeal for the same reason, there is no question of law arising under the circumstances for the purposes of sec. 66 (2). 9 R. 21=1931 R. 97. *See also* 1932 O. 164. The question whether an assessment made by the Income-tax Officer under sec. 23 (4) is valid or not is

not a question of law that arises or can arise out of an order of the Assistant Commissioner passed under sec. 31, and such a question cannot therefore be made the ground for an order by the High Court under sec. 66 (3) requiring the Commissioner to state a case. [6 R. 21; 8 R. 209; 8 R. 203; 7 R. 669, Overr.] 9 R. 281=1931 R. 194 (F.B.); 56 A. 933=1934 A.L.J. 274=1934 A. 559. But *see* 133 I.C. 753=1931 P. 306 (F.B.) holding that the Commissioner may be required to state a case raising the question of law whether or not the facts established are such as to bring the case within the ambit of proviso to sec. 30 (1). Where a notice was duly served on the assessee under sec. 22 (4) but he failed to produce some of the accounts and thereupon the Income-tax Officer made an assessment under sec. 23 (4) and subsequently he refused to cancel the assessment at the instance of the assessee holding that there was no sufficient cause for the non-production of the accounts and the same order was affirmed by the Assistant Commissioner on appeal: *Held*, that the questions regarding the validity of the notice and the propriety of the assessment did not arise in the appeal and that there was no room for a reference to be made to the High Court. 9 R. 25=1931 R. 98. Assessee producing evidence in support of return—Evidence rejected by the Income-tax Officer and assessment on estimate from personal inspection—Determination of assessable income if a question of law. 3 I.T.C. 48. Appeal on the ground that assessee was not in British India — Dismissal of — Reference to High Court: *See* 9 L. 964=1928 L. 864.

FRESH NOTICE.—The issue of a fresh notice under sec. 34 does not do away with a previous assessment under sec. 23 (4). 1931 A. L.J. 1109=1932 A. 83.

APPEAL.— An Assistant Commissioner should hear the assessee or his counsel and decide whether the case really fell under sec. 27 (4). He should not merely scrutinize the memorandum of appeal and the assessment order of the Income-tax Officer behind the back of the assessee or his counsel and dismiss the appeal on the ground that it is not allowable. 54 A. 496=1932 A. 390. *See also* 101 I.C. 321=1927 L. 5; 133 I.C. 753=1931 P. 306 (F.B.). A person who has been assessed under sec. 23 (4) is not entitled to prefer an appeal to the Assistant Commissioner on the ground that he was not liable to be assessed under the Act. Proviso to sec. 30 (1) is a bar to such an appeal. [10 L. 596 (F.B.), Foll.] 133 I.C. 753=1931 P. 306 (F.B.).

SEC. 23 AND 13 (PROVISO).—An Income-tax Officer can have recourse to the proviso to sec. 13 even in cases where he rejects the accounts produced by the assessee on the ground that they are not genuine and thus fail to represent truly his income and profits. If he purposes to make an estimate in disregard of the evidence, oral or documentary, led by the assessee, he should in fairness disclose to the assessee the material on which he is going to found that estimate. He is not, however, debarred from relying on private sources of information, which sources he may not disclose to the assessee at all. In case he proposes to use against the assessee the result of any private enquiries made by him, he must communicate to the assessee the substance of the information so proposed to be utilised to such an extent as to put the asses see in possession of full particulars of the case he is expected to meet and should further give him ample opportunity to meet it, if possible. *Per* Harries, C.J. and Munir, J. Contra.—If the books of the assessee are false, the Income-tax Officer can ignore them, but he has to discover the possible income of the assessee otherwise than by resorting to the proviso to sec. 13, and he may base the assessment on any fact that tends to show such income provided the assessee's attention has been drawn to that fact and he has been given an opportunity to rebut it. 1944 Lah. 353 (2) (F.B.)=I.L.R. 1945 Lah. 173.

SECS. 23 (4) AND 27.—Under sec. 23 (4), the fact of failure to comply with the notice under sec. 22 (4) makes it compulsory on the officer to make an assessment; and under sec. 27 unless the officer is aatisfied that the assessee had not a reasonable opportunity to comply or was prevened by sufficient cause from complying with that notice, the assessment must stand. That he had sufficient cause for not complying with another notice is irrelevant. 64 I.A. 102=I.L.R. 1937 Nag. 191=41 C.W.N. 719=1937 P.C. 133=(1937) 2 M.L.J. 43 (P.C.).

SECS. 23 (4),—Assessment under sec. 23 (4) —When justified—Conditions of validity— "Sufficient cause" for cancellation—Appeal— Assessment after amendment in proceedings started before amendment—Right of appeal. 45 Bom.L.R. 168=1943 Bom. 122.

SEC. 23 (5) (*a*).—Total income of each partner of firm—If includes his share of firm's income.

The plain meaning of sec. 23 (5) (*a*) of the Income-tax Act is that the Income-tax Officer in computing the total income of each partner of the firm should include there his share of its income, profits and gains. The word "assessed" used in that clause means computed, and there is no room for the construction that a partner's share of the firm's income should be calculated, as if it were the separate income of an individual; nor is there any particular unfairness in treating persons, who have formed a partnership for carrying on business in British India, as persons resident in British India so far as their profits in that partnership are concerned. 1944 I.T. R. 463=1944 N.L.J. 415=1944 Nag. 329=I. L.R.)1945) Nag. 328.

SECS. 23 (4), 30—34 AND 35: FINAL ASSESSMENT UNDER SEC. 23 (4)—WHEN CAN BE REOPENED—POWERS OF COMMISSIONER.—The Act nowhere imposes any limit of time within which an assessment under provisions of secs. 23 and 29 is to be made, and the service of the notice of demand can therefore be made at any time. But it is not true that after a final assessment under those sections has been made, the Income-tax Officer can go on making fresh computations and issuing fresh

[1][Provided that the registration of a firm shall not be cancelled until fourteen days have elapsed from the issue of a notice by the Income-tax Officer to the firm intimating his intention to cancel its registration.]

[2][(5) Notwithstanding anything contained in the foregoing sub-sections, when the assessee is a firm and the total income of the firm has been assessed under sub-section (1), sub-section (3) or sub-section (4) as the case may be,—

(*a*) in the case of a registered firm, the sum payable by the firm itself shall not be determined but the total income of each partner of the firm, including therein his share of its income, profits and gains of the previous year, shall be assessed and the sum payable by him on the basis of such assessment shall be determined :

Provided that if such share of any partner is a loss it shall be set off against his other income or carried forward and set off in accordance with the provisions of section 24 :

Provided further that when any of such partners is a person not resident in British India, his share of the income, profits and gains of the firm shall be assessed on the firm at the rates which will be applicable if it were assessed on him personally, and the sum so determined as payable shall be paid by the firm ; and

(*b*) in the case of an unregistered firm, the Income-tax Officer may instead of determining the sum payable by the firm itself proceed in the manner laid down in clause (*a*) as applicable to a registered firm, if, in his opinion, the aggregate amount of the tax including super-tax, if any, payable by the partners under such procedure would be greater than the aggregate amount which would be payable by the firm and the partners individually if the firm were assessed as an unregistered firm.]

[3][(6) Whenever the Income-tax Officer makes a determination in accordance with the provisions of sub-section (5), he shall notify to the firm by an order in writing the amount of the total income on which the determination has been based and the apportionment thereof between the several partners.]

LEG. REF.

1 Proviso added by sec. 3 of Act XXI of 1930.

2 Sub-section added by sec. 25 of Act VII of 1939.

3 Sub-sec. (6) of sec. 23 added by Act XXIII of 1941.

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notices of demand to the end of all time. When once a final assessment is arrived at, it cannot be reopened except in the circumstances detailed in sec. 34 and sec. 35 of the Act and within the time limited by those sections. It is quite impossible to suppose that the Income-tax Officer may in every kind of circumstance and after any lapse of time make fresh assessments or issue fresh notices of demand; or that the Commissioner can direct him to do so. The Commissioner's powers under sec. 33 can only be exercised subject to the provisions of the Act, of which the provisions in secs. 34 and 35 are in this respect of the greatest importance Where therefore an assessment is made under sec. 23 (4) of a registered firm assessing it only to income tax, the assessment is final in respect of income-tax and super-tax. If on the discovery of a mistake the registration is cancelled by the Commissioner under sec. 33, the order assessing the firm to super-tax more than one year after final assessment under sec. 23 (4) is beyond the powers of the Income-tax Officer. 65 I.A. 237=I.L.R. (1938) Bom. 487 =42 C.W.N. 873=1938 P.C. 175=(1938) 2 M. L.J. 115 (P.C.). Where an asssessment has been made, not in form only but in fact, under sec. 23 (4) of the Act, and where the Assistant Commissioner, upon consideration of the facts, has found that the assessment was properly so made, the proviso to sec. 30 bars an appeal; and the order of the Assistant Commissioner rejecting the appeal is not an order under sec. 31 inasmuch as he has not "disposed of" the appeal. Hence there can be no question of law referable to the High Court under sub-sec. (2) or sub-sec. (3) of sec. 66=1941 A.L.J. 12=1940 All. 530. *See also* 1943 Bom. 122=45 Bom.L.R. 168.

SECS. 23 AND 33: PROFITS EARNED BEFORE YEAR OF ACCOUNT— ASSESSMENT— POWER OF INCOME-TAX AUTHORITIES— PROCEDURE. —The Income-tax authoritise are not entitled in law to include in the assessment in respect of a particular year of accounts, profits secret or otherwise, which had been earned before that year of account, even in assessing a firm under sec. 26 (2). If they do, they are not acting in accordance with law. The proper way to assess such profits or income is to take action under sec. 34 with a view to collect-tax on income which had escaped assessments. 1942 Mad. 266; 1942 I.T.R. 64=55 L.W. 87=(1942) 1 M.L.J. 158.

SECS. 23 AND 34—Proceedings before the Income-tax officer are not strictly judicial; all that is required of him is to proceed without bias and give sufficient opportunity to the assessee to place his case before him. Provided the course of natural justice is followed, and the assessee is informed of the

[1][23-A. [2]* * * * *]

Power to assess individual members of certain companies.

[3] (1)] [3][Where the Income-tax Officer is satisfied that in respect of any previous year the profits and gains distributed as dividends by any company up to the end of the sixth month after its accounts for that previous year are laid before the company in general meeting [4]* * * * * * are less than sixty per cent. of the assessable income of the company of that previous year, [5][as reduced by the amount of income-tax and super-tax payable by the company in respect thereof] he shall, unless he is satisfied that having regard to losses incurred by the company in earlier years or to the smallness of the profit made, the payment of a dividend or a larger dividend than that declared would be unreasonable, make with the previous approval of the Inspecting Assistant Commissioner an order in writing that the undistributed portion of the assessable income of the company of that previous year as computed for income-tax purposes [6][and reduced by the amount of income-tax and super-tax payable by the company in respect thereof] shall be deemed to have been distributed as dividends amongst the shareholders as at the date of the general meeting aforesaid, and thereupon the proportionate share thereof of each shareholder shall be included in the total income of such shareholder for the purpose of assessing his total income :

Provided that when the reserves representing accumulations of past profits which have not been the subject of an order under this sub-section exceed the paid up capital of the company, together with any loan capital which is the property of the shareholders, or the actual cost of the fixed assets of the company whichever of these is greater, this section shall apply as if instead of the word "sixty per cent." [7]* * * * the words "one hundred per cent. [7]* * * were substituted :

Provided further that no order under this sub-section shall be made where the company has distributed not less than fifty-five per cent. of the assessable income of the company [5][as reduced by the amount of income-tax and super-tax payable by the company in respect thereof], unless the company, on receipt of a notice from the Income-tax Officer that he proposes to make such an order, fails to make within three months of the receipt of such notice a further distribution of its profits

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LEG. REF.

1 Inserted by sec. 4 of Act XXI of 1930.

2 Original sub-sec. (1) omitted by sec. 26 of Act VII of 1939.

3 Original sub-sec. (2) re-numbered (1) and this portion substituted *ibid.*

4 The words "increased by any income-tax payable thereon" were omitted by sec. 7 of Act XL of 1940.

5 Inserted by *ibid.*

6 These words inserted by Act XI of 1940.

7 The words "of the assessable income" omitted by sec. 7 of Act XL of 1940.

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substance of the information on which the Income-tax Officer proposes to act and of the case against him and he is given a reasonable opportunity to meet that case, it is open to the Income-tax officer to act on private and confidential information in a work which is of a strictly private and confidential nature without disclosing the names of his informants. Sec. 91 of the Evidence Act is concerned solely with the mode of proof of a document, while the limitations imposed by sec. 92 relate only to the parties to the document and would not be binding on the Income-tax authorities so as to debar them from interpreting the document in a way different from what is alleged or recited in the deed itself or from challenging and going behind the recitals in the deed as to the payment of consideration or the amount of consideration stated in the document. 1944 I.T.R. 458. *See also* 1944 I.T.R. 441.

SEC. 23-A (2): ASSESSMENT UNDER—EXPRESS FINDING AS TO INTENTION TO EVADE TAXATION—IF ESSENTIAL.—Before an income-tax Officer can assess the shareholders of a Company under sec. 23-A (2) of the Income-tax Act on accumulated or undistributed profits of the Company, he has to be satisfied (1) that the profits of the Company have been allowed to accumulate beyond the existing and contingent needs of the Company, or that a reasonable part of the profits, having regard to the said needs, have not been distributed to its members, and (2) that such accumulation or failure to distribute is for the purpose of preventing the imposition of tax upon any of the members in respect of their shares in the profits so accumulated or not distributed. Both these conditions, which are questions of fact, must be satisfied before the members of a company can be assessed to income-tax on their shares in the accumulated or undistributed profits. It is not, however, necessary that there should be an express finding that the accumulation was made for the purpose of evading taxation. Such a finding can be implied. 1935 M. 1005=69 M.L.J. 577 (F.B.).

and gains so that the total distribution made is not less than sixty per cent. of the assessable income of the company of the previous year concerned [1][as reduced by the amount or income-tax or super-tax payable by the company in respect thereof] ;

[2][Provided further that this sub-section shall not apply to any company in which the public are substantially interested or to a subsidiary company of such a company if the whole of the share capital of such subsidiary company is held by the parent company or by the nominees thereof.]

Explanation.—For the purpose of this sub-section,—

[3]* * * * * * *

[4]* a company shall be deemed to be a company in which the public are substantially interested if shares of the company (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) carrying not less than twenty-five per cent. of the voting power have been allotted unconditionally to, or acquired unconditionally by, and are at the end of the previous year beneficially held by, the public (not including a company to which the provisions of this sub-section apply), and if any such shares have in the course of such previous year been the subject of dealings in any stock exchange in British India or are in fact freely transferable by the holders to other members of the public.

[5]* * * * * * *

[6][(2)] The [7][Inspecting] Assistant Commissioner shall not give his approval to any order proposed to be passed by the Income-tax Officer under this section until he has given the [8][* * *] company concerned an opportunity of being heard.

[9][(3)] [10][* * * * * *]

(*ii*) Where the proportionate share of any member of a company in the undistributed profits and gains of the company has been included in his total income under the provisions of [11][sub-section (1)], the tax payable in respect thereof shall be recoverable from the company, [12][if it cannot be recovered from such member.] [13]* * * * *]

(*iii*) Where tax is recoverable from a company [14][* * * *] under this sub-section, a notice of demand shall be served upon it in the prescribed form showing the sum so payable, and such company [14][* * * *] shall be deemed to be the assessee in respect of such sum, for the purposes of Chapter VI.

[15][(4)] Where tax has been paid in respect of any undistributed profits and gains of a company under this section, and such profits and gains are subsequently distributed in any year, the proportionate share therein of any member of the company shall be excluded in computing his total income of that year.

[16][(5) When a company is a shareholder deemed under sub-section (1) to have received a dividend, the amount of the dividend thus deemed to have been paid to it shall be deemed to be part of its total income for the purpose also of the application of that sub-section to distributions of profits by that company.]

LEG. REF.

1 This words were inserted by Act XI of 1940.

2 Proviso substituted by sec. 26 of Act VII of 1939.

3 Cl. (*a*) omitted, *ibid.*

4 The brackets and letter "(*b*)" were omitted by *ibid.*

5 Cls. (*c*) and (*d*) omitted by sec. 26 of Act VII of 1939.

6 Original sub-sec. (3) was re-numbered (2) by *ibid.*

7 This word was inserted, by *ibid.*

8 The words "firm, association or" were omitted, by Act VII of 1939.

9 Original sub-sec. (4) was re-numbered (3), *ibid.*

10 Sub-cl. (*i*) was omitted, by *ibid.*

11 Substituted for the word brackets, and figure "sub-sec. (2)," by *ibid.*

12 Substituted for the words "and may be recovered from such member," by *ibid.*

13 Original words were omitted by *ibid.*

14 The words "firm or other association" omitted by *ibid.*

15 Original sub-sec. (5) was re-numbered (4), by *ibid.*

16 Sub-section added by sec. 26 of Act VII of 1939.

24. (1) Where any assessee sustains a loss of profits or gains in any year under any of the heads mentioned in section 6, he shall be entitled to have the amount of the loss set off against his income, profits or gains under any other head in that year:

Set off of loss in computing aggregate income.

[1][Provided that, where the loss sustained is a loss of profits or gains which would but for the loss have accrued or arisen within an Indian State and would, under the provisions of clause (*c*) of sub-section (2) of section 14, have been exempt from tax, such loss shall not be set off except against profits or gains accruing or arising within an Indian State and exempt from tax under the said provisions].

[2][Provided [further] that where the assessee is an unregistered firm which has not been assessed under the provisions of clause (*b*) of sub-section (5) of section 23 in the manner applicable to a registered firm, any such loss shall be set off only against the income, profits and gains of the firm and not against the income, profits and gains of any of the partners of the firm; and where the assessee is a registered firm, any loss which cannot be set off against other income, profits and gains of the firm shall be apportioned between the partners of the firm and they alone shall be entitled to have the amount of the loss set off under this section];

LEG. REF.

1 Inserted by Act XI of 1944.

2 Proviso added by sec. 27 of Act VII of 1939.

SEC. 24.—Scope of section. 55 M. 818=1932 M. 375=62 M.L.J. 638 (F.B.). The word "assessee" has not been used in sec. 24 in the strict sense of a person by whom income-tax is payable but means and signifies the person against whom assessment proceedings have been started and who has been asked to give a return of his total income during the previous year under sec. 22 (2). 182 I.C. 270=1939 Cal. 196 (S.B.). Applicability of section—Condition of set-off—Company having several businesses—Losses in some which have ceased to exist—If can be set off against—Profits or gains of others. 58 M. 433=1935 M. 330=68 M.L.J. 379 (F.B.). Where the assessee paid certain commission to his Banker for realising interest on Government securities on his behalf, *held*, that such payment could not constitute "loss" of profits or gains in the sense the expression has been used in sec. 24. 9 Pat. 139=1929 P. 419. Although the Act nowhere in terms authorizes the deduction of bad debts of a business, such a deduction is necessarily allowable. But they must be bad debts incurred in that particular year. For the purpose of computing yearly profits and gains, each year is a separate self-contained period of time, in regard to which profits earned or losses sustained before its commencement are irrelevant. It thus follows that a debt, which had in fact become a bad debt before the commencement of a particular year, could not properly be deducted in ascertaining the profits of that year, because the loss had not been sustained in that year. 59 I.A. 290=1932 P.C. 178=63 M.L.J. 361 (P.C.). [1929 N. 50 (F.B.) Reversed.] *See also* notes under sec. 10, Cl. (2) (*ix*)]. So long as there is any ray of hope left to recover a debt, however dim it may be, and so long as a debt is in the process of realization, it cannot be said that it has become irrecoverable and hence bad. 18 L. 306=168 I.C. 549=1937 L. 338 (F.B.). Upon a dissolution of partnership, a partner's share of the losses for several preceding years cannot be accumulated and thrown into the scale against the income of another partner for a particular year. No principle of writing off bad debts could justify such a course, whether in the year following the dissolution or in some subsequent year in which the partner's insolvency has crystalized. The "bad debt" would not, if good, have come in to swell the taxable profits of the other partners. Hence where the assessee is made to bear an ex-partner's share of loss in another partnership business by reason of the ex-partner's inability to meet it and the assessee transfers such loss to his own business and treats it as a bad debt, he is not entitled to set-off such amount against the income, profits or gains as loss in his business within the meaning of sec. 24. It cannot be considered as a bad debt made by the assessee in the course of his business. 63 I.A. 234=59 M. 716=1936 P.C. 133=71 M.L.J. 772 (P.C.). A debt due from a limited company can be treated as irrecoverable and a bad debt for the purposes of income-tax, and as a business loss under sec. 24 of the Income-tax Act, even when the debtor company is not actually wound up or has not ceased to be a going concern. 61 I.A. 318=58 B. 579=1934 P.C. 180=67 M.L.J. 213 (P.C.). Debt due from a joint-stock company cannot be said, to be a bad debt, so long as the company is carrying on business. *See* 56 B. 457=34 Bom.L.R. 1235=1932 B. 609. Whether a debt is a bad debt, and, if so, at what point of time it became a bad debt, are questions of fact. The assessee has no option of declaring a debt as bad. The mere fact that a debt was incurred at a date beyond the period of limitation will not of itself make the debt a bad debt; still less will it fix the date at which it became a bad debt. A statute barred debt is not necessarily bad; neither is a debt which is not statute barred necessarily good. The age of the debt is no doubt a relevant matter to take into consideration. 59 I.A. 290=1932 P.C. 178=63 M.L.J.

361 (P.C.). *See also* 1941 I.T.R. 635; 1933 S. 148. Purchaser of shares—Price exceeding face value paid—Excess is no loss. 1930 A.L.J. 26=1929 A. 919. If a person carries on two or more distinct businesses, the profits or losses of all of them are to be added together and the aggregate so arrived at represents his "profits or gains" under the head "business". If the net result of this calculation shows a loss, such loss may under sec. 24 be set off aggainst the profits or gains derived by the assessee from other heads of income in that year. 11 L. 38=1929 L. 556. Where a person carries on two different trades, he is entitled to set-off for purposes of income-tax the losses incurred by him in respect of one against the profit made by him in the other. But for this principle to apply, the condition precedent is that both businesses should be alive during the current year. A dead business's losses cannot be set off against a living business's gains. 18 L. 306=168 I.C. 549=1937 L. 338 (F.B.). *See also* 1935 L. 869; 1934 M. 557=67 M.L.J. 236 (F. B.). In the case of a registered firm it is the firm and not the partner that is the assessee in respect of the profits and gains of the business of the firm. It is only under sec. 24 (2) that a partner is allowed to set off, against the profits on which the partner is liable to pay income-tax, a proportion of the loss incurred by the firm. He is not entitled to set off the loss in the business of the firm agaiost the profits in other business carried on by him. (47 M. 660, Disappr.) 26 N.L.R. 75=1930 N. 183. *See also* 1935 L. 896. Loss incurred in transaction which is not part of business is not deductible from profits. 1936 L. 872. *See also* 58 M. 433=1935 M. 330=68 M.L.J. 379 (F.B.). Firm of partners doing business—Stock of shares always valued at cost—Dissolution of firm at end of accounting year—Shares allotted to partners at market value prevailing on date of dissolution—Difference, if can be claimed as loss. 187 I.C. 722=1939 Cal. 559. *See also* 1937 Lah. 814. Actual losses incurred must be proved—Mere showing figures of purchase and sale is not sufficient. 117 I. C. 217=1929 N. 153. Burden of proving losses is on assesee who alleges them—Opening balance must be shown. 1929 N. 153. The expression "loss of profits or gains" in sec. 24 (2) must mean loss on the year's working. When the general principles on which profits or gains of a business are computed are utilized to ascertain the result of the year's working and the calculation shows that there has been a loss, that is a loss of profits or gains. 26 N.L.R. 75=1930 N. 183. Sec. 24 should be read in as liberal a manner as possible. Where there is a *bona fide* loss, a man can always set it off against his income profits or gains under the same head, and in exceptional cases where the loss is so heavy that it more than counterbalances the whole of the profits under that head of income in order that the assessee may obtain his full relief. *Held*, that the amount of rent of a certain property which was occupied by a tenant who in spite of the efforts of the assessee (landlord) persisted in making default and which amount the landlord in a subsequent litigation had to forego in order to secure the eviction of the tenant, is not liable to be taken into account as the income of the assessee in arriving at the total sum on which the assessment is to be made. 132 I.C. 1=32 P.L.R. 418=1931 L. 656. Salt trade—Deposit of securities for deferring payment—System of deferred payment abolished—Assessee selling securities and incurring loss—Right to set-off. 165 I.C. 671=1936 L. 452. Assessee having business in Bombay and Rangoon—Assessment in 1937-38—Loss in Rangoon business—Claim to set-off—Rangoon ceasing to be part of British India after 31st March, 1937 does not deprive assessee of right to set-off—Facts to be taken into account as in previous year. 1940 I.T.R. 1. Assessee having three shops—One stopped in acounting year—Losses in same made up of bad debts, interest and miscellaneous items of expenses—Right to set-off against profits of other shops—Bad debts—When to be wiped out. 1941 I.T.R. 635.

SEC. 24 (2): 'SAME BUSINESS"—TEST TO DETERMINE.—In determining whether different trading operations constitute a single or the "same business" within the meaning of sec. 24 (2) the real question to be considered is whether there is any inter-connection, any interlacing, any interdependence, any unity as all embracing the different businesses. 1945 Mad. 318=(1945) 1 M.L.J. 406. The assessee who was a manufacturer of *bidis*, engaged in a particular year in addition to his *bidi* business in specculation which consisted in dealing in forward cotton contracts, and in that speculation lost a large amount. Under sec. 24 (1) he was allowed to set this off against the profits derived from the manufacture of *bidis* during that year. The loss, however, outweighed the gains and he sought to carry forward the balance of the loss to the following year and claimed to set it off against the profits of *bidi* manufacture for the following year. In the following year he did not engage in any speculation whether in the nature of forward cotton contracts or otherwise at all. *Held*, that under sec. 24 (2) the balance of loss could only be set off against any profits which would have arisen from the same business in which the loss was incurred, that is to say, the business of engaging in forward cotton contracts and that as in the year to which it was sought to carry foorward the loss no such business was undertaken, the claim for the set off could not be allowed. I.L.R. (1943) Nag. 650=1943 N.L.J. 458=1943 Nag. 317=1944 I.T.R. 21. Sec. 26 (2) is not a section of computation; the computation is allowed to be made only in the manner provided by sec. 24 (1) of the Act. The words "at the time of making an assessment under sec. 23" in sec. 26 (1) merely mean "when the time comes to make an assessment", or, in other words, "in the course of the assessment". During the "previous year" ending 30—9—1937, the assessee was in possession of a colliery and in working it he suffered a loss of

[1][(2) Where any assessee sustains a loss of profits or gains in any year, being a previous year not earlier than the previous year for the assessment for the year ending on the 31st day of March, 1940, under the head " Profits and gains of business, profession or vocation,' and the loss cannot be wholly set off under sub-section (1), the portion not so set off shall be carried forward to the following year and set off against the profits and gains, if any, of the assessee from the same business profession or vocation for that year ; and if it cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following year and so on ; but no loss shall be so carried forward for more than six years, and a loss arising in the previous years for the assessment for the years ending on the 31st day of March, 1940, the 31st day of March, 1941, the 31st day of March, 1942, the 31st day of March, 1943, and the 31st day of March, 1944, respectively, shall be carried forward only for one, two, three, four and five years, respectively :

[2][Provided that—

LEG. REF.

[1] Substituted for the original sub-sec. (2), by sec. 27 of Act VII of 1939.

[2] Inserted by Act XXIII of 1941.

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about Rs. 17,000. In June, 1938, he sold the colliery as a going concern to *B. Held,* that "assessee" meant the assessee or his predecessor, and the assessee was therefore entitled to deduct this loss against his income under other heads. 22 Pat. 727=25 P.L.T. 52=1944 Pat. 107.

LAND PURCHASED BY COPARCENARY—PARTITION—LAND ALLOTTED TO ASSESSEE—SUBSEQUENT SALE—LOSS CANNOT BE CLAIMED AS SET-OFF.—A land was purchased in 1920 by the coparcenary of which the assessee was a member, in partnership with a stranger to the coparcenary. In 1924, in a partition between the coparceners this property was allotted to assessee. He sold it in 1928. The assessee claimed that he was entitled to deduct from his income the loss which he had sustained, *i.e.,* the difference between the price at which the land was purchased in 1920 and the price at which it was sold in 1928. *Held,* that the purchase was an investment of capital in land and not a purchase made for the purpose of business in buying and selling land and when it came to the assessee it formed part of his capital. The assessee was not therefore entitled to claim the loss as set-off. 1933 S. 145=145 I.C. 202.

LOSS SUSTAINED OWING TO PARTNER'S DEFAULT—DEDUCTION OF.—The mere absence in the Act of a provision for loss in respect of a time-barred debt is no ground for disallowing it; but whether such loss could be claimed in any particular year or not is a question of fact depending upon the circumstances of each case. Where, therefore, an assessee is being taxed personally, it is open to him to say that on a settlement of accounts of the old partnership he treated the amount due by a partner as a loan made by him personally to that partner and that the loss which he consequently sustained on account of the failure of such partner to pay back the loan is a loss which he is entitled to claim credit for in assessing the profit which he has made in respect of all kinds of business carried on by him in the year of assessment. 1933 S. 148=27 S.L.R. 243.

SECS. 24 AND 26.—*See* 1937 S. 201. Whether a firm is registered or unregistered, partnership does not obstruct or defeat the right of a partner to an adjustment on account of his share of loss in the firm, whether the set-off be against other profits under the same head of income within the meaning of sec. 6 of the Act or under a different head. So long as the set-off is of the share of the loss made by the firm in the year of account, the adjustment does not involve the taking of any general or other account between the partners, or indeed any examination of the accounts of the individual partners in the books of the firm. 63 I.A. 233=59 M. 716=1936 P.C. 133=71 M. L.J. 772 (P.C.). Sec. 24 of the Income-tax Act which enables an assessee to set-off the loss of profits under any head mentioned in sec. 6, against the profits received under any other head can only apply in a case falling under sec. 26 (2) to the successor who is the only assessee. Under sec. 26 (2), it is peremptory that where there has been succession to a business it is the successor, and not the predecessor who is to be assessed. Whether by doing so one or the other is deprived of an advantage which he would otherwise have enjoyed under sec. 24 is irrelevant. Sec. 24 does not apply by any means to every assessment; it only applies where there is a profit under one head and a loss under another. *Kania, J.*—Sec. 24 assumes that the assessee is liable to be assessed under the particular head in respect of which he has suffered loss. On transferring a business, the transferor ceases to be an assessee who is liable to be assessed under that head, and sec. 24 in terms will not apply to him as regards the business which is assessed. I.L.R. (1940) Bom. 287=188 I.C. 706=42 Bom.L. R. 120=1940 Bom. 169. *See also* 1944 Pat. 107.

SECS. 24 AND 66 (3).—Assessee claiming that certain bad debt should not be included in assessment—Income-tax Officer disallowing claim on ground that it had not been shown as irrecoverable in previous year—Propriety—Issue of *mandamus* to commissioner to state case. *See* 167 I.C. 178.

[1][[(a) where the loss sustained is a loss of profits and gains of a business, profession or vocation to which the first proviso to sub-section (1) is applicable, and the profits and gains of that business, profession or vocation are, under the provisions of clause (c) of sub-section (2) of section 14, exempt from tax, such loss shall not be set off except against profits and gains accruing or arising in an Indian State from the same business, profession or vocation and exempt from tax under the said provisions.] (*Inserted by Act XI of* 1944).

(b) where depreciation allowance is, under clause (b) of the proviso to clause (vi) of sub-section (2) of section 10, also to be carried forward, effect shall first be given to the provisions of this sub-section] ;

(c) nothing herein contained shall entitle any assessee, being a registered firm, to have carried forward and set off any loss which has been apportioned between the partners, under the proviso to sub-sction (1), or entitle any assessee, being a partner in an unregistered firm which has not been assessed under the provisions of clause (b) of sub-section (5) of section 23 in the manner applicable to a registered firm, to have carried forward and set off against his own income any loss sustained by the firm :

[2][(d) where an unregistered firm is assessed as a registered firm under clause (b) of sub-section (5) of section 23, during any year, its losses shall also be carried forward and set off under this section as if it were a registered firm :

[2][(e) Where a change has occurred in the constitution of a firm, nothing in this section shall be deemed to entitle the firm to have set off so much of the loss proportionate to the share of a retired or deceased partner computed in accordance with the provisions of clause (b) of sub-section (1) of section 16 as exceeds his share of profits, if any, of the previous year in the firm or to entitle any partner to the benefit of any portion of the said loss which is not apportionable to him under the said clause (b) and where any person carrying on any business, profession or vocation has been succeeded in such capacity by another person, otherwise than by inheritance, nothing in this section shall be deemed to entitle any person other than the person incurring the loss to have it set off against his income, profits or gains.]]

(3) When, in the course of the assessment of the total income of any assessee, it is established that a loss of profits or gains has taken place which he is entitled to have set off under the provisions of this section, the Income-tax Officer shall notify to the assessee by order in writing the amount of the loss as computed by him for the purposes of this section.]

Assessment in case of departure from British India.

[3][24A. (1) When it appears to the Income-tax Officer that any person may leave British India during the current financial year, or shortly after its expiry, and that he has no present intention of returning, the Income-tax Officer may proceed to assess him on his total income [4][of the period from the expiry of the last previous year of which the income has been assessed in his hands to the probable date of his deparutre from British India, or where he has not been previously assessed on his total income of the period up to the probable date of his departure from British India. The assessment shall be made on the total income of each completed previous year included in such period at the rate at which such income would have been charged had it been fully assessed, and as respects the period from the expiry of the last of such completed previous years to the probable date of departure the Income-tax Officer shall estimate the total income of such person during such period and assess it at the rate in force for the financial year in which such assessment is made] :

Provided that nothing herein contained shall authorise an Income-tax Officer to assess any income, profits, or gains which have escaped assessment [4][or

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LEG. REF.

1 In sub-sec. (2), in the proviso, cls. (a), (b), (c) and (d) re-lettered as cls. (b), (c), (d) and (e),respectively, and new cl. (a) inserted by Act XI of 1944.

2 Substituted by Act XXIII of 1941.

3 Inserted by sec. 11 of Act XVIII of 1933.

4 Substituted for the words "or have been assessed at too low a rate", by sec. 28 of Act VII of 1939.

have been under-assessed, or have been assessed at too low a rate, or have been the subject of excessive relief under this Act but] in respect of which he is debarred from issuing a notice under section 34.

(2) For the purpose of making an assessment under sub-section (1) the Income-tax Officer may serve a notice upon such person requiring him to furnish, within such time not being less than seven days as may be specified in the notice, a return in the same form and verified in the same manner as a return under sub-section (2) of section 22, setting forth (along with such other particulars as may be provided for in the notice) his total income for each of the completed previous years [1][comprised in the relevant period referred to in the first sentence of] sub-section (1) and his estimated total income for the period from the expiry of the last such completed previous year to the probable date of his departure; and the provisions of this Act shall, so far as may be, apply as if the notice were a notice issued under sub-section (2) of section 22.]

Tax of deceased person payable by representative.

[2][24B. (1) Where a person dies, his executor, administrator or other legal representative shall be liable to pay out of the estate of the deceased person to the extent to which the estate is capable of meeting the charge the tax assessed as payable by such person, or any tax which would have been payable by him under this Act if he had not died.

[3][(2) Where a person dies before the publication of the notice referred to in sub-section (1) of section 22 or before he is served with a notice under sub-section (2) of section 22 or section 34, as the case may be, his executor, administrator or other legal representative shall, on the serving of the notice under sub-section (2) of section 22 or under section 34, as the case may be, comply therewith, and the Income-tax Officer may proceed to assess the total income of the deceased person as if such executor, administrator or other legal representative were the assessee.]:

(3) Where a person dies, without having furnished a return which he has been required to furnish under the provisions [4]* * * of section 22, or having furnished a return which the Income-tax Officer has reason to believe to be incorrect or incomplete, the Income-tax Officer may make an assessment of the total income of such person and determine the tax payable by him on the basis of such assessment, and for this purpose may [5][, by the issue of the appropriate notice which would have had to be served upon the deceased person had he survived,] require from the executor, administrator or other legal representative of the deceased person any accounts, documents or other evidence which he might under the provisions of sections 22 and 23 have required from the deceased person.]

25. (1) Where any business, profession or vocation [6][to which Sub-section

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LEG. REF.

1 Substituted for the words **"comprised in** the period first referred to in", by Act VII of 1939.

2 Inserted by sec. 11 of Act XVIII of 1933.

3 Substituted by sec. 29 of Act VII of 1939.

4 The words, gracke's and figure "of sub-sec. (2)" omitted by *ibid.*

5 Inserted by *ibid.*

6 Substituted by Act XI of 1944.

SEC. 24-B.—Sec. 24-B of the Income-tax Act is not retrospective. 37 Bom.L.R. 112 =1935 B. 167. Sec. 24-B does not override sec. 26 (2). It was inserted to supplement sec. 26 (2) and it leaves sec. 26 (2) untouched. Sec. 26 (2) must therefore be applied in a case of succession to a business by death and the tax levied on the successor as if he had carried on the business throughout the previous year. 1944 M. 155=(1943) 2 M.L. J. 582=I.L.R. (1944) Mad. 639. It is wholly irregular to assess a deceased person. The assessment should be made on the legal representative in respect of the income of the deceased. The provisions of sec. 24-B must be strictly complied with in such a case, and the notice under sec. 22 (2) read with sec. 24-B must clearly state that it is served on the legal representative and that the return required is of the income of the deceased. I.L.R. (1943) Bom. 224=45 Bom.L.R. 143= 1943 I.T.R. 202=1943 Bom. 102. Death of person during accounting year without drawing commission earned by him prior to that year—Such commission paid to his widow during accounting year—Liability of widow to assessment thereon. 46 C.W.N. 489. In a case to which sec. 25-B of the Income-tax Act applies the estate of a deceased person can be assessed either under sub-sec. (2) or sub-sec. (3) of sec. 24-B; if that is possible there is no occasion to introduce the provisions of sec. 34 of the Act. 37 Bom.L.R. 112=1935 B. 177.

SEC. 25.—Transfer of business from one

Assessment in case of discontinued business.

(3) is not applicable is discontinued in any year, an assessment may be made in that year on the basis of the income, profits ar gains of the period between the end of the previous year and the date of such distontinuance in addition to the assessment, if any, made on the basis of the income, profits or gains of the previous year.

(2) Any person discontinuing any such business, profession or vocation shall give to the Income-tax Officer notice of such distontinuance within fifteen days thereof, and, where any person fails to give the notice required by this sub-section, the Income-tax Officer may direct that a sum shall be recovered from him by way of penalty not exceeding the amount of tax subsequently assessed on him in respect of any income, profits or gains of the business, profession or vocation up to the date of its discontinuance..

(3) Where any business, profession or vocation [1]*** on which tax was at any time charged under the provisions of the Indian Income-tax, Act, 1918, is discontinued, [2][then, unless there has been a succession by virtue of which the provisions of sub-section (4) have been rendered applicable] no tax shall be payable in respect of the income, profits and gains of the period between the end of the previous year and the date of such distontinuance, and the assessee may further claim that the income, profits and gains of the previous year shall be deemed to have been the income, profits and gains of the said period. Where any such claim is made, an assessment shall be made on the basis of the income, profits and gains of the said period, and if an amount of tax has already been paid in respect of the income, profits and gains of the previous year exceeding the amount payable on the basis of such assessment, a refund shall be given of the difference.

[3][(4) Where the person who was at the commencement of the Indian Income-tax (Amendment) Act, 1939, carrying on any business, profession or voca-

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LEG. REF.

1 The words "which was in existence at the commencement of this Act and" omitted by Act XI of 1924.

2 Inserted by sec. 30 of Act VII of 1939.

3 Sub-secs. (4) and (5) inserted by *ibid.*

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person to another—Effect. 27 Bom.L.R. 1471=50 B. 87=1926 B. 129. Where the assessee, a money-lender, enters into a lease of a large building hoping that he would be able to sub-le· the major portion of the building and to recover from the sub-lessees most of the rent to be paid to the landlord, such lease is no part of the assessee's business as a money-lender. Such a transaction is entirely outside the business of money-lending, and the loss suffered by him in the lease transaction cannot be treated as a business loss in respect of his money-lending business. It can only be treated as a capital loss. The fact that the assessee chooses to write off the amount in the books kept by him in connection with his money-lending business would make no difference. 1943 Mad. 389=(1943) 1 M.L.J. 171.

CL. (3: APPLICABILITY AND SCOPE—ASSESSMENT ON SALARIES IN YEAR IN WHICH THEY ARE EARNED.—Sec. 25 (3) is intended to prevent a double assessment. It cannot be intended to apply to a case where income-tax is assessed on salaries in the year in which they are earned. If the section were to apply, it would lead to this very strange and unreasonable result: that an assessee who chooses to reliquish his appointment in the 11th month of the year would escape payment of income-tax on the salary earned by him in these 11 months; whereas, if he continued for one month longer, admittedly he would be assessable on his salary in the whole of the 12 months. 59 M. 216=1935 M. 953=69 M.L.J. 611 (S.B.). The profits from a profession or vocation mentioned in sec. 25 (3) mean the professional earnings which are taxable under sec. 11 (*v*). An assessee can only have the benefit of sec. 25 (3) if he has been assessed for tax on professional earnings. 69 M.L.J. 611 (S.B.).

SEC. 25 (3): SCOPE AND APPLICABILITY.—Sec. 25 (3) is not retrospective and does not apply when the claim for relief had accrued and when an oral claim had been made therefore before the amendment came into force, although a formal written application has been made only subsequent to the coming into force of the amended Act. A bar of limitation cannot be read into the provisions of sec. 25 (3) as it stood before the amendment, and the claim for refund of tax wrongly assessed cannot be barred except by Statute. 1942 A.L.J. 454=A.I.R. 1942 All 227. The words "no tax shall be payable" in sec. 25 (3) impose a duty on the Income-tax Officer to give relief under sec. 25 (3). He cannot refuse relief on the ground that he is not bound to exclude the income unless he is made aware of the discontinuance of the business, profession or vocation, etc. If the Income-tax Officer has before him material which should have put him on inquiry as to whether the assessee was entitled to relief under sec. 25 (3), he is bound to give relief. I.L.R. (1942) All. 377=1942 A.L.J. 454=1942 All 227.

SEC. 25 (3): IF SUBJECT TO DEPARTMENTAL RULE IN INCOME-TAX MANUAL.—A department-

tion on which tax was at any time charged under the provisions of the Indian Income-tax Act, 1918, is succeeded in such capacity by another person, the change not being merely a change in the constitution of a partnership, no tax shall be payable by the first mentioned person in respect of the income, profits and gains of the period between the end of the previous year and the date of such succession, and such person may further claim that the income, profits and gains of the previous year shall be deemed to have been the income, profits and gains of the said period. Where any such claim is made, an assessment shall be made on the basis of the income, profits and gains of the said period, and, if an amount of tax has already been paid in respect of the income, profits and gains of the previous year exceeding the amount payable on the basis of such assessment, a refund shall be given of the difference ;

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al rule can in no way affect a legal claim; a claim to relief under sec. 25 (3) cannot be rejected on the ground that it is belated and made after the time specified in r. 96 of the Income-tax Manual. 1942 A.L.J. 454=1942 All. 227.

SEC. 25 (3): ORAL CLAIM FOR RELIEF—SUFFICIENCY.—There is nothing in the Income-tax Act to justify the contention that a claim for relief under sec. 25 (3) should be in writing. An oral application for relief would be sufficient. 1942 All. 223.

SEC. 25 (3): "DISCONTINUED"—MEANING OF.—The word "discontinuance" in sec. 25 (3) covers discontinuance either by cessation or by disposal; it is wide enough to include the contingency of a transfer under the amended Act as it exists now. 52=43 Bom. L.R. 1034=1942 Bom. 50. When a unit of business devolves on an heir or is sold to a purchaser, there is a clear case of succession because there is nothing but a change of ownership. In such a case, neither the identity nor the integrity of the business is impaired. But difficulty arises when there is a division of a business which is run in several branches which are carried on independently but which attain apparent unity only because of common ownership. When there is a division of such a running business and the quondam partners become the exclusive owners of the branches of the original business, the fact that as a result of partition of that business, the branches lose their organic relation with each other does not necessarily imply the discontinuance of the business of the branch which passes into the hands of the quondam partner. To be able to say that with respect to the branch the business has ceased, the parent business must terminate so that the branch which becomes independent should cease to be a going concern when it passes into the hands of the quondam partner. The business in his hands would, if it was running independently, even though as a factor of a larger unit, change its identity or integrity. The argument that if the assessee's case is not a case of succession, it must be a case of discontinuity of business, rests on an imperfect application of the meaning of the words "then unless" in sec. 25 (3) of the Income-tax Act. On their true construction, they mean "except when". 221 I. C. 649. The word "discontinued" in sec. 25 (3) means only a complete cessation of the business and does not include the case of discontinuance of the business by the person formerly carrying it on as the result of the transfer or assignment of that business to another person who thereafter carries it on. Under the Act before its amendment sec. 25 (3) gave relief in the event of discontinuance; the amendment introduced a qualification, not enlarging or altering the meaning of discontinuance but providing that, if there was a succession in respect of which relief was given, there should not be relief upon discontinuance. To construe the word "discontinuance" as including succession would be doing violence to plain language. 72 I.A. 196 =47 Bom.L.R. 737=49 C.W.N. 784=58 L.W. 454=1945 P.C. 137=(1945) 2 M.L.J. 231 (P.C.). The word "discontinued" in sec. 25 (3) means "cessation" and does not cover a case of succession. Sec. 25 (3) has been inserted merely for the purpose of preventing double taxation. A.I.R. 1943 Mad. 504= (1943) 2 M.L.J. 8=I.L.R. (1944) Mad. 166. Where a Railway Company invested its unpended capital pending construction of the Railway and the interest was assessed under the Income-tax Act, 1918, the income cannot be treated as business income of the company in respect of which the benefits under sec. 25 (3) and (4) of the Income-tax Act, (1922) can be claimed. 1946 I.T.R. 395.

SECS. 25 AND 25-A: RELATIVE SCOPE OF.—Sec. 25 is intended to meet only those cases where business has been carried on after the end of the previous year and before the expiry of the year of assessment, and looks at the situation from the point of view whether or not any tax on such business was paid under the Act of 1918. Sec. 25-A, on the other hand, deals with an entirely different position. It envisages a position where at the time of making an assessment on the income of the previous year the Income-tax Officer finds or it is alleged before him that the family which was in the past assessed as an undivided Hindu family exists no longer, having partitioned its property or that the business profession or vocation hitherto carried on by a Hindu undivided family has passed on to some one else and the family has also disrupted and partitioned its property after the assignment of the business. The section provides that in such a case the income of the family during the period that it carried on the business as an undivided family shall be assessed, and the tax payable on it levied on the members or groups of the

[1][Provided that sub-sections (3) and (4) shall not apply—

(*a*) to super-tax except where the income, profits and gains of the business, profession or vocation were assessed to super-tax for the first time either for the year beignning on the 1st day of April, 1920, or for the year beginning on the 1st day of Apirl, 1921 ;

(*b*) to a business, profession or vocation on which income-tax was at any time charged in the hands of a company under the Indian Income-tax Act, 1886 or on which income-tax would have been charged in the hands of a company for the assessment year ending on the 31st day of March, 1918, if the company having been in existence in that year had also been in existence in the year ending on the 31st day of March, 1917.]

(5) No claim to the relief afforded under sub-section (3) or sub-section (4) shall be entertained unless it is made before the expiry of one year from the date on which the business, profession or vocation was discontinued or the succession took place, as the case may be.]

[2][(6)] Where an assessment is to be made under [3][sub-section (1), sub-section (3), or sub-section (4)], the Income-tax Officer may serve on the person whose income, profits and gains are to be assessed, or, in the case of a firm, on any person who was a member of such firm at the time of its discontinuance, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22, and the provisions of this Act, shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section.

Assessment after partition of a Hindu undivided family.

[4][25A. (1) Where, at the time of making an assessment under section 23 it is claimed by or on behalf of any member of a Hindu family hitherto [5][assessed as] undivided that a partition has taken place among the members of such family,

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LEG. REF.

[1] Added by Act XXIII of 1941.

[2] Original sub-sec. (4) re-numbered (6) by sec. 30 of Act VII of 1939.

[3] Substituted for the words, brackets and figures "sub-sec. (1) or sub-sec. (3)", by *ibid.*

[4] Inserted by sec. 4 of Act III of 1928.

[5] Inserted by sec. 3 of Act XXII of 1930.

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family according to the portion of the joint family allotted to them. Each of the two sections deals with an entirely different set of circumstances. There is no inconsistency, repugnancy or contrariety between them, nor do they overlap each other. Each deals with a different position and enacts a different rule. (1946) I.T.R. 152.

SECS. 25 (3) IND 26 (2).—A firm which was running four businesses till 1937 and which had been assessed under the Income-tax Act of 1918, consisted of six partners. In October, 1937, the sixth partner, as the result of a dispute with the other five partners, locked up two of the shops. On 3-11-1937, the other five partners started two new firms one of which was the assessee firm, in separate premises with new sets of accounts. On 25-11-1937, the dispute between the partners of the old business was referred to arbitration and on 26-11-1937, an award was given, which *inter alia* provided that the sixth partner was to be bought out and that partners 1 to 5 were to realise all outstandings and to discharge all liabilities. No partner was entitled to use the trading name of the old business. The sixth partner was in fact bought out. *Held*, (1) that on the facts of the case the new firm (assessee) was not a successor of the old firm for the purposes of sec. 26 of the Income-tax Act, that the old business had been discontinued and the partners of the old firm were therefore entitled to relief under sec. 25 (3); (2) that the proper effect of a proved fact is a question of law; and whenever the facts found by the Commissioner of Income-tax give rise to a consequential question whether there is or there is not a succession within the meaning of sec. 26 (2) of the Income-tax Act, a question of law is involved under sec. 66 (3). (1944) I.T.R. 367.

SECS. 25 (4) AND 25-A (2): APPLICABILITY. —A Hindu undivided family carried on a business of grocery and yarn which was axed under the Income-tax Act of 1918. The family divided and partitioned its properties, as a result of which the business fell to the share of one of the members, who carried on the same. The family claimed relief under sec. 25 (4). *Held*, that there was a succession under sec. 25-A (2) of the Act, and the family, which must be regarded as joint for purposes of assessment, was entitled to relief under sec. 25 (4). (1946) I.T.R. 152. *See also* 1944 Mad. 245=(1944) 1 M.L.J. 112 (F.B.).

SEC. 25-A: SCOPE AND APPLICABILITY.— Sec. 25-A of the Income-tax Act contemplates an actual partition by metes and bounds of the joint family property. 1934 L. 942. Sec. 25-A does not demand a partition by metes and bounds. 31 N.L.R. (Supp.) 233= 162 I.C. 554=1936 N. 121. The fact that assets are divided and the members began

the Income-tax Officer shall make such inquiry thereinto as he may think fit, and, if he is satisfied [1]* * * * that the joint family property has been partitioned among the various members or groups of members in definite portions [2]* * he shall record an order to that effect:

LEG. REF.

[1] The words "that a separation of members of the family has taken place and " omitted by sec. 31 of Act VII of 1939.

[2] The words "before the end of the previous year" omitted by sec. 3 of Act XXII of 1930.

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to live separately would not constitute partition under sec. 25-A, when other properties are left for division at a future date. 57 L.W. 139=I.L.R. (1945) Mad. 21; 1944 Mad. 368=(1944) 1 M.L.J. 197. In the case of a partial division of a joint family property sec. 25-A has no application. The partition contemplated by the section is not necessarily a partition by metes and bounds. 56 A. 504 =1934 A. 217.

SEC. 25-A: SCOPE AND APPLICABILITY.—Sec. 25-A contains no warrant for any prohibition against members of an undivided Hindu family entering into a partnership in respect of the joint property which they have partitioned among themselves. It has no reference at all to any case in which the Hindu undivided family remains in existence at the time of assessment. No difficulty whatever in the assessment of a Hindu undivided family is caused—or was ever thought to be cuased —by the fact that in one year it has certain assets and certain income therefrom and that in the next year it is found to have parted with one asset and to be no longer in receipt of the same income. The same assessee has a different income in each year—that is all. It matters nothing whether the particular asset no longer possessed by the undivided family has become the separate property of a member or belongs to a stranger. Sec. 25-A is directed to the difficulty which arose when an undivided family had received income in the year of account but was no longer in existence as such at the time of assessment. The difficulty was the more acute by reason of the provision contained in sec. 14 (4). Sec. 25-A deals with the difficulty in two ways which are explained by the rule applicable to families governed by the Mitakshara, that by a mere claim of partition a division of interest may be effected among coparceners so as to disrupt the family and put an end to all rights of succession by survivorship. Sec. 25-A provides that if it be found that the family property has been partitioned in definite portions, assessment may be made, notwithstanding sec. 14 (1), on each individual or group in respect of his or its share of the profits made by the undivided family, while holding all the members jointly and severally liable for the total tax. If, however, though the joint Hindu family has come to an end, it be found that its property has not been partitioned in definite portions, then the family is to be deemed to continue—that is, to be an existent Hindu family upon which assessment can be made on its gains of the previous year. 45 Bom.L.R. 9=47 C.W.N. 60=1942 A.L.J. 623=1942 O.W.N. 626=1942 P. C. 57=(1942) 2 M.L.J. 761 (P.C.).

Sec. 25-A is only a machinery section and not a charging section and it does not alter the Hindu Law. The section does contemplate a division amongst the members of assets of a joint family which can from that moment be their individual property and cease to be the joint family property. The essence of the section is that the income must in the first instance be received by the joint family as such. Once it is so received, it makes no difference whether the joint family exists or not on the date of the assessment. It is only when not the status is severed, but also all the properties have been partitioned, that the the order contemplated by sec. 25-A, can be applied for and made, and till such an order is made, for the purpose of income-tax the joint family continues as a unit although its status may have come to an end. 48 Bom.L. R. 56. The language of the section makes it clear that an order declaring separation shall only be passed if (1) the members of the family have separated in status from each other and (2) there has been a partition of all the joint family property. For the purposes of the Income-tax Act members of an undivided Hindu family cannot enter into a partnership in respect of a portion of joint property which they have partitioned among themselves while retaining the status of an undivided family and keeping the rest of the property joint. I.L.R. (1938) All. 638=1938 A.L.J. 610=1938 All. 452. Sec. 25-A requires a physical division and is not satisfied with a mere division in interest. Before applying sec. 25-A, the Income-tax Officer must be satisfied that the property has been physically divided. I.L.R. (1943) Bom. 245=45 Bom. L.R. 159=1943 Bom. 116. Sec. 25-A does not of necessity demand a partition by metes and bounds. But it contemplates that there should be firstly a finding by the Income-tax Commissioner that the Hindu joint family as such has disrupted and secondly a finding that the joint family property has been divided among the various members or groups of members in definite portions. And it is not sufficient that a mere disruption of the Hindu family should be provedt. There must also be, whether by consent or otherwise, a definite ascertainment of the shares of the different members composing the Hindu family 154 I.C. 191=1935 L. 81 (S.B.). Where a Hindu joint family separates and its members carry on the family business in partnership, there is a change in the ownership. When such a change takes place, there is succession within the meaning of sec. 26 (2) of the Income-tax Act. That being so, the manager

Provided that no such order shall be recorded until notices of the inquiry have been served on all the members of the family.

(2) Where such an order has been passed, [1][or where any person has ceeded to a business, profession or vocation formerly carried on by a Hindu undivided family whose joint family property has been partitioned on or after the last day on which it carried on such business, profession or vocation,] the Income-tax Officer shall make an assessment of the total income received by or on behalf of the joint family as such, as if no [2]* * partition had taken place, and each member or group of members shall, in addition to any income-tax for which he or it may be separately liable and notwithstanding anything contained in sub-section (1) of section 14, be liable for a share of the tax on the income so assessed according to the portion of the joint family property allotted to him or it; and the Income-tax Officer shall make assessments accordingly on the various members and groups of members in accordance with the provisions of section 23:

LEG. REF.

1 Inserted by sec. 31 of Act VII of 1939.

2 The words "separation or" were omitted by *ibid.*

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who is assessed is entitled to the benefit of sec. 25 (4), which will apply. Under sec. 25-A, the family, notwithstanding the partition, has to be regarded as joint for the purpose of the assessment, which must include the grant of relief unser sec. 25 (4). I.L.R. (1944 Mai. 504=57 L.W. 90=1944 Mad. 245 =(1944) 1 M.L.J. 112 (F.B.). Under sec. 25-A of the Income-tax Act, the Income-tax Officer has a discretion to conduct an inquiry and to hear such evidence, as he may consider it necessary to enable him to come to a decision on the question whether a separation of the members of the family has taken place or not. His decision is a decision on a question of pure fact, and so long as his discretion is not exercised arbitrarily or fancifully, and there are before him some materials on which he can arrive at the conclusion at which he has arrived, his decision cannot be canvassed before the High Court on an application under sec. 66, because no question of law can arise thereout. 177 I.C. 582=1938 Rang.L.R. 130=1938 Rang. 154. Where in a suit instituted by a Hindu father against his sons for partition, the matter is referred to arbitration, and an award is made which is made a rule of Court, the decree basen on the award is conclusive evidence of disruption of the unvided family, and the Income-tax authorities are bound to take notiice of the same as evidence of disruption of the family as from the date of that decree. (1946) I.T.R. 239. Before persons who have been previously assessed as a Hindu undivided family can claim to be separately assessed as members of a contractual partnership, they must establish that the joint family has been dissolved. 1938 Rang.L.R. 130=1938 Rang. 154. Where a business has permitted itself to be assessed once as a joint family business, under Cl. (3) of sec. 52-A, it must be demed to continue as a joint family business until an order under Cl. (1) of sec. 25-A has been made. 17 Luck. 426=1941 O. W.N. 1302=1942 Oudh 108. A mere recital of a prior division of property in a will, even though it be a registered one, is no evidence of division and cannot confer title. And such a document cannot be deemed by itself to be evidence of a disruption of a Hindu undivided family within the meaning of sec. 25-A. 1933 L. 815. The dissolution or existence of a joint Hindu family depends on the intention of the members thereof and is a question of fact. It is therefore open to the Income-tax Officer to decide whether the intention to dissolve is present or absent. 1933 L. 827. *See also* 17 Luck. 426. When persons claim to constitute a partnership firm for the registration of which they make an application, the Income-tax Officer may call upon them to prove by evidence that they are what they claim to be before he proceeds further with the application and he may find against declarations contained in a partnership deed and reiterated by the parties before him that a Hindu joint family still exists. 14 Lah. 134 =33 P.L.R. 947=1932 L. 575. Although the income earned in a certain year forms the material out of which the assessment is made, it is the making of the assessment and the date thereof that determines the applicability of the law and procedure governing such assessment. sec. 25-A therefore applies to a case where the section is passed before the commencement of the year in which the assessment takes place, even though it may not have been passed when the income under assessment was earned. 14 Lah. 134=138 I. C. 187=1932 L. 575. The Income-tax Officer is not ordinarily bound by the correctness of any previous orders passed by him; but when the Income-tax Officer has passed an order under sec. 25-A (1) clearly finding a separation among the mmbers of a Hindu joint family, he is preluded by sub-sec. (3) of sec. 25-A from making any fresh enquiry into the question of separation or jointness. The power to go behind the prior order is expressly withdrawn by sub-sec. (3) of sec. 25-A. 31 N.L.R. (Supp.) 233=1936 N. 121. But *see also* 1936 L. 836. Question of partition—Wrong decision by Income-tax Officer can be corrected in subsequent year. 1936 L. 836. Merely because the Income-tax Officer accepts the allegation of the assessee that there has been a partition in a certain year, he is not debarred from considering the truth about the fact of partition in the next year. The fact that assessee's allegation has been accepted in the previous year may possibly alter the burden of proof. 1933 L. 815. Hindu

Provided that all the [1][members and groups of members whose joint family property has been partitioned] shall be liable jointly and severally for the tax assessed on the total income received by or on behalf of the joint family as such.]

LEG. REF.

[1] Substituted for the words "separated members and groups of members," by Act VII of 1939.

joint family—Assessment of head of family —Plea of partition not raised before Income tax Officer cannot be allowed to be raised for the first time in appeal before the Assistant Commissioner. 12 Lah. 714=131 I.C. 639= 1931 L. 601. Hindu joint family —Manager of family being Governing Director of company—Remuneration obtained—If individual income or family income. 22 Pat. 55=1943 Pat. 169. Hindu joint family constituting itself into company with specific shares to members including mother—Effect —Members of such company owning foreign business and having personal khatas—Loan to company standing in name of mother—Equalization of credit amounts in personal khata— accumulation of interest by mother and remittance of cash and goods by foreign business to company and *vice versa*—Inference of joint status not justified. 1937 Lah. 897.

SEC. 25-A (3).—A contention that a joint Hindu family has become disrupted and that a partition has taken place must be put forward at the time of making an assessment under sec. 23. When the assessee has not so put forward a claim and the Income-tax Officer has not passed such an order, it is clear that under sec. 25-A (1) of the Act, the family shall be deemed for the purposes of the Act to continue to be an undivided family and be treated as such for the purposes of the assessment to income tax, though such a family is not actually or in law a Hindu undivided family. 22 Pat. 55=(1943) I.T.R. 16 =1943 Pat. 169. If the Income-tax Officer is satisfied that the property, which has been treated in previous assessments by the Income-tax authorities as joint family property, has been partitioned (even though it may be the self-acquired property of the father or head of the family and not joint family property), sec. 25-A would be applicable and a petition for partition would be maintainable. (1944) I.T.R. 289. Where the property is that of a trust, and the beneficiaries are not only members of a family which may or may not be undivided but also a school, a hostel and such other charities to which the trustee may feel disposed to make payments, and the members of the Hindu family are entitled to participate under the trust, not as members of such family but as beneficiaries of the trust, an assessment cannot be made in respect of income in which such institutions are entiled to participate as upon a Hindu undivided family. (1944) I.T.R. 68=A.I.R. 1944 Cal. 308=220 I.C. 442.

SECS. 25-A AND 26: APPLICABILITY.— Sec. 25-A covers the case of a joint Hindu family in which there has been a disruption and consequent partition, but no continuance of the business, either by the members of the joint Hindu family on contractual basis, or by some of them alone, or jointly with others or even by strangers. Where the business has been discontinued, sec. 25-A will apply, but where it is continued, sec. 26 will apply. In cases under sec. 26 the shares of partners are not to be included in the assessment on the family. 18 Lah. 189=167 I.C. 936=1937 L. 172 (S.B.). Where on the breaking of a joint family, the separated members immediately form themselves into a firm, sec. 26 will come into operation, and the assessment on the firm should be made under that section and not under sec. 25-A of the Act. 1935 L. 681.

SCOPE AND APPLICABILITY—HINDU UNDIVIDED FAMILY—IF CAN BE SUCCEEDED BY LIMITED COMPANY.—So far as the scheme of the Income tax Act goes, each section de ls only with the matters specified herein and goes no further, and each section completely covers the matter with which it deals. Sec. 25-A applies only to those cases where the question involved is one of pure and simple disruption of a Hindu undivided family, unattended by conversion, or transformation into a new entity. In the same manner, sec. 26 is intended to meet completely those cases which are specified in sub-secs. (1) and (2) thereof, respectively, in whatever way the situation envisaged there may arise. If, therefore, in the place of a Hindu undivided family, which is a person, a new firm is constituted or a new company brought into existence, which again is a person, it cannot be urged that the provisions of sub-sec. (1) or sub-sec. (2), as the case may be, are not attracted, simply because there exists a section which expressly deals with the disruption of a Hindu undivided family. A Hindu undivided family and a firm or a limited company are mutually exclusive and cannot co-exist. Accordingly, without disruption, the conversion of a Hindu undivided family into a firm or a company is impossible and so long as it remains undivided, the question of succession to it as a whole by another entity does not arise. But as it is possible under the income-tax law that a person conducting several businesses may be succeeded in a particular business which is divisible from the other businesses of his, a Hindu undivided family, as a person, can, in the matter of such business, be succeeded by a company to that extent. The assessment on the successor is to be made under sec. 26 (2) of the Act as if he had been carrying on the business, profession or vocation throughout the previous year and as if he had received the whole of the profits for that year. 18 Lah. 325=39 P.L.R. 934=1937 Lah. 830.

SECS. 25-A AND 26-A: JOINT HINDU FAMILY —NOT "FIRM".—The very definition of a "firm" involves the idea of contractual relationship betwetn several persons, and when the finding of the Income-tax Officer is that

[1][(3) Where such an order has not been passed in respect of a Hindu family hitherto assessed as undivided, such family shall be deemed, for the purposes of this Act, to continue to be a Hindu undivided family.]

Change in constitution of a firm.

[2][26. (1) Where, at the time of making an assessment under section 23, it is found that a change has occurred in the constitution of a firm has been newly constituted, [3][the assessment shall be made on the firm as constituted] at the time of making the assessment :

LEG. LEF.

1 Added by sec. 3 of Act XXII of 1930.
2 Substituted by sec. 5 of Act III of 1928.
3 Substituted for the original words by sec. 32 of Act VII of 1939.

there is no contractual relationship between these persons, but the relationship between them is that of a joint Hindu family relationship based on status and not on contract there is no firm in existence which he could possibly register under the provisions of sec. 26-A. 1933 L. 827. Under sec. 25-A, the Income-tax Officer does not inquire into a question of whether the joint family property has in fact been divided. Where an application under sec. 26-A for registration of a joint Hindu family as a firm was filed, and the assessees nowhere suggested that joint family existed alongside the new partnership, and there was no evidence that the family was divided: *Held*, the Income-tax Officer was right in coming to the conclusion that the partnership transaction was not a genuine one. 164 I.C. 799= 1936 P. 476. For purposes of sec. 25-A of the Income-tax Act mere disruption of the family would not be enough, but the joint family property must have been partitioned among the various members or groups of members in definite portions. It was found as a fact that there was a partition of the business in definite portions between the members of the family, that they were being assessed separately since 1936 – 1937, and that there was no complete partition because the house property and lands were not partitioned, *Held*, (1) that though the assessees were no longer a joint undivided Hindu family, there was no such division or partition as was contemplated by sec. 25-A of the Act; (2) that such a partial partition came within the operation of sec. 25-A, and the assessees under the circumstances must be deemed to continue to form a joint Hindu family for the purposes of assessing them on that portion of the income which was derivable from these properties which had not been partitioned in definite portions other than the business; (3) that the business could not be considered to be a business of a Hindu undivided family but must be considered to be a business of the persons named in the partnership. 23 Pat. 68 =1444 Pat. 137.

SECS. 25-A AND 66 (3).—The questions whether sec 25-A requires actual partition of the family property by metes and bounds as a condition precedent to the recognition of a partition under sec. 25-A. and whether a finding of the Income-tax Officer is supported by any evidence, are questions of law. 1933 L. 952.

SECS. 25-A, 26 AND 26-A: RIGHT OF ASSESSEE TO ADJUDICATION OF QUESTION AS TO WHETHER NEW FIRM HAS BEEN CONSTITUTED.—The assessee is entitled to an adjudication of the question whether a new firm has been constituted so as to attract the operation of sec. 26 and he could not be deprived of this legal right, merely on the ground that an adjudication on this question would tend to affect the decision of the Income-tax Officer under sec. 26-A, against which no appeal is competent. Sec. 25-A no doubt deals with an assessment after partition of an undivided family, but it does not exclude the posibility of the members so separated to constitute themselves into a firm so as to bring their case within the ambit of sec. 26. 1935 L. 275=156 I.C. 833; 18 L. 325. The assessees who were a joint Hindu family consisting of a father and his seven sons and who were hitherto assessed as an undivided family, separated during the year of account, and shortly thereafter the father and his seven sons formed themselves into a firm and applied to the Income-tax Officer to register the firm under sec. 26-A of the Income-tax Act, and to make the assessment under sec. 26 (2). *Held*, (1) that there had been no succession within the meaning of sec. 26 (2) of the Act, and the Income-tax Officer was therefore not bound to register the firm under sec. 26-A and to assess under sec. 26 (2); (2) that the Income-tax Officer was bound to make the assessment under sec. 25-A (2) of the total income received by the joint family as such and to hold each member liable for his proportionate share of the tax so assessed. 40 Bom.L.R. 452=1938 Bom. 350.

SECS. 25-A AND 34.—The assessee, a Natukottai Chetti, was joint with his son until the latter's death on 9—7—1934 After that the joint family consisted of the assessee, his widowed step-mother and his widowed daughter-in-law. Until 1936—1937, he was assessed to income-tax as the head of an undivided Hindu family, but subsequently he was served with a notice of assessment as an individual under sec. 34. *Held*, (1) that there was no defect in the notice, which was addressed to him by name and informing him that he had been assessed at too low a rate; since a mistake had been made, the step taken to correct it was properly taken under sec. 34; (2) that it could not be said that sec. 34 could not operate until an order had been made under sec. 25-A (1) of the Act. Sec. 25-A stood entirely apart from sec. 34, and since there had been no partition, sec. 25-A did not operate in the case. (1944) I.T.R. 39=1945 Mad. 122.

SEC. 26 (1) AND (2).—Sec. 26 (1) contemplates a business which continues in existence

[1][Provided that the income, profits and gains of the previous year shall, for the purpose of inclusion in the total incomes of the partners, be apportioned between the partners who in such previous year were entitled to receive the same :

Provided further that when the tax assessed upon a partner cannot be recovered from him it shall be recovered from the firm as constituted at the time of making the assessment.]

LEG. LEF.

[1] Added by sec. 32 of Act VII of 1939.

both during the period of the predecessor and during the period of the successor. When there is no such business in existence continuously during the life of the predecessor and of the successor, sec. 26 (1) can have no application. The provision in sec. 26 (2) as regards succession in business in designed merely with a view to preserve, in a proper case, where there is a succession, a measure upon which the successor may be assessed in the first year of his proprietorship of the business, and that is at the root of the necessity for there being a real continuity of the business. The object being to measure the income of the successor by the past history of the business, it is essential that there should be a very close identity between the business in the former proprietorship and the business in the present proprietorship. There can be no succession under sec. 26 (2) to a part only of the business. 41 C.W.N. 132= I.L.R. (1937) 2 Cal. 7. The words "change in the constitution of a firm" mean a change in its partners or personnel but not a change in the proportion in which the partners divided the profits. 177 I.C. 192=1938 Cal. 562. It is open to any person to reduce the incidence of his income-tax in any legitimate way, and the mere fact that a reconstitution of the firm has reduced the incidence of the tax is by itself no evidence that the reconstitution is not real. At the time of the reconstitution of a firm, the new capital was not introduced. Nor was there the valuation of assets. After registration had been refused the firm reverted to its old constitution. *Held,* that there were not sufficient grounds for supposing that the reconstitution was a bogus arrangement. 178 I.C. 404=40 P.L.R. 639=1938 Lah. 194. *See also* 1944 Pat. 107 =22 P. 727.

Costello, J.—There cannot, generally speaking, be a succession to a part of a business; but that does not imply that if what is succeeded to is not the same extent of trade or even does not include a particular line or set of customers, it necessarily follows that there cannot be a succession to the trade or business. The word "succession" does cover any case of transfer by one trader to another of the right to that benefit which arises from connection and reputation. If the business is one business throughout, even though in one year it operates at more places than one, whereas in the succeeding yaer it operates only in one of those places, the matter certainly falls within the purview of sec. 26 (1), even if it cannot be said that there is a succession. A mere change in the composition or constitution of the firm is within the contemplation of sec. 26 (1). 41 C.W.N. 132.

Panckridge, J.—Under sec. 26 (2), it is not necessary to determine to whom the good will, the marks and the firm name legally belong. The important thing is that the new firm does in fact use them in their business, and each one is a factor, to be taken into account in deciding whether that business was one, in respect of which the new firm should be regarded as the successor of the old. The successor to a business, profession, or vocation is under a statutory liability, imposed by sec. 26 (2), in respect of the profits earned in the previous year by the person he succeeds. The fact that the business was carried on in two places in the previous year and in one of those places only in the succeeding year does not of itself make the business carried on during the second season a different business from that carried on in the first season. The question depends ultimately on the identity of the business carried on by the assessee with the business to which he is said to have succeeded; and the admissions and conduct of the assessee with regard to the business are of the greatest asaistance in arriving at a decision on the point. The fact that no tangible assets have passed from the old firm to the new appears to be a matter of very little importance. sec. 26 (1) has only application when a change occurs in the constitution of a firm or a firm is newly constituted during the currency of a partnership; the subsection has no application where the new or succeeding firm comes into existence after the term of the former partnership has come to an end owing to efflux of time. 41 C.W.N. 132= 132=I.L.R. (1937) 2 Cal. 7.

Per Mukherjea, J.—The process of assessment begins with the service of notice under sec. 22 (2) and continues until some order of assessment is made. If, after notice has been received by the assessee and before filing a return, he dies, and is succeed by a person, it would be competent to the Income-tax Officer to find, if the evidence justified the finding, that the person on whom notice was served had carried on a business and was succeeded in that capacity by another person. 182 I. C. 270=1939 Cal. 196 (S.B.). The object of sec. 26 (2) is to assess the successor on the profits of the buiness, which he is deemed constructively to carry on during the previous year. The language of the section itself shows that the assessment is based on the assumption that the successor received the entire profits of previous year. Sec. 26 (2) has therefore no application when there is loss in the year of accounting in the business in respect to which succession has taken place, and there are no profits for which the successor could be taxed. 182 I.C. 270=1939 Cal. 196 (F.B.); *see also* 45 C.W.N. 681. Dissolution of firm by death of partner—Constitution of

[1][(2) Where a person carrying on any business, profession or vocation has been succeeded in such capacity by another person, such person and such other person shall, subject to the provisions of sub-section (4) of section 25, each be assessed in respect of his actual share, if any, of the income, profits and gains of the previous year :

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[1] Substituted by sec. 32 of Act VII of 1939.

new firm with surviving partners and others—Old business wound up and assets and liabilities taken over by new firm—Liability to income-tax and excess profits tax on profits of old firm. 47 Bom.L.R. 204=1945 Bom. 361.

SEC. 26 (2): MEANING OF TERMS—'BUSINESS."—"Business" in sec. 26 (2) is not business in the abstract, but business in concrete. 138 I.C. 673=1932 S. 189. The words "any business" in sec. 26 do not mean each and every business carried on by the former owner of a business. Where a company owning several businesses transfers one business to another company, the latter company is a successor to the former and is assssable in respect of that business. 55 M. 832=1932 M. 434=63 M.L.J. 15 (S.B.). Sec. 26 (2) is not confined to cases of succession *inter vivos*, but applies equally to the business of a deceased carried on by the heir-successors. But before a person can be assessed as a successor of a deceased money-lender, there must be evidence to show that the business of money-lending was actually carried on by the successor of the deceased money-lender. 1942 I.T.R. 405. Business transferred— Depreciation— Calculation—Unabsorbed balance if passes to successor. *See* 70 I.A. 100=46 Bom.L.R. 235= I.L.R. (1943) Kar. (P.C.) 141=I.L.R. (1943) Kar. (P.C.) 141=I.L.R. (1943) 2 Cal. 524= (1943) 2 M.L.J. 325 (P.C.); (1946) 2 M.L.J. 226. The expression "where at the time of making an assessment under sec. 23" merely means "when the time comes to make an assessment." 12 P. 5=1933 P. 123. *See also* 22 Pat. 727; 46 Bom.L.R. (material time.) The plain meaning of the words "succeeded in such capacity by another person" is that if there is a business, profession or occupation which was formerly carried on by a person and that property has now been taken directly by another person who continues the business, the transference of ownership, whether it be by operation of law or *inter vivos*, is a succession. The real test of whether there has been a succession or not is to be decided by an examination of the business. Where a business was continued after a change of ownership, *held*, that there was a succession to a business. 12 P. 5=14 P. 5=14 Pat.L.T. 171=1933 P. 123. *See also* 27 S.L.R. 47= 1932 S. 189; 168 I.C. 209=1937 Rang. 102= 1937 Rang.L.R. 26 (S.B.). Money-lending business by joint family—Partition— Business recommenced by some of the members— No "succession". 11 R. 501=148 I.C. 594= 1934 R. 13 (S.B.). Sec. 26 (2), if overridden by sec. 24-B—Succession to business by death —Levy of tax=Procedure. *See* I.L.R. 1944 M. 639=1944 M. 155=(1943) 2 M.L.J. 582. The requisities of "succession" under sec. 26 (2) of the Income-tax Act are: (1) there must be a business in existence prior to the date of an assessment being made; and (2) on the date of the making of the assessment it must be carried on by a person different to the person who carried it on prior to the date of the assessment, that is to say, the business must be the same but the person carrying it on must be different. What the section requires is that it should be the same business and not business of the same nature. Where some persons have for several years possessed the monopoly of supplying labour to the Port Trust, not jointly, but under different contracts, and finding that their monopoly is about to come to an end owing to the adoption by the Port Trust of the policy of inviting tender, and in order to secure continuity for their business they enter into a partnership and put in their tender for the contract, and being successful, find themselves in a position to continue the business without a break, it is not correct to say that they continue to supply labour to the Port Trust as before, or that what they do after that date is the same business. The prior business of the partners must be deemed to come to an end on the constitution of the partnership, and thereafter a new and separate partnership is started to carry on a business of the same nature. There is consequently no "succession" within the meaning of sec. 26 (2). I.L.R. 1937 Mad. 814= 1937 M. 316=(1937) 1 M.L.J. 619 (F.B.). *See also* 32 S.L.R. 203=1938 Sind 33. Transfer of agency by one agent to another. *See also* I.L.R 1940 Kar. 8=1939 Sind 318; 1941 Rang.L.R. 45=1940 Rang. 281. The word "assessment" is not confined to the definite act of making an order of assessment. Where a notice has been given under sec. 22 (2) to furnish a return, the process of assessment has begun and continues until some order of assessment is made. The words at the time of making the "assessment" in sec. 26 (2) therefore mean in the course of the process of assessment. Where, at the date of his death, a person carrying on business has been served with a notice under sec. 22 (2) and the time for furnishing the return had not expired and no return had been made, a person who succeeds to that business is taxable under sec. 26 (2). 61 I. A. 312=13 P. 607=1934 P.C. 200=67 M.L. J. 422 (P.C.). Sec 26 (2) operates not merely to fix the liability to pay tax but governs also the process of computation of the tax. "Assessment" in the Act is used in two senses: the process of determining the amount of profit or loss and the process of levying tax, but if there is nothing repugnant in the context, the word refers to the former. *Quere*—Whether sec. 26 (2) applies to a foreign

business. I.L.R. (1939) Mad. 269=1939 Mad. 376=(1939) 1 M.L.J. 482 (F.B.). *See also* 1939 Cal. 196. The Income-tax Act has to be construed as a whole and the definition in the assessment under sec. 26 (2), based on the profits of a predecessor in business, refers to such predecessor. I.L.R. (1938) Bom. 371 =40 Bom.L.R. 343=1938 Bom. 241 (S.B.); I.L.R. 1940 Bom. 287=1940 B. 169=42 Bom. L.R. 120=1940 I.T.R. 7. Sec. 26 of the Act is applicable in the case of foreign firms whose profits are brought into British India and are taxable under sec. 4 (2) of the Act. 1929 M. 769=57 M.L.J. 300 (F.B.). Successor is not bound to pay in respect of the predecessor any tax which the predecessor would not have been liable to pay. 47 A. 715=1925 A. 535=88 I.C. 239. There can be "succession" to a person without there being succession to that person's business. Succession to a person is not the same thing as succession to that person's business. A person may be succeeded by another in a business in the sense that it is the same sort of business, although not the same business. 27 S.L.R. 47=138 I.C. 673=1932 S. 189. The real test to determine whether there is "succession to business", within the meaning of sec. 26 (2) of the Act, is the identity of the two businesses and the time intervening between the closing down of the old business and the opening of the new one in its place. The delay is a question of degree and in some cases the delay may mean a cessor of profit-making operations and never any real cessation of the business at all. But where the time intervening between the two businesses is so great that "succession to old business" cannot be inferred, there is no 'succession to business' within the meaning of sec. 26 (2) of the Act. 1937 Rang. L.R. 26=1937 R. 102 (S.B.). "Succession"—Meaning of—Transfer of agency business in motor cars from one firm to another—Transferee—Assessment as successor —If justified—Principles. 1939 Sind 318. In order that a person should be held to have "succeeded" within the meaning of sec. 26 (2), it is necessary that the person succeeding should have succeeded his predecessor in carrying on the business as a whole. 1940 I.T. R. 531=1940 Rang. 281 (S.B.). Accumulated unabsorbed depreciation allowance of owner of business—If available to successor. *See* C.W.N. 681. Successor in business—Assessment of—Computation of profits—Right to depreciation of previous years. *See* 1939 I. T.R. 374. Where any change occurs in the constitution of a firm, for example, where a registered firm succeeds to the business of an undivided Hindu family, the assessment should be made on the firm as constituted at the time of making the assessment, that is, on the registered firm. 49 A. 611=1927 A. 397=25 A.L.J. 366. On this section, *see also* 1928 P.C 15=9 B. 123=55 I.A. 14=32 C.W.N. 457=54 M.L.J. 1 (P.C.). The legal effect of the disruption of a family is to be determined according to the facts of each case. The business of a family can continue in spite of its disruption. The question really is whether the business was discontinued or not in consequence of the breaking up of the family. 117 I.C. 2-8=1929 L. 161 (2). An assessee firm had a branch or agency operating at Ipoh in Federated Malay States. There had been an older firm there but this was wound up and the assets in the shape of outstandings divided between the partners. Part of these assets fell to the share of the partners in the assessed firm and were shown as credit in its general balance. During the year for which the firm was assessed, Ipoh branch remitted Rs. 1,20,000 in all to British India. Income-tax Department acting upon the presumption that this remittance was composed of profits made at Ipoh declined to accept the contention that the remittance was derived from realization of the old firm's outstandings and so was mainly capital. The assessed firm did not prove that the remittances were not composed of profits liable to tax. *Held*, that the assessment was good in law. 1930 M. 104=129 I.C. 654 (S.B.). Firm converted into company on first day of assessment year—Mode of assessment. 163 I.C. 860=1936 L. 510.

EFFECT OF.—Sec. 26 (2) is intended to secure to Government tax based on the earnings of a business for a full year notwithstanding the transfer of the business from one person to another before the expiry of the year, provided, of course, that the business is continued by the transferee. If the transferor and the transferee are separately taxed for profits earned by them during the period each of them carries on business, the incidence of taxation would be seriously affected; and if the income for the whole year though enjoyed by two different persons, is liable to be taxed at the end of the year, it is but proper that the person who is in possession of the business at the end of the year should be made responsible for it, leaving it to him to settle the equities between him and the transferor with regard to the apportionment of such taxation. 27 S.L.R. 47=138 I.C. 673=1932 S. 189.

OBJECT OF SECTION.—Sec. 26 is designed for the purpose of making somebody assessable to income-tax, and the whole scheme of the Act is not to assess two people at the same time, but to find somebody who is either properly assessable or more conveniently assessable; and what sec. 26 (2) says is that where a person who was not the former owner of a company is found to be owning that company in the year of assessment, that person is to be assessed. That is not only a convenient course, but seems to be a just one. Upon whom the burden is ultimately to fall is a matter of arrangement between the vendor company and the purchaser company. 55 M. 802=1932 M. 434=63 M.L.J. 15 (S.B.).

"A PERSON" includes the Secretary of State when engaged in enterprises of a commercial nature. The acquisition by him of a railway in the exercise of the statutory powers vested in him under the Railways Act would nevertheless make him the suc-

Provided that, when the person succeeded in the business, profession or vocation cannot be found, the assessment of the profits of the year in which the succession took place up to the date of succession, and for the year preceding that year shall be made on the person succeeding him in like manner and to the same amount as it would have been made on the person succeeded or when the tax in respect of the assessment made for either of such years assessed on the person succeeded cannot be recovered from him, it shall be payable by and recoverable from the person succeeding, and such person shall be entitled to recover from the person succeeded the amount of any tax so paid.]

Procedure in registration of firms.

[1][26A. (1) Application may be made to the Income-tax Officer on behalf any firm, constituted under an instrument of partnership specifying the individual shares of the partners, for registration for the purposes of this Act and of any other enactment for the time being in force relating to income-tax or super-tax.

LEG. LEF.

[1] Inserted by sec. 5 of Act XXI of 1930.

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cessor of the company in respect of such railway. 27 S.L.R. 47=138 I.C. 673=1932 S. 189.

"CAPACITY" EXPLAINED.—By capacity is meant a position enabling one to do something. 27 S.L.R. 47=138 I.C. 673=1932 S. 189.

ESCAPING ASSESSMENT.—Though it may appear somewhat unreasonable to the Court that a company should escape assessment of tax on a profit which it has admittedly made, yet, if the law, as it stands, enables the company to avoid payment of the tax, the Court is bound to give effect to it. Therefore where the Government acquires a private concern whom it pays profit for the previous nine months and keeps to itself profit for the last three months of the year, sec. 26 (2) applies to such a case and the company cannot be assessed for the profits given to it by the Government. 27 S.L.R. 47=138 I.C. 673 =1932 S. 189.

TRADING LOSS.—Where, at a time when a money-lending firm was reconstituted, the assessees entered in their books of account that certain lands possessed by the old firm had fallen in value and entered the difference as a loss to the business: *Held*, that there was no *trading loss* but only a depreciation of the value of the assets; until property taken in repayment of loans is sold, there can be no realised trading loss in respect of such property. 11 R. 462=1934 R. 1 (F.B.). The proper legal effect of a proved fact is essentially a question of law. Whenever the facts give rise to a consequential question whether there is or is not a "succession" within the meaning of sec. 26 (2), a question of law is involved. 1940 I.T.R. 531=1941 Rang.L.R. 45=1940 Rang. 281 (S.B.).

SECS. 26 (2) AND 34 (1).—Seccession—Firm taking over business as going concern except one item of profits—Succeeds to business—Profits made before 1939 escaping assessment —Assessment after 1939—Assessment to be according to the law as it stood when the escaped profits ought to have been assessed and not under the amended section in force at time of actual assessment. (1943) I.T.R. 504=1944 Cal. 116.

SECS. 26 (2) AND 44.—Partnership—Dissolution—One partner continuing business—If "succeeds" to business—Ex-partner assessed on share of profits—Fresh assessment on 'successor'—Justified. I.L.R. (1941) Mad. 220=53 L.W. 210=1941 Mad. 255=(1941) 1 M.L.J. 120 (S.B.).

SEC. 26 (2), PROVISO: APPLICABILITY—REQUISITES—"CANNOT BE FOUND"—MEANING OF.—It cannot be held that a firm which has been dissolved "cannot be found" within the meaning of the proviso to sec. 26 (2) of the Income-tax Act, notwithstanding that all the members of the firm are alive and can be found. Before the proviso can be brought into operation, it must be established that the person succeeded "cannot be found", that is, he must be dead or has disappeared. The proviso cannot be applied when the person succeeded is alive and his whereabouts are known or can be ascertained. I.L.R. (1941) Mad. 868=54 L.W. 90=1941 Mad. 673= (1941) 2 M.L.J. 152 (F.B.).

SEC. 26-A.—Sec. 26-A only contemplates the registration of a firm which is constituted under an instrument of a partnership which with clearness states what the individual shares of the partners are. Where, on the death of a partner, his widow is taken in as a partner and his minor children, three sons and three daughters, are admitted to the benefits of the partnership as a body and not as individuals, and an application is made under sec. 26-A of the Act for registration of the new firm, stating that the widow is entitled to a six annas share, though under the deed her share is really only two annas, the remaining four annas being intended for the benefit of the minor children who are admitted to the benefits of the partnership in a body, it cannot be said that the shares of the minors are specified with certainty so as to comply with sec. 26-A of the Act. I.L.R. 1942 Mad. 281=1942 M. 177=(1942) 1 M.L. J. 18 (S.B.). A Hindu undivided family as such cannot enter into a partnership with a coparcener of the same family. The contribution made by such coparcener may be treated as a debt advanced to the family and he may be allowed interest thereon but he cannot claim to be a partner. (1944) I.T.R. 335 =1945 L. 61. The Income-tax Officer is the proper person to decide whether registration

(2) The application shall be made by such person or persons, and at such times and shall contain such particulars and shall be in such form, and be verified in such manner, as may be prescribed ; and it shall be dealt with by the Income-tax Officer in such manner as may be prescribed.]

should be allowed. The remedy against any decision of his is by way of appeal as provided in the Act and not by a suit. I.L.R. 1945 Nag. 527=1944 N.L.J. 463=1944 Nag. 382. Where an application is made for renewal of registration of a firm under sec. 26-A, the Income-tax Officer is bound under r. 6 of the Rules to renew the certificate from year to year, when such application is made to him accompanied by a certificate signed by one of the partners of the firm that the constitution of the firm as specified in the instrument of partnership remained unaltered. He has no power to decline to renew the certificate of registration unless the firm has in fact altered its constitution since the grant of the prior certificate. Rule is imperative. 31 N. L.R. (Supp.) 233=162 I.C. 554=1936 N. 121. I.L.R. (1940) Nag. 200=1940 Nag. 119. It is open to the Income-tax Officer to suspend orders on an application already presented under sec. 26-A by members of a Hindu family until the assessment proceedings are held. If at the time of making the assessment a claim is made under sec. 25-A it is the duty of the Income-tax Officer to decide whether there has been a separation of members and a partition of the property within the meaning of sub-sec. (1) of that section. If it is found that there has been such separation and partition an order will be passed to that effect, and if it appears that a firm has been constituted by the separated units which have come into existence the Income-tax Officer will proceed under sec. 26 and will then register the firm upon an application under sec. 26-A. I.L.R. (1938) A. 638=1938 A.L.J. 610=1938 All. 452. Where it is found that there has been no genuine separation in status and estate between the various members of a Hindu family firm, though the family has disrupted, the Income-tax Authorities would be justified in rejecting an application by the members thereof for registration under sec. 26-A of the Act on the ground that there could be no contractual relationship between coparceners. (1946) I. T.R. 246. Where certain persons apply under sec. 26-A for registration, the Income-tax Authorities are entitled to go behind the deed of partnership and find from evidence direct and circumstantial that the deed is bogus and to refuse to register them as a firm. 1939 I. T.R. 625. The onus rests on the person who applies for the registration of the firm to prove that a genuine instrument of partnership has been executed and that all the persons named therein are actual persons and not 'dummies'. I.L.R. (1938) Lah. 113=1938 Lah. It is true that no partnership can be registered if any partner under the deed is liable to have a variation of his share. But 'share' does not mean net receipts. It is the basis of computation from which, after other necessary factors are considered, one is going to arrive at them. The law looks to the shares in the partnership business and not to the receipts from it, which may happen in certain contingencies to find their way into the pockets of individual partners. It is a fallacy to say that the individual shares of partners are not "adequately" specified by reason of the fact that their drawings or receipts may be conditioned by effect being given to other stipulations in the partnership deed. Hence where the partnership deed is genuine and the shares of each partner (as a basis for computation and not as a means by themselves of calculating his net receipts) are definite and determinable and the deed specifies these shares, and the profits of each current year are shown and credited in accordance with the shares shown in the partnership deed, the deed is registrable under sec. 26-A even though the deed provides that what the partners actually get will depend upon the time which they have devoted to the business or their absence therefrom. 1939 Rang.L.R. 532=1939 Rang. 178. *Per* Beaumont, C.J.—R. 4 (new) of the Rules under sec. 26-A of the Income-tax Act as amended in 1939 does not alter the law as it previously existed; it only makes the true effect of r. 4 clearer than it was under the previous wording. Both under the old and the new rule, it is open to the Income-tax Officer to say that the shares which appear in the deed of partnership, produced with an application for registration are not the true shares of the partners and therefore there is no proper application by the requisite firm. If it were shown that one of the partners was only a nominee of a share allotted to him or another for another partner, the deed would not then specify correctly the individual shares. It must specify correctly the individual and beneficial shares. I.L.R. (1941) Bom. 384=43 Bom.L.R. 258=1941 Bom. 205. Where in a partnership constituted by a deed of partnership for a fixed period the legal representatives of a deceased partner who, by reason of a provision in the deed are entitled, but not bound, to come in as partners in place of the deceased partner for a period which may be the same as, or different from, the period fixed by the deed, elect to continue the partnership for the unexpired portion of the period, the constitution of the firm is altered; and therefore the new firm cannot apply for renewal of the registration. Nor can the new firm in such a case apply for registration of the original partnership as, *ex hypothesi*, the applicants for registration are not parties to the deed of partnership. The only course open to the new partners, if they seek registration, is to execute a new deed of partnership and to apply for the registration of that deed. 1942 I.T.R. 422. *See also* 1942 I.T.R. 219 =(1942) A.L.W. 301.

SEC. 26-A.—If affects liability under sec. 3—Shares shown in instrument of partnership as registered—Power of Income-tax

27. Where an assessee [1]* * * * whithin one month from the service of a notice of demand issued as hereinafter provided, satisfies the Income-tax Officer that he was prevented by sufficient cause from making the return required by section 22, or that he did not receive the notice issued under sub-section (4) of section 22, or sub-section (2) of section 23, or that he had not a reasonable opportunity to comply, or was prevented by sufficient cause from complying, with the terms of the last-mentoined notices, the Income-tax Officer shall cancel the assessment and proceed to make a fresh assessment in accordance with the provisions of section 23.

Cancellation of assessment when cause is shown.

LEG. REF.

[1] The words "or, in the case of a company, the principal officer thereof" omitted by sec. 33 of Act VII of 1939.

Department to go behind and enquire as to genuineness. *See* 47 Bom.L.R. 174=I.L.R. 1945 B. 419=1945 Bom. 238.

SEC. 26-A AND RR. 2 AND 6: SCOPE.—Application for registration signed by clerk and unaccompanied by certificate of partner to show that constitution of firm was unaltered not valid. 1940 I.T.R. 121. Alleged unregistered gift by Mahomedan assessee and reinvestment in business—Unregistered partnership deed produced—cannot be registered as firm. 1938 Rang. 435. Under sec. 26-A the Income-tax Officer is empowered to register only the partners ip which is specified in the instrument of partnership which has been put forward and nothing else. If some of the persons constituting the partnership are not competent in law to be partners, the partnership, constituted by the other partners is not the partnership which the assessee seeks to register but another partnership altogether, if indeed there is in existence any partnership at all. It is quite open to the Income-tax Officer to look into the reality of the document relating to the partnership and refuse registration in such circumstances. 41 C.W.N. 629=I.L.R. (1937) 2 Cal. 160. A firm constituted under a registered deed of partnership of which one member is a firm, is not entitled to be registered as a firm for the purpose of income-tax if the instrument, while specifying the individual shares of profits and losses, does not specify the shares *inter se* of the partner firm. Unless the individual shares of the partners are specified in the instrument of partnership, the Income-tax Officer is justified in refusing registration although he has knowledge of it otherwise. The words of sec. 26-A do not permit of any elasticity of construction. I.L.R. (1937 Mad. 814=1937 M. 316=(1937) 1 M.L.J. 619 (F.B.). The question as to whether the partnership transaction is real or not is purely a question of fact. A mere application under sec. 26-A and a decision by the Income-tax Officer even in favour of the assessee will not conclude the matter. 164 I.C. 799=1936 P. 476. R. 2 of the Income-tax Rules framed under sec. 26-A of the Income-tax Act is not *ultra vires*. An Income-tax Officer does not act illegally in rejecting an application for renewal of registration of a firm on the ground that it is not signed by all the partners of the firm as required by r. 2. An Income-tax Officer is also entitled to refuse renewal of registration on the ground that the partnership deed does not disclose the correct state of affairs. No question of law is involved so as to justify the High Court in interfering under sec. 66 (3) of the Act and directing a reference. I.L.R. (1942) Kar. 582=(1942) I.T.R. 501=1943 Sind 85. An application by a partner of a firm of two brothers for the renewal of its registration signed by himself and on behalf of the other partner under a general power of attorney from him has to be rejected as not complying with r. 6 of the Income-tax Rules. The word "personally" used in that rule necessarily excludes the acting by an authorised agent of a partner and hence from signing an application on behalf of the other partner under sec. 26-A. Sec. 2 of the Powers of Attorney Act merely states the general principles of agency and cannot override a specific provision of a rule made under a different statute which requires a particular act to be done by a particular person "personally" (*i.e.*) by himself. 1946 I.T.R. 232=1946 Mad. 411=(1946) 1 M.L.J. 332.

SECS. 26-A AND 25-A.—Before a deed of partnership in respect of a business previously carried on as a joint Hindu family business can be registered under sec. 26-A, there must be proof of a partition among the members of the family prior to the execution of the partnership deed. The Income-tax Officer must record an order to that effect after enquiry upon notice to all the members of the family under sec. 25-A of the Act. He is not bound to accept the recitals in the partnership deed as correct and can call upon the executants thereof to prove the facts recited therein. 50 C.W.N. 283.

SEC. 27.—Sec. 27 is applicable to the cases noted therein. It does not apply to a case where the Assistant Commissioner refuses to admit an appeal *ex parte* without hearing the assessee or his counsel. But even where sec. 27 is applicable it is open to the aseessee if he has a good case to file an appeal and show that the order under sec. 23 (4) was not justified. 1932 A.L.J. 389=1932 A. 390=54 All. 496. It would be for the Income-tax Officer to decide whether, on the particular facts of the case sufficient cause has been shown by the assessee for not appearing in time. 1924 M.W.N. 785=1924 M. 880; 27 A.L.J. 536=119 I.C. 569 (2); 1930 A.

L.J. 78=1930 A. 209; 8 R. 209=1930 R. 78; 140 I.C. 712=1932 P. 166. The words "satisfies" and "was prevented by sufficient cause" being practically identical with similar words occurring in O. 9, r. 9 and O. 41, r. 19, C. P. Code and sec. 5, Limitation Act, they must receive similar interpretation as has been put upon those words in the latter enactments. 1934 S. 183 (2). Where the Income-tax Officer makes an assessment under sec. 23 (4), the proviso to sec. 30 (1) applies and an appeal to the Assistant Commissioner is barred. The proper remedy for the assessee is to apply to the Income-tax Officer under sec. 27 and in the event of the decision going against the assessee to file an appeal. 8 R. 587=1931 R. 53. When there is ample evidence upon which the Income-tax Officer can find that there was no sufficient cause and he had refused to cancel the assessment made under sec. 23 (4) and his order is upheld by the Assistant Commissioner on appeal there is no question of law arising for the purpose of sec. 66 (2). 9 R. 21; 9 R. 25 Even if the High Court thinks that the action of the Income-tax Officer is arbitrary and harsh and that the assessment has been made *ex parte* without sufficient materials or justification, it cannot interfere under sec. 66 of the Act. 84 I.C. 131=1924 M. 880. In an appeal against the order of the Income tax Officer refusing to reopen the question of summary assessment, the only question before the Assistant Commissioner is whether the assessment should be reopened, *i.e.*, the order of the Income-tax Officer set aside and where he decides that question in the negative and holds that there is no sufficient cause for reopening the question, he is not obliged to enter into the merits of the assessee's return. The assessment order stands and there is nothing to enquire about. 139 I.C. 593=1932 C. 410 (S.B.). The question of the sufficiency of cause is different from the question of the sufficiency of evidence, since the determination of this sufficiency of cause involves the question whether judicial discretion has been exercised in a sound and reasonable manner and, therefore, does involve a question of law. 8 R. 2 3=1930 R. 33. It is possible as a matter of law for the Income-tax Officer to find as a fact that a particular assessee had failed to establish "sufficient cause" or "not reasonable opportunity" within the meaning of sec. 27. 38 P.L.R 812 (2)=1936 L. 489. The illegality of a notice, non-compliance with which has brought about a best judgment assessment under sec. 23 (4), can be agitated within the expression "prevented by sufficient cause" under sec. 27 of the Act. The assessee has to satisfy the conditions laid down in the section in connection with the particular notice, non-compliance with which has brought about the best judgment assessment. I.L.R. (1937) All. 834=1937 A.L.J. 957=1937 All. 770. The question whether the assessee was prevented by sufficient cause from appearing or from complying with the terms of a notice issued under the Act would be a question of fact; in some cases it is possible to say that if the notice issued is an illegal notice or an invalid notice, the assessee can very well refuse to comply with that notice and can subsequently say that he was prevented by sufficient cause from complying with the notice. The assessee was served with a notice under sec. 22 (2) and filed a return. The case was subsequently transferred to another Income tax Officer who issued a second notice under sec. 22 (2), and a return was filed before him. The case was against re transferred to he Income-tax Officer who originally dealt with the case, and he started proceedings on the return which was filed before him and which had been subsequently filed before the officer to whom it was transferred. The assessee did not raise any objection to the effect that a fresh notice should have been issued to him under sec. 22 (2) after the re-transfer, and he was assessed under sec. 23 (*a*). *Held*, that the assessee had not "sufficient cause" within the meaning of sec. 27 of the Act, that he was not prejudiced in any way, and he could not call in question the validity of the proceedings on the ground of the absence of a fresh notice after the re-transfer. No question of law arose in the case under sec. 66 (2). 1942 I.T.R. 148=1942 A.L.W. 305=1942 O.A. 300. Sec. 27—"Sufficient cause"—Meaning of—Objection to jurisdiction of Income-tax Officer—Notice under sec. 22 (4)—Jurisdiction—Question decided by High Court in favour of assessee—Subsequent validation of proceedings by ordinance—Assessment under sec. 23 (4) without opportunity to produce books after ordinance—Application under sec. 27—Competency—Assessee, if can be said to have sufficient cause for not complying with notice under sec. 22 (4). *See* (1943) I.T.R. 104=45 Bom.L.R. 168.

APPEAL.—Where the Income-tax Officer makes an assessment under sec. 23 (4), the proviso to sec. 30 (1) applies and an appeal to the Assistant Commissioner is barred. The proper remedy is to apply under sec. 27 and in the event of the decision going against the assessee to file an appeal. 8 R. 587=1931 R. 53.

REFERENCE TO HIGH COURT.—When a notice was duly served on the assessee not under sec. 22 (4), but he failed to produce some of the accounts and thereupon the Income-tax Officer made an assessment under sec. 23 (4) and subsequently he refused to cancel the assessment at the instance of the assessee holding that there was no sufficient cause for the non-production of the accounts and the same order was affirmed by the Assistant Commissioner, on appeal, *held*, that the questions regarding the validity of the notice and the propriety of the assessment did not arise in the appeal and that there was no room for a reference to be made to the High Court. 9 R. 25=1931 R. 98.

SECS. 27 AND 66 (2).—Sufficiency of cause for having *ex parte* assessment reopened under sec. 27 of the Income-tax Act is a question of fact. But since its ddetermination essentially depends upon the exercise

Penalty for concealment of income or improper distribution of profits.

[1][28. [2](1) If the Income-tax Officer, the Appellate Assistant Commissioner [3][or the Appellate Tribunal] in the course of any proceedings under this Act, is satisfied that any person—

LEG. REF.

[1] Substituted by sec. 6 of Act XXI of 1930.
[2] Substituted by sec. 34 of Act VIII of 1939.
[3] Substituted for "or the Commissioner" by sec. 86, *ibid.*

of judicial discretion, the question whether discretion has or has not been exercised in a sound and reasonable manner in reaching the conclusion invariably involves a question of law. 31 N.L.R. 32=1934 N. 183. *See* 1942 A.L.W. 305. The question whether an assessee had or had not sufficient cause within the meaning of sec. 27 of the Act is ordinarily a question of fact, and no reference with regard to it is competent under sec. 66 (2) or (3). 1940 All. 530=I.L.R. (1941) All. 1=1941 A.L.J. 12.

SEC. 28.—Valid reassessment proceedings a condition precedent to imposing penalty. *See* 54 M.L.J. 298=1928 M. 257 (F.B.). In proceedings under sec. 28, the Income-tax Authorities ought to act fairly and reasonably in the circumstances of each case. 12 R. 268=151 I C. 673=1934 R. 95. The quantum of the penalty within the statutory limit that ought to be imposed is matter of fact and not of law, and is to be determined by the Income-tax Authorities, and not by the Court. 12 R. 268=1934 Rang. 95. Where an assessee submits deliberately an incorrect statement of his accounts to the Income-tax Officer, he cannot be said to have discovered his mistake on the day on which he files a corrected statement because at the time when he made his previous return, he knew it was incorrect and he could not at any subsequent time have discovered something which he knew at an earlier time, and so the order of the Income-tax Authorities imposing a penalty on him under sec. 28 is quite correct. Although the later return may for the purposes of assessability to income-tax be treated as a revised return under sec. 22 (3), the Incomh-tax Authorities are entitled to look at the previous incorrect return and are under sec. 28 entitled to inflict a penalty upon the person who has made it. 55 M. 827=1932 M. 433=63 M.L.J. 236 (F.B.). The word 'income' as has been used in the Income-tax Act has a wider sense and it connotes the assessable figure arrived at after accounting for all the legitimate deductions and exemptions and if any assessee furnishes any false particulars about any item which is to be accounted for before the assessable figure is arrived at, he brings himself within the clutches of the law. Hence, an assessee who dtliberately claims a false deduction can be penalized under sec 28. I.L.R. 1938 L. 651 =40 P.L.R. 913=1938 Lah. 620. The maximum penalty that can be imposed under sec. 28 (1) is a sum representing the difference between the tax on the income declared by the assessees and the tax on the income ascertained under the Income-tax Act in respect of which the assessment has been made. (11 R. 75 Foll.) 12 R. 268=1934 Rang. 95. The maximum penalty which can be imposed under sec. 28 (1), Income-tax Act, is determined by ascertaining the difference between the amount of the tax on the income set out in the false return and that on the income on which the assessment has been made. But the questions whether a penalty ought to be imposed and, if so the amount thereof, are matters which are (subject to secs. 30 to 32) within the discretion of the Income-tax Officer; and upon these matters the assessee is entitled to be heard under sec. 28 (3). 12 R. 470=1934 R. 354 (S.B.). The Assistant Commissioner of Income-tax has no authority in law to enhance the penalty while hearing an appeal against imposition of penalty or imposition of assessment under sec. 28 of the Act. 53 A. 679= 1931 A.L.J. 414=1931 A. 401. Sec. 28 of the Act must be strictly construed. There is no word in the section regarding supertax. Therefore the Income-tax Officer has no jurisdiction to impose a penalty in the matter of super-tax. 53 A. 445=1931 A.L. J. 336=1931 A. 421. There is no reason why any distinction should be drawn between the quantum of evidence required to support an assessment and the quantum required to justify the imposition of a penalty under sec. 28 for concealment and deliberate furnishing of inaccurate particulars. Circumstantial evidence would be sufficient. 1942 I. T R. 435. In an inquiry under sec. 28 as to whether penalty should be imposed, evidence adduced by the assessee purporting to disclose the real income of the assessee is relevant and admissible, not for the purpose of varying or affecting the assessment made for the purpose of imposing the tax under the Act, but in order to show either that no penalty ought to be imposed, or the the maximum prescribed under sec. 28, and the Income-tax Officer is not justified in refusing to admit evidence of the income that in truth accrued in the course of the assessment year. 11 R. 75=1933 R. 30 (F.B.). The Commissioner, in deciding whether the imposition of the penalty by the Assistant Commissioner is illegal, cannot reimpose the penalty himself, and thereby validate the very order which was challenged in appeal before him. For the same reason the Commissioner is precluded from imposing the penalty when an application is preferred to him under sec. 66 (2) of the Act praying that he may refer to the High Court the question of the validity of the imposition of the penalty by the Assistant Commissioner. No penalty can be imposed under sec. 28 of the Act unless a notice is served on the assessee to show cause against the imposition of such a penalty. 1936 L. 585. Once the Income-tax Officer starts proceedings under sub-sec.

(*a*) has without reasonable cause failed to furnish the return of his total income which he was required to furnish by notice given under sub-section (1) or sub-section (2) of section 22 or section 34 or has without reasonable cause failed to furnish it within the time allowed and in the manner required by such notice, or

(*b*) has without reasonable cause failed to comply with a notice under sub-section (4) of section 22 or sub-section (2) of section 23, or

(*c*) has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income,

[1][he or it may direct] that such person shall pay by way of penalty, in the case referred to in clause (*a*), in addition to the amount of the income-tax and super-tax, if any, payable by him, a sum not exceeding one and a half times that amount, and in the cases referred to in clauses (*b*) and (*c*), in addition to any tax payable by him, a sum not exceeding one and a half times the amount of the income-tax and super-tax, if any, which would have been avoided if the income as returned by such person had been accepted as the correct income :

Provided that—

(*a*) no penalty for failure to furnish the return of his total income shall be imposed on an assessee whose total income is less than three thousand five hundred rupees unless he has been served with a notice under sub-section (2) of section 22;

(*b*) where a person has failed to comply with a notice under sub-section (2) of section 22 or section 34 and proves that he has no income liable to tax, the penalty imposable under this sub-section shall be a penalty not exceeding twenty-five rupees;

(*c*) no penalty shall be imposed under this sub-section upon any person assessable under section 42 as the agent of a person not resident in British India for failure to furnish the return required under section 22 unless a notice under sub-section (2) of that section or under section 34 has been served on him.]

[2][(*d*) when the person liable to penalty is a registered firm, or an unregistered firm treated under section 23 (5) (*b*) as a registered firm, so that the amount of the income-tax and super-tax payable by the firm itself has not been determined, that amount shall be taken to be an amount equal to the tax which would have been payable by an unregistered firm on an income equal to the firm's total income, and, in the cases referred to in clauses (*b*) and (*c*), the amount of the income-tax and super-tax which would have been avoided if the income as returned had been accepted as the correct income, shall be taken to be the difference between the amount of the tax which would have been payable by an unregistered firm on an income equal to the firm's total income and the amount of the tax payable by an unregistered firm on an income equal to the income of the firm as actually returned by the firm.]

(2) If the Income-tax Officer, the [3][Appellate Assistant Commissioner] [4][or the Appellate Tribunal], in the course of any proceedings under this Act, is satisfied that the profits of a registered firm have been distributed otherwise than in

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LEG. REF.

1 Substituted for the words "he may direct" by sec. 86 of Act VII of 1939.

2 Added by sec. 8 of Act XL of 1940.

3 Substituted for "Assistant Commissioner" by sec. 34 of Act VII of 1939.

4 Substituted for "or the Commissioner" by sec. 86, *ibid.*

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(1) of sec. 28 within the time prescribed there, he is empowered to make an order imposing a penalty under that sub-section, even after the assessment order has been finally made and the tax been paid. 1938 Lah. 749. Notice under sec. 28 (3) to show cause why a penalty should not be imposed need not be given before the conclusion of the assessment. All that the section requires is that there should be a discovery and that the person discovering it is satisfied that an assessee has concealed particulars of his income or deliberately furnished inaccurate particulars in the course of any proceedings under the Act. (1944) I.T.R. 233=1945 Cal. 65. Proceedings started before Amendment—Notice after, to produce books—Failure to comply—Imposition of penalty—Legality. *See* (1943) 2 M.L.J. 6=1943 Mad. 579=(1943) 2 M.L.J. 6. Approval of imposition of penalty—Inspecting Assistant Commissioner bound to hear assessee—Question whether imposition of penalty was justified is one of fact. (1944) I.T.R. 432.

"REAL AMOUNT".—The same meaning must be attributed to the term "income" for the purpose of construing the words "real amount" of income and "correct income" in sec. 28. 12 R. 268=1934 R. 95.

accordance with the shares of the partners as shown in the instrument of partnership registered under this Act governing such distribution, and that any partner has thereby returned his income below its real amount, [1][he or it may direct] that such partner shall, [2][in addition to the income-tax and super-tax, if any, payable by him] pay by way of penalty a sum [3][not exceeding one and a half times the amount of income-tax and super-tax] which has been avoided, or would have been avoided if the income returned by such partner had been accepted as his correct income; and no refund or other adjustment shall be claimable by any other partner by reason of such direction.

(3) No order shall be made under sub-section (1) or sub-section (2) unless the assessee or partner, as the case may be, has been heard, or has been given a reasonable opportunity of being heard.

(4) No prosecution for an offence against this Act shall be instituted in respect of the same facts on which a penalty has been imposed under this section.

(5) An [4][Appellate Assistant Commissioner] [5][or the Appellate Tribunal on making] an order under sub-section-section (1)or section (2), shall frothwith send a copy of the same to the Income-tax Officer.]

[6][(6) The Income-tax Officer shall not impose any penalty under this section without the previous approval of the Inspecting Assistant Commissioner.]

[7][29. When any tax, penalty [8][or interest] is due in consequence of any order passed under or in pursuance of this Act, the Income-tax Officer shall serve upon the assessee or other persor liable to pay such tax, penalty [9][or interest] a notice of demand in the prescribed form specifying the sum so payable.]

Notice of demand.

30. (1) Any assessee objecting to the amount [10][of income assessed under section 23 or section 27, or the amount of loss computed under section 24 or the amount of tax determined under section 23 or section 27], or denying his liability to be assessed under this Act,

Appeal against assessment under this Act.

LEG. REF.

1 Substituted for the words "he may direct", by *ibid.*

2 Substituted for the words "in addition to the income-tax payable by him", by sec 34, *ibid.*

3 Substituted for the words "not exceeding the amount of income-tax" by *ibid.*

4 Substituted for "Assistant Commissioner" by sec. 34 of Act VII of 1939.

5 Substituted for "or a Commissioner, who has made" by sec. 86, *ibid.*

6 Added by sec. 34, *ibid.*

7 Subs ituted by sec. 35, *ibid.*

8 & 9 Substituted by Act XI of 1944.

10 Substituted for the words and figures "or late at which he is assessed under sec. 23 or sec. 27" by sec. 36, *ibid.*

SEC. 29.—As to period within which notice demanding income-tax should be issued, *see* 5 P. 13=7 P.L.T. 269=1925 P. 581. Where there is a perfectly good assessment order the fact that a mistaken notice was sent to the assessee in no way prevents a proper notice being sent when the mistake is discovered. 139 I C. 593=1932 C. 410 (S.B.). Service of notice—Service on person authorised to receive postal articles under letter of authorization is sufficient—Person discharged from service but letter of authority not cancelled—Effect—Service on such person is good in law. 1941 I.T.R. 193. The word "assessment" in sec. 23 (4) means determining the total taxable income and the sum payable on it. A notice can be validiy issued under sec. 29 when the Income-tax Officer has made a best judgment assessment under sec. 23 (4). 56 A. 418=1934 A. 930.

SEC. 30.—Where the Income-tax Officer makes an assessment under sec. 23 (4), the proviso to sec. 30 (1) applies and an appeal to the Assistant Commissioner is barred. The proper remedy for the assessee is to apply to the Income-tax Officer under sec. 27 and in the event of the decision going against the assessee to file an appeal. 8 R. 587=1931 R. 53. *See* 27 Bom.L R. 400=1925 B. 257. Sec. 30 deals with appeals against assessments, and as soon as the Assistant Commissioner finds that the assessment is validly made under sec. 23 (4), the proviso to sec. 30 (1) comes into operation, and it is in pursuance of that proviso that the Assistant Commissioner refuses to admit the appeal; and he cannot thereafter take any action under sec. 28 (3) by issuing a notice to the assessee regarding penalty. 1936 L. 585. There is nothing in the Act to warrant the suggestion that a wrong order passed by an Income-tax Officer as a preliminary to his passing an order under sec. 23 of the Act may not be made a ground of appeal when appealing against the final order of assessment, unless a separate appeal or application for review, where no appeal is allowed, has been successfully filed against such order. As a matter

[1][or objecting to the cancellation by an Income-tax Officer of the registration of a firm under sub-section (4) of section 23 or to a refusal to register a firm under sub-section (4) of section 23 or section 26-A];

or to make a fresh assessment under section 27, or [2][objecting] to any order [3]* * * * under sub-section (2) of section 25 [4][or section 25A] [2][or sub-section (2) of section 26] or section 28, made by an Income-tax Officer [5][or objecting to any penalty imposed by an Income-tax Officer under sub-section (6) of section 44E or sub-section (5) of section 44F or sub-section (1) of section 46, or objecting to a refusal of an Income-tax Officer to allow a claim to a refund under section 48, 49, or 49F, or to the amount of the refund allowed by the Income-tax Officer under any of those sections, and any assessee, being a company, objecting to an order made by an Income-tax Officer under sub-section (1) of section 23A], may appeal to the [6][Appellate Assistant Commissioner] against the assessment or against such refusal or order :

[7][Provided that no appeal shall lie against an order under sub-section (1) of section 46 unless the tax has been paid :

Provided further that where the partners of a firm are individually assessable on their shares in the total income of the firm, any such partner may appeal to the Appellate Assistant Commissioner against any order of an Income-tax Officer determining the amount of the total income or the loss of the firm or the apportionment thereof between the several partners, but in respect of matters which are determined by such order may not appeal against the assessment of his own total income :

LEG. REF.

1 Substituted by Act XI of 1944.

2 Inserted by sec. 36 of Act VII of 1939.

3 The words "against him" omitted by *ibid.*

4 Inserted by sec. 4 of Act XXII of 1930.

5 These words, brackets, figures and letters inserted by Act VII of 1939.

6 Substituted for "Assistant Commissioner" by sec. 36, *ibid.*

7 Substituted, by *ibid.*

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of fact, the tendency of the legislature has always been to prevent appeals against interim orders, leaving it open to the party aggrieved to challenge such orders when appealing against the final order. 1930 S. 301. The clause "denying his liability to be assessed" in sec. 30, Cl. (1), is wide enough to cover a case of an assessee who denies his liability to be declared an agent under sec. 43. 28 N.L.R. 194=140 I.C. 490=1932 N. 152. The Assistant Commissioner is right in examining the case to satisfy himself whether the appeal before him is competent. Without examining the record to some extent he cannot be in a position to find whether the assessment is under sec. 23 (4) and whether an appeal lay. And the order of the Assistant Commissioner to the effect that no appeal lay does not amount to an order dismissing an appeal under sec. 31=55 A. 804=1933 A. 541=1933 A.L.J. 1474.

RIGHT OF APPEAL—EXTENT OF.—No appeal would lie against an order refusing to register a firm made prior to the amendment of the Income-tax Act by Act XVIII of 1933 which afforded a right of appeal subsequent only to 11—9—1933. 1940 I.T.R. 421=1940 Sind 214. An order under sec. 26-A refusing to register a firm was not appealable before the 11th September, 1933, on which date sec. 30 (1), as amended by the Amending Act XVIII of 1933, came into force. A proceeding under sec. 26-A is a proceeding different from proceedings under sec. 23 of the Act; hence an order under sec. 26-A not being made in a proceeding which is an essential part of another proceeding in respect of which an appeal was specially provided by sec. 30 (1) was not appealable on that ground also. I.L.R. (1940) Kar. 299. Sec. 30 provides for appeals against certain specific orders and orders passed under sections which are not mentioned in sec. 30, are not appealable and are therefore final in the sense that they cannot be re-opened at any subsequent stage. The Income-tax Act is a special enactment which gives the authorities specific powers for purposes of assessment and these powers can only be attacked in the manner prescribed by the Act. 164 I.C. 1018=1936 L. 621. An individual partner may appeal from the assessment of the firm of which he is a partner; but he cannot, in an appeal from an order assessing him personally ask for a re-determination of the question of the assessment of the firm and the income which has come to his share according to that assessment. 1941 I.T.R. 190. An assessee is not competent to withdraw an appeal presented by him under sec. 30. I.L.R. (1938) Lah. 359=1938 Lah. 741.

SEC. 30 (1), PROVISO—EFFECT.—The proviso to sec. 30 (1) has not the effect of taking away a right of appeal in cases where the assessee does not challenge the assessment levied on him under sec. 23, Cl. (4), but only challenges his liability to be taxed

Provided further that a shareholder in a company in respect of which an order under section 23A has been passed by an Income-tax Officer, may not in respect of matters determined by such order appeal against the assessment of his own total income.]

[1][(1-A) Any person having, in accordance with the provisions of sub-section (3-A), (3-B) or (3-C) of section 18 read with sub-section (6) of that section, deducted and paid tax in respect of any sum chargeable under this Act other than interest who denies his liability to make such deduction may appeal to the Appellate Assistant Commissioner to be declared not liable to make such deduction.]; (Inserted by Act XI of 1944)

(2) The appeal shall ordinarily be presented within thirty days [of the payment of the tax deducted under sub-section (3A-), (3-B) or (3-C) of section 18 or]. of receipt of the notice of demand relating to the assessment or penalty objected to [2][or of the order in writing notifying the amount of total income on which the determination under sub-section (5) of section 23 was based and the apportionment thereof between the several partners or of the loss computed under section 24.] [3][or of the intimation of the refusal [4][to pass an order under sub-section (1) section 25A, or] to register a firm under section 26A] or of the date of the refusal to make a fresh assessment under section 27, [5][or of the intimation of an order under sub-section (1) of section 23A or under section 48, 49 or 49F], as the case may be; but the [6][Appellate Assistant Commissioner] may admit an appeal after the expiration of the period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

LEG. REF.

1 Inserted by Act XI of 1944.
2 Inserted by Act XXIII of 1941.
3 Inserted by sec. 12 of Act XVIII of 1933.
4 Inserted by sec. 2 and Sch. I of Act XX of 1937.
5 Inserted by sec. 36 of Act VII of 1939.
6 Substituted words "Assistant Commissioner" by sec. 47, *ibid.*

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in a different capacity from that possessed by him and more so when such a capacity has been duly recognised by the Income-tax Officer. Even if the proviso be open to a double construction, the proviso should be so interpreted as to exclude an appeal only in respect of an assessment levied under sec. 23, Cl. (4) and not to an appeal of this nature. 28 S.L.R. 174=S. 46. *See also* (1943) I.T.R. 553; 1940 I.T.R. 421=1940 Sind 214; 15 Luck. 132=1940 Oudh 52 (denial of liability before Income-tax Officer, if pre-requisite to right of appeal). Proviso—Scope and effect —Refusal of Income-tax Officer to make fresh assessment under sec. 27—Appealability—Effect of cancellation of order of assessment under sec. 23 (4). 6 R. 652=116 I.C. 479= 1929 R. 8. A person who has been assessed under sec. 23 (4) is not entitled to prefer an appeal to the Assistant Commissioner on the ground that he was not liable to be assessed under the Act. Proviso to sec. 30 (1) is a bar to such an appeal. 11 P. 187=133 I.C. 753=1931 P. 306 (F.B.). Where an appeal is incompetent, the mere fact that the Assistant Commissioner in dismissing the appeal does not say that it is incompetent does not amount to an entertainment of the appeal so as to make the order appealable. 132 I.C. 857=1930 L. 1014. The mere fact that an assessment purports to have been made under sec. 23 (4) does not shut out appeal but it must be shown that circumstances or the case bring it within sec. 23 (4) Income-tax Act. 10 L. 596=1929 L. 393 (F.B.). *See also* 65 I.A. 236=1938 L. 593 (F.B.). *See also* 65 I.A. 236=1938 P.C. 175=(1938) 2 M.L.J. 115 (P. C.). Person assessed under sec. 23 (4) is not entitled to appeal on the ground that he was not liable to be assessed under the Act. 10 L. 596 (F.B.). Whether the Income-tax Officer legally proceeded to assess the petitioner under sec. 23 (4) is a question of law and no appeal lies to the Assistant Commissioner. 100 I.C. 774=1927 L. 288; 1940 Sind 214.

SEC. 30.—Appeal—Order under sec. 43 appointing person agent of non-resident Company—No appeal lies where neither the company nor the agent has been assessed in respect of profits accruing to the company in British India. (1943) I.T.R. 553. Hindu undivided family—Application under sec. 25-A alleging partition—Income-tax officer accepting factum of partition but holding against assessee as to date of partition—Appeal against assessment—Question as to correctness of decision as to date of partition can be raised—No separate appeal is necessary. (1944) I.T.R. 355=1944 Pat. 339.

Appeal—Assessment proceedings started before 1—4—1939—Order of assessment under sec. 23 (4) after Amendment Act came into force—Right of appeal. *See* 45 Bom.L. R. 168=1943 Bom. 122.

SEC. 30 (2).—The use of the word "ordinarily" means that there is nothing to prevent authorities from entertaining an appeal preferred after 30 days. 31 C.W.N. 630=1927 C. 518. On this section, *see also* 9 L. 464= 1928 L. 864. Appeal filed beyond time— Effect of rejection—Statement of case under sec. 66 (2) cannot be ordered by High Court.

(3) The The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

Hearing of appeal.

31. (1) The [1][Appellate Assistant Commissioner] shall fix a day and place for the hearing of the appeal, and may from time to time adjourn the hearing.

LEG. REF.

[1] Substituted for the words "Assistant Commissioner" by sec. 37 of Act VII of 1939.

153 I.C. 124=1935 A. 572. Under sec. 30 (2), an Assistant Commissioner has no authority to admit a new matter raised in the form of an additional ground of appeal, after an appeal has once been admitted, whether within the period prescribed therefor, or after its expiry. All that he can do under this enabling provision is to admit an appeal for the first time, even if it is presented after the period prescribed therefor. 18 Lah. 325=39 P.L.R. 934=1937 Lah. 830. There is no rule of limitation prescribed for filing additional grounds of appeal. Such grounds date back to the date of the original appeal, of which, when admitted, they become a part. If, therefore, the original appeal is filed in time the additional grounds can be filed at any time before the appeal is decided, and the Assistant Commissioner can admit them in the exercise of his discretion. His discretion in refusing to admit them is open to correction. If the objection raised in the additional grounds goes to the root of the assessment and questions the principle on which it is based by the Income-tax Officer, the Assistant Commissioner would be exercising his discretion erroneously in declining to admit them on the ground that they are filed after the period prescribed for the filing of the appeal. 1937 O.W.N. 634=1937 Oudh 416.

SECS. 30 AND 23 (4).—A firm carried on business in Patiala territory. Some of the members of the firm resided in British India at Kaithal. The Income-tax Officer issued a notice to one of them under sec. 22 (2) read with sec. 34. The assessee stated that he was only the sleeping partner of the firm and that he knew nothing of its income or profits. He was directed to obtain accounts and information from his partner in Patiala territory and though the time for making the return was extended by the Income-tax Officer on two separate occasions, the partner finally intimated that neither the accounts nor the information sought was available. The Income tax Officer thereupon made an assessment under sec. 23 (4). The partner preferred an appeal under sec. 30. *Held*, that the case was properly treated as one of "no return" and no appeal was competent against the order under sec. 30. (1928 L. 729. Foll.) 1933 L. 290 (*See* Amendment Act XVIII of 1933).

PRACTICE.—Plea not raised before the Income-tax Officer cannot be raised before the Assistant Commissioner in appeal 12 L.T. 14=131 I.C. 639=1931 L. 601.

SEC. 30 AND 33 (1): APPEAL FROM APPELLATE ORDER AGAINST ASSESSMENT UNDER SEC. 23 (4)—VALIDITY OF ASSESSMENT—IF CAN BE CHALLENGED.—In an appeal under sec. 33 (1) from a decision in appeal under sec. 30 (1), the validity of an assessment under sec. 23 (4) cannot be challenged when no proceeding under sec. 27 of the Act was taken to cancel that order. The assessee's right of appeal under sec. 30 is limited as regards secs. 23 and 27 to the quantum of the assessment or tax. (1944) I.T.R. 327=220 I.C. 122=1945 Cal. 104.

SEC. 30, 26-A AND 66.—Under sec. 30 before it was amended in November, 1933, it was not open to the Commissioer to refer to the High Court under sec. 66 a question arising out of a refusal to register a firm under sec. 26-A, because the order was at that time not appealable under sec. 30, and therefore final. 164 I.C. 1018=1936 L. 621; 63 C. 395.

SECS. 30 64 (3) AND 66: DECISION AS TO PLACE OF ASSESSMENT—APPEAL—HIGH COURT CAN DEAL WITH QUESTION UNDER SEC. 66.—Where an assessee questions the jurisdiction of the Income-tax Officer of a particular place to deal with his assessment and the place of assessment is decided under the provisions of sec. 64 (3), of the Act on affidavits, the plea of jurisdiction cannot be raised before the Assistant Commissioner on appeal under sec. 30, and the High Court cannot deal with the question under sec. 66 of the Act. In such a case it cannot be said that the proviso to sec. 64 (3) has been ignored, for the proviso only requires that the assessee should have had an opportunity of representing his views and not that he should have been formally heard on his objection. I.L.R. (1940) All. 735=1940 A.L.J. 855=1941 All. 129. Where an assessment has been made, not in form only but in fact, not ostensibly but actually and in good faith, under sec. 23 (4), and where the Assistant Commissioner, upon consideration of the facts, has found that the assessment was properly so made, the proviso to sec. 30 of the Act bars an appeal and the order of the Assistant Commissioner rejecting the appeal is not an order under sec. 31 inasmuch as he has not "disposed of" the appeal, and therefore there can be no question of law referable to the High Court under sec. 66 (2) or under sec. 66 (3) of the Act. 1942 I.T.R. 148=1942 A.L.W. 305=1942 O.A. 300.

SEC. 31.—The Assistant Commissioner must state facts and give reasons for his findings. Where he omits to do so he fails to perform his duty properly. 10 L. 833=1930 L. 277. Where no appeal lies under sec. 31 no reference lies under sec. 66 (2). 1932 A.L.J. 576 =1932 A. 642. The order of an Assistant Commissioner rejecting as inadmissible an appeal against a summary assessment on the ground that the notice of demand was not attached to the appeal, is a capricious order,

(2) The [1][Appellate Assistant Commissioner] may, before disposing of any appeal, make such further inquiry as he thinks fit, or cause further inquiry to be made by the Income-tax Officer.

[2][(2A) The Appellate Assistant Comimssioner may, at the hearing of an appeal, allow an appellant to go into any ground of appeal not specified in the grounds of appeal, if the Appellate Assistant Commissioner is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable.]

LEG. REF.

[1] Substituted for "Assistant Commissioner" by sec. 37 of Act VII of 1939.

[2] Inserted by *ibid.*

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especially where the assessee alleges that no notice was received by him. The order is one under sec. 31. 22 Pat. 735=1944 I.T.R. 59 =1944 Pat. 112. The Assistant Commissioner has jurisdiction in an appeal from an assessment under sec. 23, proviso, to substitute a different method of computation. The proviso to sec. 13 does not bar the Appellate Assistant Commissioner from doing so. He can ask for a report from the Income-tax Officer under sec. 31 (2) and when the matter finally comes before him after the report, he is entitled under sec. 31 (3) to confirm, or to reduce or to enhance the assessment. (1943) I.T.R. 525. An appellant in income-tax cases has no higher right in adducing fresh evidence in appeal than he would have in a civil case under O. 41, R. 27, C. P. Code. Where the accounts were not produced before the Assistant Commissioner and they were sought to be filed before the Commissioner in appeal but were rejected, *held*, that the Commissioner did not err in law in refusing to admit those accounts at the hearing of the appeal. Under sec. 31 proviso it is not necessary to give notice that the Assistant Commissioner proposes to enhance the assessment to any particular figure or to disclose the materials on which the enhancement is about to be made. Consequently, the Assistant Commissioner cannot be said to have acted illegally in enhancing the assessment without previously disclosing the materials on which he based the enhanced assessment. 7 R. 635=129 I.C. 898=1930 R. 4. *See also* 1937 O.W.N. 634=1937 O. 416; I.L.R. 1941 A. 1=1940 All. 530. The question whether an assessment made by the Income-tax Officer under sec. 23 (4) is valid or not is a question of law that arises or can arise out of an order of the Assistant Commissioner passed under sec. 31 and such a question cannot therefore be made the ground for an order by the High Court under sec. 66 (3) requiring the Commissioner to state a case. (6 R. 21; 8 R. 281=1931 R. 194 (F.B.). An application by an assessee under sec. 27 was rejected by the Income-tax Officer and the assessee filed an appeal under sec. 30 (1) to the Assistant Commissioner, rightly or wrongly, who decided it on merits. *Held*, that the decision of the Assistant Commissioner was an order under sec. 31 for purposes of applying to the Commissioner to make a reference to the High Court. (1929 R. 8, Ref. 1933 O. 396. Where the Assistant Commissioner hears the appeal of the assessee and passes an appellate order under sec. 31 dismissing the appeal, the requirments of sec. 66 (2) are satisfied whether the Assistant Commissioner has jurisdiction or not. 28 S.L.R. 174=1934 S. 46.

SECS. 31 AND 32.—Where an appeal has been preferred to the appellate authority and has been disposed of by such authority, the order passed in such a proceeding may be regarded as an order under sec. 31 or sec. 32 as the case may be even though no appeal might have been in fact competent. (9 C. 100, Foll.) 133 I.C. 753=1931 P. 306 (F. B.).

SECS. 31 AND 34.—*Per* Panckridge, J.—Where an assessee highly objects to an assessment or re-assessment under sec. 34 on the ground that the proceedings are bad the powers of the Assistant Commissioner on appeal cannot extend to enhancing an assessment, which the Income-tax Officer had no jurisdiction to make and must be limited to annulling it as made without jurisdiction. I. L.R. (1937) 2 Cal. 540=41 C.W.N. 905. The power of an Assistant Commissioner to enhance an assessment cannot be exercised irresptive of the limitations imposed by sec. 34. The Assistant Commissioner is not, therefore, legally competent to add a new item of income, after the expiry of he limitation prescribed in sec. 34, when an appeal against an assessment in pending before him. Nor is he competent to set aside the assessment made under sec. 34 and direct the Income-tax Officer to make a fresh assessment including a fresh item of income after the period of limitation prescribed in sec. 34 has expired. I. L.R. (1938) Lah. 359=41 P.L.R. 64=1938 Lah. 741.

SECS. 31 AND 66.—Where the assessee does not raise a point before the original taxing officer, but raises it before the Assistant Commissioner in appeal, the latter may refuse to allow it to be raised when it involves the production and hearing of fresh evidence. The High Court will not interfere with the discretion of the Income-tax authorities in refusing permission to the assessee to adduce fresh evidence. 59 M. 263=1936 M. 776= 71 M.L.J. 35 (F.B.). *See also* 62 C. 1011. An order confirming an assessment within the meaning of sec. 31 of the Act means an order having reference to the assessment and affirming it. Where an appeal is dismissed by the Assistant Commissioner of Income-tax on the ground that it is barred by limitation, without even considering the question of assessment, the order of dismissal is not an order confirming the assessment under sec. 31, for the purposes of sec. 66 (2) of the Income-tax Act. Sec. 66 (2) does not apply to such a case and the High Court cannot direct the

(3) In disposing of an appeal the [1][Appellate Assistant Commissioner] may, in the case of an order of assessment,—

(*a*) confirm, reduce, enhance or annul the assessment, [2]* * *

or,

(*b*) set aside the assessment and direct the Income-tax Officer to make a fresh assessment after making such further inquiry as the Income-tax Officer thinks fit or the [1][Appellate Assistant Commissioner] may direct, and the Income-tax Officer shall thereupon proceed to make such fresh assessment [3][and determine where necessary the amount of tax payable on the basis of such fresh assessment],

[4][or in the case of an order cancelling the registration of a firm under sub-section (4) of section 23 or refusing to register a firm under sub-section (4) of section 23 or section 26-A];

(*c*) confirm such order or cancel it and direct the Income-tax Officer [5][to register the firm or to make a fresh assessment, as the case may be]],

or, in the case of an order under sub-section (2) of [6][section 25 or sub-section (1) of section 23*A*, or sub-section (2) of section 26 or section 48, 49 or 49FI],

[7][(*d*)] confirm, cancel or vary such order,

[8][or, in the case of an order under sub-section (1) of section 25A,

(*e*) confirm such order or cancel it and either direct the Income-tax Officer to make further inquiry and pass a fresh order or to make an assessment in the manner laid down in sub-section (2) of section 25A,

or, in the case of an order under section 28 or sub-section (6) of section 44E or sub-section (5) of section 44F or sub-section (1) of section 46,

(*f*) confirm or cancel such order or vary it so as either to enhance or reduce the penalty;

or, in the case of an appeal against a computation of loss under section 24,

(*g*) confirm or vary such computation] :

[or, in the case of an appeal under sub-section (1-A) of section 30,

(*h*) decide that the person is or is not liable to make the deduction and in the latter case direct the refund of the sum paid under sub-section (6)of section 18] (Inserted by ActXI of 1 44)

Provided that the [1][Appellate Assistant Commissioner] shall not enhance an assessment [9][or a penalty] unless the appellant has had a reasonable opportunity of showing cause against such enhancement :,

[3][Provided further that at the hearing of any appeal against an order of an Income-tax Officer, the Income-tax Officer shall have the right to be heard either in person or by a representatiove].

[12][(4) Where as the result of an appeal any change is made in the assessment of a firm or association of persons or a new assessment of a firm or association of persons is ordered to be made, the Appellate Assistant Commissioner may authorise the Income-tax Officer to amend accordingly any assessment made on any partner of the firm or any member of the association.

(5) The Appellate Assistant Commissioner shall, on the conclusion of the appeal, communicate the orders passed by him to the assessee and to the Commissioner.]

32. *Appeals against orders of Appellate Assistant Commissioner. Omitted by S.* 87 *of the Indian Income-tax (Amendment Act,* 1939*(VII of* 1939).

LEG. REF.

1 Substituted for "Assistant Commissioner" by sec. 37 of Act VII of 1939.

2 Omitted by Act XXIII of 1941.

3 Added by Act VII of 1939.

4 Substituted by Act XI of 1944.

5 Substituted for "to make a fresh assessment," by *ibid.*

6 Substituted for the words and figures "sec. 25 or sec. 28" by sec. 37 of Act VII of 1939.

7 Cl. (*c*) was re-lettered Cl. (*d*) by sec. 5 of Act XXII of 1930.

8 Inserted by sec. 37 of Act VII of 1939.

9 Added by *ibid.*

12 Added by Act XXIII of 1941.

Commissioner to state a case. 57 A. 971= 1935 A.L.J. 845=1935 All. 572.

SEC. 32 (1).—Assistant Commissioner—Powers of—Appeal limited to subject-matter of assessment. 4 P. 385=6 Pat.L.T. 166= 1925 P. 408. Appeal—Limitation—Application for copy not properly stamped and not

[1][33. (1) Any assessee objecting to an order passed by an Appellate Assistant Commissioner under section 28 or section 31 may appeal to the Appellate Tribunal within sixty days of the date [2][on which such order is communicated to him.]

Appeals against orders of Appellate Assistant Commissioner.

LEG. REF.

[1] Sufstituted for the original section by sec. 88 of Act VII of 1939.

[2] Substituted by Act XXII of 1941.

accompanied by a proper authority to apply for copy—Not proper—Time taken by such application cannot be deducted from period of limitation. 11 P. 40=1932 P. 103. An application for copy of an order passed by the Assistant Commissioner of Income tax falls within paragraph 5 of Art. 1 (*a*) of Sch. II of the Court-Fees Act and requires a Court-fee of two annas. 11 P. 40=1932 P. 103. When the Assistant Commissioner in an appeal to him from the order of assessment of the Income-tax Officer reduces the amount of income under one head but increases the amount under another, the net result, however, being a reduction both of the total income assessed and the tax, it is not an order "enhancing the assessment", though it may involve an enhancement of a particular item of income, and no appeal lies to the Commssioner under sec. 32 against that order. 56 M. 329=1933 M. 1=63 M. L.J. 805 (F.B).

SECS. 32 AND 33.—Where the assessee files an appeal from the order of assessment by the Income-tax Officer the Commissioner can take action under sec. 33 and proceed to enhance the assessment after having disposed of the assessee's appeal under sec. 32, but the exercise of the powers of review under sec. 33 would, however, be subject to the limitation provided in sec. 34. The Commissioner when dealing with the appeal under sec. 32 can pass orders only with respect to the subject-matter of the appeal, and cannot *suo motu* proceed to enhance an assessment which he has the power to do under sec. 33 of the Act. If the Commissioner calls for the record of a case after disposing of the appeal preferred to him against the order of an Assistant Commissioner he would be exercising powers of review in respect of proceedings which have been taken by an authority subordinate to him and not in respect of proceedings taken by himself as a Court of Appeal. 38 P.L.R. 1107=1936 L. 897.

SEC. 33: REVIEW.—Although a Commissioner of Income tax has no option but to obey departmental orders of the Central Board of Revenue, it cannot be said that his discretion under sec. 33 can be "legally" controlled by the Central Board of Revenue, because the discretion is vested in him by statute and there is no statutory control of such discretion. A Court or an official functioning as a Court must exercise its discretion judicially; that is the only form of control known to the law. I.L.R. (1942) All. 377= 1942 A.L.J. 454=1942 All. 227. Income-tax Commissioner's powers under sec. 33 are subject to limitations imposed by sec. 35. 8 L. 354=1927 L. 248. For purposes of re-assessment proceedings, sec. 33 is subject to the provisions of sec. 34. 54 M.L.J. 298= 1928 M. 257 (F.B.). During the pendency of an application under sec. 66 (2) the Commissioner can exercise his power of review under sec 33. 7 R. 644=1929 R. 245; 248 (F.B.). *See also* 1944 Lah. 445=(1944) I. T.R. 370; 1944 I.T.R. 430. Where a Commissioner reviews his decision under sec. 33 of the Income-tax Act and issues supplemental demand he must give a sufficient and reasonable opportunity to the assessee to be heard. 5 Pat.L.T. 608=3 P. 664=1924 P. 644. *See also* 30 C.W.N. 831=1926 C. 998. It is incorrect to say that if the Commissioner sees fit to hold the proceedings before the Assistant Commissioner *ultra vires* and a nullity, the High Court has no power to inquire into the validity of the Commissioner's orders, since the quashing of the proceedings before the Assistant Commissioner results in the absence of any order which the High Court can inquire into. The ultimate authority on the question whether the proceedings before the Assistant Commissioner were *ultra vires* or not is the High Court and not the Commissioner. 1933 S. 158=145 I.C. 145. It is competent for a Civil Court to make a declaration that the registration of the partnership instrument was null and void, and this course may be taken by the Court notwithstanding any concurrent remedy in that behalf, under the Income-tax Act, that may be open to the plaintiff and therefore notwithstanding the fact that the plaintiff applied as assessee to the Commissioner of Income-tax for cancellation of the registration under sec. 33 and that the application was rejected, the Court is entitled to make the declaration. 1933 R. 229=11 R. 380. *Quaere.*—When the Commissioner of Income-tax has exercised his powers of revision under sec. 33 of the Income-tax Act with reference to one point, whether it is open to him to exercise his powers of revision again in respect of the same order in respect of other points which do not affect the previous one? 1040 I.T.R. 437. Sec. 33 (4) does not permit the appellate tribunal to raise of its motion any question or ground as it pleases and decide the same. The word "thereon" in sec. 33 (4) only means on the appeal, *i.e.*, on the grounds raised in the appeal. S. 33 (4) only gives power to the appellate tribunal to give its decision and pass orders in respect of all grounds urged on behalf of the appellant in respect of the decision appealed against. But it is not open to the tribunal itself to raise a ground or permit the party who has not ap-

(2) The Commissioner may, if he objects to any order passed by an Appellate Assistant Commissioner under Section 31, direct the Income-tax Officer to appeal to the Appellate Tribunal against such order, and such appeal may be made [1][within sixty days of the date on which the order is communicated to the Commissioner by the Appellate Assistant Commissioner].

(2A) [2]The Tribunal may admit an appeal after the expiry of the sixty days referred to in sub-sections (1) and (2) if it is satisfied that there was sufficient cause for not presenting it within that period."

(3) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner, and shall, except in the case of an appeal referred to in sub-section (2), be accompanied by a fee of one hundred rupees.

(4) The Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, and shall communicate any such orders to the assessee and to the Commissioner.

[(5) Where as the result of an appeal any change is made in the assessment of a firm or association of persons or a new assessment of a firm or association of persons is ordered to be made, the Appellate Tribunal may authorise the Income-tax Officer to amend accordingly any assessment made on any partner of the firm or any member of the association.] Inserted by Act XI of 1944)

LEG. REF.

[1] Substituted by Act XXIII of 1941.

[2] Inserted by *ibid.*

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pealed to raise a ground, which will work adversely to the appellant. 47 Bom.L.R. 222=1945 I.T.R. 272=1945 Bom. 285. A point of law may be taken in appeal before the appeallate tribunal and the tribunal may grant leave to raise a point of law not raised in the memorandum of appeal, though it may not have been added by means of an amendment and though the application for leave to take the additional ground is not stamped and and fied. There is nothing in the Income-tax Act or in the rules which requires an application for urging an additional ground of appeal to be stamped or veriified or which requires that the new ground should be added by a proper amendment. Where the additional ground raised is a pure question of law not involving any further investigation into facts, and is such as would go to the root of the matter, and the tribunal refuses to grant leave to urge the addtional ground on the ground that the new point is not added by a proper amendment and that the application for leave is not stamped or verfied, it must be held that the tribunal has not properly used its discretion in refusing leave. I.L.R. (1938) Nag. 617=1943 N.L.J. 354=1943 Nag. 229.

LIMITATION.—Even though no limitation of time is prescribed for interference by way of revision under sec. 33, the Court would almost always incline in favour of taking the view that such exercise of power should be within a reasonable time of the proceedings sought to be revised, reasonable time being computed by the Court having regard to all the other provisions of the Act, to the facts of the particular case and the special features, if any, of it. 54 M.L.J. 298=1928 M. 257 (F.B.). An assessee desired to appeal to the Income-tax Appellate Tribunal against an order of the Appellate Assistant Commissioner, dated the 24th November, 1940. The Income-tax Appellate Tribunal was constituted as from the 25th January, 1941, by notification published in the Gazette of India of that date. Sec. 33 of the Income-tax Act as now amended requires that an appeal to the Appellate Tribunal shall be presented within sixty days from the date on which the appellant was served with the notice of the order. Rules regulating procedure had not been framed and were not in fact notified until the 1st February, 1941. Rule 14 of the Rules provides that an appeal to the Tribunal shall be presented in person or by a representative to the Registrar at New Delhi or some other officer authorised in this behalf by the Registrar and a proviso follows to the effect that an appeal which is received in the office of the Registrar by post within the prescribed period of limitation shall be deemed to have been validly presented. Forms indicating the location of the office of the Tribunal were published on the 25th January, 1941, in New Delhi and therefore were not available to the appellant who was in a village in the Ramnad District. Having no information with regard to the procedure the assessee drafted a petition of appeal and posted it to the office of the Commissioner of Income-tax, Madras, with the request that it should be forwarded to the Tribunal. The petition was received by the Commissioner of Income-tax, Madras, on the 31st January, 1941 and posted by him to the Tribunal three days later, which was still in time. The period of sixty days expired on the 2nd February. That day being a Sunday the period was extended to 3rd February. The petition was received in the office of the Tribunal only

(5) Save as provided in section 66 orders passed by the Appellate Tribunal on appeal shall be final.]

Power of revision by commissioner.

[1][33A. (1) The Commissioner may of his own motion call for the record of any proceedings under this Act in which an order has been passed by any authority subordinate to him and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit :

LEG. REF.

[1] Inserted by Act XXIII of 1941.

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on the 10th February. The Tribunal held that the petition was barred by limitation. On reference, *held*, (*i*) The appeal was filed within the period of limitation in the only office which was then open to the assessee and in the circumstances the appeal should have been heard on its merits. (*ii*) There is nothing in the Income-tax Act which would entitle the assessee to a refund of the deposit of Rs. 100 if the plea of limitation raised by the Incometime authorities were sound. 1942 I.T.R. 467=(1942) 2 M.L.J. 653=1943 Mad. 212. An assessment which is illegal or a nullity from the start is not final and can be quashed at any time under sec. 33. The Commissioner is not justified in rejecting an application as belated. (1944) I.T.R. 370=1944 Lah. 445 Law point arising in proceedings under sec. 33—High Court's power to direct Commissioner to make a statement of the case. *See* 49 M. 125=51 M.L.J. 650=1926 M. 1051. On this section, *see also* 45 M. 977= 43 M. L.J. 434; 46 I C. 285=34 M.L.J. 210; 9 P. 194=1930 P. 33.

SECS. 33 AND 34.—If the orders of the Income-tax Officer under sec. 22 and sec. 34 are without jurisdiction, the Act provides the Commissioner with powers of revision under sec. 33. If the Commissioner passes an order sec. 33 which the assessee considers prejudicial to him, he can avail himself of the provisions of sec. 66 (2) of the Act as amended by Act XVIII of 1933. The contention that an application under sec. 66 would entail delay, even if correct, does not justify the assessee in neglecting the remedy provided by the Act and in seeking instead to call in aid the extraordinary powers of the High Court to issue a writ of prohibition against the Income-tax Commissioner. 62 C. 1011. The scheme under sec. 34 of the Income-tax Act is that if the Income-tax Officer considers that income has escaped assessment, he serves a notice corresponding to the notice which he would serve for making the original assessment, and the assessee would have the same right of appeal against that fresh assessment as he had against the original assessment. It is clear that the Commissioner cannot by a revision order under sec. 33 enhance the tax on the ground that income has escaped assessment unless he proceeds under sec. 34. He can, no doubt, under sec. 33 direct the Income-tax Officer to take action under sec. 34. But if a re-assessment is to be made on the ground that income has escaped assessassessment that income has escepad assessment, that can only be done under the procedure laid down in sec. 34. I.L.R. (1943) Bom. 614=45 Bom.L.R. 589=1943 Bom. 290=I.L.R. (1943) Bom. 614. The Income-tax officer included in an assessment under sec. 23 (3) certain items of cash credits holding that they represented hidden sales or secret profits. In appeal by the assessee, the Appellate Assistant Commissioner held that the amount of such credits were not rightly included and that they should be excluded from the assessment. Thereupon the Commissioner of Income-tax issued a notict under sec. 33 to the assessee and set aside the order of the Appellate Assistant Commissioner and the assessment proceedings of the Income tax officer up to the stage where notices under sec. 23 (2) and 22 (4) were issued and directed the Income-tax officer to make a further and fuller inquiry.

Held, that the order of the Commissioner was intended to result in an enhancement of the assessment without regard and contrary to the provisions of sec. 34, and that it was beyond his powers to make. I.L.R. (1944) Bom. 172=214 I C. 102=(1944) I.T.R. 89= 46 Bom.L R. 138=1944 Bom. 153.

SECS. 33, 34 AND 35: COMMISSIONER'S POWERS.—The Commissioner's powers under sec. 33 of the Act are subject to the time limit of one year mentioned in Ss. 34 and 35. Hence where the order of the Income-tax Officer is revised and cancelled by the Commissioner more than a year it was passed, the cancellation is illegal. 28 S.L.R. 174=149 I. C. 1204=1934 Sind 46.

SECS. 33 AND 66.—There is no express obligation upon the Commissioner to state a case on an order arising under sec. 33; nor has the High Court power to order him to do so under sec. 45, Specific Relief Act. The Commissioner has a discretionary power vested in him. [7 R. 511, Foll.; 49 M. 725 (S B.), Diss.] 58 B. 361=36 Bom.L.R. 23=1934 B. 62. *See also* 1939 I T R. 506; 1940 I.T.R. 437. The word "prejudicial" in sec. 33 need not have the same meaning as in sec. 66 (2) of the Act. The word "prejudicial" in sec. 33 is obviously used in the narrower sense of a prejudice occasioned to the assessee by the order of the Commissioner himself. In sec. 66 (2) this reasoning does not apply, because sec. 66 (2) deals with the right of the assessee to make an application from such an order while in sec. 33 there is no application necessarily before the Commissioner at all. 1940 I.T.R 437 Assessment—Appeal to Privy Council—Assessment and payment of tax under protest for subsequent years—Privy Council holding in favour of assessee—Appli-

Provided that the Commissioner shall not revise any order under this sub-section if—

(*a*) where an appeal against the order lies to the Appellate Assistant Commissioner or to the Appellate Tribunal the time within which such appeal may be made has not expired, or

(*b*) the order is pending on an appeal before the Appellate Assistant Commissioner or has been made the subject of an appeal to the Appellate Tribunal, or

(*c*) the order has been made more than one year previously.

(2) The Commissioner may, on application by an assessee for revision of an order under this Act passed by any authority subordinate to the Commissioner made within one year from the date of the order, call for the record of the proceeding in which such order was passed, and on receipt of the record may make such inquiry or cause such inquiry to be made, and, subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit:

Provided that the Commissioner shall not revise any order under this sub-section if—

(*a*) where an appeal against the order lies to the Appellate Assistant Commissioner or to the Appellate Tribunal but has not been made, the time within which such appeal may be made has not expired, or, in the case of an appeal to the Appellate Tribunal, the assessee has not waived his right of appeal, or

(*b*) where an appeal against the order has been made to the Appellate Assistant Commissioner, the appeal is pending before the Appellate Assistant Commissioner, or

(*c*) the order has been made the subject of an appeal to the Appellate Tribunal:

Provided further that an order by the Commissioner declining to interfere shall be deemed not to be an order prejudicial to the assessee.

(3) Every application by an assessee under sub-section (2) shall be accompanied by a fee of twenty-five rupees.]

Income escaping assessment.

34. [1][(1)] If [2][in consequence of definite information which has come into his possession the Income-tax Officer discovers that] income, profits or gains chargeable to income-tax [3][have escaped assessment in any year, or have been under-assessed, or have been

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LEG. REF.

[1] Original sec. 34 re-numbered sub-sec. (1) by sec. 41 of Act VII of 1939.

[2] Subs ituted for "for any reason" by *ibid.*

[3] Substituted for "has escaped assessment in any year or has been assessed at too low a rate" by *ibid.*

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cation for refund— Refusal —Propriety— Denial of reference to High Court—Legality —"Prejudici l"—Meaning of. 1944 I.T.R. 370=1944 Lah. 445.

SEC. 34.—Sec. 34 is applicable to assessments to super-tax, and not merely income-tax. I.L.R (1939) Bom. 445=41 Bom.L.R. 652=1939 Bom. 362. *See also* 1943 I.T.R. 504. Amending Act of 1923—Effect of—Assessment to super-tax in 1922-1923 for income of 1921-22—Legality of. 79 I.C. 798 =1924 M. 485 (2). Applicability of section —Estate of deceased—Sec. 24-B, if excludes sec. 34. *See* 37 Bom.L.R 112=1935 B. 167. *See also* 1945 Mad. 122 cited under sec. 25-A *supra.*

SCOPE AND APPLICATION.—Sec. 34 is applicable to cases in which either no assessment at all has been made upon the person who received the income, profits or gains liable to assessment, or where an assessment has been made in the course of the year but some portion of the income, profits or gains of such assessee for some reason or other has not been included in the order of assessment. 9 R. 167=1931 R. 101 (S.B). Sec. 34 does not apply to cases in which assessment proceedings have been duly commenced in the course of the year of assessment although it may be that they have not been completed within that year. 9 R. 167. *See also* 58 C. 909; 61 C. 285=61 I.A. 10=1934 P.C. 30=66 M.L.J. 121 (P.C.) noted *infra.* The Income-tax Officer is not required by sec. 34 to convene the assessee or to intimate to him the nature of the alleged escapement, or to give him an opportunity of being heard, before he decides to use the powers conferred by the section. To enable him to initiate proceedings under the section, it is enough that he on the information which he has before him and in good faith considers that he has good ground for believing that the assessee's profits have for some reason escaped assessment or have been assessed at too low a rate. 67 I.A. 239=I.L.R. (1940) 2 Cal. 215=1940 P.C. 124=(1940) 2 M.L.J. 577=(P.C.). *See also* 1940 I.T.R. 243; 1941 I.T.R. 618; 1938 Cal. 557. Sec. 34

assessed at too low a rate, or have been the subject of excessive relief under this Act] the Income-tax Officer may, [1][in any case in which he has reason to believe that the assessee has concealed the particulars of his income or deliberately furnished inaccurate particulars thereof, at any time within eight years, and in any other case at any time within four years] of the end of that year, serve on the person liable to pay tax on such income, profits or gains, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22, and may proceed to assess or re-assess such income, profits or gains, and the provisions of this Act, shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section :

Provided that the tax shall be charged at the rate at which it would have been charged had the income, profits or gains not escaped assessment or full assessment, as the case may be :

[2][Provided further that when the income, profits or gains concerned are income, profits or gains liable to assessment for a year ending prior to the commencement of the Indian Income-tax (Amendment) Act, 1939, or where the assessment made or to be made is an assessment made or to be made on a person deemed to be the agent of a non-resident person under aection 43, this sub-section shall have effect as if for the periods of eight years and four years a period of one year were substituted.]

[3][(2) No order of assessment under section 23 or of assessment or re-assessment under sub-section (1) of this section shall be made after the expiry, in any case to which clause (*c*) of sub-section (1) of section 28 applies, of eight years, and in any other case, of four years from the end of the year in which the income, profits or gains were first assessable,]

[4][Provided that nothing contained in the section shall apply to a re-assessment made in pursuance of an order under section 31, section 33, section 66, or section 66-A]

LEG. REF.

1 Substituted for "at any time within one year" by 41 of Act VII of 1939.

2 Proviso added by *ibid.*

3 Added by *ibid.*

4 Added by Act XXIII of 1941.

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would also apply to a case in which no notice under sec. 22 (2) has been given, and a person who receives no notice under sec. 22 (2) does escape assessment, although, through no fault of his own, the process of assessment, has never been set in motion. Where the assessment starts with a notice under sec. 34, all the relevant portions of the Act apply as effectively as where the assessment starts with a notice under sec. 22 (2). A person who receives no notice under sec. 22 (2) and who is not at all assessed to income-tax in one year may be proceeded against under sec. 34 and assessed to income-tax in the following year on the income of the previous year. I. L.R. 1937 Bom. 310=1937 Bom. 214=39 Bom.L.R. 123. An assessment made under sec. 34 which is based not on facts but upon surmises and hypotheses for which there is no sound foundation, cannot be sustained. 14 R. 228=165 I.C. 3=1936 R. 219 (S.B.). Under sec. 34, an assessment cannot be re-opened merely at the discretion of the Income-tax Officer. He cannot reopen an assessment merely to enquire further into the assessee's books in case something assessable may be found. It is an essential pre-requisite to reopening an assessment that an item of income, profits or gains *has* escaped assessment and the Income-tax Officer cannot give himself jurisdiction by an erroneous finding of fact. 62 C. 1011. Where the assessee company has succeeded to the business in issue after notice duly served under sec. 34 upon the predecessor, the former is liable to be assessed without fresh notice being served upon it under the section. Proceedings started against the predecessor continue against the successor, even if the predecessor has ceased to exist. 18 L. 325=1937 L. 830. When part of the profits of a registered firm have escaped assessment, assessment can be made under sec. 34 and tax levied upon a partner of the firm in respect of his share of such part, when proceedings under the said section against the firm itself in respect of the said part have failed for lack of jurisdiction and fresh proceedings are time barred. 58 C. 1204=35 C.W.N. 534=1931 C. 686 (S.B.). Partners same in both firms—Remittance of profits by one business to another—Firm escaping assessment—No allocation of profits to individual partners—Assessment of individual partner is valid. 46 L.W. 901=1938 M. 59=(1937) 2 M.L.J. 928. Sec. 34 is not limited to cases of non-disclosure by the assessee or discovery of new matter by the Income-tax authorities or inadvertence as distinguished from erroneous deliberations on the part of the authorities. It can be applied to put right an assessment by which a deduction has been improperly allowed on the ground that the balance has "es-

caped assessment". 37 C.W.N. 430=1933 C. 777=60 C. 843. Service within one year of a proper notice on the assessee giving notice of the intention on the part of the Income tax Officer to re-assess is a condition precedent to any valid re-assessment under sec. 34. 54 M.L.J. 298 (F.B.). Re-assessment proceedings should be validly started under sec. 34 before a penalty is imposed by the Commissioner under sec. 28 and it is only in that sense that sec. 34 controls sec. 28. 54 M.L.J. 298 (F.B.). Where no machinery existed to make it possible for the income-tax authorities to assess the income during that year, the assessment made subsequently under the section is illegal. 12 L. 757=1931 L. 441. Reference on the question whether Hindu joint family had become divided—Jurisdiction of Income-tax Officer to decide. *See* 1927 M.W.N. 591 (F.B.). The failure to produce books of account required by the authorities by a notice under sec. 34 entails the same consequence as in the case of a failure to make a return, and the Income-tax Officer is entitled, in such a case to make the assessment under sec. 23 (4). 34 C.W.N. 1093. Where the assessee is already assessed under sec. 23 (4), it is competent to re-assess him under sec. 34 within one year of the original assessment on the ground that his income, profits, or gains chargeable to income-tax had escaped assessment. 10 L. 691=1929 L. 173. The Income-tax Officer has no jurisdiction to revise tht assessment for the previous year which has been completed and has become final. 1933 Rang. 350. A subsequent Income-tax Officer cannot go behind and revise the assessment made by his predecessor in the previous year merely because he disagreed with the predecessor's finding as to the amount of the assessable income. 12 R. 118 =146 I.C. 300=1933 R. 350 (S.B.). *See also* 145 I.C. 145=1933 S. 158; (1938) 2 M.L.J. 115=65 I.A. 236=I.L.R. 1938 B. 487 (P.C.). Under sec. 34, the Income-tax Officer has no power to reopen an assessment unless he acts in consequence of definite information which has come into his possession. The fact that the previous assessing officer has acted under a mistaken view of the law is not a sufficient ground for re-opening an assessment. This is not definite information at all. It amounts to nothing more than a change of opinion on the part of the authority making the assessment. The second opinion might be right or it might be wrong, and the fact that the second opinion has in the event, been held to be right is irrelevant. 1946 N.L.J. 25. Where an assessment of super-tax has been completed as if the assessee were a Hindu undivided family and it is subsequently held that the assessee is an individual, if the original assessment was in the absence of a return made under sec. 23 (4) and the assessee in answer to a notice under secs. 22 (4) and 34 files a return disclosing a lesser income than that taken in the original assessment, the Income-tax Officer can reopen the assessment and determine the assessee's income *de novo*. 1931 A.L.J. 1109=1932 A. 83. In such a case the Income-tax Officer cannot proceed on the footing that any portion of the income has escaped assessment, but he can proceed on the ground that the sum had been assessed at "too low a rate". 1932 A. 83. The Income-tax Officer has jurisdiction to impose a penalty in the matter of income-tax in proceedings for assessment taken under sec. 34 of the Act. 53 A. 445=1931 A.L.J. 336=1931 A. 421. So far as the word "discovers" in the amended sec. 34 of the Income tax Act is concerned, it requires that the Income-tax Officer should have formed an honest and reasonable belief upon material which could reasonably support such belief. In the nature of things it cannot amount to a conclusion of certainty. It is not necessary that, if the matter came to be subsequently decided in a Court of law, the Court should necessarily form the same conclusion as that formed by the Income-tax Officer. The Income-tax Officer's belief is a "discovery" within the meaning of the Act. What is a "discovery" and what is "definite information" must necessarily vary with the circumstances of the case. The words "definite information" are placed in sec. 34 of the Act to protect the subject against an assault by the Income-tax Officer based upon mere suspicion. The "definite information" which is something more than mere gossip or rumour, must lead to the discovery, or "belief". It need not necessarily be information of fact. Still less need it be information of actual escape from assessment or under-assessment. It may well be information of circumstances not themselves amounting to under-assessment or escape from assessment, but leading to the belief of under-assessment or escape from assessment. In short it may be circumstantial evidence. 1946 I.T.R. 431.

"DEFINITE INFORMATION" must be of fact—Discovery of error of law—Does not justify action under sec. 34. I.L.R. (1944) Bom. 230=(1944) I.T.R. 8=46 Bom.L.R. 108= 1944 Bom. 160.

"DEFINITE INFORMATION"—ALTERATION IN LAW.—The share of profits of a minor partner of a firm was, under a wrong conception of the law, not included by the Income-tax Officer in the assessment of the income of the minor's father for the year 1938-39, but in the following year it was included and its inclusion was held to be proper by the High Court in September, 1941. In March, 1940, prior to this decision of the High Court, a notice was served on the assessee under sec. 34 of the Income-tax Act in respect of his minor son's share which had "escaped" assessment in 1938-39. *Held*, though the expression "definite information" in sec. 34 would include definite information with regard to the state of the law, yet in the circumstances of the case, as the question of law had not been decided by the High Court when the notice under sec. 34 was issued, there was no "definite information" in the possession of the Income tax Officer at the time he served the notices and the assessment could not therefore be re-

opened. 1945 I.T.R. 242=1945 M.W.N. 377 =1945 Mad. 329=(1945) 1 M.L.J. 383.

POWER TO RE-OPEN ASSESSMENT—DIFFERENCE OF OPINION ON POINT OF LAW.—Under sec. 34 the Income-tax Officer is not entitled to reopen an assessment merely because he changes his mind on a question of law. Before he can act under the section, he must receive definite information from which it is apparent that income in the previous year has escaped assessment. 58 L.W. 167 (2)= 1945 M.W.N. 227=1945 I.T.R. 194=1945 Mad. 311=(1945) 1 M.L.J. 296.

LIMITATION.—"In any year"—Meaning of —Starting point of limtation for notice under sec. 34. 61 C. 132=38 C.W.N. 204= 1934 C. 515. Notice under sec. 22 served in proper time and assessment made—Assessment subsequently set aside by High Court —Fresh assessment in accordance with High Court order, but more than one year after the expiry of the tax year, not barred by limitation. 61 I.A. 10 noted *infra*. Whatever may be the reason for which the Income tax Officer should fail to assess any income within the period prescribed by law, he is not competent to assess it after the expiration of tha period of limitation. 8 L. 354 =1927 L. 248. The limitation of one year applies only to the notice. If a notice calling upon the asstssees to file a return of the additional income is given within the time therein limited, the rest of the assessment proceedings need not be completed within that time. 34 C.W.N. 1093. *See also* I.L.R. (1939) Mad. 393=1939 Mad. 302=(1939) 1 M.L.J. 371 (F.B.). There is no provision in law for the recovery of taxes on "escaped income" for more than one year. 1929 A. 919=1930 A.L.J. 26. *See also* 1933 S. 158 as to charging of super-tax against a firm, whose registration was cancelled by the Commissiontr. Mortgage—Interest assessed annually on accrual basis—Realization of interest by execution sale by assessee subsequently discovered—Assessment of interest representing escaped income on cash basis— Legality—Change of system to get over limitation not justified. 185 I.C. 83=1939 I.T.R. 522=1940 P. 239.

"ESCAPED ASSESSMENT".—The expression "has escaped assessment" in sec. 34 cannot be read as equivalent to "has not been assessed"; nor can income which has already been duly returned (under sec. 22) for assessment be said to have "escaped" assessment within the statutory meaning merely because the assessment on income so returned was not made (under sec. 23) within the tax year. Income has not "escaped" assessment within the meaning of sec. 34 if there are pending at the time proceedings for the assessment of the assessee's income which have not yet terminated in a final assessment thereof. 58 C. 909, Appr.) 61 I.A. 10=61 C. 285=1934 P. C. 33=66 M.L.J. 121 (P.C.). *See also* 61 C. 132=38 C.W.N. 204=1934 C. 515. *See also* 59 B. 626=37 Bom.L.R. 697=1935 B. 410. The word "assessment" in sec. 34 is not confined to the definite act of assessment, but includes also the process of assessment. It cannot be construed in the narrow sense of being equivalent to "has not been assessed". 1940 I.T.R. 236=1940 Cal. 520. Where an assessee makes a false return and evades liability to pay the tax he certainly escapes assessment, and if the falsehood and fraud perpetrated by him be detected within the time limit prescribed by the section, he can be assessed under sec. 34, on the correct income. 31 S.L.R. 452=1938 S. 54. Sec. 34 is applicable to cases in which either no assessment at all has been made upon the person who received the income, profits or gains liable to assessment, or where an assessmen has been made in the course of the year, but some portion of the income, profits or gains of such assessee, for some reason or other, have not been included in the order of assessment; such income is income which has "escaped assessment" in the year, and falls within the ambit of sec. 34 of the Act. 14 R. 228=1936 R. 219 (S.B.). The Income-tax Officer relying upon the accounts submitted by the assessee firm passed an order of assessment but the Commissioner of Income-tax estimateing the income for himself enhanced it without issuing notice within the period of one year: *Held*, that the difference in the estimates of income of the Income-tax Officer and Commissioner was income that had escaped assessment within the meaning of sec. 34 and the Commissioner was not entitled to enhance the income without notice to the assessee within the time mentioned in sec. 34. 38 P.L.R. 1107=1936 L. 897. The words "for any reason" before the expression "escaped assessmen" indicate that the Legislature intended to include all those cases which either resulted from mere inadvertence or from conscious misapprehension of the proper situation. There is no justification for confining the meaning of the word "escape" to those cases only which have not come to the notice of the Income-tax Officer at all and excluding those cases where he has applied his mind, but on account of an error of judgment has set any part of the income free from assessment. The idea conveyed by the words "for any reason" is so wide as to make it impossible not to include any case of non-assessment to whichever cause it may be due. 158 I.C. 349=1935 L. 361. *See also* 1940 Cal. 520= 191 I.C. 118. It covers not only a case where the Income-tax Officer omitted to consider the question at all, but also a case where on consideration he came to the conclusion, *ex hypothesi* an erroneous conclusion, that the property in question was not assessable. 49 M. 22=50 M.L.J. 63. The words "if for any reason the assessment is too low" in sec. 34, are wide enough to cover a mistake of law, *e.g.*, where the sole surviving coparcener has been originally assessed as a member of a Hindu joint family according to a decision of the High Court, but subsequently the Privy Council held differently, that in such a case he can be assessed as an individual, such a mistake is covered by sec. 34, and a fresh assessment can be made under sec. 34. I.L.R. (1939) Bom. 445

=41 Bom L.R. 652=1939 Bom. 362. *See also* 1938 Cal. 557 (S.B.); 1940 Cal. 520. Where proceedings started with the issue of a notice under sec. 22 (2) on a non-resident principal and on his objection it was declared that the whole proceeding ending with assessment on that notice was wholly void and illegal, the income of the non-resident principal has 'escaped assessment' and a notice issued on his agent, as required by sec. 42, under sec. 34 of the Act is quite valid in law. I.L.R. (1942) All. 398=1942 A.L.J. 543=(1942) F.L.J. (H.C.) 167=1942 I.T.R. 322=1942 All. 295. The word "escape" has a wide meaning and the words "for any reason" in the beginning of sec. 34 appear to widen the interpretation and not to narrow the meaning of the word "escape". Hence if an item of income is included in the return submitted by an assessee during a tax year but is left unassessed by the Income-tax Officer or if assessed in the first instance, the assessment is cancelled by any appellate or revisional authority, it escapes assessment within the meaning of sec. 34 and the assessee can be legally served with a notice within one year of the end of that year. (14 L. 255. Overr.) 16 L. 937=158 I. C. 718=1935 L. 742 (F.B.). The wrong allowance of inadmissible personal expenses of the assessee in computing the taxable income in the original assessment constitutes escapement of income, profits or gains liable to assessment within the meaning of sec. 34. 1942 I.T.R. 379. Sec. 34 gives power to Income-tax Authorities to take action where *inter alia*, the assessee has been assessed at too low a rate or has been the subject of an excessive relief under the Act. "Where the sole question involved is the assessment of income for super-tax and the assessee was held wrongly to be a joint Hindu family and not as an individual with the result that a high exemption is granted to him for purposes of assessmen to super-tax, the Income-tax Officer would be justified in issuing a notice under sec. 34 on the ground that the assessee has been assessed at too low a rate or has been the subject of an excessive relief". It is unnecessary to consider any question of "escape". (1943) I.T.R. 491. The income, profits or gains which the Income-tax Officer is authoristd and bound to assess under sec. 34 is the income, profits or gains chargeable to income-tax that had escaped assessment in the particular year. It is not open to him to ascertain the whole assessable income of the assessee and then further to ascertain whether some portion of such income had or had not escaped assessment. 9 R. 28=132 I.C. 559=1931 R. 333. In a proceeding under that section, the Income-tax Officer and after him the Assistant Commissioner are only dealing with the extra income which has not been assessed to income-tax. No jurisdiction is give to either of these officers to make a new assessment for the purpose of taxing the whole of that assessment. It is therefore not open to the Assistant Commissioner on appeal to grant any relief other than setting aside the extra assessment by the Income-tax Officer. 1931 A.L.J. 878=1932 A. 1. When an assessment has already been made in respect of the previous accounting year under sec. 34, the question whether all income which had accrued and had escaped assessment had been assessed to tax or not depends upon the investigation of the facts of the case. 1931 C. 761 (S.B.). Where income has been assessed in the hands of an assessee to whom it was subsequently found not to belong, the income must be said to have escaped assessment within the meaning of sec. 34. 8 L. 354=1927 L. 248. When the Income-tax Officer takes action under sec. 34 of the Indian Income-tax Act for the purpose of raising the rate of tax on the ground that the rate originally fixed was too low, he is not bound to reopen the whole assessment and re-assess the income, that is to determine afresh the correct taxable income of the assessee, and the enquiry need not go beyond the facts on which the raising of the rate depends. 1930 M. 126=58 M.L.J. 23 (F.B.). Where a creditor had, prior to the year of assessment, received a sum of money from a debtor and he transferred the sum to interest account in the assessment year, and such sum was not taxed before nor was it treated as non-taxable, *held*, that it must be treated as interest received in the assessment year and its assessment is not time-barred. 9 P. 240=1930 P. 81 (S.B.).

ESCAPED ASSESSMENT—BURDEN OF PROOF. —Under sec. 34, the onus does not lie on the Income-tax Authorities to satisfy the Court upon facts, that income, profits and gains had escaped assessment. The effect of so holding would be that in every case in which proceedings are taken under sec. 34, the assessee would have an appeal on facts. Under sec. 34 if the Income-tax Authorities have not misdirected themselves in law, and there were materials before the Income-tax Authorities upon which they could find that income, profits and gains had in fact escaped assessment, the High Court will not interfere or disturb the findings of fact at which the Income-tax Authorities have arrived. (1935 B. 410. Diss.) 14 R. 228=1936 R. 219 (S.B.). *See also* 59 59 B. 626=37 Bom. L.R. 697=1935 B. 410. It is always open to an assessee under sec. 34 to show that the income, profits or gains alleged to have escaped assessment have not in truth and in fact escaped and for this purpose it is not true that income, profits or gains have necessarily escaped assessment, because they have not been assessed under the right head. But if it is once shown that income has escaped assessment, the assessee cannot under sec. 34 resist proceedings to assess it merely by showing that other income, profits or gains have been assessed at too high a figure. 34 C.W.N. 816=1930 C. 627 (F.B.).

NOTICE.—The Income-tax Officer can issue a notice under sec. 34 even after an assessment has become final in appeal before the Assistant Commissioner of Income-tax. A notice under the section can be issued with-

out proving by admissible evidence before the issue of such notice that such and such income and such sources have escaped assessment. All that is necessary is that the Income-tax Officer must have reason to believe that income has escaped assessment. 1942 I. T. R. 79; *See also* (1942) I.T.R. 370. There is no standard form of notice prescribed in sec. 34 and all that the section requires is that a notice containing all or any of the requirements which may be included in a notice under sec. 22 (2) shall be served. So where the so-called notice was in the form of a letter by the Office but it contained all the details provided for in a notice, the notice must be treated as sufficient and regular in form. 61 C. 132=38 C.W.†. 204=1934 C. 513. All that is necessary under sec. 34 is that a notice should be given to the assessee, which sufficiently draws his attention to the case which he has to meet. It is not necessary to specify the particular source of income which is alleged to have escaped assessment. Where the assessee has only one source of income, namely, business, it is plain that a notice saying that income from all sources had escaped assessment is quite sufficient to how him what is the case that he has to meet. It is a valid notice under sec. 34. I.L.R. (1943) Bom. 206=(1943) I.T.R. 44=45 Bom.L.R. 125=1943 Bom. 132. *See also* 1942 I.T.R. 435. It is not necessary that a notice under sec. 34 should assume any particular form, but it must give notice to the assessee that in the opinion of the Income-tax Officer some income has escaped assessment, and in order to justify a notice under sec. 34, the Income-tax Officer must be *bona fide* of opinion that some income has escaped assessment. It cannot be held as a matter of law that when a notice is given in terms under sec. 22 (2), which subsequently turns out to be a bad notice under sec. 22 (2) because it is out of time it can automatically be held to be a good notice under sec. 34, although there is no reason to suppose that the Income-tax Officer ever considered the question under sec. 34. I.L.R. (1943) Bom. 224 =45 Bom.L.R. 143=1943 I.T.R. 202=1943 Bom. 102. It is the Income-tax Officer who is to decide whether income chargeable to tax has escaped assessment; he is the person charged with the duty of taking action under sec. 34 where such action ought to be taken. Apart from the assessee no person other than the Income tax Officer can by reason of sec. 34 of the Act, have any knowledge of the first assessment and upon what data it was based, and none else is in a position to decide whether income has escaped assessment or not. In deciding whether income has escaped assessment the Income-tax Officer must not act on suspicion or conjecture; he must decide the questions upon a fair and reasonable consideration of such information and materials as were available to him. He need not hold a formal enquiry, but he should indicate to the assessee the nature of the alleged escapement so as to enable him to identify it and explain it if he can. In other words he should give the assessee an opportunity of being heard before he decides against him that income has escaped assessment and proceeds to upset the settled assessment. If the Income tax Officer is satisfied with the assessee's explanation there is an end of the matter. On the other hand, if after a fair consideration of all the information and materials before him, including the explanation the assessee has given, or the failure of assessee to give any explanation of the alleged escapement, the Income-tax Officer thinks that income has escaped assessment he may say so, and proceed under sec. 34. Coming to a decision after giving an opportunity to the assessee of his being heard is a condition precedent to taking action under sec. 34. The Income tax Officer cannot proceed to act under sec. 34 b merely stating that he has 'reason to believe' that income has escaped assessment. 177 I. C. 255=1938 Cal. 557 (S.B.). Where the assessee company succeeded to the business in issue after notice duly served under sec. 34 upon the predecessor, the former is liable to be assessed without fresh notice being served upon it under the section. The Income tax Act does not contemplate any fresh notice to be served upon the sucessor, inasmuch as the proceedings once started agains the predecessor continue against the successor, even if the predecessor has ceased to exist. 18 Lah. 325=1937 Lah. 830. When a notice under sec. 34 has been served on a person and he has made a return in response thereto and then died, the proceedings can be continued by the issue of notices under secs. 22 (4) and 23 (2) to the successor of such person. It is not necessary that the proceedings against the successor should be started *de novo*. 57 M. 357=1934 M. 63=66 M.L.J. 17 (F.B.) Where an assessee is served with two two notices under sec. 34 of the Income-tax Act in different capacities, one to him personally and the other to him as guardian of his minor son, and the assessee makes a return on the first notice without taking any action on the second, it is open to the Income-tax Authorities to decide to take no further action on the second notice, and to proceed against the assessee on the first only. The assessment of the assessee on the first notice alone in his personal capacity is not under the circumstances *ultra vires*. 1942 I.T.R. 435. When income has escaped assessment, an assessment can be made under sec. 34 on the successor of the person who, if no succession had taken place, would have been liable. Such an assessment is not invalidated by the fact that the succession took place after the close of the year in which he escaped assessment. *See* 57 Mad. 357=466 M.L.J. 17 (F.B.); 1936 Lah. 750. The issue of a fresh notice under sec. 34 does not do away with the previous assessment under sec. 23 (4). 1931 A.L.J. 1109=1932 A. 83. Sec. 34 itself mentions that notice under sec. 34 may contain all or any of the requirements which may be included in a notice under sec. 22 (2). So when a notice under sec. 34 is issued another notice under sec. 22 (2) is not necessary. 1936 L. 750.

RE-ASSESSMENT—WHEN CAN BE MADE.—

Rectification of mistake.

35. (1) [1][The Commissioner or [2][Appellate Assistant Commissioner] may at any time [3][within four years] from the date of any order passed by him in appeal or, in the case of the Commissioner, in revision under section [4][33A] and] the Income-tax Officer may, at any time [3][within four years] from the date of any [5][assessment order [6][or refund order] passed by him] on his own motion rectify any mistake apparent from the record [7][of the appeal, revision [8][assessment or refund] as the case may be], and shall within the like period rectify any such mistake which has been [9][brought to his notice by an assessee] :

Provided that no such rectification shall be made, having the effect of enhancing an assessment [10][or reducing a refund] unless [1][the Commissioner,

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LEG. REF.

1 Inserted by sec. 6 of Act III of 1938.

2 Substituted for "Assistant Commissioner" by sec. 42 of Act VII of 1939.

3 Substituted for "within one year," by *ibid.*

4 Substituted by Act XXIII of 1941.

5 Substituted for "demand made upon an assessee," by Act VII of 1939.

6 Inserted by sec. 3 of Act XII of 1940.

7 Substituted for "of the assessment" by sec. 6 of Act III of 1928.

8 Substituted for "or assessment" by sec. 3 of Act XII of 1940.

9 Substituted for "brought to his notice by the assessee" by sec. 42 of Act VII of 1939.

10 Inserted by sec. 3 of Act XII of 1940.

An Income-tax Officer or his successor is entitled under sec. 34 to re-assess the income if he thinks that owing to some mistake in the first assessment income has escaped assessment. Sec. 34 is applicable to put right an assessment by which a deduction has been improperly allowed. But it cannot be held that it can only be re-opened on a particular ground such as change of facts or alteration in the law. But income cannot be held to have escaped assessment merely on the *ipse dixit* of the Income-tax Officer. It is for him to establish to his own satisfaction on the assessment and subsequently before any appellate triunal that income has escaped assessment; it is not for the assessee to prove that the original assessment was right and that no income has escaped assessment. 45 Bom.L.R. 125=1943 Bom. 132. Kania, J.—Where the Income-tax Officer who made the original assessment allowed certain deductions after examining four pieces of evidence and the successor of that officer who dealt with the matter after notice under sec. 34, had only three out of those four pieces of evidence and had no other evidence, and he finds that certain deductions should not have been made and that some income has escaped assessment, it must be held that there was no evidence before the Income-tax Officer to hold that any income had escaped assessment. The question of law about the applicability of sec. 34 could only arise if on the same materials at least the second officer had come to a different conclusion. I.L.R. (1943) Bom. 206=(1943) I.T.R. 44=45 Bom.L.R. 125=1943 Bom. 132. Income in respect of which a final and conclusive assessment has been made cannot be subjected to re assesment except when the asessment has been fixed at too low a rate either under sec. 34, or under any other section of the Income-taxAct. 14 R. 228=1936 R. 219 (S.B.). But *see also* 12 R. 1128=1933 Rang. 350; 1933 Sind 158. Sec. 34 (4) amended in 1939)—Re-assessment for 1937-1939 on ground of income of Branch Offices escaping assessment— Subsequent assessment for succeeding year completed without taking into acount income of Branch Offices—Notice under sec. 34 for succeeding year—Not tenable in law. 1944 I.T.R. 341=1944 Pat. 338 =220 I.C. 176.

SECS. 34 AND 23 (4).—When once a final assessment is arrival at, it cannot be re-opened except in the circumstances detailed in sec. 34 and sec. 35 of the Act and within the time limited by those sections. This evidently implies that even the "best judgment" assessment can be re-opened under sec. 34. I. L.R. 1939 L. 47=1938 Lah. 867. *See also* 65 I.A. 236=1938 2 M.L.J. 115.

SECS. 34 AND 35.—An assessment cannot be said to become final and conclusive until the time limited for altering the assessment under sec. 34 or 35 of the Act has expired; and until such time an assessment may be corrected in a proper case. I.L.R. (1939) Bom. 445 =41 Bom.L.R. 655=1939 B. 362. Secs. 34 and 35 are not mutually exclusive; and the fact that a mistake might be remedied under sec. 35 is no reason why the assessment should not be altered under sec. 34, if the case falls within that section. I.L.R. (1939) Bom. 445=41 Bom.L.R. 652=1939 Bom. 362.

SEC. 35.—Rectification of a mistake which has the effect of enhancing the assessment cannot be made after the expiry of one year from the date of the demand made by the assessee. 8 L. 357. The fact that the assessee had moved the Commissioner under sec. 33 during that period would not make any difference. 8 L. 347=1927 L. 421. Separate returns of five concerns filed to avoid heavy assessment—Notice served— Applicant mixing one more losing concern with the five and applying for reduction—Application is not maintainable. 4 P. 224=86 I.C. 170=1925 P. 352. Commissioner's powers under sec. 33 is one subject to limitations imposed by sec. 35. 8 L. 354=1927 L. 248. On this secton, *see also* 1933 S. 158=145 I.C. 145.

the [1][Appellate Assistant Commissioner] or the Income-tax Officer as the case may be], has given notice to the assessee of his intention so to do and has allowed him a reasonable opportunity of being heard :

[2][Provided further that no such rectification shall be made of any mistake in any order passed more than one year before the commencement of the Indian Income-tax (Amendment) Act, 1939.]

[3][(2) The provisions of sub-section (1) apply also in like manner to the rectification of mistakes by the Appellate Tribunal.]

[4][(3) Where any such rectification has the effect of reducing the assessment, the Income-tax Officer shall make any refund which may be due to such assessee.

[4][(4)] Where any such rectification has the effect of enhancing the assessment, [5][or reducing a refund] the Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 29, and the provisions of this Act shall apply accordingly.

Tax to be calculated to nearest anna.

36. In the determination of the amount of tax or of a refund payable under this Act, fractions of an anna less than six pies shall be disregarded, and fractions of an anna equal to or exceeding six pies shall be regarded as one anna.

Power to take evidence on oath, etc.

37. The Income-tax Officer, [6][Appellate Assistant Commissioner], [7][Commissioner and Appellate Tribunal] shall, for the purposes of htsi Chapter, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely :—

(*a*) enforcing the attendance of any person and examining him on oath or affirmation ;

(*b*) Compelling the produetion of documents ; and

(*c*) issueing commissions for the examination of witnesses, and any proceeding before an Income-tax Officer [1][Appellate Assistant Commissioner] [8][Commissioner or Appellate Tribunal] under this Chapter shall be deemed to be a "judicial proceeding" within the meaning of sections 193 and 228 [9][and for the purposes of section 196] of the Indian Penal Code.

Power to call for information.

38. The Income-tax Officer or Assistant Commissioner may, for the purposes of this Act,—

(1) require any firm, or Hindu undivided family to furnish him with a return of the members of the firm, or of the manager or adult male members of the family, as the case may be, and of their addresses ;

LEG. REF.

1 Substituted for "Assistant Commissioner" by sec. 42 of Act VII of 1939.
2 Added by sec. sec. 42 *ibid.*
3 Inserted by sec. 89, *ibid.*
4 The original sub-secs. (2) and (3) were re-numbered, *ibid.*
5 Inserted by sec. 3 of Act XII of 1940.
6 Substituted for "Assistant Commissioner" by sec. 43 of Act VII of 1939.
7 Substituted for the words "and Commissioner" by *ibid.*
8 Substituted for the words "or Commissioner" by *ibid.*
9 Inserted by sec. 6 of Act XXII of 1930.

SEC. 37.—Section being a penal section must be construed strictly. 31 C.W.N. 996 =1927 C. 724. Where a person was convicted and sentenced under sec. 196, Penal Code, for an offence committed during the proceeding pursuant to a notice under sec 23 (2) of the Act, *held,* that sec. 37, did not contemplate the offence and that the conviction should be quashed. 31 C.W.N. 996. Although an Income tax Officer making an assessment is not strictly acting as a Court of law, it is clear from sec. 37 that he is acting in a quasi judicial capacity and he ought to conform to the more elementary rules of judicial procedure and in partcular to conduct the case himself, and not allow somebody else, even his superior officer, to take the conduct out of his hands. Where at the assessment proceedings, the superior officer of the Income-tax Officer making the assessment is present and puts questions to the assessee either directly or through the Income-tax Officer the procedure is grossly irregular. It is grossly improper for a superior revenue officer to appear in the proceedings and in effect to dictate to the Income-tax Officer holding the inquiry what questions are to be asked and to direct him how to conduct the inquiry. I.L.R. (1943) Bom. 152=1943 I.T.R. 172=6 F.L.J. 28=45 Bom.L.R. 31=1943 Bom. 77.

(2) require any person whom he has reason to believe to be a trustee, guardian, or agent, to furnish him with a return of the names of the persons for or of whom he is trustee, guardian, or agent, and of their addresses ;

[1][(3) require any assessee to furnish a statement of the names and addresses of all persons to whom he has paid in any year rent, interest, commission, royalty or brokerage, or any annuity not being an annuity taxable under the head 'Salaries,' amounting to more than four hundred rupees, together with particulars of all such payments made.]

Power to inspect the register of members of any company.

39. The Income-tax Officer or Assistant Commissioner, or any person authorised in writing in this behalf by the Income-tax Officer or Assistant Commissioner, may inspect and, if necessary, take copies, or cause copies to be taken, of any register of the members, debenture-holders or mortgagees of any company or of any entry in such register.

CHAPTER V.

LIABILITY IN SPECIAL CASES.

Guardians, trustees andd agents.

[2][40. (1) Where the guardian or trustee of any person being a minor, lunatic or idiot (all of which persons are hereinafter in this sub-section included in the term "beneficiary") is entitled to receive on behalf of such beneficiary, or is in receipt on behalf of such beneficiary of, any income, profits or gains chargeable under this Act, the tax shall be levied upon and recoverable from such guardian or trustee, as the case may be, in like manner and to the same amount as it would be leviable upon and recoverable from any such beneficiary if of full age or sound mind and in direct receipt of such income, profits or gains, and all the provisions of this Act shall apply accordingly.

(2) Where the trustee or agent of any person not resident in British India and not being a minor, lunatic or idiot (such person being hereinafter in this sub-section referred to as a beneficiary) is entitled to receive on behalf of such beneficiary, or is in receipt on behalf of such beneficiary of, any income, profits or gains

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LEG. REF.

[1] Substituted by sec. 44 of Act VII of 1939.

[2] Sec. 40 substituted by Act XXIII of 1941.

SEC. 40.—Sec. 40 is not a charging section. It is only a machinery section enabling the Income-tax Officer to assess the trustees or guardians as representing their beneficiaries or wards. But it is not obligatory for the officer so to do and the section cannot be invoked to prevent him from assessing on other basis. 55 M. 891=1932 M. 378=62 M.L.J. 600 (F.B.). It makes the trustees liable for beneficiaries in certain cases, where the beneficiaries are difficult or impossible to get at and where the trustee acts as a conduit-pipe for the conveyance of the income to the beneficiaries. It does not affect the charging secs. 3 and 10 of the Act under which the trustees as an association of individuals, carrying on a business, are liable to be assessed in respect of the gains of the business carried on by them. In fact this is the only way that the profits and gains of the business carried on by the trustees can be taxed. Sec. 40 is not therefore applicable to trustees who are liable under the general provisions of the Act to be assessed. 1930 L. 929. Even apart from sec. 40, there may be other cases in which the trustees in receipt of trust income may be chargeable with tax on such income. By Act IV of 1913, for settling certain properties belonging to Sir Currimbhoy Ebrahim, Baronet, appellants were incorporated as trustees for executing the trusts. By sec. 6 the corporation was to pay out of the income from the properties all rates and taxes and sundry other outgoings. By sec. 7 the corporation was required to form two funds, called the Sinking Fund and the Repair Fund, and to carry annually thereto respectively, out of the income of the properties, certain sums calculated on percentages of capital sums there specified. By sec. 8, the residue of the income was to be paid to the Baronet for the time being, if of full age, for his own absolute use and benefit. *Held*, that, so far as concerned the money which the appellants employed in maintaining the Sinking Fund and the Repair Fund and in defraying outgoings they were not exempt from liability to pay tax. (1921) 1 A.C. 65, Ref.] *Held, also*, that even with reference to the balance of the trust income paid over to the Baronet, it was 'receivable' or 'owned' by the trustees and so rightly assessed. 61 I.A. 209=58 B. 317=66 M.L.J. 643 (P.C.).

SECS. 40 AND 41.—Sections do not exhaust the category or description of trustees or other persons who may be in receipt of income as such or on behalf of others and do not limit the operation of sec. 3 with regard to others. 16 L. 829=1935 L. 570 (F.B.) on this section *see also* 1945 I.T.R. 500.

chargeable under this Act, the tax, if not levied on the beneficiary direct, may be levied upon and recovered from such trustee or agent, as the case may be, in like manner and to the same amount as it would be leviable upon and recovered from the beneficiary if in direct receipt of such income, profits or gains, and all the provisions of this Act shall apply accordingly.]

Court of Wards, etc.

41. [1][(1)] In the case of income, profits or gains chargeable under this Act which [2]* * * * * the Courts of Wards, the Administrators-General, the Official Trustees or [3]* * any receiver or manager (including any person whatever his designation who in fact manages property on behalf of another) appointed by or under any order of a Court, [4][or any trustee or trustees [5][appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise] (including the trustee or trustees under any Wakf deed which is valid under the Mussalman Wakf Validating Act, 1913) are entitled to receive on behalf of any person], the tax shall be levied upon and recoverable from such Court of Wards, Administrator-General, Official Trustee, receiver or manager [4][or trustee or trustees], in the like manner and to the same amount as it would be leviable upon and recoverable from [6][the person on whose behalf such income, profits or gains are receivable], and all the provisions of this Act shall apply accordingly:

[7][Provided that where any such income, profits or gains or any part thereof are not specifically receivable on behalf of any one person, or where the individual shares of the persons on whose behalf they are receivable are indeterminate or unknown, the tax shall be levied and recoverable at the maximum rate:

LEG. REF.

1 Original sec. 41 re-numbered sub-sec. (1) by sec. 46 of Act VII of 1939.

2 Words "are received by "were omitted by *ibid.*

3 Word "by" omitted by *ibid.*

4 Inserted by *ibid.*

5 Substituted by Act XXIII of 1941.

6 Substituted for the words "any person on whose behalf such income, profits or gains are received," by sec. 46 of Act VII of 1939.

7 Added by *ibid.*

SEC. 41 (1): APPLICABILITY—TRUST PROPERTY—INCOME TO BE DEVOTED TO TEMPLE, DHARMASHALA AND SADAVART—BENEFICIARIES, IF JURISTIC PERSONS.—**Sec. 41 (1) of the Income-tax Act applies to the income from a trust property which has to be utilised for a temple, Dharmashala (rest house) and Sadavart (house for feeding or distributing charity to the poor). The beneficiaries connoted by the temple, the Dharmashala and the Sadavart are all persons in the juristic sense. The argument that the income is devoted to specified "objects" and not for the benefit of "persons" is fallacious since here the objects cannot be divorced from the persons the worship of the idol or the maintenance of the temple and the idol; the Dharmashala and the travellers seeking shelter there; and the Sadavart and the poor people who receive food. These are so inextricably bound up together as to make it impossible to separate the objects from the persons. These persons become in the eye of law the *cestui que trusts.* What can reasonably be said is that the beneficiaries are not a specific, fixed or limited body of persons but wholly indeterminate. I.L.R. (1946) Nag. 594=224 I.C. 589. Applicability —Testamentary trust — Assessment before amending Act of 1941 came into force—Validity.** Sec. 41 (1) did not apply to a testamentary trust. This defect was removed by the Amending Act XXIII of 1941. But this Act does not purport to be retrospective and an assessment already made before it came into force cannot, therefore, be sustained. I.L.R. (1946) Nag. 594=224 I.C. 589. Non-resident foreigner—Liability to assessment of profits earned by sales through a salesman or broker—Principles. *See* 1946 I. T.R. 417.

SEC. 41: APPLICABILITY—"MANAGER APPOINTED BY COURT".—*K* instituted a suit against *E* for a declaration that he was entitled jointly with *E* to certain properties and also for partition. A consent decree was passed, the terms of settlement providing that both *K* and *E* were each entitled to equal shares in the properties. A partition of the properties was ordered to be effected and Commissioners who were appointed for that purpose were directed to take accounts of the joint estate and divide the properties equally between both of the. The Official Receiver was appointed receiver of the properties and was invested with the power of dividing the income of the properties equally between *K* and *E*. The Official Receiver was however subsequently discharged by a consent order which jointly gave liberty to both *K* and *E* to realize the rent of properties on joint receipts and to meet the necessary expenses. The documents of title were kept in joint custody and both were given liberty to invest money which would come to their hands and divide the same equally. Both *K* and *E* while in possession under the above arrangement divided the receipts between themselves in equal shares. The Income-tax Officer assessed *K* in respect of his share in the property presumably including half the annual value of the property in the assessable income of *K* under

[1][but, when such persons have no other personal income chargeable under this Act and none of them is an artificial juridical person, as if such income profits or gains or such part thereof were the total income of an association of persons.]

Provided further that when part only of the income, profits and gains of a trust is chargeable under this Act, that proportion only of the income, profits and gains receivable by a beneficiary from the trust which the part so chargeable bears to the whole income, profits and gains of the trust shall be deemed to have been derived from that part.]

[2][(2) Nothing contained in sub-section (1) shall prevent either the direct assessment of the person on whose behalf income, profits or gains therein referred to are receivable, or the recovery from such person of the tax payable in respect of such income, profits or gains.]

Non-residents.

42. (1) [3][All income, profits or gains accruing or arising], whether directly or indirectly, through or from any business connection [4][in British India, or through or from any property in British India, or through or from any asset or source of income in British India

LEG. REF.

1 Added by Act VIII of 1946.

2 Added by sec. 46 of Act VII of 1939.

3 Substituted for the original words by sec. 47, *ibid.*

4 Substituted for "or property in British India" by *ibid.*

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the head 'property'. *Held*, that sec. 41 did not apply because in the circumstances *K* and *R* were never appointed managers or receivers of the property by or under any order of the Court within the meaning of sec. 41 and the Income-tax Officer did not therefore act illegally in assessing *K* in respect of his share in the property. I.L.R. (1939) 2 Cal. 300=40 C.W.N. 1009=1939 P.C. 163=(1939) 2 M.L.J. 803 (P.C.). To bring a person within sec. 41 it is not enough that he should be appointed to "manage" the property, he must manage it "on behalf of another". I.L.R. (1937) 2 Cal. 358=1937 Cal. 583. "Agent"—Meaning of. *See* 67 I.A. 394=(1940) 2 M.L.J. 851 (P.C.); 1939 All. 593; 1938 All. 310.

The partners of a firm conveyed their properties to trustees for the benefit of their creditors. The trustees sold in the firm's financial year a cinema business and a general business of the debtors but carried on a Saw Mill business which proved to be a profitable concern. The profits made from the Saw Mill were sufficient to pay in full all the creditors. *Held*, (*i*) the income received by the trustees was received on behalf of the general body of creditors and not of the partners and income tax should accordingly be levied on the trustees as trustees for the general body of creditors only; (*ii*) the assessees have no right to deduct an allowance for depreciation in the general and cinema business discontinued prior to the year of account as a set off against the income of the Saw Mill business. 1942 I.T.R. 477=55 L.W. 788=(1942) 2 M.L.J. 651=1943 Mad. 243. Order passed upon the terms agreed to by the parties is still an agreement and not an order of Court —Leave to guardian of minor to compromise does not change the position. 1944 I.T.R. 285=1944 M.W.N. 415=57 L.W. 352 (1)= 1944 Mad. 408 (1)=(1944) 1 M.L.J. 495.

Trustee receiving income from business, property and investments —Single assessment for entire income—Validity. (1944) I.T.R. 68 =A.I.R. 1944 Cal. 308. *See also* (1942) 2 M. L.J. 651.

SEC. 41 (1) FIRST PROVISO.—Amended section does not apply where the assessment was before the amendment came into force. 1944 I.T.R. 261=1944 M.W.N. 412=1944 Mad. 567=(1944) 1 M.L.J. 496.

SEC. 41 (1), PROVISO.—Applicability—Levy of tax at maximum rate—When justified. Where the individual shares of the beneficiaries under a trust, on whose behalf the income of the trust is received by the trustee are indeterminate and might well vary in respect of many of the *cestui que trusts* from year to year according to the wish or even the whim of the trustee himself, the proviso to sec. 41 (1) comes into operation, and the tax that is leviable is the maximum rate prevailing during the year of assessment. (1944) I.T.R. 68=1944 Cal. 308. The assessee who was the owner of a distillery business executed a wakf deed by which he dedicated the income from that business with the ultimate benefit to the poor for the maintenance and support of his family, children and descendants among other purposes. He constituted himself the sole *mutawalli* of the wakf. It was provided in the deed that in the event of profit the beneficiaries should benefit concurrently and in the same proportion. It was found that the persons entitled to be treated as beneficiaries were the assessee (settlor) his wife, his fives sons, seven daughters, and his ten grandchildren and they took the profits simultaneously and in equal shares. *Held*, that the first proviso to sec. 41 did not apply, and that the assessee should be taxed on the basis of the profits falling to the share of each beneficiary and not on the footing that all the beneficiaries constituted an association of persons. (1945) I.T.R. 189=1945 Pat.

SEC. 42.—The definition of the word 'business' in sec. 2 (4) is not exhaustive and does not restrict the meaning of 'business connection' in sec. 42 to such definition. All that is necessary is that there should be a business in British India and a connection

or through or from any money lent at interest and brought into british India in cash or in kind], shall be deemed to be income accruing or arising within British India, and [1][where the person entitled to the income, profits or gains is not resident in British India, shall be chargeable to income-tax either in his name or in the name of his agent, and in the latter case] such agent shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax.

[2][Provided that where the person entitled to the income, profits or gains is not resident in British India, the income-tax so chargeable may be recovered by deduction under any of the provisions of section 18 and that] any arrears of tax may be recovered also in accordance with the provisions of this Act from any assets of the non-resident person which are, or may at any time come within British India :

[3][Provided further that any such agent, or any person who apprehends that he may be assessed as such an agent, may retain out of any money payable by him to such non-resident person a sum equal to his estimated liability under this sub-section, and in the event of any disagreement between the non-resident person and such agent or person as to the amount to be so retained, such agent or person may secure from the Income-tax Officer a certificate stating the amount to be so retained pending final settlement of the liability, and the certificate so obtained shall be his warrant for retaining that amount :

Provided further that the amount recoverable from such agent or person at the time of final settlement shall not exceed the amount specified in such certificate except to the extent to which such agent or person may at such time have in his hands additional assets of such non-resident person.]

(2) Where a person not resident [4][or not ordinarily resident] in British India, [5]* * * * carries on business with a person resident in British India, and it appears to the Income-tax Officer, [6]* * * * that owing to the close connection [7][between such persons the course of business is so arranged that the business done by the resident person with the person not resident or not ordinarily resident] produces to the resident either no profits or less than the ordinary profits which might be expected to arise in that business, the profits derived therefrom or which may reasonably be deemed to have been derived therefrom, shall be chargeable to income-tax in the name of the resident person who shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax.

LEG. REF.

1 Substituted for the original words, by sec. 47 Act VII of 1939.

2 Substituted for "Provided that", by *ibid.*

3 Added by *ibid.*

4 Inserted by Act VII of 1939.

5 Certain words omitted by *ibid.*

6 The words "or the Assistant Commissioner, as the case may be" omitted by *ibid.*

7 Substituted for original words by *ibid.*

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between a non-resident person or company and that 'business' and that the non-resident person or company has earned an income through such connection. 57 B. 519=35 Bom.L.R. 896=1933 427. *See also* 1937 Rang.L.R. 172; 1937 Rang.L.R. 174=1937 Rang. 258 (S.B.). 'Property' in sec. 42 means something tangible and not a mere chose in action. A person who has advanced a loan is entitled to a mere debt and that is not property. 57 B. 651=35 Bom.L.R. 914=1933 B. 422. Company resident in British India holding securities in foreign Bank—Interest on same not brought into British India—Liability to tax—Exemption—Right to. *See* 47 Bom. L.R. 795. In the case of a non-resident, income which neither accrues nor arises nor is received within British India may be liable to tax under the combined operation of secs. 3, 4 and 42. Profits made by an Insurance Company outside British India on premiums of participating policies collected and sent by its branches in India by investment outside India are profits or gains which are liable to tax in India. 57 B. 519=35 Bom.L.R. 896=1933 B. 427. Income of non-resident company, when liable for income-tax. 3 R. 614. Sec. 42 (3) refers only to a person who sells goods purchased by him from any place outside British India, and not to one who sells the produce of his own lands situate outside British India. The clause deals only with "profits" and "gains" and not with income generally. I L.R. 1938 Mad. 25=1937 Mad. 745=(1937) 2 M.L.J. 310 (S.B.). An assessment of the income of a foreign resident can be made under sec. 42, as it stood before the amendment of the Act in 1939, without the interposition of an agent, *i.e.*, without the appointment of an agent under sec. 43 of the Act. The first part of sec. 42 is a charging section, but the provisions

[1][(3) In the case of a business of which all the operations are not carried out in British India, the profits and gains of the business deemed under this section to accrue or arise in British India shall be only such profits and gains as are reasonably attributable to that part of the operations carried out in Bri ish India]

LEG. REF.

[1] Substituted by sec. 47 of Act VII of 1939.

for charging income upon an agent are mere machinery and not mandatory. Sec. 42 provides a special and additional power to meet a particular difficulty, *i.e.*, to get at a foreign resident, and is not intended, and in the absence of clear words of prohibition, should not be construed, to take away existing powers. I.L.R. (1943) Bom. 224=45 Bom.L.R. 143=1943 I.T.R. 202=1943 Bom. 102.

SEC. 42 (3): CONSTRUCTION AND SCOPE.—The investment of premia collected and received by an Insurance Company is as much a part of its business as the earning of premia. If its investments can be separated it is open to the company to urge that portions of this business operation are carried out in British India and portions outside British India and such income as can be reasonably attributed to that part of the operations carried out outside British India should be exempted. Where the investment of the premia earned in British India resulting in interest is capable of being divided into separate portions, some of which took place in India and some outside, relief under sec. 42 (3) should be given to the Company on that basis. 47 Bom.L.R. 222=1945 I.T.R. 272=1945 Bom. 285.

SECS. 42 AND 43.—When two companies are closely associated, that is, there is a business connexion and the two are working in concert as though under one control, and where one company lends money to another on interest, the lender company can be said to be receiving profits or gains taxable under sec. 42 (1) and sec. 43. 63 I.A. 408=60 B. 900=41 C.W.N. 33=1936 P.C. 269=1937 1 M.L.J. 200 (P.C.). Business connection, what is. *See* 1939 A.L.J. 631=1939 All. 593=I.L.R. (1939) All. 832; 67 I.A. 394=I.L.R. (1941) Mad. 89=(1940) 2 M.L.J. 851=1940 P.C. 183 (P.C.). "Business connection", in secs. 42 and 43 denotes some element of continuity in the relationship between the person in India who makes the profits and the non-resident who receives them. A single transaction would not fall within the expression. Sec. 43 is really only machinery for giving effect to sec. 42, and the mere appointment of an agent under sec. 43 would be of no consequence unless tax can be levied under sec. 42. 41 Bom.L.R 379=1939 Bom. 257. It is not necessary for the purpose of forming a business connection in British India that contracts between the statutory agent and the non-resident should be entered into in British India or that the profits should accrue to the non-resident in British India. 1939 I.T.R. 1. Sec. 42 provides the method of charging a non-resident and lays down that his profits and gains shall be chargeable to income-tax in the name of the agent and that such 'agent' shall be deemed to be, for all the purposes of this Act, the the assessee in respect of such income-tax. According to sec. 42 (1) it is the agent alone and not his non-resident principal, that shall for the purposes of the Act, be treated as the assessee (*i.e.*) as the person to whom a notice under sec. 22 (2) shall issue and by whom the tax is payable. The provisions of that section are mandatory and the department is precluded from issuing notices to the principal and from treating the principal as the assessee except to the limited extent of recovering any arrears of tax. The proviso to sec. 42 does not militate against the above view, but it only contemplates the possibilty of the assessee, (*i.e.*) the agent not being able to pay the tax and provides the necessary method of recovery. The word 'agent' for the purposes of sec. 42 has a wider scope than it has in ordinary use. I.L.R. (1938) All. 432=1938 A.L.J. 341=1938 All. 310. Foreign company lending money to resident company—Intimate business connection between the two companies—Interest forwarded to foreign company—Resident company liable to income-tax on the footing of agency. *See* 52 B. 702=1928 B. 448=30 Bom.L.R. 1172=113 I.C. 593; *see also* 52 B. 726; 1939 All. 593. Profits accruing in British India, but earned abroad are assessable. *See* 59 C. 1226=36 C.W.N. 563=1932 C. 626, cited under sec. 4, *supra*. The mere fact that a person residing outside British India with acumulated wealth chooses to invest part of it in a loan to a person in British India does not constitute a business. And the fact that the borrower chooses to use the money which he has borrowed for the purposes of his own business does not constitute any business connection so far as relates to the lender. The relationship between the parties is that of debtor and creditor and nothing else and that is not such a business connection as is referred to in sec. 42. Hence, the latter cannot be appointed as the agent of the former under sec. 43 for assessment. 57 B. 651=35 Bom. L.R. 914=1933 B. 422. A principal can be assessed under sec. 42 without the necessity of appointment an agent under the latter part of sec. 43. 57 B. 519=35 Bom.L. R. 896=1933 B. 427. An assessee assessed under sec. 42 in respect of a business in which the manufacture of a commodity takes place in a foreign country and the sale thereof takes place in British India, is not entitled, in computing the profits and gains of such business, to make a deduction representing a proportion of profits earned by manufacture in the country of origin. 59

43. Any person employed by or on behalf of a person residing out of British India, or having any business connection with such person, or through whom such person is in the receipt of any income, profits or gains upon whom the Income-tax Officer has caused a notice to be served of his intention of treating him as the agent of the non-resident person shall, for all the purposes of this Act, be deemed to be such agent:

Agent to include persons treated as such.

C. 1226=1932 C. 626=36 C.W.N. 563. The assessee company was formed for acquiring from an American company and carrying on in a particular area, the American company's business of selling their manufactures. The American company owned all the shares of the assessee company and had complete control over it. The question was if the local company can be deemed to be the agent of the American company so as to be assessed in respect of the profits made by the American company on the sales of its manufactures to the local company. *Held*, that the necessary business connection having been established, the profits and gains in question accrued, or arose to the foreign company directly or indirectly through or from a business connection in British India and the assessee company was chargeable for the same. 55 B. 243=35 C. W.N. 349=1931 P.C. 42=58 I.A. 42=60 M.L.J. 609 (P.C.). The question as to what is the residence of a joint family cannot depend upon the nature of income it gets. It cannot be that the test of residence should be one thing if it is a trading family, and some other thing if it gets income from securities, property or other sources. In the case of a Hindu joint family, the family should be said to reside in all those places where members of the family live and may like a company or firm have more than one place of residence. Therefore, the test in 1927 M. 732=50 M. 847=53 M.L.J. 249= 1927 M. 732=50 M. 847=53 M.L.J. 249 cannot apply to what are generally described in decisions as Hindu Law partnerships, *i.e.*, partnerships which are the creatures of Hindu Law and not of the law of contracts. 55 M. 885=63 M.L.J. 22 (S.B.).

SEC. 43.—The word "agent" in sec. 43 is not to be used in the same sense as the same word in sec. 42 (1). Any person who comes within the terms of sec. 43 is put by that section artificially into the position of an agent and assessed under sec. 42 (1). It is not restricted to agents in actual receipt of the profits and gains. 55 B. 243=35 C.W.N. 349=1931 P.C. 42=58 I.A. 42=60 M.L.J. 609 (P.C.). *See also* 57 I.A. 42; 1938 All. 310=1938 A.L.J. 341; 57 I.A. 49=58 M. L.J. 197=1930 P.C. 54 (P.C.). The section merely defines who may be included as an agent and the agent under the section must be in receipt of income. 49 C. 721= 1922 C. 454=26 C.W.N. 745. The notice is by sec. 43 made part of the series of facts which results in the resident being deemed agent by force of the section. The extent of his responsibility if to be agent is another matter. If by notice given in due course under sec. 22 (2) the year or years be specified, he has no grievance in point of procedure, and he can make his case upon the merits. Thus the assessment made on an assessee as agent under sec. 43 is not rendered illegal by the fact that the notice which the Income-tax Officer served on the assessee under the proviso to sec. 43 did not mention any particular year for which the Income-tax Officer proposed to treat assessee as an agent. 65 I.A. 12=I.L.R. (1938) Lah. 129=42 C.W.N. 417=1938 P.C. 8= (1938) 1 M.L.J. 123 (P.C.). Where an Indian company distributes its Indian profits to shareholders outside British India, the company cannot be deemed to be the agent of the foreign shareholders and assessed as such to super-tax in British India. 49 C. 721. The words "denying his liability to be assessed" under sec. 30 (1) are wide enough to cover a case of an assessee who denies his liability to be declared as an agent under sec. 43. Therefore an appeal against the order of an Income-tax Officer declaring any person to be an agent of a foreigner is not barred under sec. 30 (1). 28 N.L.R. 194=1932 N. 152. The word 'through' in sec. 43 (*c*) cannot be construed as meaning 'from'. 57 Bom. 651=35 Bom. L.R. 914=1933 Bom. 422. Where a person is appointed as agent and assessed as agent in respect of a particular year, and he does not dispute his liability to be assessed in respect of that year and pays the tax, it amounts to an admission on his part that in respect of that year he is an agent of the principal for purposes of sec. 43. It is not open too the assessee to plead later on in re-assessment under sec. 34 that he was not the agent of the principal in respect of that year of assessment. The re-assessment under sec. 34 is only a part of the original assessment though the actual re-assessment might be made several years later. But an appointment of an agent for one year cannot necessarily be held to hold good for subsequent years. 1943 I.T.R. 104=45 Bom. L.R. 168=1943 Bom. 122=213 I.C. 265.

SECS. 43 AND 22: NOTICE SERVED ON ASSESSEE AS AGENT OF NON-RESIDENT—QUESTION OF AGENCY—WHEN MUST BE DETERMINED.—It is open to the Income-tax Officer to postpone any final determination of the question of agency until the time comes to make an assessment under sec. 23, as the Act imposes no technical requirement in this connexion. It may be reasonable that an assessee who is served with a notice under sec. 22 (2) as an agent of a non-resident under sec. 43, should not be required to render a return of the non-resident's income until it has first been decided that he is his agent; on the other hand, having regard to the circumstances which for this purpose constitute agency, it may well be

[1][Provided that where transactions are carried on in the ordinary course of business through a broker in British India in such circumstances that the broker does not in respect of such transactions deal directly with or on behalf of a non-resident principal but deals with or through a non-resident broker who is carrying on such transactions in the ordinary course of his business and not as a principal such first mentioned broker shall not be deemed to be an agent under this section in respect of such transactions :]

Provided [2][further] that no person shall be deemed to be the agent of a non-resident person, unless he has had an opportunity of being heard by the Income-tax Officer as to his liability.

Liability in case of a discontinued firm or association.

[3][44. Where any business, profession or vocation carried on by a firm or association of persons has been discontinued, or where an association of persons is dissolved, every person who was at the time of such discontinuance or dissolution a partner of such firm or a member of such association shall, in respect of the income, profits and gains of the firm or association, be jointly and severally liable to assessment under Chapter IV and for the amount of tax payable and all the provisions of Chapter IV shall, so far as may be, apply to any such assessment.]

[4][CHAPTER VA.

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF SHIPPING.

Liability to tax of occasional shipping.

44A. The provisions of this Chapter shall, notwithstanding anything contained in the other provisions of this Act, apply for the purpose of the levy and recovery of tax in the case of any person who resides out of British India and carries on business in British India in any year as the owner or charterer of a ship (such person hereinafter in this Chapter being referred to as the principal), unless the Income-tax Officer is satisfied that there is an agent of such principal from whom the tax will be recoverable in the following year under the other provisions of this Act.

Return of profits and gains.

44B. (1) Before the departure from any port in British India of any ship in respect of which the provisions of this Chapter apply, the master of the ship shall prepare and furnish to the Income-tax Officer a return of the full amount paid or payable to the principal, or to any person on his behalf, on account of the carriage of all passengers, live-stock or goods shipped at that port since the last arrival of the ship thereat.

LEG. REF.

1 Proviso inserted by sec. 48, of Act VII of 1939.

2 Inserted by *ibid.*

3 Substituted by sec. 49 *ibid.*

4 Chapter V-A inserted by sec. 3 of Act XXVII of 1923.

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thought advisable that the information afforded by a return and by books of account produced in support thereof would be available for the purpose of deciding as to agency. The avoidance of delay may also be a consideration. Thus, if the notice under sec. 22 is served before the expiry of one year from the financial year, it is a valid initiation of proceedings of the assessee as an agent under sec. 43. Proceedings if begun in time are not by the Income-tax Act required to be completed within any time limit. 65 I.A. 12=I.L.R. (1938) Lah. 129=42 C.W.N. 417=1938 P.C. 8=(1938) 1 M.L.J. 123 (P.C.).

SEC. 44.—The object of sec. 44 is to enable the tax on the profits of a firm which has been discontinued to be got by the Income-tax authorities and to prevent the avoidance of taxation by the discontinuance of the firm. The words "tax payable" in the section mean "tax that is due to be paid," "tax which the firm or partnership would be liable to pay if it had not been discontinued," or "tax either found to be due already or that will be found to be due in the future." They do not mean "tax payable as the result of an assessment already made upon the firm." The object of the section being clearly to get at the tax on the profits of a firm made before its discontinuance, the Income-tax authorities are perfectly entitled to assess the partners of a discontinued firm jointly and severally in respect of the profits earned by the firm before it was discontinued. 1937 M. 300=(1937) 1 M.L.J. 182 =I.L.R. (1937) Mad. 792 (F.B.). Partnership—Dissolution—Retirement of one partner and receipt by him of share of profits—Business continued by other partner—Liability of latter as 'successor' to assessment on such share of profits. *See* I.L.R. (1941) M. 220=1941 I.T.R. 1=1941 M. 255=(1941) 1 M.L.J. 120 (S.B.).

(2) On receipt of the return, the Income-tax Officer shall assess the amount referred to in sub-section (1), and for this purpose may call for such accounts or documents as he may require, and one-twentieth of the amount so assessed shall be deemed to be the amount of the profits and gains accruing to the principal on account of the carriage of the passengers, livestock and goods shipped at the port.

(3) When the profits and gains have been assessed as aforesaid, the Income-tax Officer shall determine the sum payable as tax thereon at the rate for the time being applicable to the total income of a company, and such sum shall be payable by the master of the ship, and a port-clearance shall not be granted to the ship until the Customs-collector, or other officer duly authorised to grant the same, is satisfied that the tax has been duly paid.

Adjustment.

44C. Nothing in this Chapter shall be deemed to prevent a principal from claiming [1][in the year] following that in which any payment has been made on his behalf under this Chapter that an assessment be made of his total income in the previous year, and that the tax payable on the basis thereof be determined in accordance with the other provisions of this Act, and, if he so claims, any such payment as aforesaid shall be treated as a payment in advance of the tax and the difference between the sum so paid, and the amount of tax found payable by him shall be paid by him or refunded to him, as the case may be.]

[2][CHAPTER VB.

SPECIAL PROVISIONS RELATING TO AVOIDANCE OF LIABILITY TO INCOME-TAX AND SUPER-TAX.

Avoidance of income-tax by transactions resulting in the transfer of income to persons resident or ordinarily resident abroad.

44D. (1) Where any person has, by means of a transfer of assets, by virtue or in consequence whereof, either alone or in conjunction with associated operations, any income which if it were the income of such person would be chargeable to income-tax becomes payable to a person not resident or to a person resident but not ordinarily resident in British India, acquired any rights by virtue or in consequence of which he has within the meaning of this section power to enjoy such income, whether forthwith or in the future, that income shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this section, be deemed to be income of such first mentioned person for all the purposes of this Act.

(2) Where any person receives or is entitled to receive, whether before or after any transfer of assets by virtue or in consequence whereof either alone or in conjunction with associated operations any income becomes payable to a person not resident or resident but not ordinarily resident in British India, any sum paid or payable by way of a loan or repayment of a loan or any other sum, being a sum which is not paid or payable for full consideration in money or money's worth, paid or payable otherwise than as income, such income shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this section, be deemed to be the income of the first-mentioned person for all the purposes of this Act.

(3) Sub-sections (1)and (2) shall not apply if such first-mentioned person shows to the satisfaction of the Income-tax Officer either—

(*a*) that neither the transfer nor any associated operation had for its purpose or for one of its purposes the avoidance of liability to taxation; or

(*b*) that the transfer and all associated operations were *bona fide* commercial transactions and were not designed for the purpose of avoiding liability to taxation.

LEG. REF.

[1] Substituted for "in any year" by sec. 50 of Act VII of 1939.

[2] Chapter VB inserted by sec. 51, *Ibid.*

(4) For the purposes of this section, an "associated operation" means, in relation to any transfer, an operation of any kind effected by any person in relation to any of the assets transferred or any assets representing whether directly or indirectly any of the assets transferred, or to the income arising from any such assets, or to any assets representing whether directly or indirectly the accumulations of income arising from any such assets.

(5) A person shall, for the purposes of this section, be deemed to have power to enjoy income of a person not resident or resident but not ordinarly resident, in Britsh India, if—

(*a*) the income is in fact so dealt with by any person as to be calculated at some point of time,and, whether in the from of income or not, to enure for the benefit of the first-mentioned person, or

(*b*) the receipt or accrual of the income operates to increase the value to such first-mentioned person of any assets held by him or for his benefit, or

(*c*) such first -mentioned person reccives or is entitled to recevie at any time any benefit provided or to be provided out of that income or out of moneys which are or will be available for the purposes by reason of the effect or successive effects of the associated operations on that income and on any assets which respresent that income, or

(*d*) such first-mentioned person has power by means of the exercise of any power of appointment or power of revocation or otherwise to obtain for himself whether with or without the consent of any other person, the beneficial enjoyment of the income, or

(*e*) such first-mentioned person is able, in any manner whatsoever and whether directly or indirectly, te control the application of the income.

(6) In determining whether a person has power to enjoy income within the meaning of this section, regard shall be had to the substantial result and effect of the transfer and any associated operations, and all benefits which may at any time accrue to such person as a result of the transfer and any associated operations shall be taken into account irrespective of the nature or form the benefits.

(7) For the purposes of this section—

(*a*) the expression ' assets' includes property or rights of any kind, and the expression ' transfer ' in relation to rights includes the creation of those rights;

(*b*) the expression ' benefit ' includes a payment of any kind;

(*c*) references to income of a person not resident or of a person not ordinarily resident in British India shall, where the amount of the income of a company for any year or period has been deemed to have been distributed under sub-section (1) of seetion 23A, include references to so much of the income of the company for that year or period as is equal to the amount deemed to have been distributed to that person;

(*d*) references to assets representing any assets, income or accumulations of income include references to shares in or obligations of any company to which, or obligation of any other person to whom those assets, that income or those accumulations are or have been transferred;

(*e*) any body corporate incorporated outside British India shall be treated as if it were resident out of British India whether it is so resident or not.

(8) The provisions of this section shall apply for the purposes of assessment to income-tax and super-tax for the year ending on the 31st day of March, 1940, and subsequent years, and shall apply, in relation to transfers of assets and associated operations whether carried out before or after the commencement of the Indian Income-tax (Amendment) Act, 1939.

(9) Where any person has been charged to tax on any income deemed to be his under the provisions of this section, and that income is subsequently received by him, whether as income or in any other form, it shall not again be deemed to form part of his income for the purposes of this Act.

Avoidance of tax by certain transactions in securities.

44E. (1) Where the owner of any securities (in this sub-section and in sub-section (2) referred to as 'the owner') agrees to sell or transfer those securities, and by the same or any collateral agreement—

(*a*) agrees to buy back or re-acquire the securities, or

(*b*) acquires an option, which he subsequently exercises, to buy back or acquire the securities,

then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable otherwise than by the owner, the interest payable as aforesaid shall, whether it would or would not have been chargeable to tax apart from the provisions of this section, be deemed for all the purposes of this Act to be the income of the owner and not to be the income of any other person.

(2) The references in sub-section (1) to buying back or re-acquiring the securities shall be deemed to include references to buying or acquiring similar securities, so, however, that where similar securities are bought or acquired, the owner shall be under no greater liability to tax than he would have been under if the original secuirities had been bought back or re-acquired.

(3) Where any person carrying on a business which consists wholly or partly in dealing with securities agrees to buy or acquire any sequrities, and by the same or any collateral agreement—

(*a*) agrees to sell back or re-transfer the securities, or

(*b*) acquires an option, which he subsequently exercises, to sell back or re-transfer the securities,

then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable by him, no account shall be taken of the transaction in computing for any of the purposes of this Act the profits arising from or loss sustained in the business.

(4) Sub-section (3) shall have effect, subject to any necessary modifications, as if references to selling back or re-transferring the securities included references to selling or transferring similar securities.

(5) For the purpose of this section—

(*a*) the expression 'interest' includes a dividend ;

(*b*) the expression 'securities' includes stocks and shares ;

(*c*) securities shall be deemed to be similar if they entitle their holders te the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred.

(6) The income-tax Officer may by notice in writing require any person to furnish him within such time as he may direct (not being less than twenty-eight days), in respect of all securities of which such person was the owner at any time during the period specified in the notice. such particulars as he considers necessary for the purposes of this section and for the purpose of discovering whether tax has been borne in respect of the interest on all those securities; and if that person without reasonable excuse fails to comply with the notice, he shall be liable to a penalty not exceeding five hundred rupees and to a further penalty of the like

amount for every day after the infliction of such penalty during which the failure continues.

Avoidance of tax by sales cum dividend.

44F. (1) Any person upon whom notice is served by the Income-tax Officer requiring him to furnish a statement of particulars relating to any securities in which, at any time during the period specified in the notice he has had any beneficial interest, and in respect of which, within such period, either no income was received by him, or the income received by him was less than the sum to which the income would have amounted if the income from such securities had accrued from day to day and been apportioned accordingly, shall, whether an assessment to income-tax or super-tax in respect of his total income has or has not been made for the relevant year or years of assessment, furnish such a statement and such particulars in the form and within the time (not being less than twenty-eights days) required by the notice.

(2) If it appears to the Income-tax Officer by reference to all the circumstances in relation to the securities of any such person (including circumstances with respect to sales, purchases, dealings, contracts, arrangements, transfers or any other transactions relating to such securities) that such person has thereby avoided or would avoid more than ten per cent. of the amount of the income-tax or super-tax for any year which would have been payable in his case in respect of the income from those securities if the income had been deemed to accrue from day to day and had been apportioned accordingly, and the income so deemed to have been apportioned to him had been treated as part of his total income from all sources for the purposes of income-tax or super-tax, then those securities shall be deemed to be securities to which sub section (3) applies.

(3) For the purposes of assessment to income-tax or super-tax in the case of any such person, the income from any securities to which this sub-section applies shall be deemed to accrue from day to day, and in the case of the sale or transfer of any such securities by or to him shall be deemed to have been received as and when it is deemed to have accrued :

Provided that this section shall not apply if such person proves to the satisfaction of the Income-tax Officer that the avoidance of income-tax or super-tax was exceptional and not systematic and that there was not in his case in any of the three preceding years any such avoidance of income-tax or super-tax, or that the provisions of section 44E have been applied in his case in respect of such income.

(4) If any person fails to furnish any statement or particulars required under this section, or if the Income-tax Officer is not satisfied with any statement or particulars furnished under this section, the Income-tax Officer may make an estimate of the amount of the income which, under the foregoing provisions of this section, is to be deemed to form part of the person's total income for the purposes of income-tax and super-tax.

(5) If any person without reasonable excuse fails to furnish any statement or particulars required under this section, he shall be liable to a penalty not exceeding five hundred rupees, and to a further penalty of the like amount for every day after the infliction of such penalty during which the failure continues.

(6) For the purpose of this section the expression 'securities' includes stocks and shares.]

CHAPTER VI.

RECOVERY OF TAX AND PENALTIES.

Tax when payable.

45. Any amount specified as payable in a notice of demand [1][2][under sub-section (3)] of section 23A or] under section 29 or an order under section 31 [3][* * *] or section 33,

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LEG. REF.

1 Inserted by sec. 8 of Act XXII of 1930.

2 Substituted for the words brackets and figure "under sub-sec. (4)" by sec. 52 of Act VII of 1939.

3 The words and figures "or section 32" omitted by Act XXII of 1941.

shall be paid within the time, at the place and to the person mentioned in the notice or order, or if a time is not so mentioned, then on or before the first day of the second month following the date of the service of the notice or order, and any assessee failing so to pay shall be deemed to be in default, provided that, when an assessee has presented an appeal under section 30 [1][* * * *], the Income-tax Officer may in his discretion treat the assessee as not being in default as long as such appeal is undisposed of:

[2][Provided further that where an assessee has been assessed in respect of income arising outside British India in a country the laws of which prohibit or restrict the remittance of money to British India, the Income-tax Officer shall not treat the assessee as in default in respect of that part of the tax which is due in respect of that amount of his income which by reason of such prohibition or restriction cannot be brought into British India, and shall continue to treat the assessee as not in default in respect of such part of the tax until the prohibition or restriction is removed.

Explanation.—For the purposes of this section income shall be deemed to have been brought into British India if it has been utilized or could have been utilized for the purposes of any expenditure actually incurred by the assessee without British India or if the income whether capitalised or not has been brought into British India in any form.]

Mode and time of recovery.

46. (1) When an assessee is in default in making a payment of income-tax, the Income-tax Officer may in his discretion direct that, in addition to the amount of the arrears, a sum not exceeding that amount shall be recovered from the assessee by way of penalty.

[3][(1*A*) For the purposes of sub-section (1), the Income-tax Officer may direct the recovery of any sum less than the amount of the arrears and may enhance the sum so directed to be recovered from time to time in the case of a continuing default, so however that the total sum so directed to be recovered shall not exceed the amount of the arrears payable.]

LEG. REF.

1 The words, figures and letter "or under section 33-A" omitted by sec. 52 as Act VI of 1939.

2 Added by *ibid.*

3 Inserted by sec. 8 of Act III of 1928.

SEC. 46.—Sec. 46 prescribes only a summary remedy and there is nothing in that section or elsewhere in the Act to indicate that that is the only remedy by which income-tax is recoverable. The time-limit prescribed in sec. 46 (7) of the Act obviously applies to proceedings under that section. When income-tax is assessed, it becomes a debt due by the assessee to the Crown. The Crown as a creditor has the ordinary right of suit against the assessee. This is a right under the common law and there is nothing in the Act to take away this right. A suit for recovery of arrears of income tax would undoubtedly be a suit of a civil nature and such a suit would clearly be maintainable under the provisions of sec. 9, C. P. Code, and would be governed by Art. 120, if not by Art. 149 of the Limitation Act. 1941 I. T. R. 673=196 I C. 228=1942 Pat. 87. There is no doubt that an arrear of unpaid income-tax due by an assessee is a debt due to the crown and the Court can order payment of a crown debt due by a debtor on the application of the crown without a formal attachment being issued, when there are funds in Court belonging to the debtor. Sec. 46 of the Income-tax Act is not exhaustive and the Court can order payment on mere application. 1939 I.T.R. 411. Money realised by sale in execution of assessee's property—Application by Crown for payment out towards income-tax due by assessee—Competency—Power of Court to order payment. *See* I.L.R. 1938 M. 744=1938 M. 360=(1938) 1 M.L.J. 351 (F.B.). Arrears of income-tax can be realised like an arrear of land revenue under sec. 46 of the Act, and if orders are passed by the Commissioner, like an arrear of Municipal tax or local rate. 4 Pat.L.T. 171=24 Cr.L.J. 490=1923 P. 338. The Collector has power to make a fresh assessment for income-tax if he finds the first assessment made by him is low. 44 B. 234=55 I C. 334=22 Bom.L.R. 88. In order to succeed in a suit against the Collector for a declaration that he had acted without jurisdiction in realising sums from the plaintiff, it must be shown that he paid the sum under coercion. Income accruing to an executor under a will is liable to be taxed and the Collector acts within the limits of his jurisdiction in determining such person to be chargeable 42 C. 151=26 I C. 893=19 C.W.N. 138. Competency of Income-tax Department to proceed under sec. 46 for recovery of assessment made after winding up order without leave under sec. 171 of the Companies Act. *See* (1946) F.L.J. 29 =(1946) 1 M.L.J. 415 (F.C.); I.L.R. (1945) All. 352.

(2) The Income-tax Officer may forward to the Collector a certificate under his signature specifying the amount of arrears due from an assessee, and the Collector, on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein as if it were an arrear of land revenue :

[1][Provided that without prejudice to any other powers of the Collector in this behalf, he shall for the purpose of recovering the said amount have [2][* * * the powers which under the Code of Civil Procedure, 1908, a Civil Court has [2][* * * *] for the purpose of the recovery of an amount due under a decree.]

(3) In any area with respect to which the Commissioner has directed that any arrears may be recovered by any process enforceable for the recovery of an arrear of any municipal tax or local rate imposed under any enactment for the time being in force in any part of the province, the Income-tax Officer may proceed to recover the amount due by such process.

(4) The Commissioner may direct by what authority any power or duties incident under any such enactment as aforesaid to the enforcement of any process for the recovery of a municipal tax or local rate shall be exercised or performed when that process is employed under sub-section (3).

(5) If any assessee is in receipt of any income chargeable under the head "salaries" the Income-tax Officer may require any person paying the same to deduct from any payment subsequent to the date of such requisition any arrears due from such assessee, and such person shall comply with any such requisition, and shall pay the sum so deducted to the credit of the Central Government, or as the [3][Central Board of Revenue] directs.

[4][(6) If the recovery of income-tax in any area has been entrusted to a Provincial Government under section 124 (1) of the Government of India Act, 1935, the Provincial Government may direct with respect to that area or any part thereof, that income-tax shall be recovered therein with, and as an addition to, any municipal tax or local rate, by the same person and in the same manner as the municipal tax or local rate is recovered.]

(7) Save in accordance with the provisions of sub-section (1) of section 42, [5][or of the proviso to section 45], no proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of one year from the last day of [6][the financial year] in which any demand is made under this Act ;

[7][Provided that where the sum payable is allowed to be paid by instalments the period of one year herein referred to shall be reckoned from the date on which the last of such instalments was due.]

Recovery of penalties.

47. Any sum imposed by way of penalty under the provisions of sub-section (2) of section 25, section 28, [8][sub-section (6) of section 44E, sub-section (5) of section 44F] or sub-section (1) of section 47, [9][and any interest payable under the provisions of sub-section (4), (6), (7) or (8) of section 18-A] shall be recoverable in the manner provided in this Chapter for the recovery of arrear of tax.

LEG. REF.

1 Added by sec. 16 of Act XVIII of 1933.
2 Omitted by Act XXIII of 1941.
3 Substituted for "Board of Inland Revenue" by sec. 4 and Sch. of Act IV of 1924.
4 Substituted by A.O., 1937.
5 Inserted by sec. 53 of Act VII of 1939.
6 Substituted for the words "the year," by *ibid.*
7 Proviso to sub-sec. (7) of sec. 46 added by Act XXIII of 1941.
8 The words letters, figure and brackets inserted by sec. 54 of Act VII of 1939.
9 Inserted by Act XI of 1944.

SEC. 46 (2): SALE UNDER, BY COLLECTOR —PRIORITY OVER PREVIOUS INSOLVENCY SALE. —Though a land was at achel and sold under the provisions of the Revenue Recovery Act, the sale would not give a higher title to the purchaser than the owner of the land himself would have given if he had alienated the property privately, when the sale was for the enforcement of other dues such as the income-tax. It is only if the sale was for the land-revenue that the purchaser would get a preferential title free from all encumbrances. 158 I.C. 776=42 L.W. 663=1935 M. 882.

CHAPTER VII.

REFUNDS.

Refunds.

[1][48. (1) If any individual, Hindu undivided family, company, local authority, firm or other association of persons, or any partner of a firm or member of an association individually satisfies the Income-tax Officer or other authority appointed by the Central Government in this behalf that the amount of tax paid by him or on his behalf or treated as paid on his behalf for any year exceeds the amount with which he is properly chargeable under this Act for that year, he shall be entitled to a refund of any such excess.

(2) [2][The Appellate Assistant Commissioner or the Appellate Tribunal in the exercise of their appellate powers] if satisfied to the like effect shall cause a refund to be made by the Income-tax Officer of any amount found to have been wrongly paid or paid in excess.

(3) Where income of one person is included under any provision of this Act in the total income of any other person such other person only shall be entitled to a refund under this section in respect of such income.

(4) Nothing in this section shall operate to validate any objection or appeal which is otherwise invalid or to authorise the revision of any assessment or other matter which has become final and conclusive, or the review by any officer of a decision of his own own which is subject to appeal or revision, or where any relief is specifically provided elsewhere in this Act, to entitle any person to any relief other or greater than that relief or to entitle any person to claim a refund of tax payable before the commencement of the Indian Income-tax (Amendment) Act, 1939, which he would not be entitled to claim but for the passing of that Act.]

LEG. REF.

[1] Substituted sec. 55 Act VII of 1939.

[2] Substitute for the original words by sec. 91 *ibid.*

SEC. 48: SCOPE.—An application for refund of income-tax already paid by mistake is not in the course of assessment under the Act. 27 Bom.L.R. 400=89 I.C. 595=1925 B. 257. If the assessee is a person liable to Indian income-tax in respect of part of his income, a refund of Indian income-tax is admissible in respect of the sums or dividends received by him from sterling companies registered and with their share register in the United Kingdom but satisfying the definition of a company in sec. 2 (6) of the Act. 55 B. 734=33 Bom.L.R. 776=1931 B. 420. Certificate under sec. 20 of the Act signed by the Principal Officer in the United Kingdom of such companies can be regarded as valid certificates for the purposes of sec. 48 (1) of the Act and refund granted on their production. 55 B. 734. Assessment reduced after the passing of the Act—Party if entitled to refund. 1924 N. 24.

APPEAL.—There is no provision for appeals against a refusal to grant a refund under sec. 48. So where the suit for refund of income-tax does not raise any question of assessment, it is not barred by sec. 67. 25 S.L.R. 426=136 I.C. 819=1932 S. 48.

SEC. 48 (2).—The legatee of the profits from the business of a firm due to one of the partners who died prior to the year of assessment is not entitled to maintain a claim for the refund of income-tax under sec. 48 (2) because the deceased was not a person who paid the assessment on the firm for the year in question nor was he liable as he could not himself have been an assessee for that year. 25 S.L.R. 426=136 I.C. 819 =1932 S. 48. An association incorporated under sec. 26 of the Indian Companies Act as an association limited by guarantee not existing for earning profits, and prohibited under the law from declaring any dividends to its members, is liable to assessment, and there is no exemption in the Income-tax Act in favour of such a company as such. The fact that no relief under sec. 48 of the Act is available to such an association as in the case of other associations not incorporated under sec. 26 of the Companies Act is an irrelevant consideration. 1936 A.L.J. 1085=1936 A. 764. A member of a firm means and can only mean a person who has entered into a partnership with another person or persons. If a minor is incapable of entering into partnership with another person or persons he cannot be a member of a firm in which he is not a partner. That being so under sec. 48, cl. (2) before amendment by Act XVIII of 1933, a minor was not entitled to claim a refund. 165 I.C. 565 =1936 S. 203. Sec. 48 (2) applies to a person who has been assessed and does not apply to a person who was dead before the assessment on his income was made. A dead person cannot be assessed to income-tax. 165 I.C. 328= 1936 S. 137.

SECS. 48 AND 20.—If modify sec. 14. *See* 39 C.W.N. 253.

48*A*. *General power to make refunds.—Repealed by Act VII of* 1939, *S.* 58.

Relief in respect of United Kingdom income-tax.

49. (1) If any person who has paid [1][by deduction under section 18 or otherwise] Indian income-tax for any year on any part of his income proves to the satisfaction of the Income-tax Officer that he has paid [2][by deduction or otherwise] United Kingdom income-tax [3][for the corresponding year] in respect of the same part of his income and that the rate at which he was entitled to, and has obtained, relief under the provisions of section 27 of the Finance Act, 1920, is less than the Indian rate of tax charged in respect of that part of his income, he shall be entitled to a refund of a sum calculated on that part of his income at a rate equal to the difference between the Indian rate of tax [4][or the appropriate rate of United Kingdom income-tax, whichever is less,] and the rate at which he was entitled to, and obtained relief under that section :

[5][Provided that in no case shall the rate at which such refund is calculated exceed half the Indian rate of tax appropriate to the income of the person entitled to relief.]

(2) In sub-section (1)—

(*a*) the expression "Indian Income-tax" means income-tax and super-tax charged in accordance with the provisions of this Act ;

[6][(*b*) the expression "Indian rate of tax" means the amount of Indian income-tax exclusive of super-tax after deduction of any relief due to a claimant under the other provisions of this Act but before deduction of any relief due to him under this section, divided by his total income after deducting therefrom any income (including income from a share in an unregistered firm) exempted from tax by or under the provisions of this Act, added to the amount of Indian super-tax before deduction of any relief due to the claimant under this section divided by his total income ;

(*c*) the expression "United Kingdom income-tax" means income-tax and super-tax chargeable in accordance with the provisions of the Income-tax Acts.

[7][(*d*) the expression "appropriate rate of United Kingdom income-tax" has the meaning assigned to that expression in section 27 of the Finance Act, 1920, as amended by the Finance Act, 1927.]

Relief in respect of Indian State and Dominion income-tax.

[8][49A. (1) The Central Government may, by notification in the official Gazette, make provision for the granting of relief in respect of income on which has been paid both income-tax (including super-tax) under this Act and Dominion income-tax.

(2) For the purposes of this section, "Dominion income-tax" means any income-tax or super-tax charged under any law in force in any Indian State or in any part of His Majesty's Dominions (other than the United Kingdom) where the laws of that State or part provide for relief in respect of tax charged on income both in that State or part and in British India which appears to the Central Board of Revenue to correspond to the relief which may be granted by this section.

LEG. REF.

1 Inserted by sec. 57 of Act VII of 1939.
2 Inserted by *ibid.*
3 Substituted for the word "for that year" by Act VII of 1939.
4 Inserted by sec. 2 of Act XXIX of 1934.
5 Proviso added by 57 of Act VII of 1939.
6 Substituted by 57 of Act VII of 1939.
7 Added by sec. 2 of Act XXIX of 1934.
8 Secs. 49-A to 49-D inserted by sec. 58 of Act VII of 1939.

SEC. 48-A: APPLICABILITY.—Sec. 48-A comes into play only when the income-tax has been actually paid in excess and not earlier. 18 Lah. 706=1938 Lah. 44.

SEC. 49-A: RIGHT OF SET OFF—IF LIMITED TO AMOUNT OF TAX LEGALLY RECOVERABLE. —The expression "remaining payable by the person" in sec. 49-A should not be read as meaning "legally recoverable from the person". If the Legislature had really intended that under sec. 49-A the right of set off was to be limited to an amount of tax legally recoverable, they could have expressly said so. 196 I.C. 228=1941 I.T.R. 673=1942 Pat. 87.

Payment of income-tax by company to be deemed payment by share-holder.

[1][49B. Where any dividend has been paid, credited or distributed or is deemed to have been paid, credited or distributed to any of the persons specified in section 3 who is a shareholder of a company which is assessed to income-tax in British India or elsewhere, such person shall be deemed in respect of such dividend himself to have paid income-tax (exclusive of super-tax) at the rate applicable to the total income of a company for the financial year in which the dividend has been paid, credited or distributed or is deemed to have been paid, credited or distributed on so much of the dividend as bears to the whole the same proportion as the amount of income on which the company is liable to pay income-tax bears to the whole income of the company.]

Relief granted to a company to be deemed relief granted to shareholder.

[2][49C. (1) Where any dividend has been paid, credited or distributed or is deemed to have been paid, credited or distributed to a shareholder of a company which has obtained the relief referred to in section 49 or granted under section 49-A or under the India and Burma (Income-tax Relief) Order, 1937, the shareholder shall be deemed in respect of such dividend himself to have obtained such relief at the rate at which such relief has been granted in respect of income-tax only to the company for the financial year preceding the year in which the dividend was paid, credited or distributed or is deemed to have been paid, credited or distributed.]

(2) If the rate at which a shareholder is deemed under sub-section (1) to have obtained relief exceeds the rate at which he would have been entitled to relief had such relief been given direct to him by or under the said sections or Order, any excess shall be recovered from him either as an addition to the tax payable by him on any assessment made on him under section 23 or section 34 or by setting it off against any relief due to him under section 48.

Relief in respect of tax charged in country not providing for relief in respect of British Indian income-tax.

49D. If any person who has paid by deduction or otherwise Indian Income-tax for any year in respect of any income arising without British India in a country the laws of which do not provide for any relief in respect of income-tax charged in British India proves that he has paid income-tax by deduction or otherwise under the laws of the said country in respect of the same income, he shall be entitled to the deduction from the Indian income-tax payable of a sum equal to one-half of such Indian income-tax or to one-half of such tax payable in the said country, whichever is the less.]

[3][*Explanation.*—The expression "Indian income-tax" in this section means income-tax and super-tax charged in accordance with the provisions of this Act.]

Power to set off amount of refunds against tax remaining payable.

[4][49E]. Where under any of the provisions of this Act, a refund is found to be due to any person, the Income-tax Officer, [5][Appellate Assistant Commissioner] or Commissioner, as the case may be, may, in lieu of payment of the refund, set off the amount to be refunded, or any part of that amount against the tax, if any, remaining payable by the person to whom the refund is due.

[6][49F.] Where through death, incapacity, bankruptcy, liquidation or other

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LEG. REF.

1 New sec. 49-B substituted for old sec. 49-B by XXXIII of 1941.

2 Sub-sec. (1) of sec. 49-C substituted by Act of III of 1941.

3 Explanation to sec. 49-D added by Act XXIII of 1941.

4 The existing sec. 49-E was originally inserted as sec. 49-A by sec. 19 of the Indian Income-tax (Second Amendment) Act, 1935 (XVIII of 1933) and was re-numbered by sec. 59 of Act VII of 1939.

5 Substituted for the words "Assistant Commissioner", by *ibid.*

6 The existing sec. 49-F was originally inserted as sec. 49-B by sec. 19 of Act XVIII of 1933 and was re-numbered by sec. 60 of Act VII of 1939.

Power of representative of deceased person or person disabled to make claim on his behalf.

cause, a person who would but for such cause have been entitled to a refund under any of the provisions of this Act, or to make a claim under section 48 [1]* * or 49, is unable to receive such refund or to make such claim, his executor, administrator or other legal representative, or the trustee or receiver, as the case may be, shall be entitled to receive such refund or to make such claim for the benefit of such person or his estate.

Limitation of claims for refund.

50. No claim to any refund of income-tax [2][or super-tax] under this Chapter shall be allowed, unless it is made within [3][four years from the last day of the financial year commencing next after the expiry of the previous year in which the income arose, accrued or was received or was deemed to have arisen, accrued or been received or was brought into British India :

Provided that where the claim is to a refund of income-tax or super-tax paid prior to the commencement of the Indian income-tax (Amendment) Act, 1939, the claim shall not be allowed unless it is made within one year from the last day of the year in which the tax was recovered or before the last day of the financial year commencing after the expiry of the previous year so defined in clause (11) of section 2 in which the income arose on which the tax was recovered, whichever period may expire later :]

[4][Provided [5][further] that a claim to refund under section 49 [6][of tax paid prior to the commencement of the Indian Income-tax (Amendment) Act, 1939), may be admitted after the period of limitation herein prescribed, when the applicant satisfies the Commissioner, or an Assistant Commissioner of Income-tax specially empowered in this behalf by the Central Board of Revenue, that he had sufficient cause for not making the claim within such period.]

50A. *Appeal against refusal to refund.—Omitted by S. 62 of the Indian Income-tax (Amendment) Act 1939 (VII of 1939).*

LEG. REF.

1 The word, figures and letter "or 48-A" omitted by sec. 60 of Act VII of 1939.

2 Inserted by sec. 61, *ibid.*

3 Substituted by sec. 61, *ibid.*

4 Proviso added by sec. 8 of Act XXII of 1930.

5 Inserted by sec. 61 of Act VII of 1939.

6 These words, brackets and figures were inserted by *ibid.*

SEC. 50.—Where an application for refund under sec. 48 of the Income-tax Act is made beyond the time prescribed by sec. 50 of the Act, the Commissioner acts rightly in rejecting it under sec. 50; he has no power to extend the time prescribed by the section. 13 R. 729. An application for refund under sec. 48 of the Income-tax Act must be made within the time limited by sec. 50 and on no consideration can an application made beyond that time be entertained. Though the assessment has been made only after the expiry of that period, that is no justification for presenting the application beyond time. It is quite true that it is impossible for the assessee to ascertain whether he is or is not entitled to a refund under sec. 48 (1) until after an assessment is made, and that it works a hardship in making it incumbent on him to present his application for refund within the time limited by sec. 50, when the assessment itself is not made until after the expiry of that period. But the remedy lies not with the Courts administering the law, but with the legislature. 13 R. 729=1936 R. 85. The words "*tax was recovered*" mean "tax was recovered by the Government" and not "tax was refunded to the assessee" under the provisions of sec. 27 of the Act. 50 M. 920 =1927 M. 1039=53 M.L.J. 672 (F.B.). Where an assessment for the year, 1926-27 was made on the income of the "assessee's previous year" the financial year ending with the 31st March, 1926, the period of "one year" prescribed in sec. 50 of the Act ought to be computed from the 1st April, 1926, and consequently a refund application made on the 22nd March, 1927, in respect of dividend in a limited company payable to the assessee on the 21st October, 1925, was within time. 3 I.T.C. 76.

SEC. 50-A: SCOPE—REMEDY UNDER—IF EXHAUSTIVE.—Where an assessee does not avail himself of the remedy of an appeal under sec. 50-A which is open to him, he cannot invoke sec. 45 of the Specific Relief Act for getting relief. 41 L.W. 329=1935 M. 379=68 M.L.J. 227 (F.B.); 13 R. 729=1936 R. 85.

CHAPTER VIII.

OFFENCES AND PENALTIES.

Failure to make payments or deliver returns or statements or allow inspection.

51. If a person fails without reasonable cause or excuse—

(*a*) to deduct and pay any tax as required by section 18 or under sub-section (5) of section 46 ;

(*b*) to furnish a certificate required by sub-section (9) of section 18 or by section 20 to be furnished ;

(*c*) to furnish in due time any of the returns mentioned in [1][section 19A], [2][section 20A], section 21, [3][sub-section (2) of] section 22, or section 38 ;

(*d*) to produce or cause to be produced, on or before the date mentioned in any notice under sub-section (4) of section 22, such accounts and documents as are referred to in the notice ;

(*e*) to grant inspection or allow copies to be taken in accordance with the provisions of section 39 ;

he shall, on conviction before a Magistrate, be punishable with fine which may extend to ten rupees for every day during which the default continues.

False statement in declaration.

52. If a person makes a statement in a verification mentioned in [4][section 19A or] [5][section 20A [6][or section 21] or] section 22 [7][or sub-section (2) of section 26A, or sub-section (3) of section 30, [8][or sub-section (3) of section 33] [9]* * * * * which is false, and which he either knows or believes to be false, or does not believe to be true, he shall [10][be punishable, on conviction before a Magistrate, with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.]

LEG. REF.

1 Inserted by sec. 3 of Act XXIV of 1926.
2 Inserted by sec. 21 of Act XVIII of 1933.
3 Inserted by sec. 63 of Act VII of 1939.
4 Inserted by sec. 4 of Act XXIV of 1926.
5 Inserted by sec. 22 of Act XVIII of 1933.
6 Inserted by sec. 64 of Act VII of 1939.
7 Inserted by sec. 9 of Act XXI of 1930.
8 Substituted by Act XXIII of 1941.
9 The words, brackets and figures "or sub-sec. (2) of sec. 33-A or sub-sec. (3) of sec. 50-A" omitted by sec. 64 of Act VII of 1939.
10 Substituted for the words "be deemed to have committed the offence described in sec. 177 of the Indian Penal Code", by *ibid.*

SECS. 51 AND 52: An offence under sec. 52 is of a nature different from an offence under sec. 51 and therefore an accused cannot be convicted of an offence under sec. 51 without calling upon him to meet that charge on his being found not guilty of offence under sec. 52. 30 N.L.R. 50=146 I.C. 848=1933 N. 358. Where there is a question of sanction and the sanctioning authority has sanctioned the prosecution under one section only, and the accused has been found not guilty of that offence, he cannot be found guilty of the other offence. 30 N.L.R. 50=146 I.C. 848=1933 N. 358.

SECS. 51 TO 53.—No one can be prosecuted under the Act except at the instance of the Collector under sec. 36. 23 I.C. 504=15 Cr.L.J. 296=12 A.L.J. 258. The Collector and not the District Magistrate can direct proceedings to be taken for an offence under the Income-tax Act. 38 I.C. 993=18 Cr.L.J. 433=15 A.L.J. 163. Where a person was charged with making false statements in his petition of objection for the assessment of income-txa and the petition was not signed or verified and the order to prosecute him did not disclose what particular statement was false and fell within sec. 193, Penal Code: *held*, that the conviction was bad. 38 I.C. 993=15 A.L.J. 163. A conviction could not be maintained if there was no formal service of notice as required by the Act the letter having been sent by ordinary post unregistered: 17 A.L.J. 146=49 I.C. 781. The prosecution of an assessee for failure to produce his account books in obedience to a notice is not barred by reason of a prior order for penal assessment against him. 43 M. 498=38 M.L.J. 333. The only ground on which the Collector can direct a penal assessment is that the assessee has made a false return. The Collector cannot do so on the ground of non-production of account books by the assessee. 43 M. 498.

SEC. 52.—An offence under sec. 52 is committed on the day a return made under sec. 22, is verified by a party. 1930 A.L.J. 26=1929 A. 919. The essence of the offence under sec. 52, and Penal Code, sec. 177, lies in the verification of an untrue statement, and provided the statement was deliberately false or not believed to be true, subsequent rectification cannot make it any the less an offence, though it may be considered as an extenuating circumstance in awarding sentence. 1930 A.L.J. 26=1929 A. 919. There is nothing in the Income-tax Act which suggests that it is essential that the act of sending an income-tax return under sec. 22 should be done only by an assessee. It can be done equally by an agent or other person in charge of the assessee's business. The word "person" in sec. 52 and in sec. 22 (2) includes a person duly authorised. An agent who sends a false statement is therefore liable to be prosecuted

Prosecution to be at instance of Inspecting Assistant Commissioner.

53. (1) A person shall not be proceeded against for an offence under section 51 or section 52 except at the instance of the [1][Inspecting Assistant Commissioner].

[2][(2) The Inspecting Assistant Commissioner may either before or after the institution of proceedings compound any such offence.]

Disclosure of information by a public servant.

54. (1) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of this Act, or in any evidence given, or affidavit or deposition made, in the course of any proceedings under this Act other than proceedings under this Chapter, or in any record of any assessment proceeding, or any proceeding relating to the recovery of a demand, prepared for the purposes of this Act, shall be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872, no Court shall, save as provided in this Act, be entitled to require any public servant to produce before it any such return, accounts, documents or record or any part of any such record, or to give evidence before it in respect thereof.

(2) If a public servant discloses any particulars contained in any such statement, return, accounts, documents, evidence, affidavit, deposition or record, he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine.

LEG. REF.

[1] Substituted for the words "Assistant Commissioner" by sec. 65, Act VII of 1939.

[2] This sub-section substituted by Act VII of 1939.

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under sec. 52. 54 L.W. 291=1941 Mad. 941 =(1941) 2 M.L.J. 475; I.L.R. (1942) Mad. 328. Where the assessee submits a return, but ostensibly and openly that return is not a complete one but is stated to be incomplete, there is no verification of the return as would make the return a valid one or constitute commission of an offence under sec. 52. (1929 A. 919, Dist.) 30 N.L.R. 50=146 I.C. 848=1933 N. 358. Sec. 52 is without prejudice to the provision in sec. 476, Cr. P. Code. An Income-tax Officer, being a Revenue Court, can act under sec. 476, Cr. P. Code, and make a complaint of an offence committed before him. If an assessee produces and relies on false account books to show that his return of income is true while in fact it is false, he uses or attempts to use as genuine evidence which he knows to be false or fabricated, and can be convicted under secs. 193 and 196, I. P. Code. 20 N.L.J. 214. Sec. 52 deals only with a false statement in the verification clause and does not cover the case of a false statement in the return of income to which the verification clause is attached. The proceedings before the Income-tax Officer cannot be said to start until there is some inquiry into the income of the assessee, and a statement made in the return of income-tax is not evidence given in a proceeding before the Income-tax Officer. Sec. 52 provides for the punishment of such an offence under sec. 177, I. P. Code; it cannot become punishable under sec. 193, I. P. Code, as well. 20 N.L. J. 214. Complaint for offence under—Income-tax Officer not recording finding that further enquiry was expedient—Right of appeal not affected—Proceeding, if vitiated. 8 R. 25.

SEC. 54: SCOPE AND MEANING.—All that sec. 54 provides for is, that the documents specified shall be treated as confidential and that no Court shall require a public servant to produce them. It cannot, by any stretch of language, be taken to mean that an assessee cannot himself disclose the contents of the documents referred to therein. I.L.R. (1944) All. 221=1944 O.W.N. (H.C.) 58 (2)=1944 A.L.J. 118=1944 All. 114. Public servant—Meaning of. I.L.R. (1942) Bom. 767. The wording of sec. 54 (1) is perfectly clear. It is emphatic in its language and mandatory in its provisions. Though, as a matter of practice, the Income-tax Authorities may allow a partner to inspect the books of his firm which have been deposited with him that is in no way any departure or exception to the provisions of sec. 54. No person, even if he is a partner in the firm whose books are in the possession of the Income-tax Officer is entitled to production or even to an examination as of right of the books which that officer has, when the same has been produced before him in the course of proceedings under the Income-tax Act. If an application is taken out in a suit in Court by a partner of the firm to call upon the Income-tax Officer to produce the book, the Income-tax Officer is entitled to refuse to produce it. I.L.R. (1942) Bom. 767=1942 B. 289; 1941 I.T.R. 693; 1942 M. 276 (1)=1942 1 M.L.J. 36. Sec. 54 only lays a prohibition on the Court; it does not confer any exemption on the Income-tax Officer who is subject to every process of the Court. 1939 I.T.R. 331=1939 Mad. 546= (1939) 1 M.L.J. 791. Sec. 54 does not merely exclude evidence with regard to contents of any documents which may be produced before the Income-tax Authorities for purposes of assessment, but it forbids any evidence with regard to such documents. It is wide enough to exclude evidence to the effect that account-books have been produced before the Income-tax Officer. 1935 L. 272. The intention of

[1]* * [1][(3)] Nothing in this section shall apply to the disclosure—

(*a*) of any such particulars for the purposes of a prosecution under [2]* * the Indian Penal Code in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition, or for the purposes of a prosecution under this Act, or

(*b*) of any such particulars to any person acting in the execution of this Act where it is necessary to disclose the same to him for the purposes of this Act, or

(*c*) of any such particulars occasioned by the lawful employment under this Act of any process for the service of any notice or the recovery of any demand, or

[3][(*d*) of any such particulars to a Civil Court in any suit to which Government is a party, which relates to any matter arising out of any proceeding under this Act, or

(*e*) of any such particulars to the Auditor General of India for the purpose of enabling him to discharge his functions under section 144 of the Government of India Act, 1935, or

(*f*) of any such particulars to any officer appointed by the Auditor General of India or the Central Board of Revenue to audit income-tax receipts or refunds, or

(*g*) of any such particulars, relevant to any inquiry into the conduct of an official of the Income-tax Department, to any persons appointed Commissioners under the Public Servants (Inquiries) Act, 1850, or to an officer otherwise appointed to hold such inquiry, or to a Public service Commission established under the Government of India Act, 1935, when exercising its functions in relation to any matter arising out of any such inquiry, or]

[4][(*gg*) of any such particulars, relevant to any inquiry into a charge of misconduct in connection with income-tax proceedings against a lawyer or registered accountant, to the authority referred to in sub-section (3) of section 61, when exercising the functions referred to in that sub-section,] ; [or][6]

[5][5][(*h*)] of any such particulars occasioned by the lawful exercise by a public servant of his powers under the Indian Stamp Act, 1899, to impound an insufficiently stamped document, or]

LEG. REF.

1 The words "Provided that" omitted and the proviso numbered as sub-sec. (3) by sec. 66 of Act VII of 1939.

2 The words and figures "sec. 193 of" omitted by sec. 9 of Act XXII of 1930.

3 Inserted by sec. 66 of Act VII of 1939.

4 Inserted by sec. 4 of Act XII of 1940.

5 Original cl. (*cc*) inserted by sec. 23 of Act XVIII of 1933, re-lettered as cl. (*h*) by sec. 66 of Act VII of 1939.

6 Inserted by Act XXV of 1942.

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54 is to encourage an assessee to make a full and true disclosure of all relevant facts within his knowledge knowing that any statement made by him will not subsequently be used against him. It is certainly open to an assessee to object to answering interrogatories on statements made by him in such proceedings on the ground that they are privileged. 151 I.C. 104=1934 N. 181. The object of sec. 54 clearly is to make the income tax returns and statements confidential as between the assessee and the Income-tax Department, and against the whole world, except for certain limited purposes provided by the section itself. A Court cannot, on the application of a defendant, order the plaintiff to obtain certified copies of his returns and statements of his agent made before the Income-tax Officer, as that would clearly be an evasion of the prohibition contained in the section. Such copies are inadmissible in evidence unless the plaintiff desires their retention. 1938 Rang.L.R. 243=1938 Rang. 276. A statement on oath made by a partner of a business before the Income-tax Officer is not inadmissible in evidence, and the Court is not precluded by sec. 54 from admitting in evidence a certified copy of the statement given to one of the partners by the Income-tax Authorities. 50 L.W. 681=1939 I.T. R. 560=1940 Mad. 308. Income-tax return —Certified copy of—Admissibility in evidence to prove contents of return. *See* I.L.R. 1940 Mad. 329=1940 M. 161=50 L.W. 815; 1940 M. 768=(1940) 2 M.L.J. 257. Certified copy of statements recorded or orders passed by Income-tax Officer—Admissibility in evidence. *See* I.L.R. (1946) Nag. 433. Under sec. 54 all proceedings under the Act are required to be treated as confidential. An Income-tax Officer is therefore not justified when dealing with an assessment, in allowing that assessee's partners to be present and to take part in the proceedings though the latter are not concerned with the assessment of the assessee. I.L.R. (1943) Bom. 152=6 F.L.J. 28=45 Bom. L.R. 31=1943 Bom. 77.

[1][(*i*) of such fact, to an authorised officer of the United Kingdom, or of any Indian State or of any part of His Majestys' Dominions which has entered into an agreement with British India for the granting of double taxation relief, as may be necessary for the purpose of enabling such relief or a refund under section 49 of this Act to be given, or

(*j*) of such facts, to an officer of a Provincial Government, as may be necessary for the purpose of enabling that Government to levy or realise any tax imposed by it on agricultural income, or

(*k*) of such facts, to any authority exercising powers under the Sea Customs Act, 1878, or any Act of the Central Legislature imposing a duty of excise as may be necessary for enabling it duly to exercise such powers, or

(*l*) of such facts, [2][to any person charged by law with the duty of inquiring into the qualification of electors] as may be necessary to establish whether a person is or is not entitled to be entered on an electoral roll, or

(*m*) [3][of] so much of such particulars, to the appropriate authority, as may be necessary to establish whether a person has or has not been assessed to income-tax in any particular year or years, where under the provisions of any law for the time being in force such fact is required to be established.]

[4][4* * * 4][(4)] Nothing in this section shall apply to the production by a public servant before a Court of any document, declaration or affidavit filed, or the record of any statement or deposition made in a proceeding under [5][section 25A or] section 26A, or to the giving of evidence by a public servant in respect thereof.

[6]* * * [6][(5)] No prosecution shall be instituted under this section except with the previous sanction of the Commissioner.

CHAPTER IX.

SUPER-TAX.

Charge of super-tax.

55. In addition to the income-tax charged for any year, there shall be charged, levied and paid for that year in respect of the total income of the previous year of any [7][individual, Hindu undivided family, [8][company, local authority, unregistered firm or other association of persons], not being a registered firm, [9][or the partners of the firm or members of the association individually,] an additional duty of income-tax (in this Act referred to as super-tax) at the rate or rates laid down for that year by Act of the [10][Central Legislature] :

LEG. REF.

1 These clauses were substituted for the original cl. (*d*), by sec. 66 of Act VII of 1939.

2 Substituted by Act XXIII of 1941.

3 Inserted by sec. 4 of Act XII of 1940.

4 From the original proviso which was inserted by sec. 10 of Act XXI of 1930, the word "Provided further that" were omitted and the proviso numbered as sub-sec. (4) by sec. 66 of Act VII of 1939.

5 These words, letter and figure were inserted by *ibid.*

6 The words "Provided further that" were omitted and the proviso numbered as sub-sec. (5), *ibid.*

7 Substituted for "individual, unregistered firm, Hindu undivided family or company" with effect from 1st April, 1923, by secs. 7 and 11 of Act XI of 1924.

8 Substituted for "company, unregistered firm or other association of individuals" by sec. 67 of Act VII of 1939.

9 Inserted by *ibid.*

10 Substituted for "Indian Legislature" by A.O., 1937.

SEC. 55.—Registration in the manner prescribed under the Act is a condition precedent to the right of the Income-tax Officer to proceed under sec. 55. 1933 R. 229=11 R. 380. The word "individual" in the proviso to sec. 55 of the Act includes a Hindu undivided family. 57 A. 745=1935 A. 444=1935 A.L. J. 364.

ASSESSMENT IF TO BE AS INCOME OF INDIVIDUAL OR OF HINDU UNDIVIDED FAMILY—TEST. —In order to determine whether the income of an assessee should be taxed as an income of an individual or of a Hindu undivided family under sec. 55, the test is whether the income received by the assessee is exclusively his own or the income of a joint family. If the income is his individual income and not of a Hindu undivided family he would be rightly assessed as an individual. Where a Hindu family consists of the assessee (the widow of the last surviving coparcener) and her mother-in-law (the widow of the last surviving coparcener's father), the assessee is the sole owner of the property which has devolved on her on the death of her husband. That property may be joint property and she and

[1][Provided that where under the provisions of clause (*b*) of sub-section (5) of section 23 an unregistered firm has been assessed in the manner applicable to a registered firm, super-tax shall be payable by each partner of the firm individually on his share in the income, profits and gains of the firm and not by the firm itself:]

Provided [1][further] that, where the profits and gains of an unregistered firm [1][or other association of persons not being a company] have been assessed to super-tax, super-tax shall not be payable by [2][a partner of the firm or a member of the association, as the case may be], in respect of the amount of such profits and gains which is proportionate to his share.,

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LEG. REF.

[1] Inserted by sec. 67 of Act VII of 1939.

[2] Substituted for "an individual having a share in the firm", by *ibid.*

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her mother-in-law may constitute in a broad sense a Hindu undivided family but the income she receives from the property can in no way be regarded as an income of the family. Such income is therefore liable to be assessed as an income of an individual and not as an income of the joint family notwithstanding that it is subject to the right of maintenance in favour of her mother-in-law. The daughter-in-law and mother-in-law do not form a Hindu undivided family within the meaning of that term as used in sec. 55 (*i.e.*) in relation to the income. I.L.R. (1943) Nag. 458=1943 N.L. J. 179=1943 Nag. 160. The expression *"Hindu undivided family"* in sec. 55 of the Income-tax Act includes females and is much wider than the expression "coparcenary" which includes only the males in whom the joint family property vested. In the case of a joint Hindu family consistng of the assessee, his mother and his wife, the income received by the assessee as sole surviving coparcener by right of survivorship has to be taxed as the income of a Hindu undivided family for the purposes of super-tax under sec. 55 of the Act, and not as his own individual income. 59 B. 618=37 Bom.L.R. 692=1935 B. 412. The phrase "Hindu undivided family" is used in the statute with reference not to one school only of Hindu Law, but to all schools; and it is a mistake in method to begin by passing over the wider phrase of the Act the words "Hindu coparcenary". All the more it is not possible to say on the face of the Act that no female can be a member. Where therefore the income belongs not to the assessee himself but to the assessee, his wife and daughter jointly, the association of such individuals can be described as a "Hindu undivided family". 64 I. A. 28=I.L.R. (1937) 1 Cal. 653=41 C.W.N. 385=1937 P.C. 36=(1937) 1 M.L.J. 312 (P. C.). In an extra-legal sense and even for some purposes of legal theory, ancestral property may perhaps be described as family property, but it does not follow that in the eye of the Hindu law it belongs, save in certain circumstances, to the family as distinct from the individual. By reason of its origin, a man's property may be liable to be divested wholly or in part on the happening of a particular event, or may be answerable for particular obligations, or may pass at his death in a particular way; but if, in spite of all such facts, his personal law regards him as the owner, the property as his property and the income therefrom as his income, it is chargeable to income-tax as his, *i.e.*, as the income of an individual. It would not be in consonance with ordinary notions or with a correct interpretation of the law of the Mitakshara to hold that property which a man has obtained from his father belongs to a Hindu undivided family by reason of his having a wife and daughters. 64 I.A. 28=41 C.W.N. 385=(1937) 1 M.L.J. 312=I.L.R. (1937) 1 Cal. 653 (P.C.). The income received by right of survivorship by the sole surviving male member of a Hindu undividtd family can be taxed in the hands of such male member as his own individual income for the purposes of assessment to super-tax under sec. 55. 31 S.L. R. 583=39 Bom.L.R. 1010=46 L.W. 223=169 I.C. 7=1937 P.C. 239 (P.C.). A Hindu widow on whom devolves the property of her husband on his death is the owner of the property, and so long as she is alive, one has any vested interest in the succession. The entire income belongs to her and is liable to be assessed as the income of an individual and not as that of an undivided Hindu family within the meaning of sec. 55, notwithstanding that it is subject to the right of maintenance in favour of her widowed mother-in-law. The daughter-in-law and the mother-in-law do not form a Hindu undivided family within the meaning of that term as used in sec. 55, in relation to the income. 1943 I.T.Rep. 154.

SECS. 55 TO 59.—Super-tax—Income from dividends—Liability to pay super-tax in the hands of recipient. 3 P. 470=78 I.C. 783. Where an unregistered Association is converted into a limited company, the rate of super-tax applicable to it in respect of the profits of the Association for the year previous to that of the conversion, is the flat rate of one anna in the rupee appropriate to a company. 1938 P.C. 1=55 I.A. 38=52 B. 123=54 M.L.J. 1 (P.C.). Super-tax—Liability for—Undivided profits—Capitalisation of—Bonus shares newly issued on basis of—Super-tax, on value of—Shareholders' liability for. 47 M. 837=47 M.L.J. 242. Company—Profits—No declaration of dividend—Profits distributed as bonus shares—Super-tax—Liability of shareholders. 2 R. 211=1924 R. 337. Super-tax being calculated on the income of the previous year, the fact that the assessee became entitled to larger share in a firm at the time of assessment does not en-

Total income for purposes of super-tax.

56. [1]["Except in cases to which Section 15A applies or to which by clause (*a*) of the proviso to sub-sections (3) and (4) of section 25 those sub sections do not apply and] Subject to the provisions of this Chapter, the total income of any [2][individual, Hindu undivided family, company, [3][local authority], unregistered firm or other [4][association of persons] shall, for the purposes of super-tax, be the total income as assessed for the purposes of income-tax, and where an assessment of total income has become final and conclusive for the purposes of income-tax for any year, the assessment shall also be final and conclusive for the purposes of super-tax for the same year.

[1](a)* * * * * * * *

57. *Non-resident partners and shareholders.—Omitted by S.* 69 *of the Indian Income-tax (Amendment) Act,* 1939 (*VII of* 1939).

Application of Act to super-tax.

58. (1) All the provisions of this Act, [5][relating to the charge, assessment, collection and recovery of income-tax except those contained in] section 3, [6][the second proviso] to sub-section (1) of section 7, [7][the second and third provisos to section 8, [8][clauses (*a*) and (*b*) of sub-section (2) of section 14], and section 15, [9][15A] [10]* [11]* 19, [12][and 20 and the first proviso to sub-section (1) of section 41 and section] [13]* [14][15]* 58F and [16]sub-section (2)] of section 58G] shall apply, so far as may be, to the charge, assessment, collection and recovery of super-tax.

[17]* * * * * * *

(2) Save as provided in [18][19][sub-sections (2), (2*A*), (2*B*), (3*B*), (3*C*), (3*D*), and (3*E*)] of section 18,] [20]* * * [21][and section 58H] super-tax shall be payable by the assessee direct.

LEG. REF.

1 Inserted by Act XI of 1944 and Ordinance IX of 1945.

1-a Omitted by sec. 10 of Act III of 1928.

2 Substituted for "individual, unregistered firm, Hindu undivided family or company", by secs. 8 and 11 of Act XI of 1924.

3 Inserted by sec. 68 of Act VII of 1939.

4 Substituted for "association of individuals", by *ibid.*

5 Substituted for "except" by sec. 25 of Act XVIII of 1933.

6 Substituted for "the proviso" by sec. 70 of Act VII of 1939.

7 Substituted for the words and figure "the provisos to sec. 8" by sec. 25 of Act XVIII of 1933.

8 Substituted by Act XXIII of 1941.

9 The figures [15-A] inserted by Ordinance IX of 1945.

10 The figures "18" omitted by sec. 70 of Act VII of 1939.

11 The figures "18" omitted by sec. 25 of Act XVIII of 1923.

12 Substituted for the figures "20" by sec. 70 Act VII of 1939.

13 The figures "21" omitted by *ibid.*

14 Substituted for the word and figures "and 48" by sec. 25 of Act XVIII of 1933.

15 The figures "48" omitted by sec. 70 of Act VII of 1939.

16 Substituted for the word, brackets and figures "sub-sections (2) and (3)" by *ibid.*

17 Omitted by sec. 25 of Act XVIII of 1933.

18 Inserted by *ibid.*

19 Substituted for the words, brackets, figures and letters "sub-sections (3-A), (3-B), (3-3) and (3-D)" by sec. 70 of Act VII of 1939.

20 Sec. "57" omitted by *ibid.*

21 Inserted by sec. 4 of Act XII of 1929.

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able the tax being calculated on such increased share. 26 Bom.L.R. 366=48 B. 504=1924 B. 361. Levy of super-tax after the year of assessment is closed—Suit for refund—Maintainability. 18 S.L.R. 9=78 I.C. 438=1925 S. 67. Assessee controlling and receiving income from family companies—Liability to super-tax. 51 B. 372=1927 B. 371. *Per* Marten, C. J.—Though it is permissible in law for the Crown to enquire into the genuineness of the transactions between the assessee and the family company, it would be quite wrong to start with the presumption that those transactions are sham ones. On the contrary, one should start with the presumption that they are genuine and throw the onus on the Crown to prove the contrary. 51 B. 372=1927 B. 371.

SEC. 56.—There is no provision in the Act for the assessment to income-tax or super-tax of the estate of a deceased person. 31 C.W. N. 630=103 I.C. 120=1927 C. 518.

SEC. 58.—Under sec. 58 read with secs. 34 and 35 the Assistant Commissioner has jurisdiction to inquire into an appeal from the order demanding super-tax. 145 I.C. 145=1933 S. 158. As to power of Income-tax Officer to refuse to renew certificate of registration of firm, *see* 31 N.L.R. (Supp.) 233=1936 N. 121. *See also* 51 M.L.J. 1 (P.C.), cited under sec. 55, *supra*; 53 A. 445=1931 A.L.J. 336=1931 A. 421.

[1][CHAPTER IXA.

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF PROVIDEND FUNDS.

Definitions.

58A. In this Chapter, unless there is anything repugnant in the subject or context,—

(*a*) a "recognised provident fund" means a provident fund which has been and continues to be recognised by the Commissioner, in accordance with the provisions of this Chapter;

(*b*) an "employer" means—

(*i*) a Hindu undivided family, company, firm, or other association of [2]* * persons, or

(*ii*) an individual engaged in a business, profession or vocation whereof the profits and gains are assessable to income-tax under section 10, [3]* * * maintaining a provident fund for the benefit of his or its employers.

(*c*) an "employee" means an employee participating in a provident fund, but does not include a personal or domestic servant;

(*d*) a "contribution" means any sum credited by or on behalf of any employee out of his salary, or by an employer out of his own monies, to the individual account of an employee, but does not include any sum credited as interest;

(*e*) the "balance to the credit" of an employee means the total amount to the credit of his individual account in a provident fund at any time;

(*f*) the "annual accretion" to the balance to the credit of an employee means the increase to such balance in any year, arising from contributions and interest;

(*g*) the "accumulated balance due" to an employee means the balance to his credit, or such portion thereof as may be claimable by him under the regulations of the fund, on the day he ceases to be an employee of the employer maintaining the fund; and

(*h*) the "regulations of a fund" means the special body of regulations governing the constitution and administration of a particular providend fund.

The according and withdrawal of recognition.

58B. (1) The Commissioner of Income-tax may accord recognition to any Provident fund which, in his opinion, satisfies the conditions prescribed in section 5EC and the rules made thereunder, and may, at any time, withdraw such recognition, if, in his opinion, the provident fund contravenes any of those conditions.

[4]* * * * * * *

[4][(2)] An order according recognition shall take effect on such date as the Commissioner may fix in accordance with any rules the Central Board of Revenue may make in this behalf, such date not being later than the last day of the financial year in which the order is made.

[4][(3)] An order withdrawing recognition shall take effect from the day on which it is made.

[5][(3*A*) An order according recognition to a provident fund shall not, unless the Commissioner otherwise directs, be affected by the fact that the fund is subsequently amalgamated with another provident fund on the occurrence of an amalgamation of the undertakings in connection with which the two funds are maintained, or that it subsequently absorbs the whole or a part of another provident fund belonging to an undertaking which is wholly or in part transferred to or merged in the undertaking of the employer maintaining the first mentioned fund.]

[4][(4)] An employer objecting to an order of the Commissioner refusing to recognise [6][or an order withdrawing recognition from] a provident fund may appeal, within sixty days of such order, to the Central Board of Revenue.

LEG. REF.

1 Chapter IX-A inserted by sec. 5 of Act XII of 1929.

2 The word "individuals or" omitted by sec. 71 of Act VII of 1939.

3 The words and figures "or sec. 11" omitted by *ibid.*

4 Sub sec. (2) omitted and sub-secs (3), (4) and (5) re-numbered as (2), (3) and (4) respectively by sec. 72 of Act VII of 1939

5 Inserted by sec. 9 of Act XL of 1940.

6 Inserted by sec. 72 of Act VII of 1930.

The appeal shall be in the form and shall be verified in the manner prescribed by the Central Board of Revenue.

Conditions to be satisfied by a recognised provident fund.

58C. (1) In order that a provident fund may receive and retain recognition, it shall satisfy the conditions set out below and any other conditions which the Central Government may, by rule, prescribe—

(*a*) All employees shall be employed in India, or shall be employed by an employer whose principal place of business is in British India.

[1][Provided that the Commissioner may, if he thinks fit and subject to such conditions, if any, as he thinks proper to attach to the recognition, accord recognition to a fund maintained by an employer whose principal place of business is not in British India notwithstanding that a proportion not exceeding ten per cent. of the employees is employed outside India.]

(*b*) The contributions of an employee in any year shall be a definite proportion of his salary for that year, and shall be deducted by the employer from the employee's salary in that proportion, at each periodical payment of such salary in that year, and credited to the employee's individual account in the fund.

[2][Provided that an employee who retains his employment while serving in His Majesty's Forces or when taken into or employed in the national service under the National Service (European British Subjects) Act, 1940, or the National Service (Technical Personnel) Ordinance, 1940, may, notwithstanding that he receives from the employer no salary or a salary less than he would have received had he not entered His Majesty's Forces, or been so taken into or employed in the national service, contribute to the fund during his service in His Majesty's Forces or while so taken into or employed in the national service a sum not exceeding the amount he would have contributed had he continued to receive from the employer the same salary (including increments, if any) as he would have received had he not entered His Majesty's Forces, or been taken into or employed in the national service.]

(*c*) Subject to the provisions of section 58D, the contributions of an employer to the individual account of an employee in any year shall not exceed the amount of the contributions of the employee in that year, and shall be credited to the employee's individual account at intervals not exceeding one year.

(*d*) The fund shall consist of contributions as above specified [3][and of donations, if any, received [4][by the trustees]], of accumulations thereof, and of interest (simple and compound), credited in respect of such [5][contributions, donations and accumulations], and of securities purchased therewith, and of no other sums.

(*e*) The fund shall be vested in two or more trustees [6][or in the Official Trustee] under a trust which shall not be revocable save with the consent of all the beneficiaries.

(*f*) The employer shall not be entitled to recover any sum whatsoever from the fund, save in cases where the employee is dismissed for misconduct or voluntarily leaves his employment otherwise than on account of ill-health or other unavoidable cause before the expiration of the term of service specified in this behalf in the regulations of the fund.

In such cases the recoveries made by the employer shall be limited to the contributions made by him to the individual account of the employee, and to interest (simple and compound) credited in respect of such contributions and accumulations thereof, in accordance with the regulations of the fund.

(*g*) The accumulated balance due to an employee shall be payable on the day he ceases to be an employee of the employer maintaining the fund.

LEG. REF.

1 Added by sec. 10 of Act XL of 1940.

2 Proviso added by sec. 10 of Act XL of 1940 and shall have effect from 3rd September, 1939.

3 Inserted by sec. 10 of Act XL of 1940.

4 The words "by the trustees" substituted for the words "from the trustees" by Act XXIII of 1941.

5 Substituted for "contributions and accumulations" by sec. 10 of Act XL of 1940.

6 Inserted by sec. 2 of Act IV of 1931.

(*h*) Save as provided in clause (*g*) or in accordance with such conditions and restrictions as the Central Government may, by rules, prescribe, no portion of the balance to the credit of an employee shall be payable to him.

(2) Where there is a repugnance between any regulation of a recognised provident fund and any provision of this Chapter or of the rules made thereunder, the regulation shall, to the extent of the repugnance, be of no effect.

The Commissioner may, at any time, require that such repugnance shall be removed from the regulations of the fund.

Power to relax restrictions of employers' contributions in certain cases.

58D. Subject to any rules which the Central Government may make in this behalf, the Commissioner may in respect of any particular fund, relax the provisions of condition (*c*) of sub-section (1) of section 58C—

(*a*) so as to permit the payment of larger contributions by an employer to the individual accounts of employees whose salary does not exceed five hundred rupees per mensem ; and

(*b*) so as to permit the crediting by employers to the individual accounts of employees of periodical bonuses or other contributions of a contingent nature, where the calculation and payment of such bonuses or other contributions is provided for on definite principles by the regulations of the fund.

Annual accretion deemed to be income received.

58E. The annual accretion in any year to the balance at the credit of an employee participating in a recognised provident fund shall be deemed to have been received by him in that year and shall be included in his total income for that year, and, subject to the exemptions specified in section 58F, shall be liable to income-tax and super-tax :

Provided that, for the purpose of sub-section (3) of section 15, out of such annual accretion only the employee's own contributions shall be included in his total income.

Exemption of annual accretion from income-tax.

58F. (1) An employee shall not be liable to pay income-tax on contributions to his individual account in a recognised provident fund, in so far as the aggregate of such contributions in any year does not exceed one-sixth of his salary in that year [1][or six thousandru pees, whichever is less.]

(2) [2][Interest credited on the accumulated balance of any employee in a recognised provident fund shall be exempt from payment of income-tax, if and in so far as it does not exceed one-third of the salary of the employee for the year concerned and] in so far as it is allowed at a rate not exceeding such rate as the Central Government may, by notification in the official Gazette, fix in this behalf.

Exemption of accumulated balance from income-tax and super-tax.

58G. [3][(1) Where the accumulated balance due to an employee participating in a recognised provident fund becomes payable, such accumulated balance shall be exempt from payment of super-tax except to the extent of an amount equal to the aggregate of the amounts of super-tax on annual accretions that would have been payable under section 58E up to the first day of April, 1933, if the Indian Income-tax (Second Amendment) Act, 1933, had come into force on the 15th March, 1933.]

[3][(2)] Where an employee participating in a recognised provident fund has rendered continuous service with his employer for a period of not less than five years, and the accumulated balance due to him becomes payable, such accumulated balance shall be exempt from payment of income-tax [4]* * * * and shall be excluded from the computation of his total income :

LEG. REF.

1 Added by sec. 73 of Act VII of 1939.

2 Substituted for the original words by *ibid.*

3 Sub-sec. (1) inserted and original sub-secs. (1) and (2) re-numbered (2) and (3) by sec. 26 of Act XVIII of 1933.

4 The words "and super-tax" omitted by *ibid.*

Provided that the Commissioner of Income-tax may allow such exemption and exclusion where the employee has rendered continuous service with the employer for a period of less than five years, if, in his opinion, the service has been terminated by reason of the employee's ill-health, or by the contraction or discontinuance of the employee's business, or other cause beyond the control of the employee.

[1][(3)] Where exemption from payment of income-tax is not allowed under the provisions of [2][sub-section (2)], the Income-tax Officer shall calculate the total of the various sums of income-tax [4][3]and super-tax which would have been payable by the employee in respect of his total income for each of the years concerned if the fund had not been a recognised provident fund, and the amount by which such total exceeds the total of all sums paid by or on behalf of such employee by way of tax for such years shall be payable by the employee in addition to any other income-tax and super-tax] for which he may be liable for the year in which the accumulated balance due to him becomes payable.

Deduction at source of income-tax payable on accumulated balances due.

58H. The trustees of a recognised provident fund, or other person authorised by the regulations of the fund to make payment of accumulated balances due to employees, shall, at the time an accumulated balance due to an employee is paid, deduct therefrom any income-tax payable under [5][sub-section (3)] of section 58G and any income-tax and super-tax payable on an employee's total income as determined under sub-section (3) of section 58J, and sub-sections (4) to (9) of section 18 shall apply as if the sum to be deducted were income-tax payable under the head "Salaries."

Accounts of recognised provident funds.

58I. (1) The accounts of a recognised provident fund shall be maintained by the trustees of the fund and shall be in such form and for such periods, and shall contain such particulars as the Central Board of Revenue may prescribe.

(2) The accounts shall be open to inspection at all reasonable times by Income-tax authorities, and the trustees shall furnish to the Income-tax Officer such abstracts thereof as the Central Board of Revenue may prescribe.

Treatment of balances in newly recognised provident funds.

58J. (1) Where recognition is accorded to a provident fund with existing balances, an account shall be made of the fund up to the day before the day on which the recognition takes effect, showing the balance to the credit of each employee on such day, and containing such further particulars as the Central Board of Revenue may prescribe.

(2) The account shall also show in respect of the balance to the credit of each employee the amount thereof which is to be transferred to that employee's account in the recognised provident fund, and such amount (hereinafter called his transferred balance) shall be shown as the balance to his credit in the recognised provident fund on the date on which the recognition of the fund takes effect, and sub-sections (3) and (4) shall apply thereto.

Any portion of the balance to the credit of an employee in the existing fund which is not transferred to the recognised fund shall be excluded from the accounts of the recognised fund and shall be liable to income-tax and super-tax in accordance with the provisions of this Act other than this Chapter.

(3) Subject to such rules as the Central Board of Revenue may make in this behalf, the Income-tax Officer shall make a calculation of the aggregate of all sums comprised in a transferred balance which would have been liable to income-tax if this Chapter had been in force from the date of the institution of the fund, without regard to any tax which may have been paid on any such sum, and such aggregate (if any) shall be deemed to be income received by the employee in the year in which the recognition of the fund takes effect, and shall be included in the employee's

LEG. REF.

1 Original sub-secs. 1 and 2 re-numbered as 2 and 3 by sec. 26 of Act XVIII of 1933.

2 Substituted for the word, brackets and figure "sub-section (1)," by *ibid.*

3 Substituted for the original words by sec. 74 of Act VII of 1939.

4 Substituted for the word, brackets and figures "sub-section (2)" by sec. 2 and Sch. I of Act XXIV of 1934.

total income for that year ; and, for the purposes of assessment, the remainder of the transferred balance shall be disregarded, but no other exemption or relief, by way of refund or otherwise, shall be granted in respect of any sum comprised in such transferred balance :

Provided that, in cases of serious accounting difficulty, the Commissioner shall have power, subject to the said rules, to make a summary calculation of such aggregate.

(4) Notwithstanding anything contained in condition (*h*) of sub-section (1) of section 58C, an employee, in order to enable him to pay the amount of tax assessed on his total income as determined under sub-section (3) shall be entitled to withdraw from the balance to his credit in the recognised provident fund a sum not exceeding the difference between such amount and the amount to which he would have been assessed if the transferred balance had not been included in his total income.

(5) Nothing in this section shall affect the rights of the persons administering an unrecognised provident fund or dealing with it, or with the balance to the credit of any individual employee, before recognition in accorded, in any manner which may be lawful.

Treatment of fund transferred by employer to trustee.

58K. (1) Where an employer who maintains a provident fund (whether recognised or not) for the benefit of his employees and has not transferred the fund or any portion of it, transfers such fund, or portions to trustees in trust for the employees participating in the fund, the amount so transferred shall be deemed to be of the nature of capital expenditure.

(2) When an employee participating in such fund is paid the accumulated balance due to him therefrom, any portion of such balance as represents his share in the amount so transferred to the trustee (without addition of interest and exclusive of the employee's contributions and interest thereon) shall, [1][if the employer has made effective arrangements to secure that tax shall be deducted at source from the amount of such share when paid to the employee,] be deemed to be an expenditure by the employer within the meaning of [2][clause (xii)] of sub-section (2) of section 10, incurred in the year in which the accumulated balance due to the employee is paid.

Provisions relating to rules.

58L. (1) All rules made under this Chapter shall be subject to the provisions of sub-sections (4) and (5) of section 59.

(2) In addition to any power conferred by this Chapter, the Central Government may make rules—

(*a*) prescribing the statements and other information to be submitted with an application for recognition ;

(*b*) limiting the contributions to a recognised provident fund by employees of a company who are shareholders in the company ;

LEG. REF.

1 Inserted by sec. 75 of Act VII of 1939.

2 Substituted for the word, brackets and figures "cl. (*ix*)" by sec. 75 of Act VII of 1939.

SEC. 58-K: SCHEME OF THE ACT WITH REFERENCE TO EMPLOYER'S DEDUCTIONS.—It seems to be the scheme of the Act that the employer is to have the advantage of deductions in respect of money which he has contributed to the fund, together with the increase to the fund which his money has earned prior to the time of the transfer of the fund to the trustees. He is not to have any benefit in respect of employee's contributions or interest thereon up to that time and he is not to have the benefit in respect of any interest that is earned by the fund after transfer. 'His share' occurring in sec. 58-K cannot be given the meaning of 'his contributions'. It can only mean the employer's contributions and interest thereon up to the date of transfer. I.L.R. (1941) Nag. 240=1939 N.L.J. 18=1939 Nag. 89.

'WITHOUT INTEREST'.—The words 'without interest' occurring in sec. 58-K mean "without taking into account the interest earned on the fund after it has been transferred to the trustees.' I.L.R. 1941 Nag. 240=1939 N.L.J. 18=1939 Nag. 89. The words 'without addition of interest earned on the fund after it has been transferred to the trustees' and the words 'his share' mean, the employer's contributions and interest thereon up to the date of transfer. I.L.R. (1941) Nag. 240 =1939 Nag. 89.

(*c*) providing for the assessment by way of penalty of any consideration received by an employee for an assignment of, or creation of a charge upon, his beneficial interest in a recognised provident fund ;

(*d*) determining the extent to and the manner in which exemption from payment of income-tax and super-tax may be granted in respect of contributions and interest credited to the individual accounts of employees in a provident fund from which recognition has been withdrawn ; and

(*e*) generally, to carry out the purposes of this Chapter, and to secure such further control over the recognition of provident funds and the administration of recognised provident funds as [1][it] may deem requisite.

Application of this Chapter.

58M. This Chapter shall not apply to any provident fund to which the Provident Funds Act, 1925, applies.]

[2]CHAPTER IXB.

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF SUPERANNUATION FUNDS.

Definitions.

58N. In this Chapter, unless there is anything repugnant in the subject or context,—

(*a*) 'approved superannuation fund' means a superannuation fund or any part of a superannuation fund which has been and continues to be approved by the Central Board of Revenue in accordance with the provisions of this Chapter ;

(*b*) 'employer,' 'employee' and 'contribution' have, in relation to superannuation funds, the meanings assigned to those expressions in section 58A in relation to provident funds ;

(*c*) 'ordinary annual contribution' means an annual contribution of a fixed amount or an annual contribution computed on some definite basis by reference to the earnings, the contributions or the number of members of the fund.

Approval and withdrawal of approval.

58O. (1) The Central Board of Revenue may accord approval to any superannuation fund or any part of a superannuation fund which in its opinion complies with the requirements of section 58P, and may at any time withdraw auch approval, if in its opinion the circumstances of the fund or part cease to warrant the continuance of the approval.

(2) The Central Board of Revenue shall communicate in writing to the trustees of the fund the grant of approval with the date on which the approval is to take effect, and, where the approval is granted subject to conditions, those conditions.

(3) The Central Board of Revenue shall communicate in writing to the trustees of the fund any withdrawal of approval with the reasons for such withdrawal and the date on which the withdrawal is to take effect.

(4) The Central Board of Revenue shall neither refuse nor withdraw approval to any superannuation fund or any part of a superannuation fund unless it has given the trustees of that fund a reasonable opportunity of being heard in the matter.

Conditions of approval.

58P. In order that a superannuation fund may receive and retain approval the following conditions shall be satisfied namely :

(*a*) the fund shall be a fund established under an irrevocable trust in connection with a trade or undertaking carried on in British India :

(*b*) the fund shall have for its sole purpose the provision of annuities for employees in the trade or undertaking on their retirement at or after a specified age or on their becoming incapacitated prior to such retirement, or for the widows, children or dependants of persons who are or have been such employees on the death of those persons ; and

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LEG. REF.

1 This word was substituted for the word 'he' by A.O., 1937.

2 Chapter IXB inserted by sec. 76 of Act VII of 1939.

(*c*) the employer in the trade or undertaking shall be a contributor to the fund :

Provided that the Central Board of Revenue may, if it thinks fit and subject to such conditions, if any, as it thinks proper to attach to the approval, approve a fund or any part of a fund—

(*i*) notwithstanding that the rules of the fund provide for the return in certain contingencies of contributions paid to the fund, or

(*ii*) if the main purpose of the fund is the provision of such annuities as aforesaid, notwithstanding that such provision is not its sole purpose, or

(*iii*) notwithstanding that the trade or undertaking in connection with which the fund is established is carried on only partly in British India.

Application for approval.

58Q. (1) An application for approval of a superannuation fund or part of a superannuation fund for any year of assessment shall be made in writing before the end of that year by the trustees of the fund to the Income-tax-yax Officer and shall be accompanied by a copy of the instrument under which the fund is established and by two copies of the rules and of the accounts of the fund for the last year for which such accounts have been made up. The Central Board of Revenue may require such further information to be supplied as it thinks proper.

(2) If any alteration in the rules, constitution, objects or conditions of the fund is made at any time after the date of the application for approval, the trustees of the fund shall forthwith communicate such alteration to the Income-tax Officer, and in default of such communication any approval given shall, unless the Central Board of Revenue otherwise orders, be deemed to have been withdrawn from the date on which the alteration took effect.

Exemption of superannuation fund from cinome-tax.

58R. Income derived from investments or deposits of an approved superannuation fund shall be exempt from payment of income-tax, and any sum paid by an employer or an employee by way of contribtuion towards an approved superannuation fund shall, in the case of an employer, be deducted in computing his income, profits or gains for the purpose of assessment, and, in the case of an employee, be treated for all the purposes of this Act as it if were a sum to which the provisions of section 15 apply :

Provided that no such exemption shall be allowable to an employee in respect of any sum which is not an ordinary annual contribution :

Provided further that where a contribution by an employer is not an ordinary annual contribution it shall, for the purposes of this section, be treated, as the Central Board of Revenue may direct, either as an expense incurred in the year in which the sum is paid, or as an expense to be spread over such period of years as the Central Board of Revenue thinks proper.

Treatment of repaid contribtuions.

58S. (1) Where any contributions (including interest on contributions, if any) are repaid to an employee, the amount so repaid shall be deemed for the purposes of income-tax [1]* * to be income of the employee for that year.

(2) Where any contributions (including interest on contributions, if any) are repaid to an employee during his lifetime but not at or in connection with the termination of his employment, income-tax on the amount so repaid or paid shall except in the case of an employee whose employment was carried on abroad, be deducted by the trustees of the fund at the average rate of tax at which the employee was liable to income-tax, [1]* * during the preceding taree years or during such period, if less than three years, as he was a member of the fund, and shall be paid by the trustees to the credit of the Central Government within the prescribed time and in such manner as the Central Board of Revenue may direct.

LEG. REF.

[1] The words "and super-tax" omittted by sec. 5 of Act XII of 1940.

58T. Where an employer deducts from the emoluments paid to an employee or pays on his behalf any contributions of that employee to an approved superannuation fund, he shall include all such deductions or payments in the return which he is required to furnish under section 21.

Deduction from pay of, and contributions on behalf of, employee to be included in return under section 21.

58U. If a fund or a part of a fund for any reason ceases to be an approved superannuation fund, the trustees of the fund shall nevertheless remain liable to account for tax on any sum paid—

Liabilities of trustees on cessation of approval of fund.

(*a*) on account of returned contributions (including interest or contributions, if any,), and

(*b*) in commutation or in lieu of annuities,

in so far as the sum so paid is in respect of contributions made before the fund or part of the fund ceased to be an approved fund under the provisions of this Chapter.

58V. The trustees of an approved superannuation fund and any employer who contributes to an approved superannuation fund shall, when required by notice from the Income-tax Officer, within twenty-one days of the date of such notice :—

Particulars to be furnished in respect of superannuation funds.

(*a*) furnish to the Income-tax Officer a return containing such particulars of contributions made to the fund as the notice may require ;

(*b*) prepare and deliver to the Income-tax Officer a return containing—

(*i*) the name and place of residence of every person in receipt of an annuity from the fund,

(*ii*) the amount of the annuity payable to each annuitant,

(*iii*) particulars of every contribution (including interest on contributions, if any) returned to the employer or to employees ; and

(*iv*) particulars of sums paid in commutation or in lieu of annuities ;

(*c*) furnish to the Income-tax Officer a copy of the accounts of the fund to the last date prior to such notice to which such accounts have been made up, together with such other information and particulara as the Central Board of Revenue may reasonably require.]

CHAPTER X.

MISCELLANEOUS.

59. (1) The [1][Central Board of Revenue] may, subject to the control of the Central Government, make rules for carrying out the purposes of this Act and for the ascertainment and determination of any class of income. Such rules may be made for the whole of British India or for such part thereof as may be specified.

Power to make rules.

LEG. REF.

[1] Substituted for the words "Board of Inland Revenue by sec. 4 and Sch. of Act IV of 1924.

SEC. 59: RULES: RULE 2.—Under R. 2 of the rules framed by the Board of Inland Revenue under sec. 59, the Assistant Commissioner is not himself competent to order the registration of a firm. The only power that he can exercise under the rule is to permit the presentation of the application to the Income-tax Officer and thus condone the delay. Further the matter is entirely discretionary with him and he cannot be compelled under any provisions of the Act or the rules made thereunder, to grant the prayer made to him by the assessee. Still on general principles the High Court is competent to determine whether the jurisdiction vested in the Assistant Commissioner has been perversely refused. Where in an application by a firm for registration a recital is not in accordance with facts, the Assistant Commissioner is justified in refusing to register the firm. (8 I.T.C. 107, Rel. on.) 1937 Lah. 445.

RULE 3, if *ultra vires*. *See* 1945 I.T.R. 421.

RULE 6.—Sufficient compliance with—Signing by one partner on behalf of himself and on behalf of another partner under general power of attorney. *See* (1946) 1 M.L.J. 332.

APPELLATE TRIBUNAL RULES, R. 14.—Scope—Mandatory character of—Presentation of application for reference at Office of Tribunal in Madras—If valid presentation. *See* (1945) 1 M.L.J. 173.

APPELLATE TRIBUNAL RULES, R. 21: SCOPE

(2) Without prejudice to the generality of the foregoing power, such rules may—

AND EFFECT OF.—R. 21 of the Rules framed by the Appellate Tribunal limits the appellant to the grounds urged in his memorandum of appeal, and prescribes that if a party wishes to raise any further ground, he has to do so after obtaining the leave of the Tribunal. The proviso does not enlarge the powers of the Tribunal in raised grounds of appeal against the appellant. It only says that the Tribunal is not obliged to rest its decision on the grounds urged by the appellant, it merely recognises the principle that the judgment of the lower Court may be supported on any ground even though it is not raised in the memorandum of appeal. That, however, does not allow the Tribunal to suggest another mode of assessment altogether. 1945 I.T.R 272=47 Bom.L.R 222=A.I.R. 1945 Bom. 285.

RULE 24: APPLICABILITY.— R 24 of the Income tax Rules in applicable only in respect of a seller who manufactures tea which he has himself grown and which he himself sells. 50 C.W.N. 398.

RULES 25-35.—Rr. 25 to 35 of the rules made by the Central Board of Revenue under sec. 59 should not be taken as having any further effect than that they provide a somewhat arbitrary, though convenient, method of ascertaining the total profits or gains in respect of Life Assurance business and so do not prevent the assessees from claiming the benefits of the provisions of secs. 8 and 18 (5) of the Act. The assessees may, therefore, claim exemption from income-tax in respect of interest derived from Government of India tax-free securities which come within the proviso to sec. 8 and also claim credit under sec. 18 (5) for any deductions of tax made at the sources. I.L.R. (1937) 2 Cal. 540 =41 C.W.N. 905.

RULE 25.—The actuarial valuation referred to in R. 25 is the actuarial investigation into the company's financal condition required by sec 8 (1) of the Indian Life Assurance Companies Act, 1912 and not merely the actuarial valuation of its liabilities which by itself can never ascertain the profits. 50 L.W. 119=43 C.W.N. 926=1939 P.C. 190 (P.C.). Under R. 25 "the income, profits and gains of a life assurance business shall be the average annual net profits disclosed by the last preceding valuation"; that is to say, shall be arrived at by taking one fifth of the surplus disclosed in the valuation balance sheet and treating it "as the average annual income of the business for the next quinquennium". The "net profits" in this rule clearly mean the "surplus, if any" in the statutory form of valuation balance-sheet of "life assurance and annuity funds (as per balance-sheet under Third Schedule)" over the "net liability under life assurance and annuity transactions (as per summary statement provided in Fourth Schedule)." If the assessee's actuarial valuation balance-sheet on the last date of the last preceding valuation shows a deficiency, the Income-tax Department cannot go behind the said valuation balance sheet to find out if there were any profits in respect of the period of the last preceding valuation. (61 I.A. 41, Foll.) 43 C.W.N. 926=50 L.W. 119=1939 P.C. 190 (P.C.). Where in the case of a Life Insurance Company, the actuarial valuation balance sheet on the last date of the last preceding valuation shows a deficiency, R. 25 of the Rules framed under sec. 59 of the Income-tax Act does not permit the department to go behind the said valuation balance-sheet to find out if there were any profits in respect of the period of the last preceding valuation. 42 C.W.N. 440 The expression 'last preceding valution' in R 25 does not mean the valuation covering the last valuation period terminating before the 1st of April of the year of assessment, but the last preceding valuation at the time of the return. R. 25 is of a mandatory character and provides the only manner in which the income, profits and gains of Life Assurance Companies can be ascertained. I.L.R. 1938 Mad. 270=1938 Mad. 145=(1938) 1 M.L.J 11 (F. B.).

RULE 30.—The words "may be treated as expenditure" in r. 30 cannot be interpreted as conferring upon the Income-tax Officer and upon him alone the option to treat sums written off to meet dtpreciation of, or loss on securities or other assets, or carried to a reserve fund formed for that sole purpose and not used for any other purpose, as expenditure incurred solely for the purpose of earning the profits of the business. Such a construction would do violence to the plain words of the rule. The rule really confers an option on the assessee to write off in his accounts to meet depreciation or to carry to a reserve fund to meet depreciation any amount which is justified by an actual loss in any particular year. 40 Bom L.R. 447=1938 Bom. 345. It may be that the very purpose and nature of a reserve fund is to meet future contingencies, liabilities to be incurred as well as those incurred, Rs. 30 of the Income-tax Act makes special provision whereby certain amounts otherwise liable to taxation may be exempt from this liability, but only on the basis of expenditure incurred solely for the purpose of earning the profits of the business. What is properly to be carried to the reserve fund for the purpose of Rs. 30 is not any amount that the directors in their discretion think necessary to safeguard the future position of the company or to meet contingencies, but only such amounts as are necessary to meet depreciation or loss that has actually occurred or has actually been suffered. I. L.R. (1945) Kar. 362=1946 Sind 25.

RULE 31.—The words *"which in the opinion of the Central Board of Revenue, is unreasonable"*, is sec. 59 (3) of the Income-tax Act, gives the Central Board of Revenue absolute discretion to decide in cases coming under cl. *(a)* of sub-sec. (2) of sec. 59, whether amount of trouble to the assessee is un-

(*a*) prescribe the manner in which, and the procedure by which, the income, profits and gains shall be arrived at in the case of—

(*i*) income derived in part from agriculture and in part from business;

1. * * * * * * * *

[1][(*ii*)] persons residing out of British India;

(*b*) prescribe the procedure to be followed on applications for refunds;

(*c*) provide for such arrangements with His Majesty's Government as may be necessary to enable the appropriate relief to be granted under section 27 of the Finance Act, 1920, or under section 49 of this Act;

(*d*) prescribe the year which, for the purpose of relief under section 49, is to be taken as corresponding to the year of assessment for the purposes of section 27 of the Finance Act, 1920; and

(*e*) provide for any matter which by this Act is to be prescribed.

[1][(3) In cases coming under clause (*a*) of sub-section (2), where the income, profits and gains liable to tax cannot be definitely ascertained, or can be ascertained only with an amount of trouble and expense to the assessee which, in the opinion of the Central Board of Revenue, is unreasonable, the rules made under that sub-section may—

(*a*) prescribe methods by which an estimate of such income, profits and gains may be made, and

(*b*) in cases coming under sub-clause (*i*) of clause (*a*) of sub-section (2), prescribe the proportion of the income which shall be deemed to be income, profits and gains liable to tax:

and an assessment based on such estimate or proportion shall be deemed to be duly made in accordance with the provisions of this Act.]

[2][(4)] The power to make rules conferred by this section shall, except on the first occasion of the exercise thereof, be subject to the condition of previous publication.

[3][(5)] Rules made under this section shall be published in the official Gazette, and shall thereupon have effect as if enacted in this Act.

LEG. REF.

1 Original sub cl. (*ii*) was omitted and sub-cl. (*iii*) re-numbered (*ii*) by sec. 77 of Act VII of 1939.

2 Inserted by sec. 2 of Act XXVIII of 1927.

3 Sub-section renumbered by *ibid.*

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reasonable, and in that case to estimate the income in accordance with rules prescribed. Hence r. 31 of the Income-tax Rules is perfectly *intra vires* and not *ultra vires*. (1939) I.T.R. 352=1939 Sind 363. R. 31 is clearly made under sec. 59 (3) of the Income-tax Act, and sec. 59 (2) must be read with sec. 59 (3). Insurance Companies come under sec. 59 (2) (*a*) (*ii*) and it is clear that the words *"Dividing Society"* in r. 31 means and must be read as Dividing Insurance Society. It is also obvious from a reading of r. 32 that "companies" referred to in r. 31 mean Life Assurance Companies. I.L.R. (1939) Kar. 779=1939 I.T.R. 293=1939 Sind 293. *See also* 1939 I.T.R. 352=1939 Sind 363; 1939 I.T.R. 333=1939 Sind 296.

RULE 35.—The Income-tax Officer is authorised to have recourse to the method of computation provided by r. 35 of the Income-tax Rules only "in the absence of more reliable data". When he has before him the quinquennial valuations and the actuarial reports of the assessee company in respect of their Indian Life Insurance business, he cannot reject them *in toto* and assess the company under the proportionate scheme of r. 35, even if he questions the correctness of certain particulars in them. On the other hand, he must apply himself to the data before him and assess the profits and gains of the company in accordance with the methods customarily employed in estimating the profits of Life Assurance Companies. I.L.R. (1941) 1 Cal. 550=45 C.W.N. 694 =1942 Cal. 170. A Life Insurance Company carrying on business throughout the world as well as in India submitted a statement under r. 35 of the Rules showing the profits of the Indian business as the proportion of the company's whole world-wide income that Indian premiums bear to the world-wide premium. The company claimed exemption from income-tax under the proviso to sec. 8 of the Act in respect of interest derived from tax-free securities of the Government of India: *Held*, that the company was entitled to have the same proportion of that tax-free interest that the Indian premiums bear to the world-wide premiums, deducted from the income, profits and gains assessed under rr. 25 and 35 and exempted from tax. I.L.R. (1937) 2 Cal. 581=41 C.W.N. 922. The Income-tax Officer is authorised to have recourse to the method of computation provided by r. 35, "only in the absence of more reliable data", which requires (*a*) a scrutiny of the data which in fact had been made available

Power to make exemptions, etc.

60. [1][(1)] The Central Government may, by notification in the official Gazette, make an exemption, reduction in rate or other modification, in respect of income-tax in favour of any class of income, or in regard to the whole or any part of the income of any class of persons.

[2][(2) Where, by reason of any portion of an assessee's salary being paid in arrears or in advance, [3][or by reason of his having received in any one financial year salary for more than twelve months], [4][or a payment which is under the provisions of sub-section (1) of section 7 a profit in lieu of salary] his income is assessed at a rate higher than that at which it would otherwise have been assessed, the Central Government may grant [5][the appropriate relief].

[6][(3) After the commencement of the Indian Income-tax (Amendment) Act, 1939, the power conferred by sub-section (1) shall not be exercisable except for the purpose of rescinding an exemption, reduction or modification already made.]

LEG. REF.

1 Original sec. 60 re numbered as sub-sec. (1) by sec. 10 of Act XXII of 1930.

2 Added by sec. 10 of Act XXII of 1930.

3 Inserted by sec. 27 of Act XVIII of 1933.

4 Inserted by sec. 78 of Act VII of 1939.

5 Substituted for "such relief as it may think fit", by *ibid.*

6 Sub-section added by *ibid.*

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to the Income tax Officer, irrespective of any question as to the validity or correctness of the return made under sec. 22 (1), and (*b*) a consideration of the reliability of those data for the purpose of a computation of the income profits or gains of the company in accordance with sec. 13 of the Act. The total income, profits or gains, of the company referred to in r. 35 is the income, profits or gains as they would be ascertained for the purposes of the Act. 63 I.A. 99=60 B. 248=1936 P.C. 55=70 M. L.J. 412 (P.C.).

SEC 60.—The law and statutory rules applicable for determining the assessment of income-tax must be the statutory law and rules in force for the year of the assessment and not those in force during the year the income of which is assessed. The Government Notification No. 11 of 4th April, 1936, would therefore be applicable to an assessment levied on 28—10—1937 for the year ended 31st March, 1937, even though the income assessed be for the year ended 31—3—1936. 196 I C. 143=1941 Sind 110 =1940 I.T.R 467. Under sec. 60 the Government of India can, by notification, deal with income-tax and super-tax, but it does not follow that it cannot exempt, reduce the rate or otherwise modify income-tax alone or super tax alone. The Government of India Notification, Finance Department (Central Revenue) No. 21, dated 12th October, 1929, exempts the assessee from the payment of income-tax in respect of such part of the profits of a firm which has discontinued its business, if tax had at any time been charged on such business under the Income-tax Act (VII of 1918) or if an assessment has been made on the firm in respect of such profits under sec. 25 (1) of the Income tax Act (XI of 1922). This notification does not, however, extend to super tax and the profits so exempted from income-tax can be included for ascertaining whether the income is sufficient to make it chargeable to super tax. 65 M.L.J. 327= 56 M. 679=1933 M. 701 (F.B.). The intention of the Government underlying its notification, dated 12th August, 1925, was to exempt from income-tax the profits accruing from Co operative Societies from carrying on the business of a mutual Co-operative Society upon the ground that a man cannot make a loss or profit out of himself and in that way to encourage and foster Co-operative Societies which were designed to improve the conditions of Indian cultivators But neither interest from securities nor income derived from property is "profits" within the meaning of the term as used in the notification, unless the investment of capital in property or securities is part of the business of the Co operative Society. In considering that question, the fact that such income appears as part of the profits in the profit and loss account of the assessee is not conclusive. 11 R. 521=1934 R 27 (S.B.). A society was incorporated in England in 1923 under the Industrial and Provident Societies Act of 1893 and the shares were owned exclusively by two other Co-operative Societies. The Apex Society carried on business in India for growing tea, etc., and except a very small quantity of useless tea disposed of locally, the goods were consigned to the society in England and the branch societies delivered the goods to their members on a system, the object of which was to eliminate the profits of the middle man, and the question arose whether that company was assessable to income-tax in India in respect of the amount charged on the branch societies, but it appeared that such profits were distributed among the shareholders: *Held*, that the society was a mutual Co-operative Society earning no profit and was therefore not liable to assessment under sec. 60 of the Income-tax Act. 1929 M.W.N. 534.

Appearance by authorised representative.

[1][61. (1) Any assessee, who is entitled or required to attend before [2][the Appellate Tribunal or] any Income-tax authority in connection with any proceeding under this Act otherwise than when required under section 37 to attend personally for examination on oath or affirmation, may attend by a person authorised by him in writing in this behalf, being a relative of or a person regularly employed by the assessee, or a lawyer or accountant or Income-tax practitioner, and not being disqualified by or under sub-section (3).

(2) In this section,—

(*i*) a person regularly employed by the assessee shall include any officer of a Scheduled Bank with which the assessee maintains a current account or has other regular dealings ;

(*ii*) "lawyer" means a Barrister-at-Law or Solicitor or any other person entitled to plead in any Court of law in British India ;

(*iii*) "accountant" means a registered accountant enrolled in the Register of Accountants maintained by the Central Government under the Auditors Certificate Rules, 1932, or a holder of a registered certificate under the Restricted Certificate Rules, 1932, or a member of an association of accountants recognised in this behalf by the Central Board of Revenue ;

(*iv*) "Income-tax practitioner" means—

(*a*) any person who, before the 1st day of April, 1938, attended before an Income-tax authority on behalf of any assessee otherwise than in the capacity of an employee or relative of that assessee ;

(*b*) any person who has passed any accountancy examination recognised in this behalf by the Central Board of Revenue ; or

(*c*) any person who has acquired such educational qualifications as the Central Board of Revenue may prescribe for this purpose.

(3) No person who has been dismissed from Government service after the 1st day of April, 1938, shall be qualified to represent an assessee under sub-section (1): and if any lawyer or registered accountant is found guilty of misconduct in connection with any income-tax proceedings by the authority empowered to take disciplinary action against members of the profession to which he belongs, or if any other person is found guilty of such conduct by the Commissioner of Income-tax, the Commissioner of Income-tax may direct that he shall be thenceforward disqualified to represent an assessee under sub-section (1) :

Provided that—

(*a*) no such direction shall be made in respect of any person unless he is given a reasonable opportunity of being heard,

(*b*) any person against whom such direction is made may, within one month of the making of the direction, appeal to the Central Board of Revenue to have the direction cancelled, and

(*c*) no such direction shall take effect until one month from the making thereof, or, when an appeal is preferred, until the disposal of the appeal.]

Receipts to be given.

62. A receipt shall be given for any money paid or recovered under this Act.

LEG. REF.

1 Section substituted by sec. 79 of Act VII of 1939.

2 Inserted by sec. 11 of Act XL of 1940

STATUS OF MAHARAJA OF BENARES—EXEMPTION FROM INCOME-TAX.—His Highness the late Maharaja of Benares was a Ruler as defined in sub-sec. (1) of sec. 311 of the Government of India Act, 1935. He is not exempt from taxation under the Income-tax Act. I.L.R. (1942) All. 398=201 I.C. 209=1942 I T.R. 322=1942 A.L.J. 543=1942 All. 295.

SEL. 61.—An application for a copy of the order passed by the Assistant Commissioner is within the words "attendance before an Income-tax Officer". Any person asking for a copy of the order should be expressly authorised in writing in that behalf and the fact that a pleader had been authorised by the party to conduct his case before the Assistant Commissioner is not sufficient to authorise him to apply for a copy of the order. 11 P. 40=1932 P. 103.

Service of notices.

63. (1) A notice or requisition under this Act may be served on the person therein named, either by post or, as if it were a summons issued by a Court, under the Code of Civil Procedure, 1908.

(2) Any such notice or requisition may, in the case of a firm or a Hindu undivided family be addressed to any member of the firm or [1][to the] manager, or any adult male member of the family [2][and, in the case of any other [3][association of persons] be addressed to the principal officer thereof].

Place of assessment.

64. (1) Where an assessee carries on [4][a business, profession or vocation] at any place, he shall be assessed by the Income-tax Officer of the area in which that place is situate or, where the [4][business, profession or vocation] is carried on in more places than one, by the Income-tax Officer of the area in which [5][the principal place of his business, profession or vocation] is situate.

(2) In all other cases, an assessee shall be assessed by the Income-tax Officer of the area in which he resides.

(3) Where any question arises under this section as to the place of assessment, such question shall be determined by the Commissioner, or, where the question is between places in more provinces than one, by the Commissioners concerned, or, if they are not in agreement by the [6]Central Board of Revenue].

Provided that, before any such question is determined, the assessee shall have had an opportunity of representing his views :

[2][Provided further that the place of assessment shall not be called in question by an assessee if he has made a return in response to the notice under sub-section (1) of section 22 and has stated therein the principal place wherein he carries on his business, profession or vocation, or if he has not made such a return shall not be called in question after the expiry of the time allowed by the notice under sub-section (2) of section 22 or under section 34 for the making of a return ;

LEG. REF.

1 Substituted for the words "on the" by sec. 2 and Sch. I of Act VII of 1924.

2 Added by sec. 9 of Act XI of 1924.

3 Substituted for the words "association of individuals", by sec. 80 of Act VII of 1939.

4 Substituted for the word "business" by sec. 81, *ibid.*

5 Substituted for the words "his principal place of business", by *ibid.*

6 Substituted for the words "Board of Inland Revenue" by sec. 4 and Sch. I of Act IV of 1924.

7 Provisos were added by sec. 81 of Act VII of 1939.

SEC. 63: SERVICE OF NOTICE.—Sec. 63 is to be read along with sec. 27, General Clauses Act. The words "unless the contrary is proved" in sec. 27 refer both to the service and the time. Consequently, when a notice has been posted properly addressed and prepaid and in a register cover, the presumption raised even as regards the service is not conclusive but is rebuttable. 54 A. 548= 138 I.C. 70=1932 A. 374. Section does not require that service of a notice must be by its being placed in the hands of the person named therein by the officer of the Court himself and does not exclude other forms of service permitted by O. 5 of the C. P. Code. 23 Cr.L.J. 591=1922 N. 187. A notice addressed to a Hindu undivided family in its trading name is sufficient compliance with the requirements of sec. 63. 17 Pat. 187= 1938 Pat. 91. Where a notice under the Income-tax Act is delivered otherwise than by post to any clerk or servant on the premises where the assessee carries on business, and according to the practice obtaining in business, the employee is expected to hand on any communication which he has received to the manager, that is not evidence upon which the Income-tax Authorities can find as a fact that the manager was served with the summons. 13 R. 251=156 I.C. 385= 1935 R. 144 (S.B.). Income-tax Officers, in doing the very important work of assessing income-tax, must take the elementary precaution of seeing that the person with whom they are dealing is in fact authorised to represent the assessee, and they are not entitled to assume this merely because such person has on occasions signed a notice, possibly under pressure, or produced account books for inspection. A notice served on such person who is not authorised to accept service is not a valid service on the assessee. 30 N.L.R. 340. Delivery by unregistered post does not amount to the service required by the section. Therefore a conviction under sec. 34 (*b*) based on such a notice is liable to be set aside. 17 A.L.J. 146=49 I.C. 781. In the case of an unregistered firm a notice need not be served only on the member of the firm who made the return but under sec. 63 (2) it can be served on any member of the firm and such service is good service. 48 M. 602=49 M. L.J. 124=1925 M. 1048.

SEC. 64.—Sec. 64 was intended to ensure that as far as practible an assessee should

Provided further tha. if the place of assessment is called in question by an assessee the Income-tax Officer shall, if not satisfied with the correctness of the claim, refer the matter for determination under this sub-section before assessment is made.]

(4) Notwithstanding anything contained in this section, every Income-tax Officer shall have all the powers conferred by or under this Act on an Income-tax Officer in respect of any income, profits or gains accruing, or arising or received within the area for which he is appointed.

[1][(5) The provisions of sub-section (1) and sub-section (2) shall not apply and shall be deemed never at any time to have applied to any assessee—

(*a*) on whom an assessment or re-assessment for the purposes of this Act has been, is being or is to be made in the course of any case in respect of which a Commissioner of Income-tax appointed without reference to area under sub-section (2) of section 5 is exercising the functions of a Commissioner of Income-tax, or

(*b*) where by [1][any direction given or] any distribution or allocation of work made by the Commissioner of Income-tax under sub-section (5) of section 5, [3][or in consequence of any transfer made by him under sub-section (7*A*) of section 5], a particular Income-tax Officer has been charged with the function of assessing that assessee, or

(*c*) who or whose income is included in a class of persons or a class of incomes specified in any notification issued under sub-section (6) of section 5,

but the assessment of such person, whether the proceedings for such assessment began before or after the 1st day of April, 1939, shall be made by the Income-tax Officer for the time being charged with the function of making such assessment by the Central Board of Revenue or by the Commissioner of Income-tax to whom he is subordinate, as the case may be.]

LEG. REF.

[1] Added by sec. 6 of Act XII of 1940.

[2] Inserted by sec. 12 of Act XL of 1940.

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be assessed locally, and the area to which an Income-tax Officer is appointed must, so far as the exigencies of the tax collection allowed, bear some reasonable relation to the place where the assessee carried on business or resided. I.L.R. 1940 Bom. 350 =3 F.L.J. (H.C.) 75=42 Bom.L.R. 414= 1940 Bom. 234.

SEC. 64 (1).—The effect of sub-secs. (1) and (4) of sec. 64 is that, where two or more Income-tax Officers have territorial jurisdiction in respect of the same income, they exercise concurrent jurisdiction in the matter of issuing notices to the assessee and where notices have been issued by one officer it is unnecessary for the other officer to issue the same notices again. The latter can act upon them and make an assessment without giving a fresh notice. 50 C.W.N. 355. Sec. 64 (3) applies only when a question arises as to the place of assessment, and when there is no dispute between the assessee and the Income-tax Officer as to the proper place of assessment the point need not be referred to the Commissioner under that sub-section. A request by the assessee for transfer of the income-tax file from one district to another is not a question arising as to the place of assessment. Sub-sec. (3) refers to a position when a contest exists as to the correct assessment area. 50 C.W.N. 355. Jurisdiction—Place of assessment—Appeal on question as to place—Order under sec. 5—Appeal—Validity—If can be questioned—Ordinance IX of 1938—Effect on prior orders—Validation. (1943) I.T.R. 67=45 Bom.L.R. 136=1943 Bom. 110. Jurisdiction—Notice under secs. 22 (4) and 34—Abolition of circle—Transfer of case to Income-tax Officer, central section—Effect on notice—Jurisdiction—Absence of—Validating Ordinance of 1939—Effect of. 1943 I.T.R. 104=45 Bom.L.R. 168=1943 Bom. 122 Notice by Income-tax Officer and filing of return—Subsequent transfer—Fresh notice and fresh return—Re-transfer to original officer—Proceedings started on original return without fresh notice—Validity—Assessment under sec. 23 (4)—If justified on assessee's failure to file accounts. *See* 1942 I.T.R. 148. Where the assessee has branches at several places and his head office at Benares, the Officer at Benares has jurisdiction to call for a return of the income of all the branches, though situate out of Benares. (47 A. 631, Foll.) 1933 A.L.J. 49=1933 A. 197=145 I.C. 562. *See also* 1940 A.L.J. 855. "Ordinarily the principal place of business of a firm or company is at the place at which the persons directing the firm or company do their business". The fact that the goods are manufactured in one place does not make that place necessarily the principal place of business. Where business is carried on in many places or at different branches, it may be said that the business is carried on in each of those places, though neither of them may be the principal place of business. 49 A. 616=100 I.C. 756 =1927 A. 299. On this sub-clause, *see also* 3 Luck. 237; 1928 L. 701; I.L.R. (1940) All. 785=1940 A.L.J. 855=1941 All. 129;

65. Every person deducting, retaining or paying any tax in pursuance of this Act in respect of income belonging to another person is hereby indemnified for the deduction, retention or payment thereof.

Indemnity.

66. [1][(1) Within sixty days of the date upon which he is served with notice of an order under sub-section (4) of section 33, the assessee or the Commissioner may, by application in the prescribed form, accompanied where application is made by the assessee by a fee of one hundred rupees, require the Appellate Tribunal, to refer to the High Court any question of law arising out of such oder, and the Appellate Tribunal shall within ninety days of the receipt of such application draw up a statement of the case and refer it to the High Court :

Statement of case by Appellate Tribunal to High Court.

LEG. REF.

[1] Sub-sections substituted by sec. 92 of Act VII of 1939.

44 Bom.L.R. 618. The scheme of the Income tax Act does not contemplate an objection as to the place of assessment being raised on an appeal against the assessment after the assessment has been made. The provisions of sec. 64 (3) and the third proviso thereto clearly indicate that the question as to the proper place of assessment is more a matter of administrative convenience than of jurisdiction and that in any event it is not one for adjudication by the Court. 1945 F.C.R. 65=I.L.R. (1945) Kar. (F.C.) 88=79 C.L.J. 265=1945 F.L.J. 34=49 C.W.N. (F.R.) 50=47 Bom.L.R. 153=1945 F.C. 9=(1945) 1 M.L.J. 359 (F.C.). The combined effect of sec. 64 (1) and (4) is that where two or more Income-tax Officers have territorial jurisdiction in respect of the same income, they exercise concurrent jurisdiction in the matter of issuing notices to the assessee, and where notices have been issued by one officer it is unnecessary for the other officer to issue the same notices again after the case has been transferred to him by the former. 1942 I.T.R. 103. Sec. 64 (3) comes into play only when any "question" of dispute arises as to the place of assessment: where neither the assessee nor the Income-tax Officer concerned raises any question as to the proper place of assessment, no question as to the place of assessment arises within the meaning of sec. 64 (3), and there is therefore no occasion for such a question being submitted to the commissioner for determination. 1942 I.T.R. 103.

SEC. 66: SCOPE.—The High Court should require before they seek to entertain any question under sec. 66 that the preliminary requirements of the section are strictly complied with. 1930 P.C. 151=57 I.A. 152=54 B. 437=59 M.L.J. 242 (P.C.). It is open to the tribunal to express on the facts finding one way or the other on the question whether certain persons are partners. If there is evidence, it is not for the High Court to correct any error which there may be in the conclusion to which the tribunal arrived. 50 C.W.N. 398. Where the question is one of fact, *viz.*, whether a certain sum advanced by a company to the managing agents was advanced in the ordinary course of business giving rise to a claim to write it off as a bad debt, the only question of law arising is whether there was evidence to justify the finding on the question; the High Court will not interfere on a reference under sec. 66. (1946) I.T.R. 272. Whatever conclusions are arrived at by the Income-tax Authorities, they must have some material to support them, and in case it is contended that there is no material for those conclusions, the question does not resolve itself into one of law. 1937 L. 305. Whether a debt is a bad debt, and if so, at what point of time it becomes a bad debt, are questions of fact to be decided in the event of dispute by the appropriate tribunal. If the finding of such tribunals is based on relevant and admissible evidence, even though it is erroneous, interference by the High Court is barred. 18 L. 325=168 I. C. 549=1937 L. 338 (F.B.).

AMENDMENT ACT OF 1933—RETROSPECTIVE OPERATION.—Amendment to sec. 66, by the Amending Act of 1933, giving a right to the assessee to reopen an order of the Income-tax Commissioner under sec. 33 on a reference to the High Court is not a mere matter of procedure and cannot be construed to give a retrospective right to an assessee to claim a reference from an order passed before the amenment came into force. 1934 L. 1013. All cases pending at the time the Act was amended in 1933, will be governed by the Act as amended. 172 I.C. 511=1938 Nag. 16.

APPLICATION FOR REFERENCE WHEN TO BE MADE.—An application by an assessee for reference must be made before the case is disposed of by the Chief Revenue Authority. 64 I.C. 610= 23 Bom.L.R. 1267; 46 B. 707=1922 B. 345 (2). Application under sec. 66 (2) must state the question of law to be referred to High Court. *See* 92 I.C. 249 (2)=1926 L. 168. Reference on the question whether a Hindu joint family had become divided—Statement by members—Jurisdiction of Income-tax Officer to decide the question. *See* 1927 M.W.N 597 (F.B.). An assessee is not entitled to obtain mere *obiter dicta*. 11 P. 187=133 I.C. 753=1931 P. 306 (F.B.).

FORM OF REFERENCE.—Where the Commissioner of Income-tax referred to the High Court whether the Income-tax Officer was right in disallowing set off, held, that the form of the question was open to exception in view of the fact that under sec. 66, the Court has to decide the questions of law only. 58 C. 1446=35 C.W.N. 589=I.L.R. 1938 10 In stating a case to the High Court, the

Commissioner should not frame the questions in general terms. Also he should state only such questions as are intended to be answered by the High Court. 35 C.W.N. 312=58 C. 906=1931 C. 543. The practice of referring questions to the High Court in a negative from is inconvient and ought to be condemned. I.L.R. (1943) Bom. 224=45 Bom.L.R. 143=1943 I.T.R. 202=1943 Bom. 102. In making a reference to the High Court under sec. 66, it is incumbent on the tribunal making the reference to set out clearly all the material and relevant facts on which the question of law is based. 47 Bom.L.R. 183=1945 I.T.R. 203=1945 Bom. 345. In cases of references under sec. 66 the High Court would not be justified in considering any question but the question or questions actually referred to it. 1945 A.W.R. (C.C.) 62=1945 I.T.R. 94=1944 O.W.N. 451=1945 Oudh 42. Statement of case—Duty of Appellate Tribunal to make full and clear statement of facts admitted or proved. 23 Pat. 398=1944 I.T.R. 344=1944 Pat. 291. Where the assessee asks the Commissioner of Income-tax to refer certain points of law to the High Court, it is correct and proper that the Commissioner should write a judgment, so to say, giving the reasons for his conclusion. But if part of the conclusion to which he comes is that it is right to refer a certain question to the High Court, then he ought in strictness to make out another document, namely, a statement of the case upon that point for the opinion of the High Court. 58 C. 906. It is the duty of the Commssioner to state the facts and then to formulate the questions of law which arise upon them. 34 Bom.L.R. 100=1932 B. 116. He may then if he choose give his own opinion and discuss the case. 104 I.C. 841. It is desirable that the questions of law which the Commissioner refers to the High Court should, for convenience of reference, be assembled and numbered consecutively at the end of the stated case. 30 I. A. 146=12 P. 318=1933 P.C. 108=64 M.L. J. 612 (P.C.). In formulating questions for the opinion of the High Court, the Commissioner of Income-tax should ask only one question at a time. An attempt should not be made to combine two or more questions in the form of one question. Further, the questions should not be divorced from the facts of the particular case and should not be in the abstract. I.L.R. (1937) 1 C. 697=173 I.C. 898=1938 Cal. 20. Where the Chief Court when requiring the Commissioner to make a reference has not made any modification in the form of the question as stated in the application of the assessee, the Commissioner is bound under R. 10 of Appendix VII of the Rules of the Chief Court to state the point of law in the form stated in the application of the assessee. 169 I.C. 404=1937 O.W.N. 634=1937 O.W. N. 634=1937 O. 416.

REFERENCE BY COMMISSIONER SUO MOTU—RIGHT TO BEGIN.—In a reference under sec. 66 (1) by the Commissioner *suo motu*, the Advocate-General or Counsel on behalf of the Commissioner has the right to begin. 37 Bom.L.R. 112=1935 B. 167. *See also* 145 I.C. 254=1933 S. 148=27 S.L.R. 243. The Income-tax Commissioner is an official charged with certain duties as to the collection of income-tax and if in the course of these duties he deems it necessary to ascertain the views of the Court upon the meaning of a section of the Act (other than one under Ch. 8), he is entitled to state a case for the opinion of a Bench of at least two Judges of the High Court. He cannot be estopped from exercising that statutory right. 177 I.C. 255=1938 Cal. 557 (S.B.).

"HIGH COURT".—Chief Court of Oudh—If High Court under the section. 13 O.L.J. 381 =1926 O. 191; 105 I.C. 556=1927 O. 165=3 Luck. 237. It is open to the High Court when hearing the case on the statement of the Commissioner to decide what are the questions of law which arise. 56 A. 504=1934 A. 217. *See also* 1931 C. 683=39 P.L.R. 1028 =1937 Lah. 721. It is open to the High Court in a proper case to reframe the real question of law on which its decision is required to be given. 50 C.W.N. 227. Where in a reference under sec. 66 there is a misstatement of important facts in the statement of case by the Appellate Tribunal, the High Court has no option but to send the case back to the Appellate Tribunal for the facts to be correctly stated and for a question or questions upon those facts to be framed for the opinion of the High Court. 50 C. W.N. 227. Although there may be some questions of law, if such questions are based on incorrect assumption and do not really raise out of the orders passed by the Income-tax authorities, the High Court will not direct the Commissioner to state a case under sec. 66 (3) at the request of the assessee. 1942 I.T.R. 435. The jurisdiction of the High Court in income-tax matters is very limited. Sub-sec. (3) covers only the case of a refusal on the ground of any question of law arising. It does not cover the case of a refusal to refer on the ground that the application was filed beyond time. 33 Bom.L.R. 1114. Commissioner's finding of fact based on misconception of law—Interference. *See* 55 M. L.J. 416 (F.B.). The High Court can call upon the Commissioner under sec. 66 (3) of the Income-tax Act to state a case upon a particular question if the latter has refused to do. But where the Commissioner has never been asked to state a case upon any question and has not refused to do so, the High Court cannot call upon him to state such a case. Where there is no question before the High Court relating to a particular point, the High Court has no power to deal with that point; it can only deal with the question which was framed upon which the case has been stated. The High Court is bound by the findings of the Income-tax authorities on questions of fact, *viz.*, whether there was any loss in business during a particular period. 1942 I.T.R. 288 =1943 Pat. 39. In a reference under sec. 66 (3), the High Court cannot go into the correctness or otherwise of the finding of fact arrived at by the Commissioner of Income-tax, but can only see if there is any evidence

to support such finding. If there are materials to support the finding the conclusion of the Commissioner on the fact will not be disturbed. (1945) I.T.R. 311=1945 Mad. 513. As a matter of principle there is no jurisdiction entrusted to the High Court by sec. 66, either to go behind or to question statements of fact made by the appellate tribunal in the statement of a case. The only jurisdiction is that, if in any case the Court is not satisfied that the statements contained in the statement of the case are sufficient to enable it to determine the question raised by it the Court has power to send it back to the appellate tribunal for a second helping of facts. Where on the facts stated the appellate tribunal had sufficient material to come to a finding that a trust was a public one entitled to exemption from tax in respect of its income derived the High Court will not interfere. 1946 I.J.R. 440. On a reference under sec. 66 (2), it is always desirable that the Commissioner should state correctly the questions of law raised by the stated case, but the High Court is not precluded from deciding questions of law arising from the case as stated by the Commissioner though not set out specifically for the High Court's decision. I.L.R. (1939) Kar. 779=1939 I.T.R. 253=1939 Sind 293. Though it is for the Income-tax authorities to state the questions of law for decision by the High Court, if from the case as stated by them another question of law arises, the High Court is not precluded from deciding the same because it has not been specifically sent out in the reference. 1939 I.T.R. 341=1939 Sind 301. But *see* 52 L.W. 406=1940 P.C. 158=I.L.R. 1940 K. 335 (P.C.).

JURISDICTION OF HIGH COURT—NATURE OF.—The jurisdiction conferred upon the High Court by sec. 66 of the Income-tax Act is a special jurisdiction and forms no part of the Court's original or appellate jurisdiction. The High Court is not a Court of appeal in income-tax cases. Its functions are confined strictly to the disposal of references on points of law. 39 C.W.N. 1140=62 C. 671. Where a High Court in answering a question referred to it under sec. 66, gives its opinion the opinion is only 'advisory'. 63 I.A. 408=60 Bom. 900=164 I.C. 18=41 C.W.N. 33=1936 P.C. 269=1937 1 M.L.J. 200 (P.C.). When the Assistant Commissioner applies the correct principle of law to facts and comes to a certain conclusion, there is no misdirection and it is immaterial to consider whether the High Court applying the same principle to the question of fact to be decided would have arrived at the same conclusion. 177 I.C. 630=1938 Rang. 315 (S.B.). *Manohar Lal, J.*—Where a case stated by the Commissioner of Income-tax comes before the High Court for hearing, and the High Court directs the case to be sent back in order that it may be re-stated with such finding of fact as may be considered necessary, there being an error in the statement of the case, the Commissioner is bound in duty to carry out the order of the Court, and re-hear the parties, admit such further evidence as he considers relevant on the point at issue and restate the case with his opinion thereon. He cannot refuse to do so on the ground that he has no power under sec. 66 (4) to vary an opinion given under sec. 66 (2). If the Commissioner is dissatisfied with the order of the High Court, which has jurisdiction to require him to re-state a case which is not found satisfactory, he should appeal to the Privy Council. But as long as the High Court's order stands, it must be carried out to the very letter and in the spirit. 18 Pat. 805=1939 I.T.R. 536=1940 Pat. 24. *See also* 53 All. 451; 1930 All. 209; 54 All. 496. *Per* Dalip Singh, J.—There is no section which empowers the Commissioner to ask the advice of the High Court as to the legality of any proceedings that he intends to take, and it would not be proper for the High Court to express any opinion on the point, because the point may never arise, as the assessee may not ask for a reference on the point, and secondly, because any decision or advice given by the Court on a question not directly arising before it cannot bind the Bench that subsequently hears the reference, if any, upon this question when it really does arise. 16 L. 937=1935 L. 742 (F.B.). Where, in an applicaton under sec. 66 (2), the Commissioner refuses to state a case, the assessee has the option of either withdrawing the application and getting back the deposit made by him or applying to the High Court within the time prescribed by sec. 66 (3). If the assessee exercises the option of withdrawing the application and gets a refund of the fee deposited by him, it necessarily follows that he cannot afterwards apply to the High Court or continue his application before it. He has no right to prosecute an application under sec. 66 (3) by making a fresh deposit. I.L.R. (1943) Nag. 290=(1943) I.T.R. 179=1943 N.L.J. 226=1943 Nag. 184 (case before amendment of 1939).

REFERENCE NOT COMPULSORY.—It is not incumbent upon the Chief Revenue Authority to make a reference to the High Court, whenever an application for a reference is made. 45 B. 1064=63 I.C. 775=23 Bom.L.R. 609. Piecegoods—Fall in price of stock at the end of year—Estimation of loss—Balance of stock—Opening price for next year—Calculation of profit and loss—Reference under sec. 66—Question—Frame of. 48 M. 836=1925 Mad. 1242=49 M.L.J. 425. Chief Revenue Authority is not bound under sec. 45, Specific Relief Act, to make reference to the High Court under sec. 51 of the Income-tax Act. 45 B. 881=1925 Bom. 119=23 Bom.L.R. 139. High Court cannot compel reference by Revenue Board—Government of India Act, sec. 106 (2)—Specific Relief Act, sec. 45. 44 M. 718=1921 M. 524=41 M.L.J. 177; 30 C.W.N. 831=1926 C. 998; 28 Bom.L.R. 1096=1926 B. 566. Where in pursuance of an order under sec. 45 of the Specific Relief Act by the High Court, the Board of Revenue, instead of appealing against the order made a reference to the High Court, it is not open to them afterwards to object to the

reference on the ground that the order was without jurisdiction. 1921 M. 717=70 I.C. 30=14 L.W. 413 (F.B.). When an application is made to a Commissioner of Income-tax to state a case to the High Court under sec. 66, he cannot refuse to pass any order on the application or delegate his authority Application to Commissioner to refer questions of law=Fee payable. 2 R. 579=1925 R. 94. Commissioner of Income-tax—Statement of case to the High Court—Points of law. 2 Pat.L.R. 122=1925 P. 155 (Cr.). *See also* 91 I.C. 980=21 N.L.R. 175=1926 N. 180; I.L.R. 1945 Lah. 173=220 I.C. 339. In making a reference to the High Court the Commissioner has power to refer additional questions besides the matter formulated in questions sent down to him. 1935 L. 681.

Refusal to state a case as question of law was a settled one—Application under sub-sec. (3), if lies. *See* 1943 Oudh 148=18 Luck. 311.

REFERENCE, WHEN PROPER AND WHEN NOT. —When Chief Revenue Authority can be compelled to state a case. 45 M.L.J. 592=47 B. 742=50 I.A. 227=1923 P.C. 138. Where the Commissioner on an application under sec. 66 (2) refuses to refer a case on the view that the question arising in the case is a settled question of law, it amounts in other words to saying that the question of law does not arise and the High Court can in such a case require the commissioner to state a case and refer it to the High Court. 15 Luck. 723=189 I.C. 458=1940 Oudh 362. Assessee can maintain an application for mandamus to direct Commissioner to state a case only on points of law which he urged before the Commissioner and he cannot be permitted to shift his ground. 6 R. 492=1928 R. 281. Whether review can be granted; whether reasonable opportunity was given under sec. 33 and whether personal income can be jointly assessed with family income are questions of law necessitating a reference to the High Court. 84 I.C. 792=1925 P. 155. Non-compliance with sec. 23 (2) though not raised in proceedings under sec. 66 (3) before Commissioner was held to be a question of law under sec. 66 (2). 29 C.W.N. 28=85 I.C. 520=1925 C. 173. The question as to what constitues receipts for purposes of the Income-tax Act is a question of law and not a question of fact. 21 N.L.R. 175=1926 N. 180. On this section, *see also* 60 I.A. 325=14 Lah. 682; 1933 P.C. 198 =65 M.L.J. 335 (P.C.).

QUESTION OF LAW.—It is not possible to turn a mere question of fact into a question of law by asking whether as a matter of law an officer came to a correct conclusion upon a matter of fact. (1937) 2 M.L.J. 43=41 C.W.N. 719=1937 P.C. 133=64 I.A. 102= I.L.R. 1937 N. 191 (P.C.). Question whether process of curing tobacco adopted by assessee falls under sec. 2 (1) (b) (*ii*) is one of law. 1944 M. 248=219 I.C. 174. Distinction between question of law and fact, *see* 3 I.T.C. 10. If one of two possible inferences is drawn by the Commissioner, no question of law arises in the case. 121 I.C. 648; 122 I.C. I.C. 379=1930 N. 200. The proper effect of a proved fact is a question of law, and the High Court, in a reference under sec. 66 (1), is entitled to correct wrong conclusions drawn from admitted or proved facts. 1945 I.T.R. 329=1945 M.W. N. 454=1945 Mad. 366=56 L.W. 322= (1945) 2 M.L.J. 93. The right to carry forward and set off loss against the profits of the following year or years allowed under sec. 24 (2) is subject to the condition that the profits against which the set off is claimed should have arisen out of the same business as the one which resulted in the loss. Whether different trading operations constitute a single or same business or constitute different businesses is largely a question of fact but the proper legal inference from proved facts is essentially a matter of law. 58 L.W. 195=1945 I.T.R. 177=1945 M.W.N. 378= 1945 Mad. 318=(1945) 1 M.L.J. 406. Where the assessee accepts the finding of the appellate tribunal on a point of law and does not pray in his application under sec. 66 (1) for the inclusion of that point in the reference to the High Court, the High Court has no power to consider that point of law which has not been included in the reference. The function of the High Court in cases referred to it under this section is advisory only and is confined to considering and answering the actual question referred to it. I.L.R. (1946) Nag. 594=224 I.C. 589=1946 N.L.J. 506. The true intent of the first proviso to the second sub-section of sec. 66 is that a question of law that is common to both the Assistant Commissioner's and the Commissioner order is not a proper subject-matter of a reference unless the question of law is raised on a reference from the decision of the Assistant Commissioner. I.L.R. 1938 N. 133=171 I.C. 797=1937 Nag. 154. The question whether the Income-tax Officer legally proceeded to assess the assessee under sec. 23 (4) is one of law. 100 I.C. 774 (2)= 1927 L. 288. *See also* 104 I.C. 127=1027 L. 691. Before declining to adjudicate on the merits of an appeal on the ground that it is barred by the proviso to sec. 30 (1) it is incumbent on the Assistant Commissioner to satisfy himself that the assessment was not merely ostensibly but genuinely under sec. 23 (3). It is the duty of the Commissioner if required by the assessee to state the question of law whether or not the facts established before the Assistant Commissioner are such as to bring the case within the ambit of the proviso to sec. 30 (1). 11 P. 187=133 I.C. 753=1931 P. 306 (F B). When there is ample evidence upon which the Income-tax Officer can find that there was no sufficient cause preventing the assessee from producing account books requisitioned under sec. 22 (2) and it appears upon the ground he had refused to cancel the assessment made under sec. 23 (4) and his order is upheld by the Assistant Commissioner on appeal for the same reason there is no question of law arising under the circumstances for the pur-

poses of sec. 66 (2). 9 R. 21=1931 R. 97. The question whether an assessment made by the Income-tax Officer under sec. 23 (4) is valid or not is not a question of law and cannot therefore be made the ground for an order by the High Court under sec. 66 (3) requiring the Commissioner to state a case. 9 R. 281=1931 1931 R. 194 (F.B.). 1942 I. T.R. 148. *See also* 1930 L. 1014. But *see* 1931 P. 306 (F.B.). Whether a debt is wholly or partly and to what extent bad or irrecoverable is in every case a question of fact, to be decided by the appropriate tribunal upon a consideration of the relevant facts of that case. 61 I.A. 318=58 B. 579 =1934 P.C. 180=67 M.L.J. 213 (P.C.); 18 Lah. 306=1937 Lah. 338; 1941 Rang.L.R. 529=1941 Rang. 185 (S.B.); 1941 Rang. 273 (S.B.); 1941 I.T.R. 332; 1939 I.T.R. 149; 1941 I.T.R. 224. But the conclusions of the appropriate tribunal must be based on relevant and admissible evidence, and the question whether there is such evidence to support the conclusions arrived at by the Income-tax Authorities is a question of law open to consideration by the High Court. 37 P.L.R. 497=1935 L. 637. The Income-tax Officer is the sole arbitrator on the question of the possibility of deducing the income, profits and gains of the assessee from the method of accounting employed by him. The correctness of the opinion of the Officer under these circumstances is a question of fact which cannot be challenged by means of an application under sec. 66 of the Act. (1926 L. 446, Foll.) 164 I.C. 1018=1936 L. 621. The question whether a person is or is not a member of a joint undivided family is one of fact, but when the tribunal of facts states the circumstances on which it relies for its finding, and those circumstances do not in law lead to the conclusion arrived at by the tribunal of fact, it is open to a Court of law to draw the proper inference from the circumstances stated. 14 P. 785=16 Pat. L.T. 351=1935 P. 342 (S.B.). The question whether a person is rightly declared an agent under sec. 43 and the further question whether when an assessment is made under sec. 23 (4) to proviso to sec. 30 (1) bars an appeal though the appeal is not against the assessment but agianst the order of the Income-tax Officer declaring the assessee to be liable are questions of law and the reference under sec. 66 (2) to the High Court on such questions is competent. 28 N.L.R. 194=140 I.C. 490=1932 N. 152. The question whether the Assistant Commissioner of Income-tax could or could not set aside in appeal the order of Income-tax Officer refusing to register an instrument of partnership, is a question of law. The question whether a deed of partnership and the application for its registration fulfilled the requirements of R. 2 of the rules made under the Income-tax Act, and also the question whether for the purposes of R. 2 sec. 2 (14) of the Act it is obligatory that the instrument of partnership should be signed by all the partners, and if so under what provision of law, are similarly questions of law arising out of the order of the Assistant Commissioner when his assessment was on the assumption that the assessee firm was an unregistered firm. 1930 S. 301. In a particular year an assessment was made on actual receipts. It was objected by the assessee that a certain sum already assessed in previous years was included in the receipts. Assistant Commissioner in appeal found that, as the estimate of income in those years was not an assessment strictly on accrued basis but merely on best available data, there was no conclusive proof that such sum had already been included in the assessment of the previous years. *Held*, that a question of law arose from the order whether or not the assessee was entitled to show that the actual receipts had in fact been included in the estimates of the previous years and the Commissioner must state and refer the case on the question. 7 R. 644=1929 R. 245. The adoption of a particular basis and a certain method in preference to another, both being entirely within the discretion of the Income-tax Officer cannot give rise to any question of law. 32 P.L.R. 344=1931 L. 432. Question whether person is member of partnership firm. *See* 201 I.C. 485=1942 Pesh. 17 (1). Whether the evidence tendered before the Income-tax authorities established that the method of accounting was such that the profits and gains of the business could not be properly deduced therefrom is a question of fact. 1934 L. 977. The employment of a correct procedure of assessment does not raise a question of law. 1931 L. 759. The queston whether the goods still in transit can be valued at market value prevalent at the place of destination does not involve any point of law. 1931 L. 759. The decision of the Income-tax Officer under sec. 20 of the Income-tax Act that no sufficient cause for non-submission of a return was shown by the assessee, is essentially a question of fact and not of law that can be referred to the High Court. 36 P.L.R. 198=1934 L. 983. The validity or otherwise of an assessment made by the Income-tax Officer under sec. 23 (4) except where he made the assessment *mala fide* and arbitrarily in the sense that he acted recklessly or fraudulently, is not a not a question of law that can be referred to the High Court. 36 P.L.R. 198=1934 L. 983. Whatever conclusions are arrived at by the Income-tax authorities, they must have some material to support them, and in case it is contended that there is no material for those conclusions, the question does resolve itself into one of law. 1937 Lah. 305. The question whether there was any evidence upon which an Assistantt Commissioner or Commissoner could come to a finding of fact is a question of law. If there was any evidence on which it was reasonably possible for the Commissioner to come to the conclusion at which he arrived, the High Court will not consider whether on that evidence that finding was correct, because the High Court is not a Court of appeal in such matters. Even where the finding of fact is an inference

from other facts the question whether such an inference was properly drawn is not a question of law. Where the Assistant Commissioner from the fact of non-production of certain books which the assessee him was ordered to produce coupled wth other facts came to the conclusion that the books of account on which the assessment was based were not the full and complete accounts of the business, *held*, that it was a finding of fact which could not be tht subject-matter of a reference to the High Court. 7 R. 635 1930 R. 4 (F.B.). *See also* 1930 L. 197; 1933 A. 231; 11 R. 156=177 I.C. 630=1938 Rang. 315; 1941 I.T.R. 190. As to the legal effect of the disruption of a joint Hindu family, *see* 30 P.L.R. 134=1927 L. 616; the proper legal effect of proved facts. 46 C. 189; 194 I.C. 336=1927 N. 366. Whether a statement given by the accused is incomplete and fradulent or not, is a question of fact for the determination of the income-tax authorities and not a question on which High Court can interfere. 7 R. 281=115 I.C. 897 =1929 R. 102. Where the only question is whether the accounts of the assessee are maintained in such a way that they indicate the true income of the assessee, reference cannot be made to the High Court since it is a question not of law but of fact. 1935 L. 841. Where the Income-tax Officer made an assessment under sec. 23 (4) on the ground that the assessee failed to comply with the terms of the notice, the question whether there has been a compliance with the terms of the notice is not a question of law but a question of fact. Further, whether the evidence before the Income-tax Officer is sufficient to justify him in rejecting the accounts of the assessee is also a question of fact. 137 I.C. 732 (1)=1932 O. 164.. When an assessment has already been made in respect of the previous accounting year under sec. 34, the question whether all income which had accrued and had escaped assessment had been assessed to tax or not depends upon the investigation of the facts of the case. 1931 C. 761 (S.B.). The question where a partner as partner lends moneny beyond the initial capital to the partnership at no agreed rate of interest and the money is used for capital expenditure, whether the interest paid by the partnership to him in the year of assessment should be deducted in computing the profits or gains of the partnership within the meaning of sec. 10 (2) (*iii*), is a question of law. 116 I.C. 454=1929 L. 404 (1). As to what legal presumption is to be drawn under certain stated circumsances. (*Ibid.*) 1927 N. 283. The question whether the Income-tax Officer, having ordered registration of the instrument of partnership is estopped from holding persons mentioned therein as partners to be members of a joint Hindu family and from assessing them together, involves a question of law and the assessee is entitled to the decision of the Chief Court on that question. I.L.R. (1942) Kar. 22=1942 Sind 74=1942 I.T.R. 384. The question whether the Income-tax Offiicer is justified in increasing the estimate of the annual value of the property from Rs. 1,200 to Rs. 3,000 merely on a finding as to the cost of erection of the buildings is one of law. 131 I.C. 212=1932 L. 187. The Income-tax Officer is not competent to rectify a supposed mistake which has the effect of enhancing assessment without issuing notice to the assessee under sec. 35, and where the Assistant Commissioner refuses to cancel such enhanced assessment, there arises a question of law. 117 I.C. 383=1929 L. 326.

REFERENCE, WHEN NOT PROPER.—An application under sec. 66 (2) for a reference to the High Court is incompetent where the assessment has been accepted without appeal. 4 P. 224=86 I.C. 170=1925 P. 352. Where the questions as to the validity of notice or the propriety of assessment do not arise out of an appellate order, there cannot be a reference. 9 R. 25=1931 R. 98. *See also* 3 Luck. 237 =1927 O. 465; 18 Lah. 306=1937 Lah. 338. (Question whether a certain item to be allowed as bad debt); 18 Lah. 325=1937 Lah. 830. (Question whether burden of proof has been discharged by the assessee). When a document purporting to be an instrument of partnership is tendered under sec. 26-A on behalf of a firm and application is made for registration of the firm as constituted under such instrument, to decide that such an instrument is not genuine in the sence that it has been executed by way of pretence in order to escape liability for tax and without intention that its provisions should in truth have effect as defining the right of the parties *inter se*, is to come to finding of fact: Whether there was evidence upon which it was open to the Income-tax Authority to come to such a decision is a question of law. 1942 P.C. 57=(1942) 2 M.L.J. 761 (P.C.. Sec. 66 (2) does not say expressly that the remedy provided by that section will not be available where the assessment is not appealable: all that it requires is that there should be an order or decision under sec. 31 or sec. 32. Under sec. 31, the Assistant Commissioner has the power to allow the appeal as well as to reject and the mere fact that he rejects it on the ground that in his opinion no appeal lies is no ground for treating the order as one not under sec. 31. In such cases, the assessee can take to the High Court at least the limited question as to whether an appeal did or did not lie in the circumstances of the case. 11 P. 187=133 I.C. 753=1931 P. 306 (F.B.). But *see contra* 1932 A.L.L.J .576= 1932 A. 642. Where the Assistant Commissioner of Income-tax has no occasion to deal with or apply his mind to a point of law, the point not having been raised before him, such point of law cannot be said to arise out of his order and the assessee can claim no reference in respect of that point. 27 S.L.R. 47=138 I.C. 673=1932 S. 189. No application lies to state a case when Commissioner acts under sec. 33. 89 I.C. 785 (1)=1925 R. 252. If the Commissioner of his own motion under sec. 33 imposes tax and penalty, is there any authority to which

reference can be made if the tax and penalty are arbitrary and contrary to the provisions of the Act? 1930 P. 538 (F.B.). The failure of the Commissioner in his duty under sec. 33 will not give the High Court jurisdiction to require the case to be referred under sec. 66 (3), since that sub-section relates back to sub-sec. (2) and sub-sec. (2) deals only with order under sec. 31 or sec. 32 and not with order under sec. 33. 8 R. 203=1930 R. 33. Appeal—Subsequent applications under secs. 33 and 66 (3) in the alternative —Draft statement sent to assessee—Subsequent exercise of power of review and case remitted to Assistant Commissioner—Reference to High Court—Not competent. *See* (1945) I.T.R. 359. No reference can be made to the High Court of any question arising out of an order under sec. 52 whether it is contained in a separate proceeding. 1933 A. 231=144 I.C. 144. When the account books of the previous years do not support the verified return and the assessee's statement on oath, and the assessee fails to substantiate his allegation, *held*, that the Income-tax Authorities are entitled to draw a presumption from the state of matters which had admittedly existed in previous years and that no error of law has been committed by the Income-tax Authorities which would justify the High Court calling on the Commissioner of Income-tax for a reference. (50 C. 907, Dist.) 103 I.C. 38=1927 N. 283. The question whether the purchase and sale of landed property is one of the objects with which a company was formed or whether the development of the property in order to earn a continuing profit year by year was its real object, is one of fact with which the High Court in a reference under this section, is incompetent to deal. 11 L.B.R. 309= 1922 L.B. 35 (F.B). Where the Income-tax Officer finds as a fact on the evidence that complete accounts have not been produced before him and proceeds to estimate the income under the proviso to sec. 13 of the Income-tax Act, no question of law arises. 16 L. 416=1935 L. 539. *See also* 145 I.C. 944 =1933 L. 832.

APPELLATE TRIBUNAL, WHEN MAY BE REQUIRED TO STATE CASE.—It is only when the High Court is not satisfied of the correctness of the decision of the Appellate Tribunal that it should be required to state a case. If the decision of that Tribunal is correct, even if any point of law arises upon which the Tribunal refuses to state the case, no direction should be given for stating a case. 50 C.W.N. 355.

JURISDICTION.—Commission Agency business—Advances to Munims and Gumastas written off as irrecoverable— Diwali presents to servants—Claim to deduct the two items as business expenditure—Rejection of claims by the Officer—Question, if one of law for reference to Court. 3 I.T.C. 54. The question whether or not the accounts disclosed by the assessee do or do not disclose his true income is itself a question of fact, behind which the High Court cannot go. 9 P. 240=1930 P. 81 (S.B.). Where a question is raised as to the assessee's principal place of business under sec. 64 and the same is decided by the Commissioner or Board of Inland Revenue, such decision is final and cannot be interfered with. But where there is a total failure on the part of the Income-tax Authorities to apply the plain provisions of sec. 64 and an Income tax Officer illegally assumes authority to assess as though the assessee's place of business has been finally determined, the High Court can direct the Commissioner to have a case stated and the existence of an alternative remedy under sec. 64 (3) does not affect the case. 49 A. 616=1927 A. 299. The Act gives no directions as to whether the officer deciding an appeal must set out fully the considerations which have led him to a certain decision. It is a matter of propriety rather than of law and is a matter in which the High Court has no business to interfere. The High Court has no jurisdiction to consider the findings of fact arrived at by an Income-tax Authority and it is immaterial whether the grounds stated for these findings are sound or not sound or whether no reasons at all have been stated. 1930 R. 224. *See also* 18 L. 325. The ultimate authority on the question whether proseedings before the Assistant Commissioner were *ultra vires* or not is the High Court and not the Commissioner. 1933 S 15=1 5 I.C. 145. Cl. (1) of sec. 66 does not contemplate a reference at the instance of an assessee. 9 L. 317=1927 L. 513. Nor has the High Court any power to issue mandamus directing him to refer questions of law to it for opinion. 9 L. 317. Where a case, if stated by the Commissioner of Income-tax, would have to be referred to the Court of the Judicial Commissioner in Sind for decision, it would not be right for the Bombay High Court in the exercise of its discretion to make an order under this section requiring the Commissioner to state a case to it, even if the Bombay Court has jurisdiction to do so by reason of the fact that the Commissioner resides in Bombay. 33 Bom.L.R. 36 =1931 B. 150. An assessee in Sind unlike an assessee within the jurisdiction of High Courts, has no remedy under sec. 45, Specific Relief Act, when he cannot obtain relief under sec. 66 (3) of the Income-tax Act. It is, however, for the Legislature to remedy this anomaly by extending the provisions of sec. 45, Specific Relief Act, or by amending sec. 66 (3) of the Income-tax Act, so as to give him a right of reference where the Commissioner refuses to state a case on fanciful grounds. 26 S.L.R. 235=136 I.C. 762 =1932 S. 1. The question whether a particular section of the Income-tax Act is to be applied when making an assessment is a question of law. When there is no decision on that question by the Sind Chief Court the assessee cannot be debarred from seeking a decision of the Sind Chief Court by reason of the fact that there exists a decision of the Bombay High Court. I.L.R. (1942) Kar. 22=1942 Sind 74.

PRACTICE AND PROCEDURE.—It is for the

Commissioner in stating a case to find facts which must be accepted by the High Court. 134 I.C. 1275=1931 C. 729 (S.B.); 1932 A. 471. The Income-tax Act does not lay down any rules of procedure for references under sec. 66 of the Act, and the Calcutta High Court has made the rules contained in Chapter XXX-A of its original side Rules. This it had jurisdiction to do in the absence of any specific provision in the Act. 39 C. W.N. 1140=62 C. 671. The function of the High Court in cases referred to it under sec. 66 is advisory only and is confined to considering and answering the actual question referred to it. 190 I.C. 1=42 Bom. L.R. 1182=52 L.W. 406=I.L.R. 1940 Kar. 3'5=1940 P.C. 158 (P.C.). *See also* 41 C. W.N. 33=1936 P.C. 269 (P.C.). When an assessee is aggrieved the Commissioner is bound to refer the question in dispute to the High Court for determination. The assessee should normally be heard first and good reasons must be shown before any departure is made from this practice. 1937 Rangoon L.R. 174=1937 R. 258 (S.B.). The grounds mentioned in the opinion of the Commissioner are not necessarily binding on the High Court and the Court is entitled to go through the whole record for a proper determination of the questions raised. 57 B. 519=35 Bom.L.R. 896=1933 B. 427. Where a matter is one of fact, the High Court, though it might differ from the view of the Commissioner if the matter were before it as an appellate Court, cannot interfere with the order of the Commissioner merely on the ground that the finding of fact arrived at by him was wrong. 1941 I.T.R. 190. *See also* 1938 Rang. 315; 1933 All. 231; 1941 I.T.R. 190. Whether the time granted by the Income-tax Officer under a notice as required by sec. 23 (2) is reasonable or not is a question of fact. 134 I.C. 1275= 1931 C. 729 (S.B.). High Court has to accept the facts as found by the Commissioner of Income tax and if necessary may call for further facts by asking him to make a fresh statement of them under sec. 66 (4). But though ordinarily the Income-tax Commissioner would be the officer who would frame the points of law that arise in the case stated by him and though he would be expected to give his own opinion on those points of law, for the benefit of the High Court, sec. 66 requires the High Court to decide the questions of law that arise in the case, *i.e.*, the High Court is entitled to "resettle the issues" as it were and to decide those issues. 1929 A. 819; 54 A. 496=1932 A. 390; 53 A. 451=1931 A. 417; *see also* 18 Pat. 805=1940 Pat. 24. 1930 A.L.J. 78=1930 A. 209. It is for the Commissioner and not for the High Court to state formally the questions which arise; and the duty of the High Court is only to decide the questions so raised. 60 I.A. 146=12 P. 318= 37 C.W.N. 508=1933 P.C. 108=64 M.L.J. 612 (P.C.). The High Court will not on a reference under sec. 66, hear new points for the first time, which have not been raised earlier at any stage of the case. 59 M. 263 =1936 M. 776=71 M.L.J. 35 (F.B.). The Court has poower under sec. 66 (5) to amend the questions asked by the Commissioner by raising the real question and then answering that question. 55 B. 637=33 Bom.L.R. 807=1931 B. 448. The case stated by the order of the Court under sub-sec. (3) is not quite out in form from that stated under sub-sec. (2) and consequently the expression "the question of law raised thereby" in subsec. (5) does not mean such question as in the opinion of the High Court arose when the application is made by the assessee to order the Commissioner to state a case. 11 P. 187 =133 I.C. 753=1931 P. 306 (F.B.). In a reference to the High Court under sec. 66 the finding of fact arrived at by the Commissioner is binding on the High Court unless it is shown that it was come to by some improper process or by failure to give effect. to some rule of law. 6 P. 29=1927 P. 133. *See also* 1933 S. 145=145 I.C. 202. It is not open to an assessee to ask the High Court upon a reference under sec. 66 to examine his books of account and to come to findings of fact contrary to those arrived at by the Commissioner in the case stated. Still less, is it intended that the High Court should be a last resort for the production of books which were not produced before the Income-tax Officers. 35 C.W.N. 589=58 C. 1446= 1931 C. 683. When a reference is made to the High Court under sec. 66, the High Court is not entitled to scrutinize evidence, as the Commissioner's decision upon the evidence is final. 1930 M. 104 (S.B.). Where four persons originally formed an undivided family but subsequently became divided and were separately assessed to income tax, four separate applications and deposits are necessary to require the Commissioner of Income-tax to take action under sec. 66 (2). 50 M. 335=1927 M. 545=52 M.L.J. 273. Reference under section— Statement of case—Form of, 4 P. 73=1924 P. 679=5 Pat.L.T. 497=82 I.C. 653. *See also* 55 C. 953. High Court can be moved under sec. 66 (3) only when assessee is competent to apply to Commissioner under sec. 66 (2). 7 L. 226=1926 L. 400. Competency of High Court to issue mandamus, when to be questioned. 94 I.C. 128=1926 L. 446; 1937 Lah. 814=39 P.L.R. 616. When a Judge directs the Commissioner of Income tax to state a case for the opinion of the High Court under sec. 66, the question should be so framed as to leave it to the Court which afterwards hears the reference to decide the matter on the facts stated by the Commissioner of Income-tax who makes the reference. 48 M. 836=1925 M. 1242 48 M.L.J. 425. Where before issuing notice the High Court decided whether a certain point had already been decided and eventually ordered a reference to be made, *held*, that it was not competent for the Bench finally disposing of the matter to consider whether the point should be allowed to be raised. 139 I.C. 900=1932 N. 65. Where a Bench of two judges hearing a reference under sec 66 (3) of the Income-tax Act are

Provided that, if in the exercise of its powers under sub-section (2), the Appellate Tribunal refuses to state a case which it has been required by the assessee to state, the assessee may, within thirty days from the date on which he receives notice of the refusal to state the case, withdraw his application and, if he does so, the fee paid shall be refunded.

(2) If on any application being made under sub-section (1) the Appellate Tribunal refuses to state the case on the ground that no question of law arises, the assessee or the Commissioner, as the case may be, may, within six months from the date on which he is served with notice of the refusal, apply to the High Court, and the High Court may, if it is not satisfied of the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case and to refer it, and on receipt of any such requisition the Appellate Tribunal shall state the case and refer it accordingly.

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equally divided, it is open to them to move the Chief Justice to have the matter disposed of by a fuller Bench. 12 L. 725=132 I.C. 689=1931 L. 578 (F.B.). Appeal from Commissioner's decision—Opinion of the High Court to be obtained by stating a case—Point of law not urged before the Income-tax Officer and Commissioner—Effect. 23 A.L.J. 40=1925 A. 298 (1). The High Court will not consider any point of law that was not raised before the appellate officer or Commissioner himself by the assessees. 52 A. 991=1930 A.L.J. 1548=1931 A. 23. It is not competent to the High Court in a reference under sec. 66 (2) to decide a question which has not been referred to the High Court by the Commissioner, though it may be open to the assessee to apply under sec. 66 (3). 1941 I.T.R. 618. Opinion of Commissioner on questions raised in the statement of the case is not a part of the draft case and need not be supplied to the assessee. 1936 A.L.J. 549=1936 A. 279.

RIGHT TO APPEAR BY COUNSEL.—Where, on the motion of an assessee, the Board of Revenue made a reference to the High Court under sec. 51 of the Act, the assessee's pleader is entitled to be heard first. 43 M. 75 =37 M.L.J. 663 (F.B.). The practice to be followed in references under sec. 66 should be that counsel for the assessee should begin and should also have a right of reply. (1921 C. 40, Foll.) 27 S.L.R. 243=1933 S. 148. *Quaere.*—Whether counsel for the Crown as such should be afforded a general right of reply. 27 S.L.R. 243=1933 S. 148. In a reference under sec. 66 (1) by the Commissioner *suo motu*, the Advocate-General or counsel on behalf of the Commissioner has the right to begin. 37 Bom.L.R. 112= 1935 B. 167. In applications under sec. 66 (3) to the High Court, it would be wrong to require the appearance of the Advocate-General in the first instance, because most of those applications plainly do not raise any questions of law, and they can be dismissed *in limine* without hearing the Advocate-General on behalf of the Commissioner of Income-tax. If, after hearing the applicant, the Court considers that the case for the Commissioner of Income-tax should be placed before them at that stage, then it is simple to adjourn the case in order to obtain the appearance of the Advocate-General for the Commissioner of Income-tax. That is the practice which should be adopted in such applications. 176 I.C. 601=1938 Rang. 260 (F.B.).

Application under sec. 66 (2)—Pleader filing Vakalat for all purposes and all sections—Withdrawal of application by pleader on getting taxable amount reduced in revision—Repudiation by client and application for statement of case not maintainable. The pleader was, under the vakalatnama, acting within his powers and was authorised to withdraw the application and the assessee was bound by the withdrawal and could not claim to have a case stated. 1941 Cal. 183=1940 I.T.R. 482=199 I.C. 649. The mere death of an assessee at whose instance a reference was made does not preclude the High Court from answering the question or questions formulated by the Commissioner of Income-tax. 1941 I.T.R. 193.

LIMITATION.—The refusal of the Income-tax Commissioner to make a reference of a supplementary question of law submitted to him one month after the Assistant Commissioner passed his orders, as being barred by time, is justified. 139 I.C. 599=1932 C. 411 (S.B.). *See also* 155 I.C. 124=1935 A.L.J. 845=1935 A. 572. The Commissioner of Income-tax has no power to extend limitation in reference to an application under sec. 66. Sec. 30 (2) of the Act does confer powers on the Assistant Commissioner to admit an appeal after the expiration of he usual period if he is satisfied that the appellant had sufficient cause, *i.e.*, for such appeals there is a provision analogous to that of sec. 5, Limitation Act; but there is no such provision for applications to the Commissioner. Sec. 5, Limitation Act, is also not applicable. I.L.R. 1938 Lah. 229=1937 Lah. 876. An application for reference made under sec. 66 (2) more than one month after the order giving rise to the application should not be entertained and a reference made on such an application is without jurisdiction. 6 L. 373=1925 L. 615. High Court has no power to extend the limited period of one month. 28 Bom. L.R. 1096=98 I.C. 299=1926 B. 566. Sec. 66 (2) is express and there is no provision in it for any official or even for the Court to extend the time. 50 M. 335=1927 M. 545=52 M.L.J. 273. [The period is ex-

tended to 60 days by the Amending Act of 1930. It commences now from the date of service of notice of the order. The decision in 9 P. 172 under the old section is not now good law.] The period required for obtaining the copies of the order under sec. 31 or 32 of the Income-tax Act should be excluded in computing the period of limitatilon for an application for reference by an assessee under sec. 66 (2) and (3). 9 P. 172=1930 P. 14. An application for copy of the order of the Assisstant Commissioner was struck off the file for non-prosecution. The assessee applied under sec. 66 (2) after 30 days of the passing of the order and the application was rejected as time-barred. A further application was made under sec. 66 (3) and the assessee contended that he ought to have been allowed time for obtaining copy: *Held*, that the application was not maintainable. 140 I.C. 714 (2)=1932 P. 167 (2). Where for an application under sec. 66 (3) the rules provide that there should be copies of the orders of the Income-tax Officer, the Assistant Commissioner of Income-tax and the commissioner of Income-tax disposing of the case, the mere fact that these orders are required does not connote that the applicant has a right to extend the period of limitation by the period required for obtaining orders other than those of the Commissioner of Income-tax under reference. 53 A. 684=1931 A.L.J. 593=1931 A. 673. Sec. 12 of the Limitation Act does not apply to a proceeding under sec. 66 (3). 1931 A. 673. The High Court can only act under sec. 66 (3) if it is not satisfied of the correctness of the appellate Tribunal's decision. If it is satisfied that the decision is correct, no order can be passed. An application for a reference to the High Court under sec. 66 (1) was presented at the office of the appellate Tribunal on the last day of the ptriod of limitation. Since there was no provision in the Appellate Tribunal Rules for the presentation of an appeal or an application for reference to the Tribunal itself, the Madras office of the Appellate Tribunal refused to receive the application presented to it and it was then posted to the Regisarar at Bombay, where it was received out of time. The Tribunal refused to make a reference because the period of limitation had expired and it had no power to extend the period. The petitioner then applied to the High Court under sec. 66 (3) of the Act. *Held*, that R. 14 of the Appellate Tribunal Rules was mandatory and an application for reference could only be filed in accordance with that rule, *i.e.*, it must be presented to the Registrar within time and as the decision of the Tribunal was correct the High Court could not interfere under sec. 66 (3). I.L.R. (1945) Mad. 772=1945 I.T.R. 112=1945 Mad. 169=1945 M.W.N. 100=(1945) 1 M.L.J. 173. An application under sec. 66 (2) is not complete till it is accompanied by the fee of Rs. 100. Where though the application was presented in time the fee of Rs. 100 was not received by the Commissioner till two days after the expiry of the period of limitation, the Commissioner could not have recourse to sec. 5 of the Limitation Act to condone the delay as there was no saving clause in sec. 66 (2) which could enable the High Court or the Commissioner to condone the delay. I.L.R. (1942) All. 470=1942 A.L.J. 327=1942 All. 251 (2).

COURT-FEE.—Fee in respect of an application as a whole and not for each point raised. 2 R. 579=84 I.C. 521=1925 R. 94. As no mention of the Court-fee payable on a reference under sec. 66, Income-tax Act, is to be found in Schs. I and II, Court-Fees Act, sec. 4 of that Act does not apply to documents produced in a reference to the High Court under sec. 66, and therefore no Court-fee is chargeable on such documents. 1933 S. 148=27 S.L.R. 243. The fee of Hs. 100 paid by an assessee for a reference under sec. 66 (2) is part of the assessee's costs of reference; and the High Court when allowing costs to the assessee under sec. 66 (6) of the Act has power to direct a refund of that fee to the assessee. 60 B. 999=165 I. C. 518=38 Bom.L.R. 929=1936 B. 385.

COSTS.—All fiscal enactments must be construed in favour of the subject, and it cannot be said that if an assessee has not been properly taxed and if he succeeds on a reference in the High Court, yet he must lose a sum of Rs. 100 simply because the Income-tax Officer has chosen to make an assessment. 52 A. 991=1930 A.L.J. 1548 =1931 A. 23. In dealing with the costs of a reference made by the Income-tax Appellate Tribunal under sec. 66, the High Court must have regard to the number of questions raised, their complexity, the evidence involved and the conduct of the parties. I.L.R. (1943) Bom. 224=45 Bom.L.R. 143=1943 I.T.R. 202=1943 Bom. 102. Th ultimate decision on the point of law, whether for or against the Commissioner, can have no bearing on the question whether there was a point of law upon which a case should have been stated, and, therefore, the costs of an application to direct the Commissioner to state a case, ought, in the absence of special circumstances, to follow the event. I.L.R. (1942) Kar. 22=1942 I.T.R. 384=1942 Sind 74. The right rule as to costs of an application under sec. 66 (3), asking the Court to direct the Commissioner of Income-tax to state a case, is that costs should follow the event. The ultimate decision upon the point of law, whether for or against the Commissioner, can have no bearing on the question whether there was a point of law upon which a case should have been stated. In the absence of special circumstances, the costs of such an application ought to follow the event. I.L.R. (1939) Bom. 574=41 Bom.L.R. 919=1939 Bom. 448. In proceedings under sec. 66 (2), costs are in the discretion of the Court. There is no provision in the Act that cos's payable by an assessee should be paid from or limited to the sum of Rs. 100 deposited by the assessee as required by sec. 66 (2). I.L.R. 1940 Kar. 8=(1939) I.T.

R. 305=1939 Sind 318. When an application under sec. 66 (3) is dismissed as having no subs ance in it, the applicant is not entitled to ask that the costs of the reference which he is ordered to bear must come out of the deposit of Rs. 100 made by him under sec. 66 (2). 1942 I.T.R. 507. *See also* 1942 All. 251. Costs—Application dismissed with costs—Right of applicant to claim that costs should come out of deposit of Rs. 100 under sec. 66 (2). *See* 207 I.C. 517=1943 Sind 79. Preliminary deposit by the assessee under sec. 66 (2) forms part of the costs incurred in relation to the reference. 1940 I.T.R. 247=1940 Lah. 50. The amount of Rs. 100 which is payable under sec. 66 (2) of the Income-tax Act canno be described as a deposit or security for costs incurred in Court; nor could it be said that it does not fall within the discretion of the High Court under sec. 66 (6). The amount is a "fee" within the meaning of sec. 66 (2), *i.e.*, a part of the costs of the reference. It falls within the term "costs" as used in sec. 66 (6), and it is in the discretion of Court to pass such orders in relation to it as may, in its judicial discretion seem proper. The word "fee" in sec. 66 (2) is used in its ordinary meaning, being the price paid by the assessee for the reference. If the assessee is successful, ordinarily he should be entitled to his costs which would include this fee of Rs. 100. If the assessee is unsuccessful, in the absence of special circumstances, there is no reason why the fee of Rs. 100 should be returned to him, by way of cash or credit, in part or in whole. The taxed costs payable by the asesssee to the Income-tax Commissioner cannot be set-off against the fee of Rs. 100 paid under sec. 66 (2) which would be retained by the Commissioner as a fee. 1939 I.T.R. 556=1939 Sind 364. *See also* 39 Bom.L.R. 1209. Under the second proviso in sec. 66 (2) it is clear that a refund of the fee of Rs. 100 will only be made if the application is withdrawn, and when the assessee applies for refund of the money, the only logical inference is that he intends to withdraw his application. When an applicant has withdrawn his deposit of Rs. 100, it must be held that an application under sec. 66 (3) is incompetent. 1942 I.T.R. 93. In an application to the High Court to reduce the amount of costs in an Income-tax reference, *held*, by sec. 66 (6) of the Act costs are in the discretion of Court. The Court having exercised its discretion is *functus officio* and cannot re-open the matter. 87 I.C. 797=1925 A. 403. All questions relating to costs and all submissions in which costs are involved must be argued and decided at the time of hearing and before a final order is drawn up. 1925 A. 403. Where the Court has awarded costs to an assessee as against the Commissioner on a reference to the High Court, the amount of Rs. 100 deposited by the assessee as fee for reference is part of such costs and must be deemed to be included in the order. (52 A. 991, Foll.) 1933 A.L.J. 942=1933 A. 853. *See* also 11 R. 454; I.L.R. (1940) Kar. 8.

REFUND OF TAX.—Application to the High Court to direct Commissioner of Income-tax to make a reference—Rectification of mistake—Refund of tax collected. 86 I.C. 170 =4 P. 224=1925 Pat. 352. *See also* 1942 I.T.R. 93.

REVISION.—An order which dismisses an application asking for the revision of a prejudicial order must be deemed to be prejudicial within the meaning of sec. 66 (2) of the Income-tax Act. (57 M. 367, Overruled.) I.L.R. (1939) Mad. 358=1939 Mad. 709=(1939) 2 M.L.J. 68 (S.B.). *See also* (1939) II.T.R. 506.

REVIEW.—No review lies in the case of a judgment of the High Court delivered in an income-tax case on a statement made by the Commissioner under sec. 66 of the Income-tax Act. 1930 A.L.J. 78=1930 A. 209. Where the Commissioner operating under sec. 33 refuses to review the order of the Assistant Commissioner, the position of the assessee not being altered as a consequence, the assessee is not prejudiced within the meaning of the sec. 66 (2), and hence an application under sec. 66 (2) is incompetent. 1937 N. 154. The assessee's claim for deduction of a bad debt was disallowed by the Income-tax department on the ground that it was not proved that the debt had become bad or irrecoverable. In an application under sec. 66 (3) of the Income-tax Act for a reference, the assessee produced two letters which, if genuine, would show that the debt could no longer be recovered from the debtor. *Held*, that it was not open to the High Court, not being an appellate Court, to hold that the order of the Income-tax Commissioner was incorrect on the ground that this evidence which was not produced before him should now be taken into consideration by him. The Commissioner could still review his order if he considered the letters genuine and could give the assessee the relief claimed, if he was of opinion that it was justly due. 1941 I.T.R. 224.

SEC. 66 (2).—Sec. 66 (2) is, as is well-known, indifferently framed. The function of the High Court is to decide, not the question set out in the application under sec. 66 (2), but questions of law raised by the case stated. The question whether, under proviso to sec. 13, the computation of profit can legally be on the basis of the accrued interest with or without modification is not one of law. 162 I.C. 995=1936 P. 295. *See also* 202 I.C. 279=1942 Pesh. 48; 1938 A.L.J. 507=1938 A. 367. The High Court is not competent to investigate matters of fact in a reference under sec. 66 (2). Whether or not in any particular case there is any evidence to support the findings of fact arrived at below is, of course, a question of law; but such question of law is entirely limited to whether there was any evidence and if there was any evidence, then the finding of fact must stand, although the appellate tribunal might itself have found the facts in a contrary way. 177 I.C. 630=1938 Rang.

315 (S.B.). The jurisdiction of the High Court under sec. 66 (3) is confined to those matte s which are contained in the application made to the Commissioner of Income-tax under sec. 66 (2) and it is only in relation to such matters that the refusal of the Commissioner to state a case can subsequently be investigated. But where no objection is raised by the Commissioner at the time of the hearing of the *mandamus* application to a point raised by the assessee, the latter is entitled at the hearing after reference to argue that poin' as propoun'ed by t'e *man'amus* Bench. 1943 I.T.R. 491. New plea—Point not set forth in petition for reference cannot be urged at hearing. 1944 I.T.R. 432. Objection not raised in appeal an' not permi'ed before Appellate Tribun'l—Not open in application for reference before High Cour . (1944) I.T.R. 432. The question whether a person is to be deemed to be a "suc'essor" within the meaning of sec. 26 (2) of the Act is primarily a question of fact. The facts may be such that the case presents no difficulty. But whenever the facts found to be proved give rise to a consequential question whether there is or is not a "succession" within the meaning of sec. 26 (2), a question of law is involved, because the proper legal effect of proved fact is essentially a question of law. 1937 Rang.L.R. 26=1937 R. 102 (S. B.). *See also* 164 I.C. 57=1936 L. 961. Where a reference arises out of the rejection of an application for registration of a firm under sec 26-A on the ground that r. 3 of the Income-tax Rules has not been complied with, the real question which arises and which has to be referred is whether the assessee is entitled to have the partnership registered under sec. 26-A, and not whether r. 3 of the Rules is *ultra vires*. 1945 I.T.R. 421. *Quaere.*—Whether r. 3 is *ultra vires*. (1945) I.T.R 421. Question of law—Existence of evidence to support finding as to genuineness of document presented under sec. 26-A for registration of firm. *See* I.L. R. (1942) Kar. (P.C.) 132=I.L.R. (1943) All. 69=(1942) 2 M.L.J. 761 (P.C.). *See also* 1944 I.T.R. 432 (Question whether penalty under sec. 28 (*b*) is justified). Under the rules regarding applications under sec. 66 (2), it is the duty of the Commissioner to settle the case in its final form only if no suggestion, addition or amendment is received by him wihtin the prescribed period; but if a question does arise on the statement of the case, it is clearly his duty to decide whether he and the assessee are able or unable to agree. 146 I.C. 599 =1933 L. 859. Question of law not raised before Commissioner—High Court—Power of, to direct reference. 1929 N. 243; 53 M. 510=1930 M. 449=58 M.L.J. 581 (F.B.). The High Court has no jurisdiction, on an application by an assessee, under sec. 66 (3), to order the Commissioner of Income-tax to state a case and refer any question of law for consideration by the High Court which the assessee had not duly required the Commissioner to refer under sec. 66 (2). 12 R. 322=1934 R. 132 (S.B.). Whether the reference is under sub-sec. (2) or sub-sec. (3) of sec. 66 it is not open to the assessee to raise before the Court any question other than that referred. 8 R. 209=1930 R. 78 (S.B.). The language of sec. 66 of the Income-tax Act does not empower the High Court to require the Commissioner to state a case in respect of an original order passed by him and not in respect of an order passed in a matter which came before him on an appellate order by the Assistant Commissioner. *Quaere.*—Whether an original order as to penalty imposed by the Commissioner in appeal can be the subject-matter of a reference to High Court. 8 P. 877=1930 P. 127. It nearly always must be a question of fact whether or not a deduction which the assessee seeks to make can properly be described in the words of sec. 10 (2) (*iv*) as an expenditure incurred solely for the purpose of earning such profits or gains. There is no obligation on the Income-tax Commissioner to refer such a question to the High Court. Where the Commissioner finds that payments made to the directors of a company as allowance which they are entitled to draw under the Articles of Association are not *bona fide* payments for services rendered, but merely a device for enabling the company to escape super-tax and after making an enquiry, allows a deduction not of what has been actually paid but what he considers to be the market-value of the services rendered by the directors, the matter is really one of fact, and no question of law arises. It is a decision on a matter of fact with which the High Court will not interfere. 40 C.W.N. 933. *See also* I.T.R. (1941) 190. Assessee dying pending reference—Proceedings do not abate—Heirs were allowed to be heard. 9 P. 240=1930 P. 81 (S.B.). Sufficiency of cause for having *ex parte* assessment re-opened under sec. 27 is question of fact. But since its determination essentially depends upon the exercise of judicial discretion, the question whether the discretion has or has not been exercised in a sound and reasonable manner in reaching the conclusion invariably involves a question of law. 1934 N. 183. It is the practice of the Nagpur High Court, and was the practice of the Judicial Commissioner's Court, when *ex parte* applications were made to a Court asking the Court to call upon the Commissioner of Income-tax to show cause why a case should not be stated, either to dismiss the application, or if it is to be entertained to give notice to the other side to show cause. 1937 N. 154. Where the Commissioner of Income-tax, acting under sec. 33 refuses to interfere with the Income-tax Officer's order refusing a refund under sec. 48 the Commissioner's order is not prejudicial to the party, because it does no more than leave him in the position created by the order of the Income-tax Officer. His position has already been prejudiced by the Income-tax Officer's order of refusal. An application to the Commissioner under sec. 66 (2) is not therefore competent, because

that section only applies when the order under sec. 33 itself alters the position of the assessee or applicant to his prejudice. 58 M. 367=1935 M. 379=68 M.L.J. 227 (F.B.). Where the question is one of fact to be decided on the findings of the Commissioner under sec. 66 (2) the assessee must establish either that the Commissioner had misdirected himself on some question of law or that there was no sufficient evidence to justify his findings. 67 I.T. 464 =I.L.R. 1940 Lah. 685=1940 I.T.R. 635= 1940 P.C. 230=(1941) 1 M.L.J. 130 (P.C.). The question whether two businesses of an assessee are independent and separate business or separate branches of the same business is obviously a question of fact and not one of law which can be dealt with by the High Court under sec. 66 (2). The difficulty of determining a question of fact would not make it a question of law. The High Court has jurisdiction only to inquire whether there was evidence before the Commissioner of Income-tax for his conclusion. 206 I.C. 228=1943 I.T.R. 128=45 Bom.L. R. 115=1943 Bom. 98.

SEC. 66 (2), FIRST PROVISO.—The assessee will have a right to ask for the opinion of the High Court only upon a question of law which arises out of that order itself but not on a question of law which arises out of a previous order under sec. 31. A question of law which is common to both the Assistant Commissioner's and Commissioner's order is not a proper subject-matter of a reference unless the question of law is raised on a reference from the decision of the Assistant Commissioner. 1943 Pat. 41. *Quaere.*—Whether an order passed by the Commissioner under sec. 33 which merely affirms the order passed by the subordinate Income-tax Authorities is an order otherwise prejudicial to the assessee. 21 Pat. 658 =1942 I.T.T.R. 296=1943 P.W.N. 13= 1943 Pat. 41. If the Commissioner of Income-tax in a case arising under sec. 33 in which he has reviewed an order made under sec. 31 or sec. 32 agrees with the view taken by the Assistant Commissioner and declines to interfere, no reference can be made to the High Court under sec. 66 (2) of the Act, as the order cannot be said to be prejudicial to the assessee. But, if on reviewing an order under sec. 33, the Commissioner differs from the order on a point of law or upholds it on a different point of law to that which influenced the lower tribunal, then a reference can be made under the proviso to sec. 66 (2) against the order under sec. 33, because it raises a point of law arising only out of that order. I.L.R. (1944) Bom. 159 =(1944) I.T.R. 36=46 Bom.L.R. 123=1944 Bom. 150.

APPEAL TO PRIVY COUNCIL.—*See* sec. 66-A. The decision of a High Court on a reference is a judgment within cl. (9) of the Letters Patent, and an appeal lies to Privy Council from the same. 1942 B. 128=64 I.C. 931 =23 Bom.L.R. 1102. Proceedings connected with the assessment of income-tax normally and mainly are concerned with issues of fact and where neither the Commissioner nor the High Court is of opinion that any question of law has arisen in the course of the assessment, it may be that the legislature did not think it convenient or desirable that the Judicial Commiteee should be called upon to review an order which in the opinion of the High Court turned solely upon questions of fact. Therefore, the High Court has no jurisdiction to grant leave to appeal to His Majesty in Council from an order of the High Court under sec. 66 (3) refusing to require the Commissioner to state a case. 1930 R. 274. Subject to the provisions of secs. 109 and 110, C. P. Code, there is a right of appeal to His Majesty in Council against the decision of the High Court, on a reference to it under the Indian Income-tax Act. 18 L.W. 392=1924 M. 63. (*See* now sec. 66-A, *infra.*) Order summarily rejecting application for reference—Application for leave to appeal—Not competent under—C. P. Code, sec. 110 or Letters Patent (Patna), cl. 31. 1941 Pat. 225. A right of appeal must be given by express enactment and cannot be implied. The function of the High Court in cases referred to it under sec. 66 is advisory only, and is confined to considering and answering the actual questions referred to it. 20 Pat. 561=22 Pat.L.T. 341=1941 Pat. 225. *See also* I. L.R. (1939) Mad. 770=50 L.W. 590=1939 Mad. 903=(1939) 2 M.L.J. 667 (F.B.): 1940 P.C. 158=52 L.W. 406 (P.C.).

PRACTICE AND PROCEDURE.—Where the Commissioner holds that all the questions before him are pure questions of fact and that there is no question of law which properly can be made the subject of a reference to the High Court, there is no obligation on the part of the Commissioner to make a reference, merely because the assessee requests him to state a case on a "question of law" formulated by the assessee. The question "whether in the circumstances of this case there were any materials on which the Income-tax Officer could base his finding that the assessee (who had repeatedly failed to submit returns and account books in spite of repeated notices) was not prevented by sufficient cause from filing the returns called for under sec. 22 (2) or producing the accounts called for under sec. 22 (4)", is not a question of law, but one of fact, and hence is not a proper question for submission to the High Court under sec. 66 (2). 63 C. 401. A question of law which has not been raised in the appeal to the Assistant Commissioner does not arise out of the order under sec. 31 of the Act. The assessee has, therefore, no right to demand that that question should be referred by the Commissioner. 155 I.C. 526=1935 L. 201. The questions that can be referred by the Commissioner to the High Court cannot travel beyond the order under sec. 31 of the Act. (1944) I.T.R. 153. If the assessee did not, during the assessment by the Income-tax Officer or in his appeal from that assessment, raise the issues necessary for the determination of the question of fact which

arises under sec. 14 (1), the question cannot be raised in reference, as it does not arise out of the appellate order. 14 P. 313 =1935 P. S. There is nothing in the Act to prevent the officiating Commissioner, who as the Assistant Commissioner had heard the appeal, from disposing of the application under sec. 66. 1934 L. 977. Where the Assistant Commissioner hears the appeal of the assessee and passes an appellate order under sec. 31 dismissing the appeal, the requirements of sec. 66 (2) are satisfied whether the Assistant Commissioner has jurisdiction or not. 28 S.L.R. 174=1934 S. 46. The words "served with notice of an order" in sec. 66 (2) do not mean "served with a written notice" or "served with a copy of the detailed order giving reasons". It is sufficient if the applicant or his representative is given notice of the order in Court. Where the order was announced to the applicant's mukhtar-i-am who was present in Court, notice to him is as good as notice to the applicant. 158 I.C. 382 (1)=1935 L. 959. The true intent of the first proviso to sec. 66 (2) is that a question of law common to both the Assistant Commissioner's and the Commissioner's order is not a proper subject-matter of a reference, unless the question of law is raised on a reference from the decision of the Assistant Commissioner. 1937 N. 154. Where the assessee had ample notice that a reference had been made to the High Court by the Commissioner in the form originally proposed by him and he has made no application in writing, to the High Court to decide the question under r. 12, it is not open to the High Court on an oral application made at the end of arguments in reference, to direct the Commissioner to make a modified statement of the case by the Commissioner. 1935 L. 727. It is the duty of the Commissioner on receipt of objections by the assessee to notify to the latter, if he does not modify the reference, that he is not prepared to accede to his prayer to modify the proposed reference to the High Court. 1935 L. 727.

SEC. 66 (2) AND (3).—Sec. 66 (2) does no require the assessee to formulate precise questions of law. What he has to do within the prescribed time limit is to require the Commissioner to refer to the High Court any question of law arising out of the order or decision of the Assistant Commissioner, and then the Commissioner has, within sixty days, to draw up a statement of the case and refer it to the High Court, with his own opinion thereon. Where the Commissioner refuses to state a case under sec. 66 (2), holding that no point of law arises, the Court can, under sec. 66 (3), require the Commissioner to state "the case", and to refer it to the Court, if it is not satisfied of the correctness of the Commissioner's view of the case. If the Court thinks that questions of law arise, it should indicate to the Commissioner what those questions are; the actual framing of the questions rests with the Commissioner. But the Court under sec. 66 (3) is no more limited than the Commissioner under sec. 66 (2) to the precise questions formulated by the assessee. 59 B. 405=37 Bom.L.R. 89=1935 B. 170 *See also* 1934 L. 977. Where the Commissioner on an application to him under sec. 66 (2) refuses to state a case as the question involved was a settled question of law it amounts to saiying that no question of law arises within the meaning of sub-cl. (3) of sec. 66 and the High Court may if it is not satisfied as to the correctness of the decision of the Commissioner require him to state the case and refer it. 1942 I.T.R. 441 =1942 O.W.N. 477=1942 O.A. 386. Where one of the questions of law arising out of the order of the Assistant Commissioner was whether the appeal to him was competent in view of the proviso to sec. 30 (1), by deciding this question himself adversely to the assessee, the Commissioner cannot deprive the assessee of the right of having the question decided by the Court. 65 I.A. 236=I. L.R. 1938 Bom. 487=42 C.W.N. 873=40 Bom.L.R. 854=1938 P.C. 175=(1938) 2 M. L.J. 115 (P.C.). Under sec. 66 (as amended) no reference lies against an order of the Income-tax Commissioner under sec. 33 unless the order is one which involves an enhancement of the assessment or is otherwise such as is prejudicial to the assessee; if the Income-tax Commissioner simply maintains the decision of the Assistant Commissioner and the assessment made by him, it cannot be said that the order of the Commissioner of Income-tax is such as is prejudicial to the assessee. 172 I.C. 511=1938 Nag. 16. The words "otherwise prejudicial" in sec. 66 (2) contemplate a prejudicial order. If an order passed by the Income-tax Officer is prejudicial, an order which confirms it or refuses to review or revise it is also prejudicial. Where an assessee has been overcharged and assessed at a figure which is far more than the figure which ought to have been taken as the proper or correct figure, and he has a good case on the merits, an order refusing to review the order of assessment is an order "otherwise prejudicial" to the assessee within the meaning of sec. 66 (2) of the Act and a reference to the High Court is therefore competent. I.L.R. (1942) All. 377=1942 I.T.R. 152=1942 A. L.J. 454=1942 All. 227. Sec. 66 (2) of the Income-tax Act clearly contemplates a reference on any order prejudicial to the assessee and not only when an assessment has been enhanced. I.T.R. 370=1944 Lah. 445. *See also* 1943 Pat. 41. Before an assessee can put in an application to the High Court under sub-sec. (3), it is incumbent upon him to apply to the Commissioner under sub-sec. (2) of sec. 66. That he can do only if an order in respect of the assessment complained of is made under sec. 31 or sec. 32, or if an order under sec. 33 enhances the assessment made on him or is otherwise prejudicial to him, or if a Board of Referees decides any question relating to his assessment under sec. 33-A. Where none of these conditions exists, no application under sub-sec. (2) of sec. 66 is competent, and consequently

(3) If on any application being made under sub-section (1) the Appellate Tribunal rejects it on the ground that it is time-barred, the assessee or the Commissioner, as the case may be, may, within two months from the date on which he is served with notice of the rejection, apply to the High Court, and the High Court, if it is not satisfied of the correctness of the Appellate Tribunal's decision, may require the Appellate Tribunal to treat the application as made within the time allowed under sub-section (1).

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sub-sec. (3) of sec. 66 does not come into play at all. 1938 Lah. 864. The proper course for an assessee when he desires the Commissioner to refer a question of law to the High Court is to formulate, under sec. 66 (2) of the Income-tax Act, the question which he desires to have so referred. Under sec. 66 (2) the High Court has power to direct the Commissioner to refer some question other than that which the applicant has formulated, although generally, the High Court should be slow to go outside the question which the party himself asked the Commissioner to state. 152 I.C. 972=36 Bom. L.R. 818=1934 B. 378. The assessee has no right to apply to the Court for an order in the nature of a mandamus under the Specific Relief Act requiring the Commissioner to state a case and refer a question of law, because a "specific and adequate legal remedy" in that behalf is available to the assessee under sec. 65 (2) and (3), Income-tax Act. 12 R. 322=150 I.C. 408=1934 R. 132 (S. B.). A point of law would invariably be involved in an *ex parte* assessment which is not shown to have been made to the best of his judgment by the Income-tax Officer, so as to make it the subject of a reference to and decision by the High Court under sec. 66 (2) or (3). 31 N.L.R. 32=1934 N. 183 (2). Sec. 66 (3) is controlled by sec. 66 (2); and under the latter an assessee is not entitled to require the Commissioner of Income-tax to state a question of law arising under sec. 48 (1) of the Act; and consequently the assessee is not entitled to apply under sec. 66 (3), to the High Court for an order directing the Commissioner to refer such a question. 13 R. 729. *See also* 169 I.C. 404=1937 O. 416. Under the second proviso in sec. 66 (2) it is clear that a refund of the fee of Rs. 100 will only be made if the application is withdrawn, and when the assessee applies for refund of the money, the only logical inference is that he intends to withdraw his application. Where an applicant has withdrawn his deposit of Rs. 100, it must be held that an application under sec. 66 (3) is incompetent. 1942 I.T. R. 93.

SEC. 66 (3): SCOPE.—The essential condition for an application under sec. 66 (3) is that an application under sec. 66 (2) has been made to the Commissioner and refused by him. The fact that the assessee makes an application under sec. 33 invoking the powers of review and the application states that if the Commissioner is unwilling to exercise his power under sec. 33, he should draw up a statement of the case and refer it under sec. 66 (1) is not sufficient. 140 I.C. 672=1932 P. 167 (1). *See also* 1941 I.T. R. 679. The proper legal effect of all the proved facts which are stated in the reference by the Commissioner of Income-tax and which haive been admitted by the parties is not a question of fact, but essentially a question of law, and the finding on such a question can be interfered with by the High Court under sec 66 (3). Where the question for determination is the question of the status of an individual, and the Commissioner has committed many errors of law and has misunderstood the legal position existing between the parties, it is impossible to accept as correct the so called finding of fact arrived at by the Commissioner. Without questioning the facts the soundness of the conclusions from them can be questioned and that is a matter of law. 22 Pat. 55=(1943) I.T.R. 16=1943 Pat. 169. The only ground upon which an application under sec. 66 (3) lies is where the Commissioner refuses to state a case on the ground that no question of law arose. But where the Commissioner only dismisses an application in effect for the review of a prior order of his permitting the applicant to withdraw his application under sec. 66 (2) of the Act, it is not a refusal to state a case as contemplated by cl. (3) of sec. 66 and as such an application under that clause would be incompetent. I L.R. 1942 A. 349=1942 A. 134 =1942 O.W.N. 98=1942 A.L.J. 105 (F.B.). In references under sec. 66 (3) the same limitations are imposed on the powers of the High Court as exist in second appeals. On all questions of fact, the Income-tax Authorities are the sole arbiters and the only question of law that arises in respect of the finding of fact recorded by them is whether there was any material to support it. If the finding of an Income-tax Officer is based partly on admissible and partly on inadmissible materials, it should be left in tact. If, however, the inadmissible material is the main foundation of the entire superstructure raised by him, the finding should disappear. 1944 I.T.R. 393=1944 Lah. 353 (2) (F.B.). It is open to the High Court to recast the question itself if the exigencies of the case so required, but it cannot frame new questions not raised by the assessee or the Commissioner. Whether a reference is made under sub-sec. (2) or sub-sec. (3) of sec. 66, it is really the question indicated by the assessee in the first instance that serves as the basis. In a reference under sub-sec. (2), the Commissioner may give the question a proper shape, and in case he refuses to refer the case to the High Court that Court at the stage of issuing the mandamus or hearing the reference may determine the proper form in which the question of law

indicated by the assessee may arise. But subject to this, the High Court is confined to the statement of the case drawn up by the Commissioner so far as the substance of the question is concerned and can decide that question only which is raised thereby. 1944 I.T.R. 393=1944 Lah. 353 (2) (F.B.). The High Court has no jurisdiction under sec. 66 (3) to order the Commissioner of Income-tax to state a case and to refer a question of law to the High Court which the assessee has not duly required the Commissioner to refer under sec. 66 (2). 1938 Rang. 435. *See also* 1938 Cal. 168=177 I.C. 300; I.L.R. (1938) Lah. 477=40 P.L.R. 308=1938 Lah. 545. The inference to be drawn from the facts as found by the Income-tax Authorities as to whether petitioners can be treated as successors of a former company and assessed on its profits prior to the conveyance of its business to the petitioners is a question of law. 167 I.C. 312=1937 Sind 41. The High Court has no jurisdiction under sec. 66 (3) to order the Commissioner of Income-tax to state a case and refer a question for the consideration of the High Court which the assessee has not duly required the Commissioner to refer under sec. 66 (2). 1934 L. 977. *See also* 1935 L. 727. It is not open to a Bench to consider whether an order under sec. 66 (3) directing the Commissioner to state a case was valid. 28 S.L.R. 174=1934 S. 46. Where no appeal was preferred under secs. 31 and 32 and there was no refusal by the Commissioner, an application could not be maintained before the High Court to direct the Commissioner to state a case. 3 Luck. 237 =105 I.C. 556 (2)=1927 O. 465. The refusal must be on the ground that no question of law arises. Sub-section is inapplicable where the refusal is on other grounds, such as limitation. 26 S.L.R. 235=136 I.C. 762=1932 S. 1 following 1928 B. 434 (1)= 113 I.C 619. But *see* 1924 L. 662. The only question in a petition under sec. 66 (3) was whether a small sum expended on the mortgaged property was to be disallowed. The assessee was not able to give any facts about his income: *Held*, that as the amount was small, no mandamus could be issued on it alone. 146 I.C. 551=1933 L. 822. Where a question of law is involved, *viz.*, whether the Income-tax Officer was justified in proceeding under the proviso to sec. 13 and not under the first part of that section, it is a fit case in which the Commissioner should be directed to refer the question to the High Court. 34 P.L.R. 900=1933 L. 832. *See also* 16 L. 416=157 I.C. 911=1935 L. 539. Whether the association in question can be held to be an assessee within the meaning of sec. 3, is clearly a question of law which it would be proper for the Commissioner to refer for the decision of the High Court. 1935 L. 100. The High Court sits to hear the reference by the Income-tax Commissioner and any device, such as by a petition under sec. 66 (3), to ask the Income-tax Authorities to state a case on the question which they refused to refer should be deprecated. The reference cannot be extended by an application under sec. 66 (3). 58 C. 999=1931 C. 727 (F.B.). Where the matter in issue has already been decided in connection with a previous year's assessment, the assessee cannot re-agitate the matter before the Income-tax Authorities or move the High Court for a reference when the assessment for a subsequent year is in question. 139 I.C. 295=1932 N. 68. When on a loan advanced a suit is brought and a decree is obtained for an amount smaller than the amount claimed under the loan, the part of the loan disallowed by the decree becomes a "bad debt" at once at the date of the decree, or the "bad debt" is to be ascertained as a whole at the time when the decree is eventually realised; and the lender's position *qua* the loan finally determined is one of law. 148 I.C. 228=1934 L. 67 (2). In every case when the question is whether a particular sum is "profits" or "capital", the question is a question of fact to be determined upon the material before the Income-tax Authorities. If therefore an assessee's foreign business remits money to him in a country in which his profits from his business in that country are assessed to income-tax, the question whether the remittance is a remittance from out of the profits of the foreign business or out of capital is a question of fact. In such circumstances the only question of law that can arise is whether there was material before the Income-tax Authorities upon which they could find that a particular sum was profits or income earned by he assessee and remitted during the year of assessment. 11 R. 397=1933 R. 217. The question whether certain cash deposits on various dates entered in the khata of the assessee are income or profits assessable to tax or capital, is not a question of law, but one of fact and therefore cannot be considered in an application under sec. 66 (3). 16 Luck. 805=198 I.C. 192; 1941 O.W.N. 757=1941 I.T.I. 286=1941 Oudh 445. *See also* 1941 I.T.R. 373. Where it appeared that the Commissioner was wrong in refusing to state a case and refer a question of law on the request of the assessee. *Held*, that the Commissioner should be directed to pay the assessee's costs of the application to the High Court though the reference might ultimately turn out against the assessee. 8 R. 209=1930 R. 78 (S.B.). A decision to the effect that a mandamus should not be issued on an application under sec. 66 (3) is a final judgment. Where in a case in which the subject-matter involved Rs. 10,000 or more in value the High Court refuses to issue a mandamus under sec. 66 (3) the applicant can appeal to the Judicial Committee as of right. 12 L. 166=1931 L. 138 (F.B.). An order of the High Court dismissing an application under sec. 66 (3), and refusing to require the Commissioner to state a case and refer it is not a judgment "on a reference" under sec. 66-A (2) so as to allow a right of appeal to His Majesty in

Council. 57 A. 306=1934 A.L.J. 876=1934 A. 974. The High Court cannot enquire into a finding of fact arrived at by the Income-tax Officer. 1933 L. 827. Where a Bench of the High Court has issued an order directing the Commissioner of Income-tax to state a case, the valdity of that order cannot be questioned by the Bench hearing the reference. (1944) I.T.R. 370=1944 Lah. 445.

WHAT ARE QUESTIONS OF LAW TO JUSTIFY STATING A CASE FOR REFERENCE.—The question whether money spent in taking leases for brick kilns is capital expenditure or incurred for purpose of earning profits is a question of law and the Commissioner can under sec. 66 (3) be directed to state the case and refer it. 1942 I.T.R. 441=1942 O.W.N. 477=(1943) Oudh 148=18 Luck. 311. The question as to the effect of an award made in arbitration and made a decree of Court, as to whether it has the operation of transferring the taxable property from the assessees to their mother (which the award purports to do) is a question of law on which the High Court can direct a reference to be made. 1945 I.T.R. 46. Whether an assessee does or does not carry on business in British India is in the main a question of fact, but on the other hand questions of law may arise. It may well be a question of law as to whether the proof of certain facts is sufficient to establish that actual business is being conducted which would make the assessee liable to assessment to tax. 1942 I.T.R. 13=1942 Pat. 318. Where a question arises as to the interpretation of sec. 2 (1) (*a*) and as to the meaning of the words used, a question of law does arise. 225 I.C. 41. As to question of Estoppel, *see* 106 I.C. 34; I.T.R. (1943) Kar. 541=1943 Sind 64.

WHAT ARE NOT QUESTIONS OF LAW—REFERENCE NOT COMPETENT.—Sec. 13 proviso of the Act is very wide in its scope and it cannot be said that any point of law arises where flat rate is applied with sufficient reason. The amount of rate is entirely in the discretion of the Income-tax Officer and the mere fact that a high rate of profits has been applied will not by itself warrant the High Court directing the Commissioner to state the case. 204 I.C. 195=1942 I.T.R. 441=1942 A.W.R. (C.C.) 311=1942 O.W.N. 477=1942 O.A. 386; 18 Luck 311=1943 and 148. The question whether the assessee had another set of account books than those produced before the Income-tax Officer, which he did not produce before the Income-tax Officer is a pure question of fact, and no case can be referred to the High Court under sec. 66 (3) of the Income-tax Act. The matter is pre-eminently one within the discretion of the Income-tax Officer. 1942 I.T.R. 386. Where the account books produced by an assessee were gone through and profits were worked out from the total sales and purchases and the flat rate adopted in previous years was not adopted, nor the profits shown in the books accepted, it was held that it was impossible to say that as a question of law the flat rate adopted in previous years should be adopted and that it was not also possible to say that any question of law arose out of the fact that the books of account were produced and the Income-tax Officer was bound to accept the profits as shown from the books. I.L.R. (1942) All. 445=1942 I.T.R. 416=1942 A. L.W. 374. In an order rejecting an application for renewal of a firm under sec. 26-A, the Income tax Authorities held that the previous registration allowed to the firm was improper as one of the partners shown was then a minor and as the books of the firm showed that the distributions of income were not made in accordance with the shares shown in the partnership deed and therefore the partnership deed did not represent the true state of affairs: *Held*, there was no question of law upon which a reference could be ordered under sec. 66 (3) of the Income-tax Act. I.L.R. (1942) Kar. 582=(1942) I.T.R. 501=1943 Sind 85; (1942) I. T.R. 501. Whether a particular gift is real and *bona fide* or nominal made in order to escape income-tax is a pure question of fact and no reference lies. 1943 I.T.R. 168. Although the income of each year has to be considered separately when assessing an assessee for a particular year, the Income-tax Officers are entitled to take note of properties or businesses which the assessments of previous years show have been owned by the assessee and which have furnished him with income on which tax has previously been assessed. There is no obligation on the Income-tax Authorities to trace with meticulous accuracy a remittance of foreign income, found proved to have been received, to its precise source. Where the assessee produces no evidence there could be no question of any rebuttal by the assessee of the presumption that a receipt of a sum of money is income and not a capital receipt. The question whether in such circumstances the assessee has not rebutted the presumption is not a question of law which can be made the subject of a reference under sec. 66 (3). (1942) I.T.R. 507. The presumption that a remittance made to an assessee in British India from his foreign business is a remittance out of foreign profits is rebuttable. But whether the evidence on recoord is sufficient to rebut that presumption is a question of fact and not of law. 1942 I.T.R. 109. *See also* 207 I.C. 517=1943 Sind 79. The question whether a business started by a member of a Hindu joint family is joint family business or his separate business is a question of fact; and the finding of the Income-tax Authorities on that point cannot be challenged if they have not misdirected themselves in law. A pure question of fact cannot be turned into one of law by asking whether as a matter of law the Income-tax Authorities came to a correct conclusion upon a matter of fact. 1945 I.T.R. 356. *See also* 1943 I.T.R. 235. Where two Hindu undivided families represented by their respective kartas own a limited company, and the kartas are paid certain sums

of money as directors' fees, the amounts so received by the kartas must be regarded as their personal earnings and not the income of the joint Hindu family, because the joint family property has not been spent in earning the remuneration of the directors. The dividends earned on the shares would still be the income of the joint Hindu family. 1945 Comp. C. 136=1945 I.T.R. 419=T.I.R. 1946 Pat. 50. A finding by the Income-tax Authorities that a memorandum entered into between the members of a joint Hindu family, which is not properly stamped or registered, did not affect the status of the parties and that there has been no partition of the property among the members of the family is clearly one of fact and no question of law arises on that point. 1945 I.T.R. 46. The question whether there has been a partition and change of status between the members of a Hindu joint family or whether they remain joint is one of fact and no question of law arises necessitating a reference under sec. 66. 1945 I.T.R. 46. Whether a partnership exists or not is a question of fact within the power of the Commissioner of Income-tax to determine on the evidence placed before him. When the Income-tax Commissioner comes to the conclusion that a partnership is not a real partnership but that the deed is a sham one he is entitled to refuse registration. The question being one of fact, the High Court will not call upon the Commissioner to state a case when he has arrived at a finding on evidence. 1943 I.T.R. 164. *See also* (1944) I.T.R. 367 Question whether new firm is successor to old firm). Deposits entered in accounts, if income, or profits or capital. *See* 16 Luck. 805=198 I.C. 192.

OTHER ILLUSTRATIVE CASES.—Ordinarily it is a question of fact to be determined by the Income-tax Officer *whether a particular debt is recoverable or not.* But the question, whether a sum of money which is shown in the assessee's accounts as assessable income from interest but proved irrecoverable should not be deducted from the total income in the assessment as a loss of profit and not a loss of capital is a question of law. 1934 L. 940. *See also* 39 P. L.R. 616=1937 Lah. 814; 167 I.C. 178, 1937 Lah. 338=18 Lah. 306. The question *whether an assessment under sec.* 23 (4) *is valid or not is* not an order of the Assistant Commissioner passed under sec. 31 and consequently such a question cannot be made the ground for an order by the High Court under sec. 66 (3) requiring the Commissioner to state a case. 56 A. 933=1934 A.L.J. 274=1934 A. 559. Where assessment is made on the assessee under sec. 23 (4), then the provisions of sec. 66 (2) and (3) would not apply to it. 15 Luck. 723=1940 I.T.R. 489=1940 O.W.N. 514=1940 Oudh 362. *See also* 1940 243; *see also* 1941 O.W.N. 757; 1938 All. 367 (Computation of profits at a high rate); 1938 Rang.L.R. 130=1938 Rang. 154 (decision of Income-tax Officer under sec. 25-A); I.L.R. (1938) Lah. 426=40 P.L.R. 228=1938 Lah. 530 (question whether an advance made by a partner is a loan or increase of capital); 1940 A.L.J. 855=1941 A. 129=I.L.R. 1940 A. 785 (decision as to place of assessment); 1940 I.T.R. 635=1940 P.C. 230 (Question of sufficiency of evidence to support finding, *see also* 1941 Oudh 279; 1941 I.T.R. 330 (Question whether application of sec. 13 of the Act is proper or not); 1941 I. T.R. 616 (Finding that a person is not a partner in a firm is one of fact); 1940 I.T. R. 179 (Qestion whether a person is carrying on business and whether he is rightly assessed at a particular figure); 1940 P.W. N. 702 (Question whether *Salami* or *nazarana* is income as rent or capital); 1940 I. T.R. 378 (Question whether rent derived by Zamindar from Patnidar under lease of land is agricultural income or not); 1940 I.T.R. 437 (Rejection of application for revision on the ground that it was belated); I.L.R. 1939 Kar. 779=1939 Sind 293 (Whether on facts found a society is a dividing society under r. 31. *See also* 1939 Sind 363; 1939 Sind 296); 1940 All. 530 Rejection of appeal not amounting to an order under sec. 31); 1940 All 530 (Question as to the existence of sufficient cause within the meaning of sec. 27). (1939) I.T.R. 625 (Refusal of application under sec. 26-A on finding that deed of partnership is sham and not intended to be acted upon). 1939 I.T.R. 151 (Question of reasonableness of flat rate adopted by Income-tax Officer under sec. 13). *See also* 1939 I.T.R. 513; 1939 I.T.R. 515; 1939 I.T.R. 488. The question whether a Hindu family is divided or undivided is a question of fact which is not within the competence of the High Court to decide. 1941 I.T.R. 311=1941 Pesh. 64. The assessee was called upon by a notice under sec. 22 (2) to submit a return but the return was not duly verified or signed. Subsequently, the officer issued another notice under sec. 22 (4) directing the assessee to produce his accounts. He did not produce the accounts and the Income-tax Officer made an assessment to the best of his judgment under sec. 23 (4): *Held,* that no questions of law could possibly arise on the findings of fact arrived at by the Income-tax Officer. 1934 A. 929. *See* 1941 Oudh 279; 1941 I.T.R. 241 and 306; 1941 O.W.N. 68=16 Luck. 579; 15 Luck. 723; 1942 I.T.R. 103. It cannot be laid down as a gneral proposition that it is not possible at all to evolve a question of law out of the various circumstances mentioned in sec. 27 of the Act. On the other hand a question of law can well arise from a refusal of the Income-tax Officer to cancel an assessment under sec. 27 of the Act, and certain questions may form the subject of a reference under sec. 66, though in the majority of cases no question of law would ordinarily arise out of the decision of an Assistant Commissioner of Income-tax dismissing an appeal against an order of the Income-tax Officer under sec. 27. I.L.R. (1937) All. 834=1937 A.L.J. 957=1937 All. 770. The question as to *whether money deposited with the assessee belongs to the person in whose name it stands deposited* is not a ques-

(4) If the High Court is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine the question raised thereby, the Court may refer the case back to the Appellate Tribunal to make such additions thereto or alterations therein as the Court may direct in that behalf.

(5) The High Court upon the hearing of any such case shall decide the questions of law raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded and shall send a copy of such judgment under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such judgment.]

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tion of law. 154 I.C. 191=1935 L. 81 (S. B.). *Whether the association in question can be held to be an assessee* within the meaning of sec. 3, is clearly a question of law which it would be proper for the Commissioner to refer for the decision of the High Court. 1935 L. 100. In the case of a printing press *whether "type" is part of the machinery or plant* is a question of law. 37 P.L.R. 371=1934 L. 919. The assessee was assessed for the year 1933-34 at a certain sum. He claimed that a certain sum should not be included in the assessment as it consisted of bad debts. This was disallowed by the Income-tax Officer on the ground that the last balances were struck in 1930 and that it had not been shown that the amount had become irrecoverable by the accounting year, 1932-33: *Held*, that it did not follow that because a debtor firm was in difficulties in 1930, it would never recover, and that all debts due by it should immediately be struck off as bad debts, and that a mandamus must issue on the Commissioner to state a case on this question. 167 I.C. 178.

SEC. 66 (3) AND (5).—Sub-sec. 66 (3) does not lay down that a question is to be formulated by the Court issuing the mandamus. Further, sub-sec. (5) of the same section also does not confine the High Court to the decision of the question of law as formulated by the Commissioner or the Court issuing the mandamus but confers full power to decide the question of law in the form it actually arises from the statement of the case made by the Commissioner. The High Court may clarify the issue of law involved in the statement of the case made by the Commissioner and give its considered opinion on the question really at issue; not to do so would amount to a refusal to do its duty. I.L.R. 1938 Lah. 10=39 P.L.R. 1028 =1937 Lah. 721. If any assumptions of facts are made by the High Court at the stage when the mandamus is issued, they are not binding upon the Commissioner and they are open to correction by him when he draws up the statement of the case. The High Court on reference is concerned only with the statement drawn up by the Commissioner and by virtue of sec. 66 (5) is required to decide the question of law raised thereby. Any expression of opinion on facts made by the High Court at the time of issuing the mandamus, which ultimately turns out to be incorrect, does not, therefore, bind the Bench hearing the reference, and it can refuse to answer the question if so minded. 1944 I.T.R. 393=1944 Lah. 353 (2) (F.B.). Powers of High Court—Power to direct reference on question which the Commissioner was not asked to refer—Finding of fact—Conclusive character of. *See* 204 I.C. 484.

SEC. 66 (4).—Where a case referred to the High Court under sec. 66 (2) had ultimately to be decidtd on the findings which did not appear in the statement of the case as made by the Commissioner, *held*, that the High Court could send back the case to the Commissioner for further findings. 50 C. L.J. 300=1929 C. 753. *See also* 1929 A. 819.

SEC. 66 (4) AND (5).—The question whether there is any particular case a "succession" within the meaning of sec. 26 (2) of the Act is a question of fact. I.L.R. 1937 (2) Cal. 7=41 C.W.N. 132. *Per* Panckridge, J.—The question of succession is a question of fact, though the question whether a particular set of facts amount to succession within the meaning of sec. 26 (2) is a question of law. It is not correct to say that the High Coourt is not entitled to look beyond the specific findings of fact of the Commissioner. To so hold wiuld be a very narrow interpretation of the powers of the High Court under sec. 66 (4) of the Income-tax Act. The High Court on the other hand is entitled to look at the documents and proceedings annexed to the statement of the case by the Income-tax Commissioner. 41 C.W.N. 132=I.L.R. (1937) 2 Cal. 7.

SEC. 66 (5).—It is the duty of the Income-tax Department to take up the question of re-assessment after a reference by the Commissioner of Income-tax has been answered by the High Court and to see in the presence of the assessee whether in the light of the judgment of the High Court, any of the figures arrived at are liable to alteration or not. It is not enough to say the material alteration in the figure of assessment is not expected and therefore re-assessment is not necessary. 1932 A.L.J. 174= 1932 A. 317. If the case stated by the Commissioner of Income-tax contains merely conclusions on pure questions of fact, the High Court cannot go behind the statement of facts. But if what the Commissioner states he has found on facts is actually a series of conclusions founded partly on pure facts and partly on inferences drawn from

(6) Where a reference is made to the High Court [1]* * * the costs shall be in the discretion of the Court.

(7) Notwithstanding that a reference has been made under this section to the High Court, income-tax shall be payable in accordance with the assessment made in the case :

Provided that, if the amount of an assessment is reduced as a result of such reference, the amount overpaid shall be refunded with such interest as the Commissioner may allow [2][unless the High Court, on intimation given by the Commissioner within thirty days of the receipt of the result of such reference that he intends to ask for leave to appeal to His Majesty in Council, makes an order authorising the Commissioner to postpone payment of such refund until the disposal of the appeal to His Majesty in Council].

[3][(7A) Section 5 of the Indian Limitation Act, 1908, shall apply to an application to the High Court by an assessee [4][under sub-section (2) or sub-section (3)]]

[5][(8) For the purposes of this section "the High Court" means—

(a) in relation to [6]* * * * British Baluchistan the High Court of Judicature at Lahore ;

(b) in relation to the province of Ajmer-Merwara, the High Court of Judicature at Allahabad ; and

(c) in relation to the province of Coorg, the High Court of Judicature at Madras.]

LEG. REF.

1 The words "on the application of an assessee" omitted by sec. 92 of Act VII of 1939.

2 Added by sec. 82 of Act VII of 1939.

3 Sub-section inserted by sec. 28 of Act XVIII of 1933.

4 Substituted for "under sub-sec. (3) or sub-sec. (3A)" by sec. 92 of Act VII of 1939.

5 Added by sec. 7 of Act XXIV of 1926.

6 The words "the North-West Frontier Province and" omitted by sec. 82 of Act VII of 1939.

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those facts, the High Court has power to deal with the whole case and to see whether the evidence justified what the Commissioner held. It is not as if the only course open to the High Court is to either express an opinion upon the findings of the Commissioner or to say that it is impossible to do so because the findings are not warranted by the evidence on which they are based. It is competent to the High Court to look at the real situation and to give a decision founded upon what appears to the High Court to be the real position. 62 C. 87=39 C.W.N. 70. If an officer vested with the discretion to do or not to do a particular thing, does not misdirect himself in law, or in other words, does not exercise his discretion arbitrarily, the High Court will not be justified in interfering with it. 18 Lah. 325=1937 Lah. 930. Sub sec. (5), sec. 66 enacts that the High Court upon the hearing of any such case shall decide the question of law raised thereby and the Court is not bound by the applicant's point of law or the Commissioner's. But the question of law must arise out of the appellate order. 28 S.L.R. 174=149 I. C. 1204=1934 S. 46; 18 Lah. 706=1938 Lah. 44 (Interference with question of fact). It is for the Commissioner and not for the High Court to state formally the questions which arise; and the duty of the High Court is only to decide the questions so raised. 60 I.T. 146=12 P. 318=1933 P.C. 108 =64 M.L.J. 612 (P.C.). *See also* I.L.R. Lah. 477=40 P.L.R. 308=1938 Lah. 545. The question of 'status" of an assessee, *i.e.*, as to whether he is an undivided Hindu family or an individual is normally one of fact, and if the Income-tax Authoritits hold on a proper appreciation of the facts that the status of the assessee should be that of an individual the High Court would have no jurisdiction to interfere under sec. 66 (5). But if in arriving at this finding the Income-tax Authorities misappreciate the law on the point, the High Court will interfere. Where the assessee has expressed a clear intention to waive his separate rights, if any, and there is nothing to show that such declaration of intention is bogus or otherwise unreliable, the Commissioner of Income-tax errs in law in ignoring and refusing to accept the declaration, and the High Court will interfere with the finding of the Commissioner. (1943) I.T.R. 491.

SECS. 66 (5), 49-A AND 33 (2).—High Court declaring assessment illegal—Power of Commissioner to order further enquiry—Fresh assessment and demand of security for refund of tax previously paid—Legality. 63 I.A. 408=1936 P.C. 269=60 B. 900= (1937) M.L.J. 200 (P.C.).

SEC. 66 (6).—Under sec. 66 (6) the High Court has power to deal with all costs of and subsequent to the application of the assessee to state a case and make a reference to the High Court. It is entirely in the discretion of the Taxing master to decide if a case is of sufficient importance to justify the Commissioner in getting the reference settled by the Government solicitor and the Advocate-General. I.L.R. 1938 B. 81=1938

References to be heard by Benches of High Courts, and appeal to lie in certain cases to Privy Council.

[1][66A. (1) When any case has been referred to the High Court under section 66, it shall be heard by a Bench of not less than two Judges of the High Court, and in respect of such case the provisions of section 98 of the Code of Civil Procedure, 1908, shall, so far as may be, apply notwithstanding anything contained in the Letters Patent of any High Court established by Letters Patent or in any other law for the time being in force :

[2][Provided that where in any reference heard by the Bench of the Court of the Judicial Commissioner of the North-West Frontier Province , a difference of opinion arises between the Judicial Commissioner and the Judge of the said Court, the opinion of the Judicial Commissioner shall prevail.]

(2) An appeal shall lie to His Majesty in Council from any judgment of the High Court delivered on a reference made under section 66 in any case which the High Court certifies to be a fit one for appeal to His Majesty in Council.

(3) The provisions of the Code of Civil Procedure, 1908, relating to appeals to His Majesty in Council, shall, so far as may be, apply in the case of appeals under this section in like manner as they apply in the case of appeals from decrees of a High Court :

LEG. REF.

1 Inserted by sec. 8 of Act XXIV of 1926.

2 Added by sec. 83 of Act VII of 1939.

B. 83=39 Bom.L.R. 1209. The fee of Rs. 100 paid along with a reference under sec. 16 (2) forms part of the costs of and incidental to the reference and may be allowed to the assessee in a propsr case. 11 R. 454 =1934 R. 4. *See also* 1933 A.L.J. 942= 1933 A. 853 and cases under heading "costs" *supra.*

SECS. 66 AND 66-A.—Upon a reference of questions of law made by the Commissioner of Income-tax under sec. 66 of the Act, the prior judgment delivered by the High Court, if not appealed against, is binding between the parties (*i.e.*, the Income-tax authorities on the one hand and the assessee on the other) and such judgment, whether right or wrong, must govern the relations of the parties in the particular case. 61 I.A. 1=56 All. 1= 1934 P.C. 34=66 M.L.J. 127 (P.C.).

REVIEW.—The High Court, when acting under the powers conferred by sec. 66 is exercising a special jurisdiction, and those proceedings are not subject to the provisions of the C. P. Code. The tribunal determining the questions referred to under sec. 66 does not operate as a Chief Court so as to attract the C. P. Code and therefore an application for review of judgment passed in an Income-tax matter under sec. 66 is incompetent and no review lies. 1940 I.T.R. 412.

SEC. 66-A.—The intention of the legislature in adding sec. 66-A was to enable an appeal to His Majesty in Council in cases in which the High Court could certify that the question of law involved was one of great private or public importance. 8 L. 269= 1927 L. 181. *See also* 9 L. 284=54 I.A. 421 =1927 P.C. 242=53 M.L.J. 819 (P.C.). If the law permits the Commissioner of income-tax to have the judgment of this Court examined by their Lordships of the Privy Council, there is no reason why his request for leave to appeal to the Privy Council should not be granted as it is possible that their Lordships of the Privy Council might come to a different conclusion. 1933 S. 344. The fact that the decision sought to be appealed against might affect the action or the position of other companies who sought to evade payment of income-tax by adopting the method that was adopted by the assessee in the case is not sufficient for the granting of the certificate. 8 L. 269=1928 L. 181. The Act in providing that the Commissioner in proper cases should make references to the Civil Court, merely provides a convenient procedure for obtaining the decision of the Court with regard to the matter in dispute and so when the matter comes before the Civil Court, the Commissioner is a party. 119 I.C. 689=1929 N. 265. Where the question sought to be raised before His Majesty in Council is whether or not a particular amount awarded by an improvement trust on the acquisition of a property was by way of interest or damages, it is strictly speaking not a pure question of law, but is a mixed question of fact or law, and certainly not, a substantial question of law. Nor is it one of such general importance as to justify leave to appeal being granted on that ground. 1942 A.L.J. 332=1942 All. 258 (F. B.)=I.L.R. (1942) All. 753. A decision that an assessee succeeded to the old business does not involve a question of importance within the meaning of sec. 109 (*c*), C. P. Code, which alone can justify a certificate allowing leave to appeal. 123 I.C. 530 (2)=1930 L. 109. Therd is no review of a judgment in an income-tax case under sec. 66-A. 1930 A. 211 (1). The words "to be a fit one for appeal to His Majesty in Council" coupled with the words 'so far as may be' in para. 3, sec. 66-A, exclude from the requirements of sec. 110 of the Code and are operative to confine that right to cases which are certified to be otherwise fit for appeal to His Majesty in Council. 1929 S. 336. On a reference by the Commissioner under sec. 66

Provided that nothing in this sub-section shall be deemed to affect the provisions of sub-section (5) or sub-section (7) of section 66 :

Provided further that the High Court may, on petition made for the execution of the order of His Majesty in Council in respect of any costs awarded thereby, transmit the order for execution to any Court subordinate to the High Court.

(4) Where the Judgment of the High Court is varied or reversed in appeal under this section, effect shall be given to the order of His Majesty in Council in the manner provided in sub-sections (5) and (7) of section 66 in the case of a judgment of the High Court.

(5) Nothing in this section shall be deemed—

(*a*) to bar the full and unqualified exercise of His Majesty's pleasure in receiving or rejecting appeals to His Majesty in Council, or otherwise howsoever, or

(*b*) to interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force, for the presentation of appeals to His Majesty in Council, or their conduct before the said Judicial Committee.]

Bar of suits in Civil Court.

67. No suit shall be brought in any Civil Court to set aside or modify any assessment made under this Act, and no prosecution, suit or other proceeding shall lie against any [1][officer of the Crown] for anything in good faith done or intended to be done under this Act.

LEG. REF.

[1] Substituted for "Government Officer" by A.O., 1937.

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(2), Income-tax Act, all the questions referred to were answered in favour of the assessee by the High Court and the Commissioner was not allowed to support the assessment on other provisions of the Act which he had not taken before. *Held*, that it was not a fit case for appeal to the Privy Council and that leave should not be granted. 146 I.C. 942=1933 L. 637. In granting leave to appeal to His Majesty in Council on the application of the Income-tax authorities the High Court has no power to impose a condition to the effect that the Income-tax authorities should pay the costs of the assessee respondent. The powers of the High Court are confined in this respect to those conferred by sec. 66-A of the Income-tax Act and the provisions of the Civil Procedure Code which have been made applicable to such appeals. Though the Privy Council have, on occasions, stipulated in granting special leave that the appellant shall bear the costs, the High Court has no such powers. 174 I.C. 491=47 L.W. 350=1938 Mad. 352 (F.B.). The question as to the effect of the second proviso to sec. 4 (1) of the Income-tax Act is a substantive question of law, and is a fit one for arpeal to His Majesty in Council. 174 I.C. 491=1938 M. 352=47 L.W. 350. In an application for leave to appeal to His Majesty in Council in respect of an assessment to income-tax involving only Rs. 3,500, leave ought not to be refused merely because the assessment in question is less than the required amount of Rs. 10,000. Where the assessee carries on a large business and the question is likely to arise every year while he remains in the business, the amount in the end would be very considerable; a certificate of leave to appeal should therefore be granted in such a case. 47 L.W. 350=1938 Mad. 352 (F.B.). *See also* 1931 Lao. 138; 1934 All. 974; I.L.R. 1939 M. 770=1939 M.903=(1939) 2 M.L.J. 667 (F.B.). The right of appeal to His Majesty in Council from a judgment of the High Court delivered on a reference made under sec. 66 is conferred only by sub-sec. (2) and not by sub-sec. (3) of sec. 66-A of the Act and is therefore confined to only such cases as are cetified to be fit by the High Court. Sub-sec. (3) obviously deals with the procedure to be applied to appeals where such an appeal lies under sec. sec. (2). 1935 A.L.J. 513=1935 A. 464. An order passed by the High Court declining to call upon the Commissioner to state a case and refer it to the High Court is not a judgment "on a reference" within the meaning of sec. 66 A (2) so as to allow a right of appeal to His Majesty in Council. 57 A. 306=151 I.C. 604=1934 A.L.J. 867=1934 A. 974. The rules in Chapter XXXIII of the Rules and Orders of the Calcutta High Court, so far as they have the effect of altering the provisions of O. 45, C. P. Code have been made under sec. 129, C. P. Code and apply only to matters arising within the original civil jurisdiction of that Court, and therefore have no application to petitions for leave to appeal to the Privy Council in income tax matters. In sec. 66-A of the Income tax Act, specific provision has been made and the procedure therein laid down must be followed. 39 C.W.N. 1140=62 C. 671.

SEC. 67.—Sec. 67 is not *ultra vires* by virtue of sec. 32 of Government of India Act, because a suit for recovery of the tax paid would not have lain against the East India Company prior to 1858. 5 R. 825. 1928 R. 70. *See also* 27 Bom.L.R. 1507. When a statute confers exclusive power over a subject-matter on an authority, the Civil Court cannot interfere; but it will interfere if the authority purports to exercise those powers on what is not the subject-matter. 62 I.C. 394. Sec. 67, only applies to bar a suit which is for setting aside or modifying an assessment made under that Act. A suit for a declaration that the assessment is unauthorised by the Act and outside the Act, and for recovery of the tax levied on the ground that the demand for it and levy were made

[1][67A. In computing the period of limitation prescribed for an appeal under this Act or for an application under section 66, the day on which the order complained of was made, and the time requisite for obtaining a copy of such order, shall be excluded.]

Computation of periods of limitation.

[2][67B. If on the 1st day of April in any year provision has not yet been made by an Act of the Indian Legislature for the charging of income-tax for that year, this Act shall nevertheless have effect until such provision is so made as if the provision in force in the preceding year or the provision proposed in the Bill then before the Legislature, whichever is more favourable to the assessee, were actually in force.]

Act to have effect pending legislative provision for charge of income-tax.

68. [*Repeals.*] *Repealed by the Repealing Act*, 1927 (XII *of* 1927).

[3][THE SCHEDULE].

[*See* section 10 (7).]

RULES FOR THE COMPUTATION OF THE PROFITS AND GAINS OF INSURANCE BUSINESS.

1. In the case of any person who carries on, or at any time in the preceding year carried on, life insurance business, the profits and gains of such person from that business shall be computed separately from his income, profits or gains from any other business.

LEG. REF.

1 Inserted by sec. 12 of Act XXII of 1930.

2 Inserted by sec. 7 of Act XII of 1940.

3 The original Schedule repealed by Act XII of 1927 and this Schedule added by sec. 84 of Act VII of 1939.

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under an invalid provision of law is not barred by sec. 67. (1943) I.T.R. 393=6 F.L.J. (H.C.) 133=1943 Comp. C. 265=I.L.R. (1944) Cal. 34. Where an assessee contends that he is not liable to be assessed to income-tax on the ground that he is not resident in British India, the Income-tax Officer, as the assessing authority, has power to determine the question of the assessee's residence in British India and the consequent receipt of assets under sec. 4 of the Income-tax Act. A suit by the assessee for a declaration that he is not liable to be assesed to income-tax and to recover the tax paid by him is not maintainable in a Civil Court. Such a suit is barred by sec. 67 of the Act. Subject to the controlling effect of the words "made under this Act" in sec. 67, the exclusion of the jurisdiction of the Civil Court is almost absolute, and the appropriate remedies of an assesee by way of appeal and reference have been provided in the Act itself. Stodart J. —A statutory tribunal or authority which has to arrive at a decision as to the existence or non-existence of certain facts before proceeding to take further action under the statute is acting within the jurisdiction in making that decision and is immune from civil proceedings to quash that decision except such as are precribed by the statute. The absence of any other remedy is not to be taken into consideration in deciding the question whether the decision of a statutory tribunal is or is not final. I.L.R. (1937) M. 211=1936 M.W.N. 1056=44 L.W. 808=1937 M. 241. Suit contesting validity of the assessment order—If maintainable—Jurisdiction of Civil Court. 18 S.L.R. 68=78 I.C. 940=1925 S. 130. The Income-tax Act creates a special jurisdiction and provides a special remedy against an order of assessment. Where the Collector processes to tax income only and has not levied an assessment on any of the classes of income excepted under the Act, he exercises only a jurisdiction under the Act and a suit will not lie in a Civil Court challenging his order, even if there are errors in calculation. 18 S.L.R. 68=78 I.C. 940=1925 S. 130. Civil Court has no jurisdiction where income only is taxed. 18 S.L.R. 68=1925 S. 130. 78 I.C. 940 Refusal to make a return of income on alleged error or description—Assessment by Income-tax Officer—Suit for refund of tax paid not maintainable, *see* 5 R. 825=1928 R. 70. A suit by an executor of a deceased for a declaration that he is not liable to pay income tax is barred. 42 C. 151=26 I.C. 893=19 C.W.N. 138. In assessing income-tax, the Collector has to determine what is the income and what is the outgoing which ought to be legitimately deducted. A mistake by the Collector in his decision cannot be rectified by Civil Court in a suit brought before it for the purpose. 62 I.C. 394. The Act does not prohibit a suit for declaration that an assessment is *ultra vires*. 27 Bom.L.R 1507. *See also* 5 R. 825. A suit in which the relief claimed is merely a declaration that the registration of an instrument of partnership was *ul ra vires* and void is not a suit to modify an assessment made under the Act. Such a suit is not barred by sec. 67. 11 R. 380=1933 R. 229. There is no provision made in the Act for appeals against a refusal to grant a refund under sec. 48. So where a suit for refund of income-tax does not raise any question of assessment, it is not barred by sec. 67. 25 S.L.R. 426=136 I.C. 819=1932 S. 48. *See also* 196 I.C. 228=1941 I.T. R. 673. An application to have a firm registered under R. 2 of the Indian Income-tax Act, 1922, must be made on or before the date when a return is due under sec. 22 (2) of the Act. 27 Bom.L.R. 223=86 I.C. 851=1925 B. 247 (2). Jurisdiction of Civil Court—

2. The profits and gains of life insurance business shall be taken to be either—

(*a*) the gross externall incomings of the preceding year from that business less the management expenses of that year, or

(*b*) the annual average of the surplus [1][arrived at by adjusting the surplus or deficit] disclosed by the acturial valuation made for the last inter-valuation period ending before the year for which the assessment is to be made, [2]* * * * so as to exclude from it any surplus or deficit included therein which was made in any earlier inter-valuation period and any expenditure other than expenditure which may under the provisions of section 10 of this Act be allowed for in computing the profits and gains of a business,

whichever is the greater :

Provided that the amount to be allowed as management expenses shall not exceed—

(*a*) 7½ per cent. of the premiums received during the preceding year in respect of single premium life insurance policies, *plus*

(*b*) in respect of the first year's premiums received in respect of other life insurance policies for which the number of annual premiums received is less than twelve, or for which the number of years during which premiums are payable is less than twelve, for each such premium or each such year 7½ per cent. of such first year's premiums payable during the preceding year, *plus*

[3][(*c*) 90 per cent. of the first year's premiums received during the preceding year in respect of all other life insurance policies *plus*;

(*d*) 12 per cent. of all renewal premiums recevided during the preceding year..]

3. In computing the surplus for the purpose of rule 2,—

(*a*) one-half of the amounts paid to or reserved for or expended on behalf of policy-holders shall be allowed as a deduction :

Provided that in the first such computation made under this rule of any such surplus no account shall be taken of any such amounts to the extent to which they are paid out of or in respect of any surplus brought forward from a previous inter-valuation period :

Provided further that if any amount so reserved for policy holders ceases to be so reserved, and is not paid to or expended on behalf of policy-holders, one-half of such amount, if it has been previously allowed as a deduction, shall be treated as part of the surplus for the period in which the said amount ceased to be so reserved ;

(*b*) any amount either written off or reserved in the accounts or through the actuarial valuation balance sheet to meet depreciation of or loss on the realisation of securities or other assets, shall be allowed as a deduction, and any sums taken credit for in the accounts or actuarial valuation balance sheet on account of appreciation of or gains on the realisation of the securities or other assets shall be included in the surplus :

Provided that if upon investigation it appears to the Income-tax Officer after consultation with the Superintendent of Insurance that having due regard to the necessity for making reasonable provision for bonuses to participating policy-holders and for contingencies, the rate of interest or other factor employed in determining the liability in respect of outstanding policies, is materially inconsistent with the valuation of the securities and other assets so as artificially to reduce the surplus, such adjustment shall be made to the allowance for depreciation of, or to the amount to be included in the surplus in respect of appreciation of, such securities and other assets, as shall increase the surplus for the purposes of these rules to a figure which is fair and just ;

3. [(*c*) interest received in respect of any securities of the Central Government which have been issued or declared to be income-tax free shall not be excluded but the whole amount of such interest during the inter-valuation period shall be exempt from income-tax under the secod proviso to section 8 though not from super-tax";]

4. Where for any year an assessment is made in accordance with the annual average of a surplus disclosed by a valuation for an inter-valuation period exceeding twelve months, then, in computing the tax payable for that year, credit shall not be given in accordance with sub-section (5) of section 18 for the tax paid in the preceding year, but credit shall be given for the annual average of the income-tax paid by deduction at source from interest on securities or otherwise during such period.

5. For the purposes of these rules—

(*i*) 'preceding year' means that year for which annual accounts are required to be prepared under the Insurance Act, 1938, immediately preceding the year for which the assessment is to be made or until the commencement of the Insurance Act, 1938, the previous year as defined in section 2 of this Act :

(*ii*) 'gross external incomings' means the full amount of incomings from interest, dividends fines and fees and all other incomings from whatever source derived (except premiums received from policy-holders and interest and dividends on any annuity fund) and includes also profits from reversions and on the sale or the granting of annuities, but excludes profits on the realisation of securities [3][or other assets ;]

Provided that incomings, including the annual value of the property occupied by the assessee, which but for the provisions of sub-section (7) of section 10 would have been assessable under section 9 shall be computed upon the basis laid down in the last-named section, and that there shall be allowed from such gross incomings such deductions as are permissible under that section.

LEG. REF.

1 Inserted by sec. 8 of Act XII of 1940.

2 The words "after adjusting such surplus" were omitted by *ibid.*

3 Substituted by Act XI of 1944.

Question if claim for refund was validly discharged. 1942 Pat. 87.

(*iii*) 'management expenses' means the full amount of expenses (including commissions) incurred exclusively in the management of the business of life insurance, and in the case of a company carrying on other classes of business as well as the business of life insurance in addition thereto a fair proportion of the expenses incurred in the general management of the whole business. Bonuses or other sums paid to or reserved on behalf of policy-holders, depreciation of, and losses on the realisation of, securities [1][or other assets] and any expenditure other than expenditure which may under the provisions of section 10 of this Act be allowed for in computing the profits and gains of a business are not management expenses for the purposes of these rules;

(*iv*) 'life insurance business' means life insurance business as defined in clause (11) of section 2 of the Insurance Act, 1938;

(*v*) 'securities' includes stocks and shares.

6. The profits and gains of any business of insurance other than life insurance shall be taken to be the balance of the profits disclosed by the annual accounts, copies of which are required under the Insurance Act, 1938, to be furnished to the Superintendent of Insurance after adjusting such balance so as to exclude from it any expenditure other than expenditure which may under the provisions of section 10 of this Act be allowed for in computing the profits and gains of a business. Profits and losses on the realisation of investments and depreciation and appreciation of the value of investments shall be dealt with as provided in rule 3 for the business of life insurance.

7. The profits and gains of companies carrying on dividing society or assessment business shall be taken to be 15 per cent. of the premium income of the previous year, or in the case of non-resident companies 15 per cent. of the British Indian premium income of the previous year.

8. The profits and gains of the British Indian branches of an insurance company not resident in British India, in the absence of more reliable data, may be deemed to be the proportion of the total world income of the company corresponding to the proportion which its British Indian premium income bears to its total premium income. For the purpose of this rule, the total world income of life insurance companies not resident in British India whose profits are periodically ascertained by actuarial valuation shall be computed in the manner laid down in these rules for the computation of the profits and gains of life insurance business carried on in British India.

9. These rules apply to the assessment of the profits of any business of insurance carried on [2][by a mutual insurance association].]

LEG. REF.

[1] Inserted by Act XI of 1944.

[2] Substituted for by a "mutual insurance company" by sec. 13 of Act XL of 1940.

SCH. R. 8: APPLICABILITY—CONDITIONS FOR ADOPTION OF—APPLICATION OF PRINCIPLE TO INDIVIDUAL ITEMS—PROPRIETY.—The rule of assessment laid down in R. 8 of the Rules in Sch. I to the Act is to be adopted in the absence of more reliable data. Before it is adopted it has to be considered whether more reliable data are available or not. The question cannot be raised, debated and disposed of merely in the course of argument. It is a question of fact. Further the rule cannot apply to the case of a non-resident company whose profits and gains in British India are not liable to be assessed under the rule. When the principle of the rule has been applied to one portion of the income of the Company, *viz.*, interest earned by it in the United Kingdom where it has its head office, there is no justification for extending the same principle to the income, profits, and gains calculated to have been made in British India. The rule plainly read only means that if after making all reasonable efforts to ascertain the income of an Insurance Company no reliable data is found in the case of a non-resident company, the rule laid down in R. 8 may be adopted; but that is in respect of the whole income of the company. There is no warrant for holding that in respect of individual items any such principle may be applied. The duty of the Income-tax Officer is to find out the profits and gains of the assessee; and it is not open to him to adopt any such principle in respect of one item, when he is in effect assessing the whole income on adequate materials before him. 1945 I.T.R. 272=47 Bom.L.R. 222=1945 Bom. 285.

INCOME-TAX (AMENDMENT) ACT (XL OF 1940), SEC. 14: SCOPE.—Sec. 14 of the Income-tax (Amendment) Act of 1940 does not refer to jurisdiction or judicial consideration. What it provides is that all proceedings pending before the Commissioner in connection with his powers of revision, before the date when Part II of the Act of 1939 came into force, shall save to him the effect of sec. 33 (1) of the Act. The fact that afterwards he has called for the records, Part II of the Act of 1939 comes into force and the records are received only subsequently, would not deprive him of his power of review under sec. 33 (1), though sec. 33 has become repealed by the coming into force of Part II of the 1939 Act. 1944 I.T.R. 430=(1945) Cal. 67.

INCOME-TAX (REMOVAL OF DIFFICULTIES AND VALIDATING ORDINANCE (IX OF 1939)—SCOPE—RETROSPECTIVE OPERATION—STRICT CONSTRUCTION.—Ordinance No. IX of 1939 later incorporated in the Income-tax Act, sec. 64 by an amendment of 1940, is retrospective in character and must be construed strictly, and no case should be brought within it which is not fairly within its language. (1943) I.T.R. 67=45 Bom.L.R. 136=1943 Bom. 110.

THE INCOME-TAX AND EXCESS PROFITS TAX (AMENDMENT) ACT (XXII OF 1947).

18th April, 1947.

An Act further to amend the Indian Income-tax Act, 1922, *and the Excess Profits Tax Act*, 1940.

WHEREAS it is expedient further to amend the Indian Income-tax Act, 1922, and the Excess Profits Tax Act, 1940, for the purposes hereinafter appearing;

It is hereby enacted as follows:—

CHAPTER I.

Preliminary.

Short title and commencement.

1. (1) This Act may be called the Income-tax and Excess Profits Tax (Amendment) Act, 1947.

(2) It shall be deemed to have come into force on the 31st day of March, 1947.

CHAPTER II.

Amendments of Act XI of 1922.

Amendment of section 2, Act XI of 1922.

2. In section 2 of the Indian Income-tax Act, 1922 hereafter in this Chapter referred to as the said Act,—

(*a*) clause (4-A) shall be renumbered as clause (4-B), and after clause (4) the following clause shall be inserted, namely:—

'(4-A) "capital asset" means property of any kind (other than agricultural land) held by an assessee, whether or not connected with his business, profession or vocation, but does not include—

(*i*) any stock-in-trade, consumable stores or raw materials held for the purposes of his business, profession or vocation;

(*ii*) personal effects, that is to say, movable property (including wearing apparel, jewellery and furniture) held for personal use by the assessee or any member of his family dependent on him;'

(*b*) for the *Explanation* to clause (6-A) the following shall be substituted, namely:—

'Provided further that the expression "accumulated profits", wherever it occurs in this clause, shall not include capital gains of any previous year prior to the previous year for the assessment for the year ending on the 31st day of March, 1948;'

(*c*) in clause (6-C), after the word and figures "section 10", the words, figures and letter "and any capital gain chargeable according to the provisions of section 12-B" shall be inserted;

(*d*) in clause (15), for the words "does not apply; and" the words "does not apply and except any capital gain which is not includible in the total income of an assessee;" shall be substituted.

Amendment of section 4, Act XI of 1922.

3. In sub-section (3) of section 4 of the said Act,—

(*a*) to clause (*iv*) the words "and any capital gains of the Fund arising from the sale, exchange or transfer of such securities" shall be added;

(*b*) in clause (*vii*), after the words "Any receipts" the words, figures and letter "not being capital gains chargeable according to the provisions of section 12-B and" shall be inserted.

Amendment of section 4-A, Act XI of 1922.

4. To clause (*c*) of section 4-A of the said Act, the words 'account not being taken in either case of income chargeable under the head "Capital gain" shall be added.

Amendment of section 6, Act XI of 1922.

5. To section 6 of the said Act the following clause shall be added, namely:—

"(*vi*) Capital gains".

Insertion of new section 12-B in Act XI of 1922.

6. After section 12-A of the said Act the following section shall be inserted, namely:—

Capital gains.

12-B. (1) The tax shall be payable by an assessee under the head "Capital gains" in respect of any profits or gains arising from the sale, exchange or transfer of a capital asset effected after the 31st day of March, 1946; and such profits and gains shall be deemed to be income of the previous year in which the sale, exchange or transfer took place:

Provided that where the amount of capital gains in the previous year does not exceed fifteen thousand rupees, the tax shall not be payable by the assessee and such amount shall not be included in his total income:

Provided further that the tax shall not be payable by an assessee in respect of any profits or gains arising from the sale, exchange or transfer of a capital asset, being property the income of which is chargeable under section 9 and which has been possessed by the assessee or a parent of his for not less than seven years before the date on which the sale,

exchange or transfer took place; and the amount of such profits or gains shall not be included in his total income:

Provided further that any transfer of capital assets by reason of the compulsory acquisition thereof under any law for the time being in force relating to the compulsory acquisition of property for public purposes or any distribution of capital assets on the total or partial partition of a Hindu undivided family, or on the dissolution of a firm or other association of persons, or on the liquidation of a company, or under a deed of gift, bequest, will or transfer on irrevocable trust shall not, for the purposes of this section, be treated as sale, exchange or transfer of the capital assets:

Provided further that the transfer of a capital asset by a company to a subsidiary company, the whole of the share capital of which is held by the parent company or by the nominees thereof, shall not be treated as a sale, exchange or transfer within the meaning of this section where the subsidiary company is resident in British India and is registered under the Indian Companies Act, 1913, so however that for the purposes of clause (*vi*) or clause (*vii*) of sub-section (2) of section 10, the cost or the written down value, as the case may be, of the transferred capital asset shall be taken to be the same as it would have been if the parent company had continued to hold the capital asset for the purposes of its business.

(2) The amount of a capital gain shall be computed after making the following deductions from the full value of the consideration for which the sale, exchange or transfer of the capital asset is made, namely:—

(*i*) expenditure incurred solely in connection with such sale, exchange or transfer;

(*ii*) the actual cost to the assessee of the capital asset, including any expenditure of a capital nature incurred and borne by him in making any additions or alterations thereto, but excluding any expenditure in respect of which any allowance is admissible under any provision of sections 8, 9, 10 and 12:

Provided that where a person who acquires a capital asset from the assessee, whether by sale, exchange or transfer, is a person with whom the assessee is directly or indirectly connected, and the Income-tax Officer has reason to believe that the sale, exchange or transfer was effected with the object of avoidance or reduction of the liability of the assessee under this section, the full value of the consideration for which the sale, exchange or transfer is made shall, with the prior approval of the Inspecting Assistant Commisisoner of Income-tax, be taken to be the fair market value of the capital asset on the date on which the sale, exchange or transfer took place:

Provided further that where the capital asset is an asset in respect of which the assessee has obtained depreciation allowance in any year, the actual cost of the asset to the assessee shall be its written down value, as defined in section 10, increased or diminished, as the case may be, by any adjustment made under clause (*vii*) of sub-section (2) of that section:

Provided further that where the capital asset became the property of the assessee before the 1st day of January, 1939, he may, on proof of the fair market value thereof on the said date to the satisfaction of the Income-tax Officer, substitute for the actual cost such fair market value which shall be deemed to be the actual cost to him of the asset, and which shall be reduced by the amount of depreciation, if any, allowed to the assessee after the said date and increased or diminished, as the case may be, by any adjustment made under clause (*vii*) of sub-section (2) of section 10:

Provided further that where the capital asset was on any previous occasion the subject of negotiations for its sale, exchange or transfer, any option or other money received and retained by the assessee in respect of such negotiations shall be deducted in computing the actual cost to him of such asset.

(3) Where any capital asset became the property of the assessee under any of the circumstances referred to in the third proviso to sub-section (1), its actual cost allowable to him for the purposes of this section shall be its actual cost to the previous owner thereof, and the provisions of sub-section (2) shall apply accordingly; and where the actual cost to the previous owner cannot be ascertained, the fair market value at the date on which the capital asset became the property of the previous owner shall be deemed to be the actual cost thereof.

(4) Notwithstanding anything contained in sub-section (1), where a capital gain arises from the sale, exchange or transfer of a capital asset which immediately before the date on which the sale, exchange or transfer took place was being used by the assessee for the purposes of his business, profession or vocation, or which in the two years immediately preceding that date was being used by him or a parent of his mainly for the purposes of his own or the parent's own residence, and the assessee has within a period of one year before or after that date purchased a new capital asset for the same purposes of his business, profession or vocation or, as the case may be, for the purposes of his own residence, then instead of the capital gain being charged to tax as income of the previous year in which the sale, exchange or transfer took place, it shall, if the assessee so elects in writing before the assessment is made to be dealt with in accordance with the following provisions of this sub-section, that is to say,—

(*a*) if the amount of the capital gain is greater than the cost of the new asset,—

(*i*) the difference between the amount of the capital gain and the cost of the new asset shall be charged under this section as income of the previous year, and

(*ii*) for the purposes of computing in respect of the new asset any allowance under clause (*vi*) or clause (*vii*) of sub-section (2) of section 10 or the amount of any capital gain arising from its sale, exchange or transfer, the cost or the written down value, as the case may be, shall be *nil*; or

(*b*) if the amount of the capital gain is equal to or less than the cost of the new asset,—

(*i*) the capital gain shall not be charged under this section, and

(*ii*) for the purposes of computing in respect of the new asset any allowance under the said clause (*vi*) or any allowance or adjustment under the said clause (*vii*) or the amount of any capital gain arising from its sale, exchange or transfer the cost or the written down value, as the case may be, shall be reduced by the amount of the capital gain:

Provided that where in respect of the purchase of a new capital asset consisting of plant or machinery the assessee satisfies the Income-tax Officer that despite the exercise of due diligence it has not been possible to make the purchase within the period specified in this sub-section, the Income-tax Officer may, with the prior approval of the Inspecting Assistant Commissioner of Income-tax, extend the said period to such date as he considers reasonable.

Amendment of section 14, Act XI of 1922.

7. In clause (*c*) of sub-section (2) of section 14 of the said Act, after the words "are assessable under" the words, figures and letter "section 12-B or" shall be inserted.

Amendment of section 17, Act XI of 1922.

8. To section 17 of the said Act the following sub-sections shall be added, namely:—

(6) Where the total income of an assessee, not being a company, includes any income chargeable under the head "Capital gains", the tax, including super-tax, payable by him on his total income shall be—

(*i*) income-tax and super-tax payable on his total income as reduced by the amount of such inclusion, had such reduced income been his total income, *plus*

(*ii*) income-tax on the whole amount of such inclusion at the following rates, namely:—

Where such amount—	Rate.
exceeds Rs. 15,000 but does not exceed Rs. 50,000 ..	.. One anna in the rupee,
exceed Rs. 50,000 but does not exceed Rs. 2,00,000 ..	.. Two annas in the rupee,
exceeds Rs. 2,00,000 but does not exceed Rs. 5,00.000 ..	.. Three annas in the rupee,
exceeds Rs. 5,00,000 but does not exceed Rs. 10,00,000..	.. Four annas in the rupee,
exceeds Rs. 10,00.000	.. Five annas in the rupee :

Provided that where owing to the fact that the amount of such inclusion has exceeded a certain limit, income-tax thereon is payable or is payable at a higher rate, the amount of income-tax so payable shall be reduced so as not to exceed—

(*a*) the amount which would have been payable if the amount of such inclusion had not exceeded that limit, *plus*

(*b*) one-half of the amount by which the amount of such inclusion exceeds that limit.

(7) Where the total income of a company includes any income chargeable under the head "Capital gains", the super-tax payable by the company in any year shall be reduced by an amount computed on that part of its total income which consists of such inclusion at the rate of super-tax (excluding the rate of additional super-tax, if any) specified in the case of a company by the annual Act of the Central Legislature fixing the rate or rates of tax for that year.'

Amendment of section 18-A, Act XI of 1922.

9. To section 18-A of the said Act the following sub-section shall be added, namely:—

(12) Any income chargeable under the head "Capital gains" shall not be taken into account for any of the purposes of this section.'

Amendment of section 24, Act XI of 1922.

10. In section 24 of the said Act, after sub-section (2) the following sub-sections shall be inserted, namely:—

'(2-A) Notwithstanding anything contained in sub-section (1), where the loss sustained is a loss falling under the head "Capital gains", such loss shall not be set-off except against any profits and gains falling under that head.

(2-B) Where an assessee sustains a loss such as is referred to in sub-section (2-A) and the loss cannot be wholly set-off in accordance with the provisions of that sub-section, the portion not so set-off shall be carried forward to the following year and set-off against capital gains for that year, and if it cannot be so set-off, the amount thereof not so set-off shall be carried forward to the following year and so on, so however that no such loss shall be so carried forward for more than six years:

Provided that where the loss sustained in any previous year does not exceed fifteen thousand rupees, it shall not be carried forward.'

Amendment of section 38, Act XI of 1922.

11. To section 38 of the said Act the following clause shall be added, namely:—

"(4) require any dealer, broker or agent or any person concerned in the management of a stock or commodity Exchange to furnish a statement of the names and addresses of all persons to whom he or the Exchange has paid any sum in connection with the sale, exchange or transfer of a capital asset, or on whose behalf or from whom he or the Exchange has received any such sum, together with particulars of all such payments and receipts."

Amendment of section 42, Act XI of 1922.

12. In section 42 of the said Act,—

(*a*) for the marginal heading the following shall be substituted, namely:—

"Income deemed to accrue or arise within British India";

(*b*) in sub-section (1), after the words "in cash or in kind," the words "or through or from the sale, exchange or transfer of a capital asset in British India," shall be inserted.

Amendment of section 43, Act XI of 1922.

13. To section 43 of the said Act the following *Explanation* shall be added, namely:—

"*Explanation.*—A person, whether residing in or out of British India, who acquires, after the 28th day of February, 1947, whether by sale, exchange or transfer, a capital asset in British India from a person residing out of British India shall, for the purposes of charging to tax the capital gain arising from such sale, exchange or transfer, be deemed to have a business connection, within the meaning of this section, with such person residing out of British India."

Amendment of section 58-C, Act XI of 1922.

14. In clause (*d*) of sub-section (1) of section 58-C of the said Act, after the words "securities purchased therewith," the words "and of any capital gains arising from the sale, exchange or transfer of capital assets of the fund," shall be inserted.

Amendment of section 58-R, Act XI of 1922.

15. In section 58-R of the said Act, after the words "deposits of an approved superannuation fund" the words "and any capital gains arising from the sale, exchange or transfer of capital assets of such fund" shall be inserted.

CHAPTER III.

Amendments of Act XV of 1940.

Amendment of section 15, Act XV of 1940.

16. In section 15 of the Excess Profits Tax Act (hereafter in this Chapter referred to as the said Act), the words "within five years of the end of the chargeable accounting period in question" shall be omitted, and shall be deemed always to have been omitted.

Insertion of new section 26-A in Act XV of 1940.

17. After section 26 of the said Act the following section shall be inserted, namely:—

"26-A. (1) If on an application made to it through the Excess Profits Tax Officer, the Central Board of Revenue is satisfied that a person who in a chargeable accounting period ending on the 31st day of March, 1946, carried on a business the profits of which for any chargeable accounting period are charged with excess profits tax,—

Further powers of Central Board of Revenue to grant certain relief.

(*i*) incurred during the period commencing on the 1st day of April, 1946 and ending on the 31st day of December, 1947, in connection with that business,—

(*a*) expenditure on the removal of works constructed for protection against enemy attack;

(*b*) where under the orders of a competent authority the business was wholly or partly removed during the war, expenditure on again removing the business or part thereof;

(*c*) where any physical assets held for the purposes of the business were altered to adapt them to war conditions, expenditure on re-adapting them to normal requirements;

(*d*) expenditure in consequence of the termination of any contract for the supply of goods, materials or services, or the lease of buildings or machinery to him, where that contract is terminated by reason of the termination of a contract for the provision by him of goods, materials or services for the purposes of the war; or

(*ii*) incurred during the period commencing on the 1st day of April, 1946 and ending on the 31st day of December, 1947, a loss on the sale of trading stock held on the 31st day of March, 1946 for the purposes of the business; or

(*iii*) incurred in any accounting period ending on or before the 31st day of March, 1946, in connection with that business any expenditure referred to in the sub-clauses of clause (*i*) which, except under the provisions of this sub-section, is not allowable, either wholly or partly, in computing the profits of such accounting period:—

the Central Board of Revenue may direct that such allowance as it thinks just shall be made in computing the profits of the business during the chargeable accounting period ending on the 31st day of March, 1946, and effect shall be given to such direction by repayment of otherwise, as the case may require:

Provided that in giving any such direction, the Central Board of Revenue may impose such conditions as it considers appropriate:

Provided further that where the applicant satisfies the Central Board of Revenue that it was not possible to complete any work referred to in such clauses (*a*), (*b*) and (*c*) of clause (*i*) within the period specified in that clause, the Central Board of Revenue may extend the said period to such date as it considers reasonable:

Provided further that, where any change has taken place in the persons carrying on the business, the persons carrying it on after the change shall have the same right to make an application under this sub-section in respect of any expenditure referred to in sub-clauses (*b*) and (*c*) of clause (*i*) as the persons previously carrying on the business would have had if there had been no such change.

(2) Where an accounting period included, but did not end on, the 31st day of March, 1946, all expenditure referred to in the sub-clauses of clause (*i*) of sub-section (1) which would, apart from the provisions of this sub-section and rule 11 of Schedule I, be allowable as a deduction in computing the profits of the said accounting period, shall be treated for the purposes of sub-section (1) as if it were incurred after that day, and if an application is made under this section, no deduction from, or in computing, the profits of any accounting period or chargeable accounting period shall be allowed in respect of such expenditure otherwise than under sub-section (1).

(3) Where a change takes place in the persons carrying on a business, or a person carrying on a business, being a body corporate, becomes or ceases to be a subsidiary company or principal company within the meaning of sub-section (6) of section 9, and where except for the happening of that event relief would be allowable under this section, the Central Board of Revenue may, if it thinks fit, allow such relief under this section as it considers just, having regard to the extent to which the persons directly or indirectly interested in the business or body corporate, as the case may be, before the change remain interested therein after the change."

Amendment of Schedule I, Act XV of 1940.

18. To the first paragraph of rule 11 of Schedule I to the said Act the following proviso shall be added, namely:—

"Provided that where any loss or expenditure incurred during the period commencing on the 1st day of April, 1946, and ending on the 31st day of December, 1947 is reasonably and properly attributable, wholly or partly, to any chargeable accounting period or standard period, such deduction as appears to the Excess Profits Tax Officer to be reasonable shall be allowed in computing the profits of such chargeable accounting period or standard period; and any relief accruing from such deduction shall be given by repayment or otherwise, as the case may require."

THE INDIAN INCOME-TAX (AMENDMENT) ACT (XXIII OF 1941)

An Act further to amend the Indian Income-tax Act, 1922.

[26*th November*, 1941.

WHEREAS it is expedient further to amend the Indian Income-tax Act, 1922, for the purposes hereinafter appearing,

It is hereby enacted as follows:—

Short title and commencement

1. (1) This Act may be called THE INDIAN INCOME-TAX (AMENDMENT) ACT, 1941.

(2) It shall come into force at once; but effect shall not be given to the amendments hereby made in the Indian Income-tax Act, 1922, by section 4, section 6, section 7, section 8, clause (*b*) of section 10 and clause (*a*) of section 13 in the making of any assessment under that Act for any year before the year ending on the 31st day of March, 1943

[N B—*The amendments have been incorporated in their proper places in the main Act*]

THE INDEMNITY ACT (XXVII OF 1919)

[REPEALED BY ACT (I OF 1938).]

INDIAN AND COLONIAL DIVORCE JURISDICTION ACT (16 AND 17 GEO. V, CH. 40) 1926.

See **Colonial (Indian) and Divorce Jursdiction Act in Vol. L.**

INDIAN SECURITIES ACT (X OF 1920).

See **Securities Act in Vol. III.**

Indian Soldiers (Litigation) Act IV of 1925

See Soldiers (Litigation) Act

THE INDIAN (FEDERAL COURT JUDGES) ACT, 1942.

(5 and 6 Geo VI, Ch 7)

An Act to extend the power of the Governor-General of India to make acting appointments of Judges of the Federal Court.

[26*th February*, 1942.

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Amendment of S. 202 of the Government of India Act, 1935, 26 Geo V and 1. Edw. 8 c. 2.

1. (1) At the end of section two hundred and two of the Government of India Act, 1935, there shall be added the following sub-section:—

"(2) If the Governor-General in his discretion is satisfied, after considering a report from the Chief Justice of India—

(*a*) that in view of some personal interest which any Judge of the Federal Court has in the decision of any particular case, or of some part which any judge of the Federal Court has already taken, as judge or counsel or otherwise, in or in relation to any particular case (whether or not while it was before the Federal Court), that judge ought not to take part in the hearing and determination thereof. and

(*b*) that without a Judge there are not sufficient Judges of the Federal Court available to sit for that purpose.

the Governor-General may in his discretion appoint a Judge of a High Court who is duly qualified for appointment as Judge of the Federal Court

to act temporarily as a Judge of that Court, and the person so appointed shall, unless the Governor-General in his discretion thinks fit to revoke his appointment, be deemed to be a Judge of the Federal Court until that case has been heard and determined by the Federal Court".

(2) The amendment made by this Act in the Government of India Act, 1935, shall be deemed to have been made therein immediately before the passing thereof.

(3) A copy of the said Act giving effect to—

(*a*) the amendments mentioned in sub-section (2) of section seventeen of the India and Burma (Miscellaneous Amendments) Act, 1940; and

(*b*) the amendment made by this Act,

shall be prepared and certified by the Clerk of the Parliament and deposited with the Rolls of Parliament, and His Majesty's printer shall print in accordance with the copy so certified all copies of the Government of India Act, 1935, which are printed after the said copy has been so prepared, certified and deposited.

Short title. 2. This Act may be cited as THE INDIAN (FEDERAL COURT JUDGES) ACT, 1942.

THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS ACT, (XX OF 1946).

[23*rd April*, 1946.

An Act to require employers in industrial establishments formally to define conditions of employment under them.

WHEREAS it is expedient to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them; It is hereby enacted as follows:—

Short title, extent and application. 1. (1) This Act may be called THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946.

(2) It extends to the whole of British India.

(3) It applies to every industrial establishment wherein one hundred or more workmen are employed, or were employed on any day of the preceding twelve months, and to such class or classes of other industrial establishments as the appropriate Government may from time to time, by notification in the official Gazette, specify in this behalf:

Provided that nothing in this Act shall apply to any industry to which, before the commencement of this Act, the provisions of Chapter V of the Bombay Industrial Disputes Act, 1938 (Bombay Act XXV of 1938), have been applied.

Interpretation. 2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "appellate authority" means an Industrial Court, wherever it exists or in its absence an authority appointed by the appropriate Government by notification in the official Gazette to exercise in such area as may be specified in the notification the functions of an appellate authority under this Act.

(*b*) "appropriate Government" means in respect of industrial establishments under the control of the Central Government or a Federal railway or in a major port, mine or oil-field, the Central Government, and in all other cases, the Provincial Government;

(*c*) "Certifying Officer" means the Labour Commissioner wherever he exists, or in his absence an officer appointed by the appropriate Government by notification in the official Gazette to exercise in such area as may be specified in the notification the functions of a Certifying Officer under this Act;

(*d*) "employer" means the owner of an industrial establishment to which this Act for the time being applies, and includes—

(i) in a factory, any person named under clause (*e*) of sub-section (1) of section 9 of the Factories Act, 1934 (XXV of 1934), as manager of the factory;

(ii) in any industrial establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf, or where no authority is so appointed, the head of the department;

(iii) in any other industrial establishment, any person responsible to the owner for the supervision and control of the industrial establishment;

(*e*) "industrial establishment" means—

(i) an industrial establishment as defined in clause (ii) of section 2 of the Payment of Wages Act, 1936 (IV of 1936), or

(ii) a factory as defined in clause (*j*) of section 2 of the Factories Act, 1934, or

(iii) a railway as defined in clause (4) of section 2 of the Indian Railways Act, 1890 (IX of 1890), or

(iv) the establishment of a person who, for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen;

(*f*) "prescribed" means prescribed by rules made by the appropriate Government under this Act;

(*g*) "standing orders" means rules relating to matters set out in the Schedule;

(*h*) "trade union" means a trade union for the time being registered under the Indian Trade Unions Act, 1926 (XVI of 1926).

(*i*) "workman" means any person employed in any industrial establishment to do any skilled or unskilled, manual or clerical, labour for hire or reward, but does not include any member of the armed forces of the Crown.

Submission of draft sanding orders.

3. (1) Within six months from the date on which this Act becomes applicable to an industrial establishment, the employer shall submit to the Certifying Officer five copies of the draft standing orders proposed by him for adoption in his industrial establishment.

(2) Provision shall be made in such draft for every matter set out in the Schedule which may be applicable to the industrial establishment, and where model standing orders have been prescribed, shall be, so far as is practicable, in conformity with such model.

(3) The draft standing orders submitted under this section shall be accompanied by a statement giving prescribed particulars of the workmen employed in the industrial establishment including the name of the trade union, if any, to which they belong.

(4) Subject to such conditions as may be prescribed, a group of employers in similar industrial establishments may submit a joint draft of standing orders under this section.

Conditions for certification of standing orders.

4. Standing orders shall be certifiable under this Act if—

(*a*) provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment, and

(*b*) the standing orders are otherwise in conformity with the provisions of this Act;

and it shall not be the function of the Certiifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders.

Certification of standing orders.

5. (1) On receipt of the draft under section 3, the Certifying Officer shall forward a copy thereof to the trade union, if any, of the workmen, or where there is no such trade union, to the workmen in such manner as may be prescribed, together with a notice in the prescribed form requiring objections, if any, which

the workmen may desire to make to the draft standing orders to be submitted to him within fifteen days from the receipt of the notice.

(2) After giving the employer and the trade union or such other representatives of the workmen as may be prescribed an opportunity of being heard, the Certifying Officer shall decide whether or not any modification of or addition to the draft submitted by the employer is necessary to render the draft standing orders certificable under this Act, and shall make an order in writing accordingly.

(3) The Certifying Officer shall thereupon certify the draft standing orders, after making any modifications therein which his order under sub-section (2) may require, and shall within seven days thereafter send copies of the certified standing orders authenticated in the prescribed manner and of his order under sub-section (2) to the employer and to the trade union or other prescribed representatives of the workmen.

Appeals.

6. (1) Any person aggrieved by the order of the Certifying Officer under sub-section (2) of section 5 may, within twenty-one days from the date on which copies are sent under sub-section (3) of that section, appeal to the appellate authority, and the appellate authority, whose decision shall be final, shall by order in writing confirm the standing orders either in the form certified by the Certifying Officer or after amending the said standing orders by making such modifications thereof or additions thereto as it thinks necessary to render the standing orders certifiable under this Act.

(2) The appellate authority shall, within seven days of its order under sub-section (1), send copies thereof to the Certifying Officer, to the employer and to the trade union or other prescribed representatives of the workmen, accompanied, unless it has confirmed without amendment the standing orders as certified by the Certifying Officer, by copies of the standing orders as certified by it and authenticated in the prescribed manner.

Date of operation of standing orders.

7. Standing orders shall, unless an appeal is preferred under section 6, come into operation on the expiry of thirty days from the date on which authenticated copies thereof are sent under sub-section (3) of section 5, or where an appeal as aforesaid is preferred, on the expiry of seven days from the date on which copies of the order of the appellate authority are sent under sub-section (2) of section 6.

Register of standing orders.

8. A copy of all standing orders as finally certified under this Act shall be filed by the Certifying Officer in a register in the prescribed form maintained for the purpose, and the Certifying Officer shall furnish a copy thereof to any person applying therefor on payment of the prescribed fee.

Posting of standing orders.

9 The text of the standing orders as finally certified under thiis Act shall be prominently posted by the employer in English and in the language understood by the majority of his workmen on special boards to be maintained for the purpose at or near the entrance through which the majority of the workmen enter the industrial establishment and in all departments thereof where the workmen are employed.

Duration and modification of standing orders.

10. (1) Standing orders finally certified under this Act shall not, except on agreement between the employer and the workmen, be liable to modification until the expiry of six months from the date on which the standing orders or the last modications thereof came into operation.

(2) An employer desiring to modify his standing orders shall apply to the Certifying Officer in that behalf, submitting five copies of the standing

orders in which shall be indicated the modifications he proposes, and where such modifications are made in agreement with the workmen, a certified copy of the agreement shall acompany the application.

(3) The foregoing provisions of this Act shall apply in respect of an application under sub-section (2) as they apply to the certification of the first standing orders.

Certifying officers and appellate authorities to have powers of Civil Court.

11. Every Certifying Officer and appellate authority shall have all the powers of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, and compelling the discovery and production of documents, and shall be deemed to be a civil Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898 (V of 1898).

Oral evidence in contradiction of standing orders not admissible.

12. No oral evidence having the effect of adding to or otherwise varying or contradicting standing orders as finally certified under this Act shall be admitted in any Court.

Penalties and procedure.

3 (1) An employer who fails to submit draft standing orders as required by section 3, or who modifies his standing orders otherwise than in accordance with section 10, shall be punishable with fine which may extend to five thousand rupees, and in the case of a continuing offence with a further fine which may extend to two hundred rupees for every day after the first during which the offence continues.

(2) An employer who does any act in contravention of the standing orders finaly certified under this Act for his industrial establishment shall be punishable with fine which may extend to one hundred rupees, and in the case of a continuing offence with a further fine which may extend to twenty-five rupees for every day after the first during which the offence continues.

(3) No prosecution for an offence punishable under this section shall be instituted except with the previous sanction of the appropriate Government.

(4) No Court inferior to that of a Presidency Magistrate or Magistrate of the second class shall try any offence under this section.

Power to exempt.

14. The appropriate Government may by notification in the official Gazette exempt, conditionally or unconditionally, any industrial establishment or class of industrial establishments from all or any of the provisions of this Act.

Power to make rules.

15. (1) The appropriate Government may, after previous publication, by notification in the official Gazette make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(*a*) prescribe additional matters to be included in the Schedule, and the procedure to be followed in modifying standing orders certified under this Act in accordance with any such addition;

(*b*) set out model standing orders for the purposes of this Act;

(*c*) prescribe the procedure of Certifying Officers and appellate authorities;

(*d*) prescribe the fee which may be charged for copies of standing orders entered in the register of standing orders;

(*e*) provide for any other matter which is to be or may be prescribed;

Provided that before any rules are made under clause (*a*) representatives of both employers and workmen shall be consulted by the appropriate Government.

THE SCHEDULE.

(*See* sections 2 (*g*) and (3) (2).)

Matters to be provided in Standing Orders under this Act.

1. Classification of workmen, *e.g.*, whether permanent, temporary, apprentices, probationers, or *badlis*.
2. Manner of intimating to workmen periods and hours of work, holidays, pay-days and wage rates.
3. Shift working.
4. Attendance and late coming.
5. Conditions of, procedure in applying for, and the authority which may grant, leave and holidays.
6. Requirement to enter premises by certain gates, and liability to search.
7. Closing and re-opening of sections of the industrial establishment, and temporary stoppages of work and the rights and liabilities of the employer and workmen arising therefrom.
8. Termination of employment, and the notihe thereof to be given by employer and workmen.
9. Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct.
10. Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants.
11. Any other matter which may be prescribed..

THE INDUSTRIAL STATISTICS ACT (XIX OF 1942). AS AMENDED BY ACT XXV OF 1942.

[*3rd April*, 1942.

An Act to facilitate the collection of statistics of certain kinds relating to industries.

WHEREAS it is expedient to facilitate the collection of statistics of certain kinds relating to industries; It is hereby enacted as follows:—

1. (1) This Act may be called THE INDUSTRIAL STATISTICS ACT, 1942.

(2) It extends to the whole of British India.

(3) It shall come into force in a Province on such date as the Provincial Government may, by notification in the official Gazette, appoint in thiis behalf for such Province.

2. In this Act "prescribed" means prescribed in rules made under this Act or in any form prescribed by those rules.

3. (1) The Provincial Government may, by notification in the official Gazette, diret that statistics shall be collected relating to any of the following matters, namely:—

(*a*) any matter relating to factories,

(*b*) any of the following matters so far as they relate to welfare of labour and conditions of labour, namely:—

(i) prices of commodities,
(ii) attendance,
(iii) living conditions, including housing, water-supply and sanitation,
(iv) indebtedness,
(v) rent of dwelling-houses,
(vi) wages and other earnings,
(vii) provident and other funds provided for labour,
(viii) benefits and amenities provided for labour,
(ix) hours of work,
(x) employment and unemployment,

(xi) industrial and labour disputes;

and thereupon the provisions of this Act shall apply to the collection of those statistics.

(2) In clause (*a*) of sub-section (1), "factory" means a factory as defined in clause (*j*) of section 2 of the Factories Act, 1934, or any premises deemed to be a factory in pursuance of a declaration made under sub-section (1) of section 5 of that Act.

Appointment of statistics authority.

4. The Provincial Government may appoint an officer to be the statistics authority for the purposes of the collection of any statistics under this Act.

Power of statistics authority to call for returns and information.

5. (1) The statistics authority may serve or cause to be served on any person a notice requiring him to furnish, at such intervals and in such form and with such particulars as may be prescribed, such information or returns relating to any matter in respect of which statistics are to be collected and to such authority or person and in such manner and at such times as may be prescribed.

(2) The notice referred to in sub-section (1) may be served by post.

Right of access to record or document.

6. The statistics authority or any person authorized by him in writing in this behalf shall, for the purposes of the collection of any statistics under this Act, have access to any relevant record or document in the possession of any person required to furnish any information or return under this Act, and may enter at any reasonable time any premises wherein he believes such record or document to be, and may ask any question necessary for obtaining any information required to be furnished under this Act.

Restriction on the publication of returns and information.

7. (1) No individual return, and no part of an individual return, made, and no information with respect to any particular undertaking given, for the purposes of this Act, shall, without the previous consent in writing of the owner for the time being of the undertaking in relation to which the return or information was made or given, or his authorized agent, be published in such manner as would enable any particulars to be identified as referring to a particular undertaking.

(2) Except for the purposes of a prosecution under this Act or under the Indian Penal Code, no person not engaged in connexion with the collection of statistics under this Act shall be permitted to see any individual return or information referred to in sub-section (1).

Penalties.

8. If any person required to furnish any information or any return—

(*a*) wilfully refuses or without lawful excuse neglects to furnish such information or return as required under this Act, or

(*b*) wilfully furnishes or causes to be furnished any information or return which he knows to be false, or

(*c*) refuses to answer or wilfully gives a false answer to any question necessary for obtaining any information required to be furnished under this Act,

or if any person impedes the right of access to relevant records and documents or the right of entry conferred by section 6, he shall for each such offence be punishable with fine which may extend to five hundred rupees, and in the case of a continuing offence [1][with a further fine] which may extend to two hundred rupees for each day after the first during which the offence continues; and in respect of false information, returns or answers the offence shall be deemed to continue until true information or a true return or answer has been given or made.

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1 Substituted by Act XXV of 1942.

Penalty for improper disclosure of information or returns.

9. If any person engaged in connection with the collection of statistics under this Act wilfully discloses any informatiin or the contents of any return given or made under this Act otherwise than in the execution of his duties under this Act or for the purposes of the prosecution of an offence under this Act or under the Indian Penal Code, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both imprisonment and fine.

Cognizance of offences.

10. No prosecution under section 8 shall be instituted except by or with the sanction of the statistics authority and no prosecution under section 9 shall be instituted except by or with the sanction of the Provincial Government.

Power of the Central Government to give directions.

11. The Central Government may give directions to a Provincial Government as to the carrying into execution of this Act in the Province.

Power of Provincial Governments to make rules.

12. (1) The Provincial Government may, subject to the condition of previous publication by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing powers, rules may be made under their section regulating the exercise of the right of access to documents and the right of entry conferred by section 6.

THE INHERITANCE ACT (XXX OF 1839).[1]

Year.	No	Short title	Amendment.
1839	XXX	The Inheritance Act, 1839	Repealed in part VII 1 of 1868 ; XII 1891; X of 1914 Supplemented ; XXXVIII of 1866, S. 29.

Short title given, Act XIV of 1897.
Rep. (except as to intestacies occurring before 1st January, 1866) Act VIII of 1868.
Rep. in pr., Act XII of 1891.
S. 1 rep. in pr., Act X of 1914.
Supplemented, Act XXVIII 1866, S. 29.
Declaration in force throughout British India except as regards the Scheduled Districts Act XV of 1874, S. 3.

SECTIONS.
1. Preamble.
"Interpretation."
"Land".
"The Purchaser".
"Descent".
"Person last entitled".
—"Assurance".
2. Descent shall always be traced from the purchaser but the last owner shall be considered to be the purchaser, unless the contrary be proved.
3. Heir entitled under a will shall take as devisee, and a limitation to the grantor or his heirs shall create an estate by purchase.
4. Where heirs take by purchase under limitations to the heirs of their ancestors, the land shall descend as if the ancestor had been the purchaser.
5. Brothers, etc., shall trace descent through their parent.
6. Lineal ancestor may be heir in preference to collateral persons claiming through him.
7. The male line to be preferred.
8. The mother of more remote male an

LEG. REF.

[1] Short title, "The Inheritance Act, 1839" *See* the Indian Short Titles Act, 1897 (XIV of 1897) The whole Act except as to intestacies occurring before 1st January 1866, was repealed by Act VIII of 1868. As to inheritance, where descent took place before the 1st January, 1866, the Act, has been declared, by the Laws Local Extent Act, 1874 sec. 3, to be in force in the whole of British India except as regards the Scheduled Districts. Sec. 29 of the Trustees and Mortgagees Powers Act, 1866 (XXVIII of 1866), is to be read as part of Act XXX of 1836. *See* Act XXVIII of 1866, sec. 29, *infra*.

cestor, to be preferred to the mother of the less remote male ancestor.
9. Half-blood, if on the part of a male ancestor, to inherit after the whole blood of the same degree; if on the part of a female ancestor, after her.
10. After the death of a person attained, his descendants may inherit.
11. Act not to extend to any descent before 1st July, 1840.
12. Limitations made before the 1st July 1840, to the heirs of a person then living, shall take effect as if the Act had not been made.
13. Saving of certain inheritance and jurisdiction.

THE INHERITANCE ACT (XXX OF 1839.)[1]

[16*th December*, 1839.

An Act for the amendment of the Law of inheritance.

Preamble.

1. WHEREAS it is expedient to extend the amendments in the English law of inheritance contained in the [2]Statute 3rd and 4th William IV, Chapter CVI, to the territiries of the East India Company in cases which, but for the passing of this Act, would be governed by the English law of inheritance as it existed previously to the passing of the aforesaid statute;

"Interpretation".

It is hereby enacted that the words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this Act, except where the nature of the provision or the context of the Act shall exclude such construction, be interpreted as follows: (that is to say),

"Land".

the word "land" shall extend to messuages, and all other hereditaments, whether corporeal or incorporeal, and whether freehold or of any other tenure, and to money to be laid out in the purchase of land, and to chattels and other personal property transmissible to heirs, and also to any share of the same hereditaments and properties or any of them, and to any estate of inheritance or estate for any life or lives, or other estate transmissible to heirs, and to any possibility, right or title of entry or action, and any other interest capable of being inherited, and whether the same estates, possibilities, rights, titles and interest, or any of them, shall be in possession, reversion, remainder or contingency;

"The purchaser".

and the word "the purchaser" shall mean the person who last acquired the land otherwise than by descent, or than by any escheat, partition or enclosure, by the effect of which the land shall have become part of, or descendible in, the same manner as other land acquired by descent;

"Descent".

and the word "descent" shall mean the title to inherit land by reason of consanguinity, as well where the heir shall be an ancestor or collateral relation as where he shall be a child or other issue;

"Descendants".

and the expression "descendants" of any ancestor shall extend to all persons who must trace their descent through such ancestor;

"Person last entitled".

and the expression "the person last entitled to land" shall ertend to the last person who had a right thereto, whether he did or did not obtain the possession or the receipt of rents and profits thereof;

LEG. REF.

[1] Short title, "The Inheritance Act, 1839" *See* the Indian Short Titles Act, 1897 (XIV of 1897). The whole Act except as to intestacies occuring before 1st January, 1866, was repealed by Act VIII of 1868, As to inheritance, where descent took place before the 1st January, 1866, the Act, has been declared, by the Laws Local Extent Act, 1874 S. 3, to be in force in the whole of British India except as regards the Scheduled Districts. Section 29 of the Trustees and Mortgagees Powers Act, 1866 (XXVIII of 1866), is to be read as part of Act XXX of 1839. *See* Act XXVIII of 1866, S 29. *infra*

[1] Short title, "The Inheritance Act, 1939", etc.

[2] Short title, "The Iaheritatece Act, 1839" *see* the Short Titles Act, 1897 (59 & 60 Vict., *c.* 14).

and the word "assurance" shall mean any deed or instrument other than a will by which any land shall be conveyed or transferred at law or in equity;

[1][* * * * * *]

Descent shall always be traced from the purchaser but the last owner shall be considered to be the purchaser, unless the contrary be proved.

2 [2][* * *] In every case descent shall be traced from the purchaser, and to the intent that the pedigree may never be carried further back than the circumstances of the case and the nature of the title shall require, the person last entitled to the land shall, for the purposes of this Act, be considered to have been the purchaser thereof unless it shall be proved that he inherited the same, in which case the person from whom he inherited the same shall be considered to have been the purchaser, unless it shall be proved that he inherited the same, and in like manner the last person from whom the land shall be proved to have been inherited shall in every case be considered to have been the purchaser unless it shall be proved that he inherited the same.

Heir entitled under a will shall take as devisee, and a limitation to the grantor or his heirs shall create an estate by purchase.

3. When any land shall have been devised by any testator who shall die after the first day of July one thousand eight hundred and forty to the heir or to the person who shall be the heir of such testator, such heir shall be considered to have acquired the lands as a devisee and not by descent; and, when any land shall have been limited by any assurance executed after the said first day of July one thousand eight hundred and forty to the person or the heirs of the person who shall thereby have conveyed the same land, such person shall be considered to have acquired the same as a purchaser by virtue of such assurance, and shall not be considered to be entitled thereto as his former estate or part thereof.

Where heirs take by purchase under limitations to the heirs of their ancestors, the land shall descend as if the ancestor had been the purchaser

4. [2][* * *] When any person shall have acquired any land by purchase under a limitation to the heirs or to the heirs of the body of any of his ancestors, contained in an assurance executed after the said first day of July one thousand eight hundred and forty, or under a limitation to the heir or to the heirs of the body of any of his ancestors, or under any limitation having the same effect, contained in a will of any testator who shall depart this life after the said first day of July one thousand eight hundred and forty, then any in any of such cases such land shall descend, and the descent thereof shall be traced, as if the ancestor named in such limitation had been the purchaser of such land.

Brothers, etc., shall trace descent through their parent.

5. [2][* * *] No brother or sister shall be considered to inherit immediately from his or her brother or sister, but every descent from a brother or sister shall be traced through the parent.

Lineal ancestor may be heir in preference to collateral persons claiming through him

6 [2][* * *] Every lineal ancestor shall be capable of being heir to any of his issue, and, in every case where there shall be no issue of the purchaser, his nearest lineal ancestor shall be his heir in preference to any person who would have been entitled to inherit, either by tracing his descent through such lineal ancestor, or in consequence of there being no descendant of such lineal ancestor, so that the father

LEG. REF.

1 Last portion in sec. 1 repealed by Act X of 1914, Sch. II.

2 The words "And it is hereby further enacted that" in secs. 2 and 4 to 6 repealed by Act (XII of 1891).

2 *Vide* note to sec. 2.

shall be preferred to a brother or sister, and a more remote lineal ancestor to any of his issue, other than a nearer lineal ancestor or his issue

The male line to be preferred.

7. [1][* * *] None of the maternal ancestors of the person from whom the descent is to be traced, nor any of their descendants, shall be capable of inheriting until all his paternal ancestors and their descendants shall have failed; and [1][* *] no female paternal ancestor of such person, nor any of her descendants shall be capable of inheriting until all his male paternal ancestors and their descendants shall have failed; and [1][* *] no female maternal ancestor of such person, or any of her descendants, shall be capable of inheriting until all his male maternal ancestors and their descendants, shall have failed.

The mother of more remote male ancestor to be preferred to the mother of the less remote male ancestor.

8. [1][* * *] Where there shall be a failure of male paternal ancestors of the person from whom the descent is to be traced, and their descendants, the mother of his more remote male paternal ancestors, or her descendants, shall be the heir or heirs of such person, in preference to the mother of less remote male paternal ancestors, or her descendants; and where there shall be a failure of male maternal ancestors, of such person and their descendants, the mother of his more remote male maternal ancestor and her descendants shall be the heir or heirs of such person in preference to the mother of a less remote male maternal ancestor and her descendants.

Half blood, if on the part of a male ancestor, to inherit after the whole blood of the same degree; if on the part of a female ancestor, after her

9. [1][* * *] Any person related to the person from whom the descent is to be traced by the half-blood shall be capable of being his heir, and the place in which any such relation by the half-blood shall stand in the order of inheritance, so as to be entitled to inherit, shall be next after any relation in the same degree of the whole blood, and his issue, where the common ancestor shall be a male, and next after the common ancestor where such common ancestor shall be a female, so that the brother of the half blood on the part of the father shall inherit next after the sisiters of the whole blood on the part of the father and their issue, and the brother of the half blood on the part of the mother shall inherit next after the mother.

After the death of a person attainten his descendants may inherit.

10. [1][* * *] When the person from whom the descent of any land is to be traced shall have had any relation who, having been attainted shall have died before such descent shall have taken place, then such attainder shall not prevent any person from inheriting such land who would have been capable of inheriting the same by tracing his descent through such relation if he had not been attainted, unless such land shall have escheated in consequence of such attainder before the first day of July one thousand eight hundred and forty.

Act not to extend to any descent before 1st July, 1840.

11. [1][* * *] This Act shall not extend to any descent which shall take place on the death of any person who shall die before the said first day of July one thousand eight hundred and forty.

12. [1][* * *] Where any assurance executed before the said first

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LEG. REF.

[1] In secs. 7 to 13, certain formal words in the beginning were repealed by Act XII of 1891.

Limitations made before the 1st July, 1840, to the heirs of a person then living, shall take effect as if the Act had not been made.

day of July, one thousand eight hundred and forty, or the will of any person who shall die before that time, shall contain any limitation or gift, to the heir or heirs of any person under which the person or persons answering the description of heir shall be entitled to an estate by purchase, then the person or persons who would have answered such description of heir if this Act had not been made shall become entitled by virtue of such limitation or gift, whether the person named as ancestor shall or shall not be living at the time aforesaid.

Saving of certain inheritances and jurisdiction.

13. [1][* * *] This Act shall not be construed to affect inheritances of land which are not subject to the English law of inheritance, or to extend or alter the jurisdiction of any of Her Majesty's Courts of Justice.

THE INDIAN INSOLVENCY RULES ACT (X OF 1898).[2]

Year.	No,	Short title.	Amendment.
1898	X	The Indan Insolvency Rules Act.	Rep in part, Act III of 1909; Act X of 1914.

S. 1 rep. in. pt., Act X of 1914.
Ss. 2, 3 Rep , Act III of 1909

[*2nd September*, 1898.

An Act to make provision for certain matters connected with Insolvency

WHEREAS doubts have arisen as to the extent of the power to make rules conferred by Ss. 15 and 76 of the Indian Insolvency Act, 1848, and whereas it is expedient to remove those doubts and to confirm certain rules which were made by the High Court of Judicature at Bombay on the thirty-first day of July, 1878; It is hereby enacted as follows:—

Short title and commencement.

1. (1) This Act may be called THE INDIAN INSOLVENCY RULES ACT, 1898; [3][*]

(2) [3][* * *]

2. [Extent of rule-making power.] *Repealed by S.* 127 *and Sch. III of the Presidency-Towns Insolvency Act,* 1909 (*III of* 1909).

3. [Confirmation of rules.] *Repealed by S.* 127 *and Sch. III of the Presidency Towns Insolvency Act,* 1909 (*III of* 1909).

Official assignee's allowance for pension.

4. The Chief Justice of the said Court may, with the previous sanction of the Central Government pay to the present Official Assignee, out of the interest on the Unclaimed Dividend Account, such sum by way of pension on retirement, or bonus in lieu thereof, as may be reasonable and proper having regard to the length, nature and conditions of his service.

THE INDIAN INSURANCE ACT (IV OF 1938).

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LEG. REF.

1 *Vide* note to sec. 7.

2 For Statement of Objects and Reasons, *see* Gazette of India, 1898, Pt. V, p. 275; for Proceedings in Council, *see ibid.*, 1898, Pt. VI, pp. 295 and 336.

3 The word 'and' and sub sec. (2) repealed by Act X of 1914.

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THE INSURANCE ACT (IV OF 1938).[1]

[Amended by Acts XI of 1939; XLI of 1939; XX of 1940; XIII of 1941; XXV of 1942; VII of 1944; *see also* I of 1941.]

[26*th February*, 1938.

An Act to consolidate and amend the law relating to the business of insurance.

WHEREAS it is expedient to consolidate and amend the law relating to the business of insurance; It is hereby enacted as follows:—

LEG. REF.

[1] For Statement of Objects and Reasons, *see* Gazette of India, 1937, Pt. V, p. 63; and for Report of Select Committee, see *ibid.*, p. 144.

This Act has been applied to—

PART I.

PRELIMINARY.

Short title, extent and commencement.

1. (1) This Act may be called THE INSURANCE ACT, 1938.

(2) It extends to the whole of British India.

(3) It shall come into force on such date[1] as the Central Government may by notification in the official Gazette, appoint in this behalf.

LEG. REF.

(1) British Baluchistan, *see* Notification No. 200-F, dated 10th August, 1938, Gazette of India, 1938, Pt. I, p. 1371.

(2) the partially excluded areas in the Mymensingh District and the District of Darjeeling, *see* Bengal Government Notification No. 1902-Com., dated 28th June, 1939, Calcutta Gazette, dated 16th July, 1939.

[1] The 1st July, 1939, *see* Notification No. 589-I (4) 38, dated the 1st April, 1939, Gazette of India, 1939, Pt. I, p. 631.

SEC. 1: GENERAL.—*Contract of Insurance*—Formalities for conclusion of contract. 37 Bom.L.R. 304=1935 Bom. 236. What is *insurable interest*. 42 P.L.R. 801=1941 Lah. 33. Stipulation as to payment of premium, if and how far a condition precedent. 37 Bom.L.R. 304=1935 Bom. 236. *Place of contract*. 38 L.W. 504=1933 Mad. 764=65 M.L.J. 455. *Life Insurance Contract*—Construction of. *See* 1936 Sind 222; 1939 Sind 254; 1921 P.C. 195; I.L.R. 1938 2 Cal. 608=42 C.W.N. 1197=1938 Cal. 393 (Reference to prospectus); 40 Bom.L.R. 155. Wilful non-disclosure of material facts makes contract voidable. 1939 Sind 254. Where a life insurance policy, including the conditions and benefits, has no reference to the prospectus of the company or to its rules which have got to be interpreted as a whole, in interpreting it any conditions outside the policy which run counter to the terms of the policy itself cannot be considered. 203 I.C. 193=1942 N.L.J. 380=1943 Nag. 9. When dealing with Insurance Companies if there is any ambiguity in the policy it is to be construed against the Company. I.L.R. (1944) 1 Cal. 101=211 I.C. 450=1944 Cal. 1. Contracts of Insurance are *uberrimae fidei*. 1936 Sind 222; 1939 Sind 254. *See also* 45 C.W.N. 623; 34 Bom.L.R. 1295 =1932 Bom. 582; 1938 Cal. 120; 1937 Cal. 510; 1936 Cal. 437 (False answers as to family history of assured); 41 C.W.N. 941 =1937 Cal. 510 (False statements of assured treated as representation and no warranties not sufficient to vitiate policy in absence of fraud). *See also* 15 Luck 360=1940 O.W.N. 149=1940 Oudh 212; 42 C.W.N. 823=1939 Cal. 8; 1937 Rang. 262. *Proof of age*. *See* 1937 Cal. 243=171 I.C. 193; when once age is admitted on the policy, company cannot dispute it afterwards. *See* I.L.R. (1938) 2 Cal. 457=42 C.W.N. 855=1938 Cal. 341. *See also* 41 Bom.L.R. 353=1939 Bom. 161. Where a policy of insurance has been rendered void on the ground of fraudulent concealment of material facts in the proposal form, notwithstanding that there was no agreement for forfeiture of the premiums, a refund of the premiums paid cannot be claimed. Neither sec. 64 nor sec. 65 of the Contract Act is applicable. I.L.R. (1944) Mad. 842=57 L.W. 140=1944 M.W.N. 153=1944 Mad. 281=(1944) 1 M.L.J. 190. The insured who makes an application for reinstatement of the policy which had lapsed by the non-payment of the premium on the due date, must be held responsible for the statements in the application that he had had no sickness, ailment or injury since the last medical examination and had not been attended upon or prescribed for by any physician. Where the answers are not induced by any misrepresentation and are on the face of them untrue, the company can legally repudiate liability under the policy. 57 L.W. 429=1944 Mad. 559=(1944) 2 M.L.J. 37=I.L.R. (1945) Mad. 150. According to a term of a policy of life insurance, the proposal and declaration made by the assured were to form the basis of the policy and any untrue statement wilfully made in the proposal was to render the policy void and of no effect. The assured wilfully made an untrue statement in the proposal that no proposal for an insurance on his life had ever been declined by any Insurance Company. It was argued on behalf of the representatives of the assured that the insurer had, at the time the policy was issued, the knowledge or, at any rate the means of knowledge that the assured had made the untrue statement in question, and since in spite of of that the insurer went on accepting the premiums till the time the assred died it must be taken to have waived its right to avoid the policy. *Held*, that if the plea of waiver was to succeed in the case it must be shown that the premiums were taken intentionally with knowledge of the untrue statement in the proposal and that mere possession of the means of knowledge would not be sufficient to constitute waiver by the insurer I.L.R. (1942) 1 Cal. 100=46 C.W.N. 759=1942 Cal. 412. Life policy—Personal declaration of assured before medical examiner made basis of contract—Questions and answers to be construed according to *Ejusdem generis* rule—Burden of proving that answers were untrue is on the company. 48 C.W.N. 263.

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LIFE INSURANCE AMOUNT, payment of—Company can call for succession certificate or letters of administration before payment of amount. 54 All. 1026=1932 A.L.J. 1015 =1933 All. 1. Willingness by the Company to pay the monies to the persons found to be entitled will not remove the obligation to pay interest, even if conflicting claims arising through no fault of the insurers, delay the payment to the claimant I.L.R. (1944) Nag. 327=1944 N.L.J. 147= 1944 Nag. 122. Life policy—"Days of grace"—Computation—The due date should be excluded. I.L.R. (1944) 1 Cal. 101=211 I.C. 450=16 R.C. 535=1944 Cal. 1. Accused committing suicide—Right of assignee to policy amount. *See* I.L.R. (1938) Lah. 561. Exception to policy—Burden of proof is on the company. 43 L.W. 276=1936 P.C. 74 =70 M.L.J. 437 (P.C.).

LIFE INSURANCE POLICY.—Payment of premia to agent not intimated to Head Office —Effect of. *See* I.L.R. (1941) Kar. 409= 1941 Sind 209. Right of agent canvassing policies to renewal commission on policies effected by him previous to the termination of his agency. 44 Mad. 170=60 I.C. 69=1921 M. 309; 40 C.W.N. 694=1936 Cal. 246. Life Insurance—Agency—If terminable on notice —Length of reasonable notice. *See* (1945) 2 M.L.J. 496 (P.C.). Policy of Insurance— Agency—If terminable on notice—Length of reasonable notice. *See* (1945) 2 M.L.J. 496 (P.C.). Policy of insurance—Construction—Clause that receipt by agent for payment of premia was only interim receipt and that formal receipt to be issued by company only—Assured to intimate to Head office in case of non-receipt of formal receipt within 30 days—If disclaimer of agent. *See* 197 I.C. 893.

LIFE INSURANCE.—Effect and validity of conditional or contingent assignment. *See* 1937 Sind 181=31 S.L.R. 98; I.L.R. (1939) Mad. 415=49 L.W. 199=1939 Mad. 411= (1939) 1 M.L.J. 261 (Effect of provision in assignment deed for reverter to assured in case of assignee (wife) predeceasing assured or assurer being alive at time of maturity of policy); "Money payable to self or wife"—Meaning of. *See* I.L.R. 1938 M. 909 =1938 M. 604=(1938) 2 M.L.J. 22 (F.B.); *see* 32 S.L.R. 138=1938 Sind 20 as to construction of life insurance policy generally; *see also* I.L.R. 1937 1 Cal. 433=40 C.W.N. 1247 (Clause making money payable to executors, administrators or assigns—Construction of).

POLICY HOLDER.—Right to apply for winding up of company. 1938 Bom. 182=40 Bom.L.R. 52. *See also* 30 S.L.R. 92=1936 Sind 165. Proceedure in winding up of Provident Insurance Co. 2 Rang. 144=1924 Rang. 317 (Assured failing to demand issue of policy—Effect of); 52 Cal. 239=1925 Cal. 690 (Endowment policy—Insured allotted shares in company—Lien on dividends for premia).

NOMINEE IN POLICY.—Right of, to sue company for money—Liability to be attached for debts of deceased. 55 Cal. 1315=32 C. W.N. 634=1928 Cal. 518.

BENEFICIARY NAMED IN POLICY.—Right to sue for amount. 69 I.C. 788=1922 Lah. 145.

PRIORITY.—Assured dying and policy money becoming payable—Subsequent liquidation of company—Assured has no right to rank as preferential creditor. 39 Bom. L.R. 1163=1938 Bom. 91.

FIRE INSURANCE POLICY.—Interpretation of. *See* 47 Bom. 509=25 Bom.L.R. 164= 1923 Bom. 249.

FIRE INSURANCE.—Insurable interest. *See* 1939 A.C. 452=1939 P.C. 195; 9 Rang. 452 =1931 Rang. 210. Joint insurance—Fraud of one would avoid the claim of the other also. 162 I.C. 443. *See also* 171 I.C. 631= 1937 Rang. 262 (Life policy). As to estoppel of company, *see* 40 P.L.R. 549=1938 Lah. 168. Construction of terms in Fire Insurance Policy. *See* 190 I.C. 843=1940 P. C. 199 ("Civil commotion"); I.L.R. (1938) 2 Cal. 400=1939 Cal. 105 ("Opening" in godown); 41 C.W.N. 339=1936 Cal. 550 (Construction of term as to arbitration in fire policy); 1939 A.C. 452=1939 P.C. 195 ("Insurance of goods" does not cover profits); 1936 Lah. 685=38 P.L.R. 405 ("Rules for the time being in force"—Meaning of in life policy). 11 R. 475=1934 Rang. 15 (Clause limiting liability of company to claims made

Definitions.

2. In this Act, unlss there is anything repugnant in the subject or context,—

(1) "actuary" means an actuary possessing such qualilcations as may be prescribed;

(2) "policy-holder" includes the person who is the absolute assignee of the benelts under the policy;

(3) "approved securities" means Government securities, and any other security charged on the revenues of the Central Government or of a Provincial Government, or guaranteed fully as regards principal and interest by the Secretary of State in Council or the Secretary of State or the Central Government or a Provincial Government; and any debenture or other security for money issued under the authority of any Act of a Legislature etabslished in British India by or on behalf of a port trust or municipal corporation or city improvement trust in any Presidency-town, or by or on behalf of the trustees of the port of Karachi [1][and any security issued by the Government of an Indian State and specified as an approved security for the purposes of this Act by the Central Government by notification in the official Gazette];

(4) "auditor" means a person qualified under the provisions of section 144 of the Indian Companies Act, 1913, to act as an auditor of companies;

(5) "certified" in relation to any copy or translation of a document required to be furnished by or on behalf of of [2][an insurer or a provident society as defined in Part III] means certified by a principal officer of [3][such insurer or provident society] to be a true copy or a corret translation, as the case may be;

(6) "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction;

(7) "Government securities" means Government securities as defined in the Indian Securities Act, 1920;

(8) "insurance company" means any insurer being a company, association or partnership which may be wound up under the Indian Companies Act, 1913, or to which the Indian Partnership Act, 1932, applies:

LEG. REF.

1 Added by sec. 2, Act XX of 1940.

2 Substituted for the words "an insurer" by sec. 2, Act XIII of 1941.

3 Substituted for the words "the insurer", *ibid.*

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within 1 year). Fire Insurance Policy constitutes entire contract. 40 P.L.R. 549=1938 Lah. 168 168. As to burden of proof, 1938 Lah. 168 (Effect of warranty by assured); 1938 Lah. 168. As to burden of proof, *see* 190 I.C. 843=1940 P.C. 199 (P.C.); 41 C.W.N. 941=1937 Cal. 510 (Life policy). Fire Insurance Policy, when becomes effective. 153 I.C. 387=1934 Rang. 343; Commencement of risk. 56 All. 237=1933 All. 900; 1934 All 208=1934 A.L.J. 719=56 All. 726. As to effect of renewal of policy, *see* 60 C. 332=1933 Cal. 170=36 C.W.N. 1101; 1934 Rang. 261; 67 M.L.J. 522 (Life policy). As to the effect of material misdescription of property isured, *see* 13 R. 63=41 L.W. 160=1935 P.C. 1=68 M.L.J. 99 (P.C.); 11 Rang. 266=1933 Rang. 166. *See also* 67 I. C. 777=1923 Rang. 6 (Insured premises destroyed by fire—Right of mortgagee of premises). Fire, marine and Life Insurance—Contract of reinsurance is one of indemnity. *See* 196 I.C. 198=1941 Lah. 68 (Power of indemnified person to compromise).

MOTOR INSURANCE.—*See* 1937 A.L.J. 442=1937 All. 535; 1937 O.W.N. 907=13 Luck. 474=1937 Oudh 476; 1933 A.C. 70=1933 P. C. 11=64 M.L.J. 133 (P.C.).

MARINE INSURANCE.—What is "total loss". 104 I.C. 332=1937 P.C. 188 (P.C.). Non-payment of premium is no defence to a suit by assured to recover losses. 27 Bom.L.R. 1310=1926 Bom. 82. On a time policy there is no warranty of seaworthiness of the vessal. 27 Bom.L.R. 1310=1926 Bom. 82. Loss by perils of the seas—What is. *See* 1941 P.C. 68 (P.C.). Marine—Loss by perils of seas—Ventilators of ship closed to prevent incursion of sea water—Closing of ventilators causing rice cargo to heat and ferment and thus damaging it—Damage if recoverable. *See* 197 I.C. 267.

SEC. 2 (2).—*See* 40 Bom.L.R. 52=1938 Bom. 182 (Meaning of "Policy holder"); 31 S.L.R. 416=1937 Sind 113 (Policy providing for payment of certain sum on happening of contingency during lifetime of member and providing for no payment to representative in case member dies before contingency—Nature of). *See also* 30 S.L.R. 92=1936 Sind 165.

(9) "insurer" means—

(*a*) any individual or unincorporated body of individuals or body corporate incorporated under the law of any country other than British India, carrying on insurance business (not being a person specified in sub-clause (*a*) of this clause) which—

(*i*) carries on that business in British India, or

(*ii*) has his or its principal place of business or is domiciled in British InIdia;

[1][or

(*iii*) with the object of obtaining insurance business, employs a representative, or maintains a place of business, in British India;]

(*b*) any body corporate (not being a person specified in sub-clause (*c*) of this clause) carrying on the business of insurance, which is a body corporate incorporated under any law for the time being in force in Brtish India; or stands to any such body corporate in the relation of a subsidiary company within the meaning of the Indian Companies Act, 1913, as defined by sub-section (2) of section 2 of that Act, and

(*c*) any person who in British India has a standing contract with underwriters who are members of the Society of Lloyd's whereby such person is authorised mithin the terms of such contract to issue protection notes, cover notes, or other documents granting insurance cover to others on behalf of the underwriters,

but does not include an insurance agent licensed under section 42 or a provident society [2][as defined in Part III];

(10) "insurance agent" means an insurance agent licensed under section 42 being an individual who receives or agrees to receive payment by way of commission or other remuneration in consideration of his soliciting or procuring insurance business;

(11) "life insurance business" includes annuity business, that is to say, the business of effecting contracts of insurance for the granting of annuities on human life and, if so provided in the ontract of insurance, disability and double [3][or triple] indemnity accident benefits;

(12) "manager" and "officer" have the meanings assigned to those expressions in clauses (9) and (11) respectively of section 2 of the Indian Companies Act, 1913;

(13) "managing agent" means a person, firm or company entitled to the management of the whole affairs of a company by virtue of an agreement with the company, and under the control and direction of the directors except to the extent, if any, otherwise provided for in the agreement, and includes any person, firm or company occupying such position by whatever name called.

Explanation.—If a person occupying the position of managing agent calls himself manager or managing director, he shall nevertheless be regarded as managing agent for the purposes of section 32 of this Act;

(14) "prescribed" means prescribed by rules made under section 114; and

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LEG. REF.

1 Added by sec. 2, Act XI of 1939.

2 Substituted for the words "to which the provisions of Part III apply" by sec. 2, Act XIII of 1941.

3 Inserted by sec. 2, Act XI of 1939.

SEC. 2 (10).—Where a Company acts as agent of an insurance Company and employs a number of sub agents for work in the area allotted to it, it cannot be said to fall within the description of a person acting on behalf of an insurer who for the purposes of insurance business employs "insurance agents" in sec. 40 (1) of the Indian Insurance Act. The members of the agency Company are individuals who receive payment by way of commission in consideration of their soliciting on procuring insurance business and subject to the question of their being licensed under sec. 42 of the Act, they come within the definition of "insurance agents" in sec. 2 (10). There is no reason for thinking that the two classes enumerated in sec. 40 (1) are mutually exclusive. 50 C.W.N. 73=(1945) 2 M.L.J. 496=1946 P.C. 6=72 I.A. 315 (P.C.).

(15) "Superintendent of Insurance" means the officer, who shall be a qualified actuary, appointed by the Central Government to perform the duties of the Superintendent of Insurance under this Act.

PART II.

PROVISIONS APPLICABLE TO INSURERS.

Insurers to be subject to this Act while liabilities remain unsatisfied.

[1][2-A. Every insurer shall be subject to all the provisions of this Act in relation to any class of insurance business so long as his liabilities in British India in respect of business of that class remain unsatisfied or not otherwise provided for.

This Act not to apply to certain insurers ceasing to enter into new contracts before commencement of Act.

2-B. The provisions of this Act shall not apply to an insurer as defined in paragraph (*i*) or (*ii*) of sub-clause (*a*) of clause (9) of section 2 in relation to any class of his insurance business where such insurer has ceased, before the commencement of this Act, to enter into any new contracts of that class of business.]

Registration.

3 (1) No [2]person[shall, after the commencement of this Act, begin to carry on any class of insurance business in British India, and no insurer carrying on any class of insurance business in British India shall, after the expiry of three months from the commencement of this Act, continue to carry on any such business, unless he has obtained from the Superintendent of Insurance a certificate of registration:

[3][Provided that in the case of an insurer who was carrying on any class of insurance business in British India at the commencement of this Act, failure to obtain a certilficate of registration in accordance with the requirements of this sub-section shall not operate to invalidate any contract of insurance entered into by him if before [4][such date as may be fixed in this behalf by the Central Government by notification in the official Gazette], he has obtained that certificate.]

(2) Every application for registration shall be accompanied by—

(*a*) a certified copy of the memorandum and articles of association, where the applicant is a company and incorporated under the Indian Companies Act, 1913, [5][or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act repealed thereby,] or, in the case of any other insurer specified in sub-clause (*a*) (ii) or sub-clause (*b*) of clause (9) of section 2, a certified copy of the deed of partnership or of the deed of constitution of the company, as the case may be. or, in the case of an insurer having his principal place of business or domicile outside British India, document specified in clause (*a*) of section 63;

(*b*) the name, address and the occupation, if any, of the directors where the insurer is a company incorporated under the Indian Companies Act, 1913,

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LEG. REF.

1 Inserted by sec. 2-A, Act XI of 1939.

2 Substituted for the word "insurer" by sec. 3, Act XX of 1940.

3 Added (with retrospective effect), *ibid.*

4 Substituted for the words, brackets and figures "the expiry of one month from the commencement of the Insurance (Amendment) Act, 1940" by sec. 3, Act XIII of 1941.

5 Inserted by sec. 2, Act XLI of 1939.

SECS. 3 AND 52: SCOPE AND EFFECT.—Sec. 3 is a general section which applies to all Insurers. It requires registration in every case and prohibits an insurer which has failed to obtain a certificate of registration on or before 1st July, 1939, from carrying on its business. This rule has no exceptions. What sec. 52 of the Act lays down is thath first of all, no new insurance business shall be started on the dividing principle after the commencement of the Act, that is to sav, after 1st July, 1939. As regards those already in existence on that date, it permits them to carry on for a further three years, but no more. It does not exempt them from the necessity of registration. 223 I.C. 52. Where a com-

[1][or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1865, or under any Act repealed thereby,] and in the case of an insurer specified in sub-clause (*a*) (ii) or clause (9) of section 2 the names and addresses of the proprietors and of the manager in British India, and in any other case the full address of the principal office of the insurer in British India, and the names of the directors and the managers at such office and the name and address of some one or more persons resident in British India authorised to accept any notice required to be served on the insurer;

(*c*) a statement of the class or classes of insurance business done or to be done, and a statement that the amount required to be deposited by section 7 or section 98 before application for registration is made has been deposited together with a certificate from the Reserve Bank of India showing the amount deposited;

(*d*) where the provisions of section 6 or section 97, apply, a declaration verified by an affidavit made by the principal officer of the insurer authorised in that behalf that the provisions of those sections as to working capital have been complied with;

(*e*) in the case of an insurer having his principal place of business or domicile outside [2][India], a statement verified by an affidavit made by the principal officer of the insurer setting forth the requirements (if any) not applicable to nationals of the country in which such insurer is constituted, incorporated or domiciled which are imposed by the laws or practice of that country upon Indian nationals as a condition of carrying on insurance business in that country;

(*f*) a certified copy of the published prospectus, if any, and of the standard policy forms of the insurer and statements of the assured rates, advantages, terms and conditions to be offered in connection with insurance policies together with a certificate in connection with life insurance business by an actuary that such rates, advantages, terms and conditions are workable and sound:

Provided that in the case of marine, accident and miscellaneous insurance business other than workmen's compensation and motor car insurance the above requirements regarding prospectus, forms and statements shall be complied with only in so far as the prospectus, forms and statements may be available; and

(*g*) the prescribed fee for registration being not more than [3][five] hundred rupees for each class of business.

(3) In the case of any insurer having his principal place of business or domicile outside [2][India], the Superintendent of Insurance shall withhold registration or shall cancel a registration already made, if he is satisfied that in the country in which such insurer has his principal place of business or domicile Indian nationals are debarred by the law or practice of the country relating to, or applied to insurance from carrying on the business of insurance, or that any requirement imposed on such insurer under the provisions of section 62 is not satisfied.

[4][(4) The Superintendent of Insurance shall cancel the registration of an insurer either wholly or in so far as it relates to a particular class of insurance business, as the case may be,—

LEG. REF.

[1] Inserted by sec. 2 of Act XLI of 1939.

[2] Substituted for the words "British India" by sec. 3, Act XX of 1940.

[3] Substituted for the word "one" by sec. 3, XIII of 1941.

[4] Sub-section substituted (with retrospective effect) by Act XX of 1940.

pany is registered both under the Life Assurance Companies Act as well as the Companies Act, an application for its winding up must be presented in the District Court only and not in the High Court, and must be made by persons, and subject to the qualifications mentioned in sec. 22 of the Life Assurance Companies Act, in view of the provisions of this section read with sec. 287 of the Companies Act. After this application has been made, the procedure is regulated by the provisions of the Companies Act. I.L.R. (1942) Lah. 800=44 P.L.R. 1 =1942 Lah. 74.

(*a*) if the insurer fails to comply with the provisions of section 7 or section 98 as to deposits, or

(*b*) if the insurer is in liquidation or is adjudged an insolvent, or

(*c*) if the business or a class of the business of the insurer has been transferred to any person or has been transferred to or amalgamated with the business of any other insurer, or

(*d*) if the whole of the deposit made in respect of a class of insurance business has been returned to the insurer under sestion 9;]

[1][or];

[1][(*e*) if, in the case of an insurer specified in sub-clause (*c*) of clause (9) of section 2, the standing contract referred to in that sub-clause is cancelled or is suspended and continues to be suspended for a period of six months,

and the Superintendent of Insurance may cancel the registration of an insurer, if the insurer has failed to have the registration renewed].

(5) When the Superintendentn of Insurance withholds or cancels any registration under sub-section (3) or [[2]clause (*a*) of sub-section (4)] [3][clause (*e*) of sub-section (4), or because the insurer has failed to have the registration renewed], he shall give notice in writing to the insurer of his decision, and the decision shall take effect on such date as he may specify in that behalf in the notice, such date not being less than one month nor more than two months from the date of the receipt of the notice in the ordinary course of transmission.

[4][(5-A) When the Superintendent of Insurance cancels any registration under clause (*b*), clause (*c*) or clause (*d*) of sub-section (4) the cancellation shall take effect on the date on which notice of the order of cancellation is served on the insurer.

(5-B) When a registration is cancelled the insurer shall not, after the cancellation has taken effect, enter into any new contracts of insurance, but all rights and liabilities in respect of contracts of insurance entered into by him before such cancellation takes effect shall, subject to the provisions of sub-section (5-D), continue as if the cancellation had not taken place.

(5-C) Where a registration is cancelled under clause (*a*) of sub-section (4), [5][clause (*e*) of sub-section (4), or because the insurer has failed to have his registration renewed], the Superintendent of Insurance may at his discretion revive the registration, if the insurer within six months from the date on which the cancellation took effect makes the deposits rquired by section 7 or section 98, [5][or has his standing contract restored or has had an application under sub-section (4) of section 3-A accepted], as the case may be, and complies with any directions which may be given to him by the Superintendent of Insurance.

(5-D) Where a registration is cancelled under sub-section (4) and the insurer is a company incorporated under the Indian Companies Act, 1913, or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act repealed thereby, the Superintendent of Insurance shall, as soon as may be after the expiry of six months from the date on which the cancellation took effect, apply to the Court for an order to wind up the insurance company, or to wind up the affairs of the company in respect of a class of insurance business, unless the registration of the insurance company has been revived under sub-section (5-C) or an application for winding up the company has been already presented to the Court. The Court may proceed as if an ap-

LEG. REF.

[1] The word "or", cl. (*e*) and the words following cl. (*e*) were added by sec. 3, Act XII of 1941.

[2] Substituted (with retrospective effect) for the word, brackets and figure "sub-sec. (4)" by sec. 3, Act XX of 1940.

[3] Inserted by sec. 3, Act XIII of 1941.

[4] Sub-secs. 5-A to 5-D inserted (with retrospective effect) by sec. 3, Act XX of 1940.

[5] Inserted by sec. 3, Act XIII of 1941.

plication under this sub-section were an application under sub-section (2) of section 53, or sub-section (1) of section 58, as the case may be.]

(6))The Superintendent of Insurance shall, on being satisfied that the applicant has fulfilled all the requirements of [1][this section] applicable to him, [2][register the insurer and grant him] a certificate of registration.

Renewal of Registration.

[3-A. (1) An insurer who has been granted a certificate of registration under section 3 shall have the registration renewed annually for each year after that ending on the 31st day of December, 1941.

(2) An application for the renewal of a registration for any year shall be made by the insurer to the Superintendent of Insurance before the 31st day of December of the preceding year, and shall be accompanied as provided in sub-section (3) by evidence of payment of the prescribed fee which shall not exceed one thousand rupees for each class of insurance business, but may vary according to the volume of business done by the insurer in India in each class of insurance business to which the registration relates.

(3) The prescribed fee for the renewal of a registration for any year shall be paid into the Reserve Bank of India, or, where there is no office of that Bank, into the Imperial Bank of India acting as the agent of that Bank, or into any Government treasury, and the receipt shall be sent along with the application for renewal of the registration.

(4) If an insurer fails to apply for renewal of registration before the date specified in sub-section (2) the Superintendent of Insurance may, so long as an application to the Court under sub-section (5-D) of section 3 has not been made, acept an application for renewal of the registration on receipt from the insurer of the fee payable with the application and such penalty, not exceeding the prescribed fee payable by him, as the Superintendent of Insurance may require;

Provided that an appeal shall lie to the Central Government from an order passed bp the Superintendent of Insurance imposing a penalty on the insurer.

(5) The Superintendent of Insurance shall, on fulfilment by the insurer of the requirements of this section, renew the registration and grant him a certificate of renewal of registration.]

Minimum limits for annuities and other benefits secured by policies of life insurance.

4. (1) No insurer, not being [4][a provident society as defined in Part III], or a Co-operative Life Insurance Society or a Mutual Insurance Company to which Part IV of this Act applies, shall pay or undertake to pay on any policy of life insurance issued after the commencement of this Act an annuity of fifty rupees or less or a gross sum of rupees five hundred or less exclusive of any profits or bonus provided that this shall not prevent an insurer from converting any policy into a paid up policy of any value or payment of surrender value of any amount.

[5][(2) Nothing contained in this section shall apply to any policy of the description known as a group policy, where the number of persons covered by the policy is not less than fifty or such smaller number as may be approved by the Superintendent of Insurance and a standard form of the policy has been certified in writing by the Superintendent of Insurance to be a policy of such description.]

LEG. REF.

[1] Substituted for the words "the Act" by sec. 3, XX of 1940.

[2] Substituted for the words "grant the insurer", *ibid.*

[3] Inserted by sec. 4, Act XIII of 1941.

[4] Substituted for the words "a provident society to which Part III" by sec. 5, Act XIII of 1941.

[5] This sub-section was substituted, *ibid.*

Restriction on name of insurer.

5. (1) An insurer shall not be registered by a name identical with that by which an insurer in existence is already registered, or so nearly resembling that name as to be calculated to deceive except when the insurer in existence is in the course of being dissolved and signifies his consent to the Superintendent of Insurance.

(2) If an insurer, through inadvertence or otherwise, is without such consent as aforesaid registered by a name identical with that by which an insurer already in existence whether previously registered or not is carrying on business or so nearly resembling it as to be calculated to deceive, the first-mentioned insurer shall, if caled upon to do so by the Superintendent of Insurance on the application of the second-mentioned insurer, change his name within a time to be fixed by the Superintendent of Insurance.

Provided that nothing in this section shall apply to any insurer carrying on business before the 27th day of January, 1937, under the Indian Life Assurance Companies Act, 1912.

(3) No insurer other than a provident society [1][as defined in Part III], who begins to carry on insurance business after the commencement of this Act, shall adopt as its name and no such insurer carrying on business before the commencement of this Act shall continue after the expiry of six months from the commencement thereof to use as its name any combination of words which includes the word "provident".

Requirements as to capital.

6. No insurer incorporated after, or who commenced carrying on the business of life insurance in British India, whether solely or in common with any other business, after the 26th day of January, 1937, shall be registered unless he has as working capital a net sum of not less than fifty thousands rupees exclusive of the deposit to be made before registration under sub-section (5) of section 7 of this Act, and exclusive in the case of a company of any sums payable as preliminary expenses in the formation of the company.

Deposits.

7. (1) Every insurer not being an insurer specified in sub-clause (*c*) of clause (9) of section 2 shall, in respect of the insurance business carried on by him in British India, deposit and keep deposited with the Reserve Bank of India in one of the offices in India of the Bank for and on behalf of the Central Government [3][the amount hereafter specified, either in cash or in approved securities estimated at the market value of the securities on the day of deposit, or partly in cash and partly in approved securities so estimated]:

(*a*) where the business done or to be done is life insurance only, two hundred thousand rupees;

(*b*) where the business done or to be done is fire insurance only, one hundred and fifty thousand rupees;

(*c*) where the business done or to be done is marine insurance only, one hundred and fifty thousand rupees;

(*d*) where the business done or to be done [2][is miscellaneous insurance only, that is to say, insurance which is not in the opinion of the Central Government principally or wholly of any kind or kinds included in clauses (*a*), (*b*) or (*c*)], one hundred and fifty thousand rupees;

LEG. REF.

1 Substituted for the words "to which Part III applies" by sec. 6, Act XIII of 1941.

2 Substituted for the words "cash or approved securities estimated at the market value of the securities on the day of deposit of the amount hereafter specified, namely" (with retrospective effect) by sec. 4, Act XX of 1940.

3 Substituted for the words "is accident and miscellaneous insurance including workmen's compensation and motor car insurance" (with retrospective effect) by sec. 4, Act XX of 1940.

SEC. 7.—*See* 74 C.L.J. 491=46 C.W.N. 284=1942 Cal. 294=I.L.R. (1942) 1 Cal. 481, cited under sec. 9, *infra*.

(*e*) where the busines, done or to be done [1][is] life insurance and any one of the three classes specified in clauses (*b*), (*c*) and (*d*), three hundred thousand rupees of which two hundred thousand rupees shall be the deposit for life insurance business;

(*f*) where the business done or to be done [1][is] life insurance and any two of the three classes specified in class (*b*), (*c*) and (*d*), four hundred thousand rupees of which two hundred thousand rupees shall be the deposit for life insurance business;

(*g*) where the business done or to be done [1][is] life insurance and all three classes specified in clauses (*b*), (*c*) and (*d*), four hundred and fifty thousand rupees of which two hundred thousand rupees shall be the deposit for life insurance business;

(*h*) where the business done or to be done does not include life insurance but [1][is] any two of the classes specified in clauses (*b*), (*c*) and (*d*), two hundred and fifty thousand rupees;

(*i*) where the business done or to be done does not include life insurance but [1][is] all three classes specified in clauses (*b*), (*c*) and (*d*), three hundred and fifty thousand rupees;[2][*]

[* * * * * * *]

[3][Provided that, where the business done or to be done is marine insurance only and relates exclusively to country craft or its cargo or both, the amount to be deposited under this sub-section shall be ten thousand rupees only.]

(2) Where the insurer is an insurer specified in sub-clause (*c*) of clause (9) of section 2, he shall be deemed to have complied with the provisions of this section as to deposit, if in respect of any class of insurance business [4][carried on] by him in British India under a standing contract of the nature referred to in sub-clause (*c*) of clause (9) of section 2 a deposit of an amount one-and-a-half times that specified in sub-section (1) as the deposit for that class of insurance business has been made in the Reserve Bank of India in one of the offices in India of the Bank for and on behalf of the Central Government in cash or approved securities estimated at the market value of the securities on the day of deposit by or behalf of the underwriters who are members of the Society of Lloyd's with whom he has his standing contract.

(3) Where the deposit is to be made by an insurer incorporated before, or carrying on the business of insurance in British India before, the 27th day of January, 1937, the deposit referred to in sub-section (1) may be made in not more than seven instalments, of which the first shall be not less than one-fourth of the total amount of the deposit and shall be paid before the application for registration is made, the second shall be not less than one-sixth of the balance of the deposit and shall be paid before [5][the expiry of four months from the commencement of the Act], and the subsequent instalments shall be of not

LEG. REF.

[1] Substituted for the word "includes", by sec. 4 of Act XX of 1940.

[2] The word "and" and cl. (*j*) omitted by sec. 4, Act XX of 1940.

[3] This proviso added, *ibid.*

[4] Substituted for the word "transacted" by Act XI of 1939.

[5] Substituted for the words and figures "the 1st day of January, 1939", *ibid.*

SEC. 7 (3), PROVISO: APPLICABILITY.—The proviso to sec. 7 (3) contemplated that the insurer must deal in life insurance business exclusively at the time when the application for registration is made. It does not apply to a case where he was at that time carrying on a business of another class along with life insurance work but discontinued the other business later on. Thus it is the character of the business that he is carrying on at that time that determines the amount of deposit and also the number of instalments in which the deposit can be made. He is not, therefore, entitled to say on the discontinuance of the other business that the instalments should be readjusted on the footing that he was doing life insurance business pure and simple from the beginning and that with regard to future instalments he was entitled to the benefit of the proviso to sub-sec. (3). I.L.R. (1943) 1 Cal. 410=77 C.L.J. 88=47 C.W.N 312=1943 Cal. 209.

less than the minimum amount required as the second instalment and shall be paid before the 1st day of January of each succeeding year:

Provided that in the case of insurers carrying on life insurance business only, the deposit may be made in not more than ten instalments, of which the first shall be not less than one-fourth of the total amount of the deposit, and shall be paid before the application for registration is made, the second shall be not less than one-ninth of the balance of the deposit, and shall be paid before [1][the expiry of four months from the commencement of this Act], and the subsequent instalments shall be of not less than the minimum amount required as the second instalment, and shall be paid before the 1st day of January of each succeeding year.

(4) Notwithstanding anything contained in sub-section (3), in the case of an insurer [2][to whom that sub-section applies,] not being an insurer specified in sub-clause (*a*) (*ii*) or sub-clause (*b*) of clause (9) of section 2, and not being an insurer incorporated in or domiciled in the United Kingdom, the deposit referred to in sub-section (1) shall be made in two instalments of which the first shall be not less than one-half of the total amount of the deposit and shall be made before the application for registration is made, and the second shall be made before the expiry of one year from the date of registration.

(5) Where the deposit is to be made by an insurer neither incorporated before,nor carying on insurance business in British India before, the 27th day of January, 1937, the deposit may be made in instalments of not less than one-fourth the total amount before the application for registration is made, not less than one-third the balance before the expiry of one year from the commencement of business in British India, and not less than one-half the residue before the expiry of two years from the commencement of business in British India and the balance before the expiry of three years from the commencement of business in British India.

Provided that in the case of any insurer not being an insurer specified in sub-clause (*a*) (*ii*) or sub-clause (*b*) of clause (9) of section 2, and not being an insurer incorporated in or domiciled in the United Kingdom, the deposit shall be made in full before the application for registration is made.

(6) No class of insurance business in addition to the class or classes in respect of which an insurer is already liable to make a depoit under sub-section (1) or sub-section (2) shall be undertaken by the insurer until the deposit to which he is already liable has been made in full, and the additional deposit required in respect of the additional class of business or so much thereof as under the provisions of sub-section (3), (4) or (5) is to be made before the application for registration, has also been made in full.

(7) Securities already deposited with the Controller of Currency in compliance with the Indian Life Assurance Companies Act, 1912, shall be transferred by him to the Reserve Bank of India and shall, to the extent of their market value [3][as at the date of the commencement of this Act], be deemed to be deposited under this Act [4][as the instalment or as part of the instalment to be

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LEG. REF.

[1] Substituted for the words and figures "the 1st day of January, 1939" by sec. 3 of Act XI of 1939.

[2] These words were inserted by *ibid.*

[3] Substituted for the words "on the day of the first deposit made in compliance with this Act" (with retrospective effect) by sec. 4 of Act XX of 1940.

[4] Substituted (with retrospective effect) for the words "in respect of the life insurance business of the insurer", *ibid.*

SEC. 7 (7).—Sec. 7 (7) is simply a general provision to make available the securities already deposited under the old Act for the purpose of being used as deposits under the new Act, the provision as to valuation being purely a question of machinery. Although there is no specific provision stating that deposits already made and now deemed to be made under the new Act by virtue of sec. 7 (7) will be appropriated according to the instalments fixed by sec. 7 (3) that is implied in the words of sec. 7 (7) themselves "deemed to be deposited under this Act". I.L.R. (1940) 2 Cal. 127=1940 Cal. 529.

made under the foregoing provisions of this section before the application for registration is made whether any such application is or is not in fact made].

(8) A deposit made in cash shall be held by the Reserve Bank of India to the credit of the insurer and shall [1][except to the extent, if any, to which the cash has been invested in securities under sub-section (9-A)], be returnable to the insurer in cash in any case in which under the provisions of this Act a deposit is to be returned; and any interest accruing due and collected on securities deposited under sub-section (1) or sub-section (2) shall be paid to the insurer, subject only to deduction of the normal commission chargeable for the realization of interest.

[2][(9) The insurer may at any time replace any securities deposited by him under this section with the Reserve Bank of India either by cash or by other approved securities or partly by cash and partly by other approved securities, provided that such cash, or the value of such other approved securities estimated at the market rates prevailing at the of replacement, or such cash together with such value as the case may be, is not less than the value of the securities replaced estimated at the market rates prevailing when they were dposited.

(9-A) The Reserve Bank of India shall, if so requested by the insurer,—

(*a*) sell any securities deposited by him with the Bank under this section and hold the cash realised by such sale as deposit, or

(*b*) invest in approved securities specified by the insurer the whole or any part of a deposit held by it in cash or the whole or any part of cash received by it on the sale of or on the maturing of securities deposited by the insurer, and hold the securities in which investment is so made as deposit, [3][and may charge the normal commission on such sale or on such investment].

(9-B) Where sub-section (9-A) applies;—

(*a*) if the cash realised by the sale of or on the maturing of the securities (excluding in the former case the interest accrued) falls short of the market value of the securities at the date on which they were deposited with the Bank, the insurer shall make good the deficiency by a further deposit either in cash or in approved securities estimated at the market value of the securities on the day on which they are deposited, or partly in cash and partly in approved securities so estimated, within a period of two months from the date on which the securities matured or were sold or where the securities matured or were sold before the 21st day of March, 1940, within a period of four months from the commencement of the Insurance (Amendment) Act, 1940; and unless he does so the insurer shall be deemed to have failed to comply with the requirements of this section as to deposits; and

(*b*) if the cash realised by the sale of or on the maturing of the securities (excluding in the former case the interest accrued) exceeds the market value of the securities at the date on which they were deposited with the Bank, the Central Government may, if satisfied that the full amount required to be deposited under sub-section (1) is in deposit, direct the Reserve Bank to return the excess.]

(10) If any part of a deposit made under this section is used in the discharge of any liability of the insurer, the insurer shall deposit such additional sum in cash or approved securities [4][estimated at the market value of the securities on the day of deposit, or partly in cash and partly in such securities], as will make up the amount so used. The insurer shall be deemed to have failed to comply with the requirements of sub-section (1) unless the deficiency is supplied within a period of two months from the date when the deposit or any part thereof is so used for discharge of liabilities.

LEG. REF.

1 These words were inserted with retrospective effect by sec. 4 of Act XX of 1940.

2 Sub-secs. (9), (91A) and (9-B) were substituted for the original sub-sec. (9) (with retrospective effect) by sec. 4 of Act XX of 1940.

3 Added by sec. 7 of Act XIII of 1941.

4 Inserted by sec. 4 of XX of 1940.

Reservation of deposits.

8. (1) Any deposit made under section 7 [1][or section 98] shall be deemed to be part of the assets of the insurer but shall not be susceptible of any assignment or charge; nor shall it be available for the discharge of any liability of the insurer other than liabilities arising out of policies of insurance issued by the insurer so long as any such liabilities remain undischarged; nor shall it be liable to attachment in execution of any decree except a decree obtained by a policy-holder of the insurer in respect of a debt due upon a policy which debt the policy-holder has failed to realise in any other way.

(2))Where a deposit is made in respect of life insurance business the deposit made in respect thereof shall not be available for the discharge of any liability of the insurer other than liabilities arising out of policies of life insurance issued by the insurer.

Refund of deposits.

9. Where an insurer has ceased to carry on in British India any class of insurance business in respect of which a deposit has been made under section 7 [2][or section 98] and his liabilities in British India in respect of business of that class have been satisfied or are otherwise provided for, the Court may, on the application of the insurer, order the return to the insurer of so much of the deposit as does not relate to the classes of insurance, if any, which he continues to carry on.

Separation of accounts and funds.

10. (1) Where the insurer carries on business of more than one of the classes specified in clauses (*a*), (*b*), (*c*) and (*d*) of sub-section (1) of section 7, he shall keep a separate account of all receipts and payments in respect of each such class of insurance business [3][and where the insurer carries on business of the class specified in clause (*d*) of that sub-section whether alone or in conjunction with business of another class, he shall, unless the Superintendent of Insurance waives this requirement in writing, keep a separate account of all receipts and payments in respect of each such sub-class of the class specified in clause (*d*) as may be prescribed in this behalf:

Provided that no sub-class of the class of insurance business specified in clause (*d*) of sub-section (1) of section 7 shall be prescribed under this sub-

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LEG. REF.

1 Inserted by sec. 4 of Act XI of 1939.
2 Inserted by sec. 5 of Act XI of 1939.
3 Added by sec. 8 of Act XIII of 1941.

SEC. 9.—Where under a scheme of compromise under sec. 153, Companies Act, it is proposed not to change one kind of company into another kind, but, in the process of reconstruction to put an end to the old company which was limited by shares and to create a new mutual company, the provisions of sec. 9 with regard to refund of deposit will come into force. 45 C.W.N. 979. No order for refund can be made under sec. 9 in respect of a discontinued business unless all the liabilities in respect of the same have been fully satisfied or otherwise provided for. 74 C.L.J. 491=46 C.W.N. 284=1942 Cal. 294=I.L.R. (1942) 1 Cal. 481.

SECS. 9 AND 7.—It is not necessary that an insurer should deposit the full amount as is required under sec. 7 (1) before he can present an application for refund under sec. 9 of the Act in respect of a certain class of insurance business that has been discontinued by him. Under sec. 7 (1) of the Act, the amount to be deposited by an insurer is rupees two lacs, if the business carried on by him is purely life insurance business. If on the other hand, miscellaneous insurance business is combined by him with life insurance, the deposit is increased to rupees three lacs, out of which rupees two lacs should be regarded as deposit for life insurance business. Under sub-sec. (3) of the section the insurer has the right to depoit this amount in certain instalments. As the entire deposit of rupees three lacs as required under sec. 7 (1) is to be divided into two parts, the instalments permitted under sub-sec. (3) are susceptible of similar division and it would be quite proper to allocate one third of such instalments to the miscellaneous insurance business and the remaining two thirds to the Life Insurance. If the insurer discontinues the former class of business, he can under sec. 9 of the Act obtain reffund of so much of the instalments of deposit as do not relate to the life insurance which he continues to carry on. It would be extremely unreasonable to hold [illegible] of business, he will still be bound to make deposits in respect of both classes of business and unless and until the full amount is deposited no separation of funds is permissible. I.L.R. (1942) 1 Cal. 481=1942 Cal. 294=74 C.L.J. 491=46 C.W.N. 284.

section if the insurance business comprised in the sub-class consists of insurance contracts which are terminable by the insurer at intervals not exceeding twelve months and under which, if a claim arises, the insurer's liability to pay benefit ceases within one year of the date on which the claim arose.]

(2) Where the insurer carries on the business of life insurance, [1][all receipts due in respect of such business], shall be carried to and shall form a separate fund to be called the life insurance fund and the deposit made by the insurer in respect of life insurance business shall be deemed to be part of such fund.

(3) The life insurance fund shall be as absolutely the security of the life policy-holders as though it belonged to an insurer carrying on no other business than life insurance business and shall not be liable for any contracts of the insurer for which it would not have been liable had the business of the insurer been only that of life insurance and shall not be applied directly or indirectly [2]* * * * for any purposes [3][other than those of the life insurance business of the insurer].

Accounts and balance-sheet.

11. (1) Every insurer, in the case of an insurer specified in sub-clause (*a*) (*ii*) or sub-clause (*b*) of clause (9) of section 2 in respect of all insurance business transacted by him, and in the case of any other insurer in respect of the insurance business transacted by him in India, shall at the expiration of each calendar year prepare with reference to that year—

(*a*) in accordance with the regulations contained in Part I of the First Schedule, a balance-sheet in the form set forth in Part II of that Schedule;

(*b*) in accordance with the regulations contained in Part I of the Second Schedule, a profit and loss account in the forms set forth in Part II of that Schedule, except where the insurer carries on business of one class only of the classes specified in clauses (*a*), (*b*) and (*c*) of sub-section (1) of section 7 and no other business;

(*c*) [4][in respect of each class or sub-class of insurance business for which he is required under sub-section (1) of section 10 to keep a separate account of receipts and payment] in accordance with the regulations contained in Part I of the third Schedule, a revenue account in the form or forms set forth in Part II of that Schedule applicable to [5][that class or sub-class of insurance business].

(2) Unless the insurer is a company [6][, as defined in clause (2) of sub-section (1) of section 2 of the Indian Companies Act, 1913], the accounts and statements referred to in sub-section (1) shall be signed by the insurer, or in the case of a company by the chairman, if any, and two directors and the principal officer of the company, or in the case of a firm by two partners of the firm, and shall be accompanied by a statement containing the names and descriptions of the persons in charge of the management of the business during the period to which such accounts and statements refer and by a report by such persons on the affairs of the business during that period.

(3) Where an insurer carrying on the business of insurance at the commencement of this Act has prepared the balance-sheet and accounts required by the Indian Life Assurance Companies Act, 1912, or has based his accounts upon the financial and not the calendar year, the provisions of this section

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LEG. REF.

[1] Substituted for the words "the excess of receipts over payments in respect of such business" by sec. 8 of Act XIII of 1941.

[2] The words and figures "save as provided in sec. 49" were omitted, *ibid.*

[3] These words were substituted for the words "other than those of life insurance", *ibid.*

[4] Substituted for the words "in respect of each class of insurance business carried on by him" by sec. 9 of Act XIII of 1941.

[5] Substituted for the words "that class of insurance business", *ibid.*

[6] Substituted for the words and figures "to which the Indian Companies Act, 1913, applies", *ibid.*

shall, if the Central Government so directs in any case apply until the 31st day of December, 1939, as if in sub-section (1) references to the calendar year were references to the financial year.

Audit.

12. The balance-sheet, profits and loss account, revenue account and profit and loss appropriation account of every insurer, in the case of an insurer specified in sub-clause (*a*) (*ii*) or sub-section (*b*) of clause (9) of section 2 in respect of all insurance business transacted by him, and in the case of any other insurer in respect of the insurance business transacted by him in India, shall, unless they are subject to audit under the Indian Companies Act, 1913, be audited annually by an auditor, and the auditor shall in the audit of all such accounts have the powers of, exercise the functions vested in, and discharge the duties and be subject to the liabilities and penalties imposed on, auditors of companies by section 145 of the Indian Companies Act, 1913.

Actuarial report and abstract.

13. (1) Every insurer carrying on life insurance business shall, in respect of the life insurance business transacted by him in India, and also in the case of an insurer specified in sub-clause (*a*) (*ii*) or sub-clause (*b*) of clause (9) of section 2 in respect of all life insurance business transacted by him, once at least in every five years cause an investigation to be made by an actuary into the financial condition of the life insurance business carried on by him, including a valuation of his liabilities in respect thereto and shall cause an abstract of the report of such actuary to be made in accordance with the regulations contained in Part I of the Fourth Schedule and in conformity with the requirements of Part II of that Schedule.

(2) The provisions of sub-section (1) regarding the making of an abstract shall apply whenever at any other time an investigation into the financial condition of the insurer is made with a view to the distribution of profits or an investigation is made of which the results are made public.

(3) There shall be appended to every such abstract as is referred to in sub-section (1) or sub-section (2) a certificate signed by the principal officer of the insurer that full and accurate particulars of every policy under which there is a liability either actual or contingent have been furnished to the actuary for the purpose of the investigation.

(4) There shall be appended to every such abstract a statement, in conformity with the requirements of Part II of the Fifth Schedule and prepared in accordance with the regulations contained in Part I of that Schedule, of the life insurance business in force at the date to which the accounts of the insurer are made up for the purposes of such abstract:

Provided that, if the investigation, referred to in sub-sections (1) and (2) is made annually by any insurer, the statement need not be appended every year but shall be appended at least once in every five years.

(5) Where an investigation into the financial condition of an insurer is made as at a date other than the expiration of the year of account, the accounts for the period since the expiration of the last year of account and the balance-sheet as at the date at which the investigation is made shall be prepared and audited in the manner provided by this Act.

[1][(6) The provisions of this section relating to life insurance business shall apply also to any such sub-class of insurance business included in the class 'Miscellaneous Insurance' as may be prescribed under sub-section (1) of section 10; and the Superintendent of Insurance may authorise such modifications and variations of the regulations contained in Part I of the Fourth and Fifth Schedules and of the requirements of Part II of those Schedules as may

LEG. REF. of 1941.

1. Sub-section added by sec. 10 of Act XIII

be necessary to facilitate their application to any such sub-class of insurance business:

Provided that, if the Superintendent of Insurance is satisfied that the number and amount of the transactions carried out by an insurer in any such sub-class of insurance business is so small as to render periodic investigation and valuation unnecessary, he may exempt that insurer from the operation of this sub-section in respect of that sub-class of insurance business.]

Register of policies and register of claims.

14. Every insurer, in the case of an insurer specified in sub-clause (*a*) (*ii*) or sub-clause (*b*) of clause (9) of section 2 in respect of all business transacted by him, and in the case of any other insurer in respect of the insurance business transacted by him in India, shall maintain—

(*a*) a register or record of policies, in which shall be entered, in respect of every policy issued by the insurer, the name and address of the policy-holder, the date when the policy was effected and a record of any transfer, assignment or nomination of which the insurer has notice, and

(*b*) a register or record of claims, in which shall be entered every claim made together with the date of the claim, the name and address of the claimant and the date on which the claim was discharged, or, in the case of a claim which is rejected, the date of rejection and the grounds therefor.

Submission of returns.

15. (1) The audited accounts and statements referred to in section 11 and the abstract and statement referred to in section 13 shall be printed, and four copies thereof shall be furnished as returns to the Superintendent of Insurance [1][in the case of the accounts and statements referred to in section 11 within six months and in the case of the abstract and statement referred to in section 13 within nine months] from the end of the period to which they refer: [2]* * * * * *

Provided that the said period of six months shall in the case of insurers having their principal place of business or domicile outside India and in the case of insurers constituted, incorporated or domiciled in British India but also carrying on business outside India be extended by three months, and provided further that the Central Government may in any case extend the time allowed by this sub-section for the furnishing of such returns by a further period not exceeding three months.

(2) Of the four copies so furnished one shall be signed in the case of a company by the chairman and two directors and by the principal officer of the company and, if the company has a managing director or managing agent, by that director or managing agent, in the case of a firm, by two partners of the firm, and, in the case of an insurer being an individual by the insurer himself.

(3) Where the insurer's principal place of business or domicile is outside British India, he shall forward to the Superintendent of Insurance, along with the documents referred to in section 11, the balance-sheet, profit and loss account and revenue account and the valuation reports and valuation statements, if any, which the insurer is required to file with the public authority of the country, in which the insurer is constituted, incorporated or domiciled, or, where such documents are not required to be filed, a certified statement showing the total assets and liabilities of the insurer at the close of the period covered by the said documents and his total income and expenditure during that period.

LEG. REF.

1 Substituted for the words "within six months" by sec. 11 of Act XIII of 1941.

2 The words "The Superintendent of Insurance may extend the time allowed for furnishing the abstract and statement referred to in sec. 13 by a period not exceeding three months" were omitted, *ibid.*

Returns by insurers established outside British India.

16. (1) Where by the law of the country in which an insurer, not being an insurer specified in sub-clause (*a*) (*u*) or sub-clause (*b*) of clause (9) of section 2, is constituted, incorporated or domiciled, the insurer is required to prepare and to furnish to a public authority of that country documents of substantially the same nature as the documents required to be furnished as returns in accordance with the provisions of section 15, the provisions of sub-section (2) of this section shall apply to such insurer in lieu of the provisions of sections 11, 12, 13 and 15.

(2) The insurer shall, within the time specified in sub-section (1) of section 15, furnish to the Superintendent of Insurance four certified copies in the English language of every balance-sheet, account, abstract, report and statement supplied to the public authority referred to in sub-section (1) of this section, and in addition thereto, [1][four certified copies] in the English language of each of the following statements, namely:—

(*a*) a statement [2][audited by a person duly qualified under the law of the insurer's country] showing the assets held by the insurer in India [3][as at the date of any balance-sheet so furnished];

(*b*) [4][for each class or sub-class of insurance business for which he is required under sub-section (1) of section 10 to keep a separate account of receipts and payments, a revenue account for the period covered by any account so furnished] in the form or forms set forth in Part II of the Third Schedule applicable to [5][that class or sub-class of insurance business] [2][and similarly audited,] showing separately with respect to business transacted by the insurer in India the details required to be supplied in a revenue account furnished under this clause of this sub-section;

(*c*) [6][a separate abstract of the valuation report in respect of all business transacted in India in each class or sub-class of insurance business to which section 13 refers, prepared in the manner required by that section, and];

(*d*) a declaration in the prescribed form stating that all amounts received by the insurer directly or indirectly whether from his head office or from any other source outside India have been shown in the revenue account except such sums as properly appertain to the capital account.

Exemption from certain provisions of the Indian Companies Act, 1913

17. Where an insurer, being a company incorporated under the Indian Companies Act, 1913 [7][or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act repealed thereby,] in any year furnishes [8][his balance-sheet and accounts] in accordance with the provisions of section 15, he may at the same time send to the Registrar of Companies [9][copies of such balance-sheet and accounts]; and [10][where such copies are so sent] it shall not be necessary for the company [11][to file copies of the balance-sheet and accounts] with the Registrar as required by sub-section (1) of section 134 of that Act and [12][such copies so sent] [13][shall be chargeable with the same fees and] shall be dealt with in all respects as if they were filed in accordance with that section.

LEG. REF.

1 Substituted for the words "four copies" by sec 7 of Act XI of 1939.

2 Inserted by sec. 7 of Act XI of 1939.

3 Added by sec. 12 of Act XIII of 1941.

4 Substituted for the words "for each class of insurance business carried on by him, a revenue account", *ibid.*

5 Substituted for the words "that class of business", *ibid.*

6 This clause was substituted, *ibid.*

7 Inserted by sec. 8 of Act XI of 1939.

8 Substituted for the words "his accounts and balance-sheet", *ibid.*

9 Substituted for the words "a copy of such accounts and balance-sheet", *ibid.*

10 Substituted for the words "where such copy is so sent", *ibid.*

11 Substituted for the words "to file a balance-sheet", *ibid.*

12 Substituted for the words "the copy of the accounts and balance-sheet so sent", by sec. 8 of Act XI of 1939.

13 Inserted by sec. 13 of Act XIII of 1941.

[1][17-A. Nothing in this Act shall apply to the preparation of accounts by an insurer and the audit and submission thereof in respect of any accounting year which has expired prior to the commencement of this Act, and notwithstanding the other provisions of this Act, such accounts shall be prepared, audited and submitted in accordance with the law in force immediately before the commencement of this Act.]

This Act not to apply to preparation of accounts, etc., for periods prior to this Act coming into force.

18. Every insurer shall furnish to the Superintendent of Insurance a certified copy of every report on the affairs of the concern which is submitted to the members or policy-holders of the insurer immediately after its submission to the members or policy-holders as the case may be.

Furnishing reports

19. Every insurer, being a company or body incorporated under any law for the time being in force in British India, shall furnish to the Superintendent of Insurance an abstract of the proceedings of every general meeting within thirty days from the holding of the meeting to which it relates.

Abstract of proceedings of general meetings.

20. (1) Every return furnished to the Superintendent of Insurance or a certified copy thereof shall be kept by the Superintendent and shall be open to inspection; and any person may procure a copy of any such return, or of any part thereof, on payment of a fee of six annas for every hundred words or fractional part thereof required to be copied, any five figures being deemed equivalent to one word.

Custody and inspection of documents and supply of copies.

(2) A printed or certified copy of the accounts, statements and abstract furnished in accordance with the provisions of section 15 or section 16 shall, on the application of any shareholder or policy-holder made at any time within two years from the date on which the document was so furnished, be supplied to him by the insurer within fourteen days when the insurer is constituted, incorporated or domiciled in British India and in any other case within one month of such application.

(3) A copy of the memorandum and articles of association of the insurer, if a company, shall on the application of any policy-holder, be supplied to him by the insurer on payment of one rupee.

21. (1) If it appears to the Superintendent of Insurance that any return furnished to him under the provisions of this Act is inaccurate or defective in any respect, he may—

Powers of Superintendent of Insurance regarding returns.

(*a*) require from the insurer such further information, certified if he so directs by an auditor or actuary, as he may consider necessary to correct or supplement such return;

(*b*) call upon the insurer to submit for his examination at the principal place of business of the insurer in British India any book of account, register or other documents or to supply any statement which he may specify in a notice served on the insurer for the purpose;

(*c*) examine any officer of the insurer on oath in relation to the return;

(*d*) decline to accept any such return unless the inaccuracy has been corrected or the deficiency has been supplied before the expiry of one month from the date on which the requisition asking for correction of the inaccuracy or supply of the deficiency was delivered to the insurer and if he declines to accept any such return, the insurer shall be deemed to have failed to comply with the provisions of section 15 or section 16 relating to the furnishing of returns.

LEG. REF. 1939.

[1] Section inserted by sec. 9 of Act XI of

(*e*) The Court may on the application of an insurer and after hearing the Superintendent cancel any order made by the Superintendent under clause (*a*), (*b*) or (*c*) of sub-section (1) or may direct the acceptance of any return which the Superintendent has declined to accept, if the insurer satisfies the Court that the action of the Superintendent was in the circumstances unreasonable:

[1][Provided that no application under this sub-section shall be entertained unless it is made before the expiration of four months from the time when the Superintendent of Insurance made the order or declined to accept the return]

Power of Superintendent of Insurance to order re-valuation

22. If it appears to the Superintendent of Insurance that an investigation or valuation to which section 13 refers [2][or an abstract of a valuation report furnished under clause (*c*) of sub-section (2) of section 16] does not properly indicate the condition of the affairs of the insurer by reason of the faulty basis adopted in the valuation, he may, after giving notice to the insurer and giving him an opportunity to be heard, cause an investigation and valuation to be made at the expense of the insurer by an actuary appointed by the insurer for this purpose and approved by the Superintendent of Insurance.

Evidence of documents.

23. (1) Every return furnished to the Superintendent of Insurance, which has been certified by the Superintendent to be a return so furnished, shall be deemed to be a return so furnished.

(2) Every document, purporting to be certified by the Superintendent of Insurance to be a copy of a return so furnished, shall be deemed to be a copy of that return and shall be received in evidence as if it were the original return, unless some variation between it and the original return is proved.

24. [*Summary of returns to be published.*] *Omitted by S.* 16 *of the Insurance* (*Amendment*) *Act,* 1941 (*XIII of* 1941).

Returns to be published in statutory forms.

25 No insurer shall publish in British India any return in a form other than that in which it has been furnished to the Superintendent of Insurance:

Provided that nothing contained in this section shall prevent an insurer from publishing a true and accurate abstract from such returns for the purposes of publicity.

Alterations in the particulars furnished with application for registration to be reported.

26. Whenever any alteration occurs or is made which affects any of the matters which are required under the provisions of sub-section (2) of section 3 to accompany an application by an insurer for registration, the insurer shall forthwith furnish to the Superintendent of Insurance full particulars of such alteration.

[3][All such particulars shall be authenticated in the manner required by that sub-section for the authentication of the matters therein referred to, and, where the alteration affects the assured rates, advantages, terms and conditions offered in connection with life insurance policies, the acturial certificate referred to in clause (*f*) of the said sub-section shall accompany the particulars of the alteration.]

INVESTMENT, LOANS AND MANAGEMENT.

Investment of assets and restriction on loans.

27. (1) Every insurer incorporated or domiciled in British India shall, subject to the provisions of sub-section (3), at all times invest and hold invested assets equivalent to not less than fifty-five per cent. of the sum of the amount of

LEG. REF.

[1] This proviso added by sec. 14, Act XIII of 1941.

[2] Inserted by sec. 15, *ibid.*

[3] Added by sec. 17, *ibid.*

his liabilities to holders of life insurance policies in India on account of matured claims and the amount required to meet the liability on policies of life insurance maturing for payment in India, less the amount of any deposit made under section 7 [1][or section 98] by the insurer in respect of his life insurance business and less any amount due to the insurer for loans granted by him on policies of life insurance [2][maturing for payment in India and within their surrender values], in the manner following, namely, twenty-five per cent. of the said sum in Government securities and a further sum equal to not less than thirty per cent. of the said sum in Government securities or other approved securities or securities of or guaranteed as to principal and interest by the Government of the United Kingdom.

Explanation.—The provisions of this sub-section shall apply also to insurers incorporated in or domiciled in the United Kingdom.

(2) An insurer incorporated or domiciled elsewhere than in British India or the United Kingdom shall, subject to the provisions of sub-section (3), at all times invest and hold invested assets equivalent to not less than the sum of his liabilities to holders of life insurance policies in India on account of matured claims and the amount required to meet the liability on policies of life insurance maturing for payment in India, less the amount of any deposit made under section 7 [1][or section 98] by the insurer in respect of his life insurance business and less any amount due to the insurer on loans granted by him on policies of life insurance [2][maturing for payment in India and within their surrender values,] in the manner following, namely, thirty-three and one-third per cent. of the said sum in Government securities, and the balance in Government securities, or other approved securities or securities of or guaranteed as to principal and interest by the Government of the United Kingdom.

(3) An insurer carrying on business at the commencement of this Act to whom sub-section (1) or sub-section (2) applies shall before the expiry of four years from the commencement of this Act invest the total amount required to be invested by those sub-sections in the manner required thereby:

Provided that of such total amount the insurer shall have invested not less than one-fourth in securities of the nature specified in sub-section (1) before the expiry of one year, not less than one-half before the expiry of two years, and not less than three-fourths before the expiry of three years from the [3][30th day of June, 1939].

(4) The assets required by this section to be held invested by an insurer to whom sub-section (2) applies shall be held in trust for the discharge of claims of the nature referred to in sub-section (2) and shall be vested in trustees resident in British India and approved by the Central Government by an instrument of trust which shall be executed by the insurer and approved by the Central Government and shall define the manner in which alone the subject matter of the trust shall be dealt with.

Explanation.—Sub-sections (2) and (4) shall apply to an insurer incorporated in British India whose share capital to the extent of one-third is owned by, or the members of whose Governing Body to the extent of one-third

LEG. REF.

[1] Inserted by sec. 10, Act XI of 1939.
[2] These words were inserted, *ibid.*
[3] Substituted for the words "commencement of this Act" by sec. 5, Act XX of 1940.

SEC. 27: CONSTRUCTION AND SCHEME—DEPOSIT OF 55 PER CENT.—HOW CALCULATED.—Sec 27 read in its natural sense, seems to direct the insurer to invest fifty-five per cent. of a sum arrived at by taking the liabilities on the matured claims, plus the liabilities on claims maturing, less any deposits under sec. 7, and less the amount of loans. That is the figure in respect of which the deposit of fifty-five per cent. has to be made. The scheme of the section (that is also the plain meaning of the section) is that the gross liabilities should be taken and then the amount of the deposits under sec. 7 must be deducted; the amount of the loans must them be deducted. The balance represents the uncovered liability of the insurer and on this deposit of fifty-five per cent. has to be made. Twenty-five per cent. of such uncovered liabilities are to be invested in Government securities and thirty per cent. in approved securities. 205 I.C. 559=45 Bom.L.R. 41=1943 Bom. 81.

consists of, individuals domiciled elsewhere than in British India or the United Kingdom.

Statement of Investments of assets.

28. [1][Every insurer registered under this Act carrying on the business of life insurance shall every year, within thirty-one days from the beginning of the year, submit to the Superintendent of Insurance a statement showing as at the 31st day of December of the preceding year the assets held invested in accordance with section 27, and all other particulars necessary to establish that the requirements of that section have been complied with, and such statement shall be certified by a principal officer of the insured.

(2) Every such insurer shall also furnish, within fifteen days from the last day of March, June and September, a statement certified as aforesaid showing as at the end of each of the said months the assets held invested in accordance with section 27.

(3) The Superintendent of Insurance may at his discretion require any insurer to whom sub-section (1) applies to submit before the 1st day of August in each or any year a statement of the nature referred to in sub-section (1), certified as required by that sub-section and prepared as at the 30th day of June.

(4) In the case of an insurer having his principal place of business or domicile outside British India, the Superintendent of Insurance may, on application made by the insurer, extend the periods of fifteen and thirty-one days mentioned in the foregoing sub-sections to thirty days and sixty days, respectively.]

[2][(5) The Superintendent of Insurance shall be entitled at any time to take such steps as he may consider necessary for the inspection or verification of the assets invested in compliance with section 27 [3][or for the purpose of securing the particulars necessary to establish that the requirements of that section have been complied with]. [4][The insurer shall comply with any requisition made in this behalf by the Superintendent of Insurance and if he fails to do so within two months from the receipt of the requisition he shall be deemed to have made default in complying with the requirements of this section.]

Prohibition of loans

29. [5][(1)] No insurer shall grant loans or temporary advances either on hypothecation of property or on personal security or otherwise, except loans on life policies issued by him within their surrender value, to any director, manager, managing agent, actuary, auditor or officer of the insurer if a company, or where the insurer is a firm, to any partner therein, or to any other company or firm in which any such director, manager, managing agent, actuary, officer or partner holds the position of a director, manager, managing agent, actuary, officer or partner:

Provided that nothing herein contained shall apply to loans made by an insurer to a banking company:

Provided further that every existing loan to any director, manager, managing agent, auditor, actuary, officer or partner, notwithstanding any contract to the contrary, shall be repaid within one year from the commencement of this Act, and in case of default, such defaulting director, manager, managing agent, auditor, actuary, officer or partner shall cease to hold office on the expiry of one year from the commencement of this Act:

Provided further that nothing in this section shall prohibit a company from granting such loans or advances to a subsidiary company or to any other company of which the company granting the loan or advance is a subsidiary company.

LEG. REF.

1 Substituted for the original sub-sec. (1) by sec 18, Act XIII of 1941.

2 Re-numbered (5), by, *ibid.*

3 Inserted by sec. 6, Act XX of 1940.

4 Substituted for the words "and the insurer shall comply with all requisitions made by the Superintendent in that behalf", *ibid.*

5 Re-numbered as sub-sec. (1) of that section by sec. 19, Act XIII of 1941.

[1][(2) The provisions of section 86-D of the Indian Companies Act, 1913, shall not apply to a loan granted to a director of an insurer being a company, if the loan is one granted on the security of a policy on which the insurer bears the risk and the policy was issued to the director on his own life, and the loan is within the surrender value of the policy.]

Liability of directors, etc., for loss due to contraventions of Ss. 27 and 29.

30. If by reason of a contravention of any of the provisions of section 27 or section 29, any loss is sustained by the insurer or by the policy-holders, every director, manager, managing agent, officer or partner who is knowingly a party to such contravention shall, without prejudice to any other penalty to which he may be liable under this Act be jointly and severally liable to make good the amount of such loss.

Assets of insurer how to be kept.

31. None of the assets in British India of any insurer shall, except in the case of deposits made with the Reserve Bank of India under section 7 [2][or section 98] or in so far as assets are required to be vested in trustees by sub-section (4) of section 27, be kept otherwise than [3][in the name of a public officer approved by the Central Government, or] in the corporate name of the undertaking, if a company, or in the name of the partners, if a firm, or in the name of the proprietor, if an individual.

Limitation on employment of managing agents and on the remuneration payable to them.

32. (1) No insurer shall, after the commencement of this Act, appoint a managing agent for the conduct of his business.

(2) Where any insurer engaged in the business of insurance before the commencement of this Act employs a managing agent for the conduct of the business, then, notwithstanding anything to the contrary contained in the Indian Companies Act, 1913, and notwithstanding anything to the contrary contained in the articles of the insurer, if a company, or in any agreement entered into by the insurer, such managing agent shall cease to hold office on the expiry of three years from the commencement of this Act and no compensation shall be payable to him by the insurer by reason only of the premature termination of his employment as managing agent.

(3) After the commencement of this Act, notwithstanding anything contained in the Indian Companies Act, 1913, and notwithstanding anything to the contrary contained in any agreement entered into by an insurer or in the articles of association of an insurer being a company, no insurer shall pay to a managing agent and no managing agent shall accept from an insurer as remuneration for his services as managing agent more than two thousand rupees per month in all, including salary and commission and other remuneration payable to and receivable by him, for his services as managing agent.

[INVESTIGATION][4]

Power of Superintendent of Insurance to order inspection.

33. (1) If the Superintendent of Insurance has reason to belive that the interests of the policy-holders of an insurer are in danger or that an insurer is unable to meet his obligations or has made default in complying with any of the provisions of this Act, or that an offence under this Act has been or is likely to be committed by an insurer or any officer of an insurer, or if he receives a requisition in this behalf signed by shareholders of an insurer being a company not less in number than one-tenth of the whole body of shareholders and holding not less than one-tenth of the whole share capital or if he receives a requisition in this behalf signed by not less than fifty policy-holders holding policies of life insurance that have been in force for not less than three years and are of the total value of not less than fifty thousand

LEG. REF.

1 Added by sec. 19, Act XIII of 1941.
2 Inserted by sec. 12, Act XI of 1939.
3 These words were inserted, *ibid.*
4 Substituted by Act XXV of 1942.

rupees and supported by an affidavit, he may, after giving notice to the insurer and giving him an opportunity to be heard, [1][order an investigation of the affairs of the insurer to be made by an auditor or actuary, or by both an auditor and an actuary appointed simultaneously, or first by an auditor only or an actuary only and afterwards by an actuary or auditor, or may himself make such investigation:

Provided that an auditor or actuary appointed for this purpose by the Superintendent of Insurance shall not be an auditor or actuary in the employ of the insurer.]

(2) The Court may, on the application of an insurer and after giving notice to and hearing the Superintendent of Insurance, forbid such action by the Superintendent, if the insurer satisfied the Court that it is unnecessary in the circumstances:

[2][Provided that no application under this sub-section shall be entertained unless it is made before the expiration of three months from the date on which the Superintendent of Insurance intimates to the insurer his intention to take such action.]

[3][(3) The results of any investigation made under this section shall be recorded in writing by the auditor or actuary appointed or by the Superintendent of Insurance, as the case may be, and four copies of the record shall be supplied to the Superintendent of Insurance; and when the investigation is completed a copy of such record, or where both an auditor and an actuary have been appointed, of each such record, shall be furnished by the Superintendent of Insurance to the insurer and to the shareholders or the policy-holders who have sent a requisition for such an investigation.]

(4) The Superintendent of Insurance may require the insurer to comply within a time to be specified by him (not being less than fifteen days from the receipt of the notice by the insurer) with any directions he may issue to remedy defects disclosed by such [4][investigation].

(5) If, as a result of any investigation made under this section, the Superintendent of Insurance is of opinion that it is necessary in the interests of the policy-holders that the business of the insurer should be wound up, or if the insurer fails to comply with any directions issued under sub-section (4), the Superintendent may, after giving notice to the insurer and giving him an opportunity to be heard, apply to the Court to have the business of the insurer wound up.

LEG. REF.

1 Substituted for the words "appoint an auditor or actuary or both, not being an auditor or actuary in the employ of the insurer, to investigate the affairs of the insurer, or may himself make such investigation" by sec. 20, Act XIII of 1941.

2 This proviso was added, *ibid.*

3 This sub-section was substituted, *ibid.*

4 Substituted by Act XXV of 1942.

SEC. 33 (2): DISPOSAL OF APPLICATION—DUTY OF COURT.—Before an application under sec. 33 (2) can be dismissed there must at least be some serious attempts to see whether the party affected by the order of the Superintendent of Insurance has good reasons for opposing the investigation, even though it may not be possible to do more than conduct a summary enquiry. Merely to allow a party to put documents on the record without any means of proving their contents to be correct, when this is denied by the other side, does not amount to the taking of evidence in any true sense of the words and does not afford a basis for judicial determination. The final order should at least give some indication of the matters substantially in dispute between the parties and the reasons for dismissing the application. 203 I.C. 395=44 P L.R. 288=1942 Lah. 267=I.L.R. (1943) Lah. 601.

SEC. 33 (2): ORDER OF DISTRICT JUDGE—REVISION.—The High Court has power to interfere in revision with an order passed by a District Judge under sec. 33 (2) of the Insurance Act. The fact that the power given to the District Judge of issuing prohibitory order under sec. 33 (2) is discretionary does not exclude the power of revision when there has been an irregularity in the exercise of jurisdiction. The party affected by an order of the District Judge is not limited to showing that the order was not issued without good reason in the first instance, but is entitled to show that the reasons have disappeared and that there is no longer any necessity for an investigation from outside. 203 I.C. 395=44 P.L.R. 288=1942 Lah. 267.

Powers of investigator.

34. When any investigation is made in pursuance of section 33 the provisions of section 140 of the Indian Companies Act, 1913, shall apply for the purposes of such investigation as they apply to an investigation made in pursuance of section 138 of that Act, and all expenses of and incidental to such investigation [1][including any expenses incurred before the making of an order by the Court under sub-section (2) of section 33] shall be defrayed by the insurer, [2][shall have priority over other debts due from the insurer and shall be recoverable as an arrear of land-revenue.]

AMALGAMATION AND TRANSFER OF INSURANCE BUSINESS.

Amalgamation and transfer of insurance business.

35. (1) No life insurance business of an insurer specified in sub-clause (*a*) (*ii*) or sub-clause (*b*) of clause (9) of section 2 shall be transferred to [3][any person or transferred to] or amalgamated with the life insurance business of any other insurer except in accordance with a scheme prepared under this section and sanctioned by the Court having jurisdiction over one or other of the [4][parties concerned.]

(2) Any scheme prepared under this section shall set out the agreement under which the transfer or amalgamation is proposed to be effected, and shall contain such further provisions as may be necessary for giving effect to the scheme.

(3) Before an application is made to the Court to sanction any such scheme, notice of the intention to make the application together with a statement of the nature of the amalgamation or transfer, as the case may be, and of the reason therefor shall, at least two months before the application is made, be sent to the Central Government, [5][and certified copies, four in number, of each of the following documents shall be furnished to the Central Government, and other such copies shall] during the two months aforesaid be kept open for the inspection of the members and policy-holders at the principal and branch offices and chief agencies of the insurers concerned, namely:—

(*a*) a draft of the agreement or deed under which it is proposed to effect the amalgamation or transfer;

[6][(*b*) balance-sheets in respect of the insurance business of each of the insurers concerned in such amalgamation or transfer, prepared in the Form set forth in Part II of the First Schedule and in accordance with the regulations contained in Part I of that Schedule;

(*c*) actuarial reports and abstracts in respect of the life insurance business of each of the insurers so concerned, prepared in conformity with the requirements of Part II of the Fourth and Fifth Schedules and in accordance with the regulations contained in Part I of the Schedule concerned;

(*d*) a report on the proposed amalgamation or transfer, prepared by an independent actuary who has never been professionally connected with any of the parties concerned in the amalgamation or transfer at any time in the five years preceding the date on which he signs his report;

(*e*) any other reports on which the scheme of amalgamation or transfer was founded.

The balance-sheets, reports and abstracts referred to in clauses (*b*), (*c*) and (*d*) shall, all be prepared as at the date at which the amalgamation or transfer if sanctioned by the Court is to take effect, which date shall not be more than twelve months before the date on which the application to the Court is made under this section:

LEG. REF.

1 Inserted (with retrospective effect) by sec. 21, Act XIII of 1941.

2 Added (with retrospective effect), *ibid.*

3 Inserted by sec. 7, Act XX of 1940.

4 Substituted for the words "insurers concerned", *ibid.*

5 Substituted for the words "and certified copies of the following documents shall be furnished to the Central Government and shall by sec. 22, Act XIII of 1941.

6 Substituted for the original cls. (*b*) and (*c*), sec. 7, Act XX of 1940.

Provided that if the Central Government so directs in the case of any particular insurer there may be substituted respectively for the balance-sheet, report and abstract referred to in clauses (*b*) and (*c*) prepared in accordance with this sub-section certified copies of the last balance-sheet and last report and abstract prepared in accordance with sections 11 and 13 [1][of this Act or sections 7 and 8 of the Indian Life Assurance Companies Act, 1912] if that balance-sheet is prepared as at a date not more than twelve months, and that report and abstract as at a date not more than five years, before the date on which the application to the Court is made under this section.]

(4) Where an application under sub-section (3) is made to the Court within three months from the commencement of this Act, the Court may, on application, extend for the insurer whose business is to be transferred to or amalgamated with the business of another insurer, the time allowed for registration [2][under section 3 and for the payment of the instalments of the deposit under section 7 or section 98] for such period not exceeding nine months as the Court may think fit.

Sanction of amalgamation and transfer by Court.

36. When any application such as is referred to in sub-section (3) of section 35 is made to the Court, the Court shall cause, if for special reasons if so directs, notice of the application to be sent to every person resident in British India or in an Indian State who is the holder of a life policy of any insurer concerned and shall cause a statement of the nature and terms of the amalgamation or transfer, as the case may be, to be published in such manner and for such period as it may direct and, after hearing the directors and such policy-holders as apply to be heard and any other persons whom it considers entitled to be heard, may sanction the arrangement, if it is satisfied that no sufficient objection to the arrangement has been established [3][and shall make such consequential orders as are necessary to give effect to the arrangement, including orders as to the disposal of any deposit made under section 7 or section 98] :

[4][Provided that—

(*a*) no part of the deposit made by any party to the amalgamation or transfer shall be returned except where, after effect is given to the arrangement, the whole of the deposit to be made by the insurer carrying on the amalgamated business or the person to whom the business is transferred is completed,

(*b*) only so much shall be returned as is no longer required to complete the deposit last mentioned in clause (*a*), and

(*c*) while the deposit last mentioned in clause (*a*) remains uncompleted, no accession, resulting from the arrangement, to the amount already deposited by the insurer carrying on the amalgamated business or the person to whom the business is transferred shall be appropriated as payament or part payment of any instalment of deposit subsequently due from him under section 7 or section 98.]

Statements required after amalgamation and transfer.

37. Where an amalgamation takes place between any two or more insurers, or [5][where any business of an insurer is transferred] whether in accordance with a scheme confirmed by the Court or otherwise, the insurer carrying on the amalgamated business or [6][the person to whom the business is transferred] as the case may be, shall, within three months from the date of the completion of the amalgamation or transfer, [7][furnish in duplicate to the Central Government]—

LEG. REF.

1 Inserted (with retrospective effect) by sec. 22, Act XIII of 1941.

2 Substituted for the words and figures "and for the payment of the first instalment of the deposit under secs. 3 and 7" by sec. 13, Act XI of 1939.

3 Added by sec. 8, Act XX of 1940.

4 Proviso added by sec. 23, Act XIII of 1941.

5 Substituted for the words "where any business of one insurer is transferred to another" by sec. 24, *ibid.*

6 substituted for the words "the insurer to whom the business is transferred" by *ibid.*

7 Substituted for the words "furnish to the Central Government", *ibid.*

(*a*) a certified copy of the scheme, agreement or deed under which the amalgamation or transfer has been effected, and

(*b*) [1][a declaration signed by every party concerned] or in the case of a company by the chairman and the principal officer that to the best of their belief every payment made or to be made to any person whatsoever on account of the amalgamation or transfer is therein fully set forth and that no other payments beyond those set forth have been made or are to be made either in money, policies, bonds, valuable securities or other property by or with the knowledge of any parties to the amalgamation or transfer, and

[2][(*c*) where the amalgamation or transfer has not been made in accordance with a scheme sanctioned by the Court under section 36—

(*i*) balance-sheets in respect of the insurance business of each of the insurers concerned in such amalgamation or transfer, prepared in the Form set forth in Part II of the First Schedule and in accordance with the regulations contained in Part I of that Schedule, and,

(*ii*) certified copies of any other reports on which the scheme of amalgamation or transfer was founded.]

ASSIGNMENT OR TRANSFER OF POLICIES AND NOMINATIONS.

Assignment and transfer of insurance policies.

38. (1) A transfer or assignment of a policy of life insurance, whether with or without consideration, may be made only by an endorsement upon the policy itself or by a separate instrument, signed in either case by the transferor or by the asisgnor or his duly authorised agent and attested by at least one witness specifically setting forth the fact of transfer or assignment.

(2) The transfer or assignment shall be complete and effectual upon the execution of such endorsement or instrument duly attested but [3][except where the transfer or assignment is in favour of the insurer] shall not be operative as against an insurer and shall not confer upon the transferee or assignee, or his legal representative, any right to sue for the amount of such policy or the moneys secured thereby until a notice in writing of the transfer or assignment [3][[4][and] either the said endorsement or instrument itself or a copy thereof certified to be correct by both transferor and transferee or their duly authorised agents] [5][have been delivered] to the insurer [6][* * *]:

[7][Provided that where the insurer maintains one or more places of business in British India, such notice shall be delivered only at the place in British India mentioned in the policy for the purpose or at his principal place of business in British India.]

(3) The date on which the notice referred to in sub-section (2) is delivered to the insurer shall regulate the priority of all claims under a transfer or assignment as between persons interested in the policy; and where there is more than one instrument of transfer or assignment the priority of the claims under such instruments shall be governed by the order in which the notices referred to in sub-section (2) are delivered.

(4) Upon the receipt of the notice referred to in sub-section (2), the insurer shall record the fact of such transfer or assignment together with the date thereof and the name of the transferee or the assignee and shall, on the re-

LEG. REF.

1 Substituted for the words "a declaration signed by every insurer concerned" by sec. 24, Act XIII of 1941.

2 This clause was subtsituted, *ibid.*

3 Inserted by sec. 14, Act XI of 1939.

4 Substituted for the words "together with" by sec. 25, Act XIII of 1941.

5 Substituted for the words "has been delivered", *ibid.*

6 The words "at his principal place of business in British India by or on behalf of the transferor or transferee" were omitted by sec. 14, Act XI of 1939.

7 This proviso was added, *ibid.*

SEC. 38.—Where an assignment of a policy of life assurance was only by way of security for an overdraft and is redeemed by payment of the debts after the death of the assured; its benefits revert back to the estate of the deceased. 20 Luck. 194=1945 O.W. N. 8=1945 Oudh 152.

quest of the person by whom the notice was given, or of the transferee or assignee, on pyment of a fee not exceeding one rupee, grant a written acknowledgment of the receipt of such notice, and any such acknowledgment shall be conclusive evidence against the insurer that he has duly received the notice to which such acknowledgment relates.

(5) [1][Subject to the terms and conditions of the transfer or assignment, the insurer shall, from the date of the receipt of the notice referred to in sub-section (2),] recognise the transferee or assignee named in the notice as the only person entitled to benefit under the policy, and such person shall be subject to all liabilities and equities to which the transferor or assignor was subject at the date of the transfer or assignment and may institute any proceedings in relation to the policy without obtaining the consent of the transferor or assignor or making him a party to such proceedings.

[2][(6) Any rights and remedies of an assignee or transferee of a policy of life insurance under an assignment or transfer effected prior to the commencement of this Act shall not be affected by the provisions of this section.]

(7) Notwithstanding any law or custom having the force of law to the contrary, an assignment in favour of a person made with the condition that it shall be inoperative or that the interest shall pass to some other person on the happening of a specified event during the [3][lifetime of the person whose life is insured], and an assignment in favour of the survivor or survivors of a number of persons shall be valid.

Nomination by policy-holder.

39. (1) The holder of a policy of life insurance [4][on his own life, [5]* * *] may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death.

(2) Any such nomination in order to be effectual shall, unless it is incorporated in the text of the policy itself, be made by an endorsement on the policy communicated to the insurer and registered by him in the records relating to the policy and any such nomination may at any time before the policy matures for payment be cancelled or changed by an endorsement or a further endorsement or a will, as the case may be [6][but unless notice in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable for any payment under the policy made *bona fide* by him to a nominee mentioned in the text of the policy or registered in records of the insurer.]

[7][(3) The insurer shall furnish to the policy-holder a written acknowledgment of having registered a nomination or a cancellation or change thereof, and may charge a fee note exceeding one rupee for registering such cancellation or change.]

LEG. REF.

1 Substituted for the words, brackets and figure "From the date of the receipt of the notice referred to in sub-sec. (2), the insurer shall," by sec. 14, Act XI of 1939.

2 This sub-section was subtsituted, *ibid.*

3 Substituted for the words "life of the policy-holder", *ibid.*

4 Inserted by sec. 15, Act XI of 1939.

5 The words 'not being an absolute assignee of the benefits under the policy,' were omitted by sec. 26, Act XIII of 1941.

6 Added by sec. 15, Act XI of 1939.

7 This sub-section was substituted, *ibid.*

SEC. 38 (5).—Where a policy of Life Insurance has been assigned and notice of assignment given to the Insurance Company and acknowledged the Insurance Company is bound under sec. 38 (5) to pay the money due under the policy to the assignee. 223 I.C. 609.

SEC. 38 (7)—Though an assignment by a Mahomedan husband in favour of his wife be construed as a contingent gift it would be nevertheless valid, as sec. 38 (7) renders the Mahomedan Law of gift inapplicable to it. 1939 A.L.J. 1103=1939 All. 744=I.L.R. (1939) All. 957. Life policy—Assignment—Condition that policy should revert to assured if assignee predeceases him before maturity—Valid in law even prior to the enactment of sec. 38 (7). I.L.R. (1944) Nag. 871=1944 N.L.J. 162=1944 Nag. 185.

(4) A transfer or assignment of a policy made in accordance with section 38 shall automatically cancel a nomination:

[1][Provided that the assignment of a policy to the insurer who bears the risk on the policy at the time of the assignment, in consideration of a loan granted by that insurer on the security of the policy within its surrender value, or its reassignment on payment of the loan shall not cancel a nomination, but shall affect the rights of the nominee only to the extent of the insurer's interest in the policy.]

(5) Where the policy matures for payment during the [2][lifetime of the person whose life is insured] or where the nominee, or, if there are more nominers than one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policy-holder or his heirs or legal representatives or the holder of a succession certificate, as the case may be.

(6) Where the nominee or, if there are more nominees than one, a nominee or nominees survive the [3][person whose life is insured], the amount secured by the policy shall be payable to such survivor or survivors.

(7) The provisions of this section shall not apply to any policy of life insurance to which section 66 of the Married Women's Property Act, 1874, applies.

COMMISSION AND REBATES AND LICENSING OF AGENTS.

40. (1) No person shall, after the expiry of six months from the commencement of this Act, pay or contract to pay any remuneration or reward whether by way of commission or otherwise for soliciting or procuring insurance business in India to any person except an insurance agent [4]* * * * * * * or a person acting on behalf of an insurer who for the purposes of insurance business employs[5]* insurance agents.

Prohibition of payment by way of commission or otherwise for procuring business.

(2) No insurance agent [4]* * * * * shall be paid or contract to be paid by way of commission or as remuneration in any form an amount exceeding, in the case of life insurance business, forty per cent. of the first year's premium payable on any policy or policies effected through him and five per cent. of a renewal premium, or, in the case of business of any other class, fifteen per cent. of the premium:

Provided that insurers, in respect of life insurance business only, may pay, during the first ten years of their business, to their insurance agents fifty-five per cent. of the first year's premium payable on any policy or policies effected through them and six per cent. of the renewal premiums.

LEG. REF.

1 Proviso added by sec. 26, Act XIII of 1941.

2 Substituted for the words "lifetime of the policy-holder", by sec. 15, Act XI of 1939.

3 These words were substituted for the word "policy-holder", *ibid.*

4 The words and figures "licensed under sec. 42" were omitted by sec. 16, *ibid.*

5 The word "licensed" was omitted, *ibid.*

SEC. 40 (2): GRANT OF OVERRIDING COMMISSION TO FIRM NOT LICENSED UNDER SEC. 42 —PERMISSIBILITY.—A firm which is not licensed under sec. 42, Act cannot be regarded as an insurance agent within the meaning of sec. 40 (2) of the Act. The grant of overriding commission to such a firm is therefore no prohibited by the latter provision. 1943 O.W. N. 44=1943 Oudh 239.

SEC. 40 (3): SCOPE AND EFFECT.—Sec. 40 (3), removes the prohibition for payment of gratuities or renewal commision under a contract existing prior to the 27th January, 1937, not only against an insurance agent who must be licensed under sec. 42, but against every other person. 1943 O W.N. 44=1943 Oudh 239.

LIFE INSURANCE—RIGHT TO COMMISSION ON RENEWAL PREMIUMS AFTER TERMINATION OF AGENCY.—*Prima facie* the right of an agent to commission ceases on the termination of his employment except in cases in which the whole of the work necessary to earn the commission has been done by the agent before his employment ceases. Where a good deal of work has to be done by the agents to prevent policies from lapsing the commisison on renewal premiums is not payable to the agent after the termination of his agency. 72 I.A. 315= 1946 P.C. 6=50 C.W.N. 73=(1945) 2 M. L.J. 496 (P.C.).

(3) Nothing in this section shall prevent the payment under any contract existing prior to the 27th day of January, 1937, of gratuities or renewal commission to [1][any person, whether an insurance agent within the meaning of this Act or not,] or to his representatives after his decease in respect of insurance business effected through him before the said date.

Prohibition of rebates.

41. (1) No person shall allow or offer to allow, either directly or indirectly as an inducement to any person to [2][take out or renew or continue] an insurance in respect of any kind of risk relating to lives or property in India, any rebate of the whole or part of the commission payable or any rebate of the premium shown on the policy, nor shall any person taking out or renewing [3][or continuing] a policy accept any rebate, except such rebate as may be allowed in accordance with the published prospectuses or tables of the insurer.

[4][Provided that the acceptance by an insurance agent of commission in connection with a policy of life insurance taken out by himself on his own life shall not be deemed to be acceptance of a rebate of premium within the meaning of this sub-section if at the time of such acceptance the insurance agent satisfies the prescribed conditions establishing that he is a *bona fide* insurance agent employed by the insurer.]

(2) Any person making default in complying with the provisions of this section shall be punishable with fine which may extend to one hundred rupees, unless the default is made by a person [5][taking out or renewing or continuing] a policy, in which case he shall be punishable with fine which may extend to fifty rupees only.

Licensing of insurance agents.

42. .(1) The Superintendent of Insurance or an officer authorised by him in this behalf shall, in the prescribed manner and on payment of the prescribed fee which shall not be more than [6][three rupees], issue to any individual [7][making an application in the prescribed manner] and not suffering from any of the disqualifications hereinafter mentioned a licence to act as an insurance agent for the purpose of soliciting or procuring insurance business.

(2) A licence issued under this section shall entitle the holder to act as an insurance agent for any registered insurer.

(3) A licence issued under this section [8][shall remain in force for a period of twelve months only from the date of issue], but shall, if the applicant does not suffer from any of the disqualifications hereinafter mentioned, be renewed from year to year on payment of [9][the prescribed fee which shall not be more than three rupees, and an additional fee of a prescribed amount not exceeding one rupee by way of penalty if the application for renewal of the licence does not reach the issuing authority before the date on which the licence ceases to remain in force.]

[10][Provided that when any licence is issued or renewed within that year beginning on the day on which the Insurance (Amendment) Act, 1940, came into operation, the Superintendent of Insurance may specify the date, not being earlier than one year nor later than two years from the date of issue or renewal, on which the licence shall cease to be in force:

Provided further that the Central Government may, by notification in the official Gazette, make provision in respect of licences, in force at the commence-

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1 Substituted for the words "an insurance agent" by sec. 10, Act XI of 1939.

2 These words were substituted for the words "effect or renew" by sec. 27, Act XIII of 1941.

3 These words were inserted, *ibid.*

4 This proviso was added, *ibid.*

5 Substituted for the words "effecting or renewing" by sec. 27, Act XIII of 1941.

6 Substituted for the words 'one rupee' by sec. 28, *ibid.*

7 Substituted for the words "making an application under this section", *ibid.*

8 Substituted for the words, figures and letters "shall expire on the 31st day of March in each year" by sec. 9, Act XX of 1940.

9 Substituted for the words "a fee of one rupee" by sec. 28, Act XIII of 1941.

10 Inserted by sec. 9, Act XX of 1940.

ment of the Insurance (Amendment) Act, 1940, extending the period for which they are to remain in force by a term of from one to eleven months.]

(4) The disqualifications above referred to shall be the following:—

(*a*) that the person is a minor;

(*b*) that he is found to be of unsound mind by a Court of competent jurisdiction;

(*c*) that he has been found guilty of criminal misappropriation or criminal breach of trust or cheating [1][or forgery or an abetment of or attempt to commit any such offence] by a Court of competent jurisdiction:

[2][Provided that, where at least five years have elapsed since the completion of the sentence imposed on any person in respect of any such offence, the Superintendent of Insurance shall ordinarily declare in respect of such person that his conviction shall cease to operate as a disqualification under this clause;]

(*d*) that in the course of any judicial proceeding relating to any policy of insurance or the winding up of an insurance company or in the course of an investigation of the affairs of an insurer it has been found that he has been guilty of or has knowingly participated in or connived at any fraud, dishonesty or misrepresentation [3][against an insurer or an insured.]

(5) If it be found that an insurance agent suffers from any of the foregoing disqualifications, without prejudice to any other penalty to which he may be liable, the Superintendent of insurance shall, and if the agent has knowingly contravened any provision of this Act may, cancel the licence issued to the agent under this section.

[4][(6) The authority which issued any licence under this section may issue a duplicate licence to replace a licence lost, destroyed or mutilated on payment of the prescribed fee which shall not be more than one rupee.]

Register of insurance agents.

43. (1) Every insurer and every person who acting on behalf of an insurer employs[5]* insurance agents shall maintain a register showing the name and address of every[5]* insurance agent appointed by him and the date on which his appointment began and the date, if any, on which his appointment ceased.

(2) Any individual not holding a licence issued under section 42 who acts as an insurance agent shall be punishable with fine which may extend to fifty rupees, and any insurer who, or any person acting on behalf of an insurer who, appoints as an insurance agent any individual not so licensed, or transacts any insurance business in India through any such individual, shall be punishable with fine which may extend to one hundred rupees.

(3) The provisions of sub-section (2) shall not take effect until the expiry of six months from the commencement of this Act.

Prohibition of cessation of payments of commission.

44. Notwithstanding anything to the contrary in a contract between any person and an insurance agent [6]* * * forfeiting or stopping payment of renewal commission to such insurance agent, no such person shall in respect of life insurance business done in India refuse payment to an insurance agent, of com-

LEG. REF.

1 Inserted by sec. 28, Act XIII of 1941.

2 This proviso was added *ibid.*

3 Substituted for the words "against an insurer or an assured", by sec. 28, Act XIII of 1941.

4 Added by sec. 28, Act XIII of 1941.

5 The word "licensed" was omitted by sec. 29, *ibid.*

6 The words "licensed under sec. 42" were omitted by sec. 30, *ibid.*

SEC. 44: SCOPE AND NATURE OF THE RIGHT CONFERRED BY.—Sec. 44 confers a right on an insurance agent which takes effect on the termination of his appointment, and if at that time the agent is an insurance agent, he comes within the section although at the time of his original employment, he was not an insurance agent. The fact that a full time agent has with the consent of the employer done a small amount of outside business of a character not engaged in by the employer is not sufficient to deprive him of the advantages conferred by sec. 44. 72 I.A. 315=1946 P.C. 6=50 C.W.N. 73=(1945) 2 C. L.J. 496 (P.C.). "Insurance Agent"—Partnership not coming within definition—Right to benefit of section. *See* 46 Bom.L. R. 279=1944 B. 166.

mission on renewal premiums due to him under the agreement by reason only of the termination of his agreement except for fraud:

Provided that such agent has served such person continually and exclusively for at least ten years, and provided further that, after his ceasing to act as agent, he does not directly or indirectly solicit or procure insurance business for any other person.

SPECIAL PROVISIONS OF LAW.

Policy not to be called in question on ground of misstatement after two years.

45. No policy of life insurance effected before the commencement of this Act shall after the expiry of two years from the date of commencement of this Act and no policy of life insurance effected after the coming into force of this Act shall, after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground that a statement made in the proposal for insurance or in any report of a medical officer, or referee, or friend of the insured, or in any other document leading to the issue of the policy, was inaccurate or false, unless the insurer shows that such statement [1][was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made] by the policy-holder and that the policy-holder knew at the time of making it that the statement was false [2][or that it suppressed facts which it was material to disclose:]

[3][Provided that nothing in this section shall prevent the insurer from calling for proof of age at any time if he is entitled to do so, and no policy shall be deemed to be called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal.]

Application of British Indian law to policies issued in British India.

46. The holder of a policy of insurance issued by an insurer in respect of insurance business transacted in British India after the commencement of this Act shall have the right, notwithstanding anything to the contrary contained in the policy or in any agreement relating thereto, to receive payment in British India of any sum secured thereby and to sue for any relief in respect of the policy in any Court of competent jurisdiction in British India; and if the suit is brought in British India any question of law arising in connection with any such policy shall be determined according to the law in force in British India:

[3-a][Provided that nothing in this section shall apply to a policy of marine insurance].

Payment of money into Court.

47. (1) Where in respect of any policy of life insurance maturing for payment an insurer is of opinion that by reason of conflicting claims to or insufficiency of proof of title to the amount secured thereby or for any other adequate reason it is impossible otherwise for the insurer to obtain a satisfactory discharge for the payment of such amount, [4][the insurer may] before the expiry of nine months from the date of the maturing of the policy [5][or, where the circumstances are such that the insurer cannot be immediately aware of such maturing, from the date on which notice of such maturing is given to the insurer,] apply to pay the amount into the Court within the jurisdiction of which is situated the place at which such amount is payable under the terms of the policy or otherwise.

LEG. REF.

1 Substituted for the words "was on a material matter and fraudulently made" by sec. 31, Act XIII of 1941.

2 These words were added, *ibid.*

3 This proviso was added by sec. 31, Act XIII of 1941.

3-a Added by Act VII of 1944.

4 Substituted for the words "the insurer shall" by sec. 32, Act XIII of 1941.

5 These words were inserted by sec. 18, Act XI of 1939.

(2) A receipt granted by the Court for any such payment shall be a satisfactory discharge to the insurer for the payment of such amount.

(3) An application for permission to make a payment into Court under this section shall be made by a petition verified by an affidavit signed by a principal officer of the insurer setting forth the following particulars, namely:—

(*a*) the name of the insured person and his address;

(*b*) if the insured person is deceased, the date and place of his death;

(*c*) the nature of the policy and the amount secured by it;

(*d*) the name and address of each claimant so far as is known to the insurer with details of every notice of claim received;

(*e*) the reasons why in the opinion of the insurer a satisfactory discharge cannot be obtained for the payment of the amount; and

(*f*) the address at which the insurer may be served with notice of any proceeding relating to disposal of the amount paid into Court.

(4) An application under this section shall not be entertained by the Court if the application is made before the expiry of six months [1][from the maturing of the policy by survival, or from the date of receipt of notice by the insurer of the death of the insured, as the case may be].

(5) If it appears to the Court that a satisfactory discharge for the payment of the amount cannot otherwise be obtained by the insurer it shall allow the amount to be paid into Court and shall invest the amount in Government securities pending its disposal.

(6) The insurer shall transmit to the Court every notice of claim received after the making of the application under sub-section (3), and any payment required by the Court as costs of the proceedings or otherwise in connection with the disposal of the amount paid into Court shall as to the costs of the application under sub-section (3) be borne by the insurer and as to any other costs be in the discretion of the Court.

(7) The Court shall cause notice to be given to every ascertained claimant of the fact that the amount has been paid into Court, and shall cause notice at the cost of any claimant applying to withdraw the amount to be given to every other ascertained claimant.

(8) The Court shall decide all questions relating to the disposal of claims to the amount paid into Court.

Directors of insurers being companies.

48. (1) Where the insurer is a company incorporated under the Indian Companies Act, 1913, [2][or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act repealed thereby,] and carries on the business of life insurance, not less than one-fourth of the whole number of the directors of the company [3][shall notwithstanding anything to the contrary in the Articles of Association of the company be elected in the prescribed manner by the holders of policies of life insurance issued by the company].

[4][(2) Only and all persons holding otherwise than as assignees policies of life insurance issued by the company of such minimum amount and having been in force for such minimum period as may be prescribed shall [5][unless disqualified under sub-section (2-a)] be eligible for election as directors under sub-section (1), and only and all persons holding policies of life insurance issued by the company and having been in force at the time of the election for not less than six months shall be eligible to vote at such elections:

Provided that the assignment of a policy to the person who took out the

LEG. REF.

1 Substituted for the words "from the death of the insured, or the maturing of the policy by survival" by sec. 18, Act XI of 1939.

2 These words and figures were inserted by sec. 19, *ibid.*

3 Substituted by sec. 33, Act XIII of 1941.

4 This sub-section was inserted, *ibid.*

5 Added by Act VII of 1944.

policy shall not disqualify that person for being eligible for election as a director under sub-section (1).

[1][(2-A) A person shall be eligible for election as a director under sub-section (1), of any company, if he is a director, officer, employee, or legal or technical adviser of that company, or of any other insurer, or is an insurance agent or employer of insurance agents, and shall cease to be a director under sub-section (1) if after election he acquires, any disqualification specified in this sub-section or no longer holds the qualifications required by sub-section (2):

Provided that nothing in this sub-section shall disqualify a person who is an elected director under sub-section (1) and is not otherwise disqualified under this sub-section, from being re-elected:

Provided further that any director holding office at the commencement of the Insurance (Amendment) Act, 1944, shall not become ineligible to remain a director by virtue of this sub-section until the expiry of six months from the commencement of that Act.]

(3) The Central Government may, for such period, or to such extent and subject to such conditions as may be specified by it in this behalf, exempt from the operation of this section—

(*a*) any Mutual Insurance Company as defined in clause (*a*) of sub-section (1) of section 95, in respect of which the Superintendent of Insurance certifies that in his opinion owing to the conditions governing membership of the company or to the nature of the insurance contracts undertaken by it the application of the provisions of this sub-section to the company is impracticable, or

(*b*) any company in respect of which the Superintendent of Insurance certifies that in his opinion the company, having taken all reasonable steps to achieve compliance with the provisions of this section, has been unable to obtain the required number of directors with the required qualifications.]

[2][[3][(4)] This section shall not take effect, in respect of any company in existence at the commencement of this Act, until the expiry of one year therefrom, and in respect of any company incorporated after the commencement of this Act, until the expiry of two years from the date of registration to carry on life insurance business.]

Restriction on dividends and bonuses.

[4][**49.** No insurer, being an insurer specified in sub-clause (*a*) (*ii*) or sub-clause (*b*) of clause (9) of section 2, who carries on the business of life insurance or any other class or sub-class of insurance business to which section 13 applies shall for the purpose of declaring or paying any dividend to share-holders or any bonus to policy-holders or of making any payment in service of any debentures, utilize directly or indirectly any portion of the life insurance fund or of the fund of such other class or sub-class of insurance business, as the case may be, except a surplus shown in the valuation balance-sheet in Form 1 as set forth in the Fourth Schedule submitted to the Superintendent of Insurance as part of the abstract referred to in section 15 as a result of an actuarial valuation of the assets and liabilities of the insurer; nor shall he increase such surplus by contributions out of any reserve fund or otherwise unless such contributions have been brought in as revenue through the revenue account applicable to that class or sub-class of insurance business on or before the date of the valuation aforesaid, except when the reserve fund is made up solely of transfers from similar surpluses disclosed by valuations in respect of which returns have been submitted to the Superintendent of Insurance under section 15 of this Act, to the Central Government under section 11 of the Indian Life Assurance Companies Act, 1912:

LEG. REF.

1 Inserted by Act VII of 1944.

2 Substituted by sec. 19, Act XI of 1939.

3 The original sub-sec. (2) was re-numbered (4) by sec. 33, Act XIII of 1941.

4 Substituted by sec. 34, Act XXIII of 1941.

Provided that payments made out of any such surplus in service of any debentures shall not exceed fifty per cent. of such surplus including any payment by way of interest on the debentures, and interest paid on the debentures shall not exceed ten per cent. of any such surplus except when the interest paid on the debentures is offset against the interest credited to the fund or funds concerned in deciding the interest basis adopted in the valuation disclosing the aforesaid surplus.]

Notice of options available to the assured on the lapsing of a policy.

50. An insurer shall, [1][before the expiry of three months from the date on which the premiums in respect of a policy of life insurance were payable but not paid], give notice to the policy-holder informing him of the options available to him [2][unless these are set forth in the policy.]

Supply of copies of proposals and medical reports.

51. Every insurer shall, on application by a policy-holder and on payment of a fee not exceeding one rupee, supply to the policy-holder certified copies of the questions put to him and his answers thereto contained in his proposal for insurance and in the medical report supplied in connection therewith.

Prohibition of business on dividing principle.

52. [3][(1)] No insurer shall after the commencement of this Act begin, or after three years from that date continue to carry on, any business upon the dividing principle, that is to say, on the principle that the benefit secured by a policy is not fixed but depends either wholly or partly on the results of a distribution of certain sums amongst policies becoming claims within certain time-limits, or on the principle that the premiums payable by a policy-holder depend wholly or partly on the number of policies becoming claims within certain time-limits:

Provided that nothing in this section shall be deemed to prevent an insurer from allocating bonuses to holders of policies of life insurance as a result of a periodical actuarial valuation either as reversionary additions to the sums insured or as immediate cash bonuses or otherwise:

Provided further that an insurer who continues to carry on insurance business on the dividing principle after the commencement of this Act shall withhold from distribution a sum of not less than forty per cent. of the premiums received during each year after the commencement of this Act in which such business is continued so as to make up the amount required for investment under section 27.

[4][(2) On the expiry of the period of three years referred to in sub-section (1), or on the insurer's ceasing before such expiry but at any time after the commencement of the Insurance (Amendment) Act, 1941, to carry on business on the dividing principle, the insurer shall forthwith cause an investigation to be made by an actuary, who shall determine the amount accumulated out of the contributions received from the holders of all policies to which

LEG. REF.

1 Substituted for the words "within three months of the lapsing of a policy of life insurance," by sec. 20, Act XI of 1939.

2 Added by sec. 35, Act XIII of 1941.

3 Sec. 52 was re-numbered as sub-sec. (1) of that section by sec. 36 *ibid.*

4 Added by sec. 36, Act XIII of 1941.

See 228 I.C. 52 cited under sec. 3.

SEC. 52 (1) PROVISO.—Where a person became a member of an association incorporated and registered under the Companies Act before the Insurance Act of 1938 was passed, when the Rules as they existed then were based on the dividing principle, but his claim accrued after the latter Act came into force. *Held*, that the contract of such a person with the association based on the original Rules then in force became unenforceable by reason of sec. 52 of the Act which prohibited business on dividing principle, and that he was governed by the second proviso to sec. 52 (1) with the result that the association would have to withhold a sum not less than 40 per cent. of the premiums received although the original Rules provided for 10 per cent. only. I.L.R. (1945) Nag. 599=1945 Comp.C. 142=1945 N.L.J. 249=1945 Nag. 187.

the dividing principle applies and the extent of the claims of those policy-holders against the realisable assets of the insurer, and shall, before the expiration of six months from the date on which he is entrusted with the investigation, make recommendations regarding the distribution, whether by cash payments or by the allocation of paid up policies or by a combination of both methods, of such assets as he finds to appertain to such policy-holders; and the insurer shall, before the expiry of six months from the date on which the actuary makes his recommendations, distribute such assets in accordance with those recommendations.

(3) Where at any time prior to the commencement of the Insurance (Amendment) Act, 1941, an insurer has ceased to carry on business on the dividing principle, the insurer shall, before the expiration of two months from the commencement of that Act, report to the Superintendent of Insurance the measures taken or proposed by him for the distribution among holders of policies to which the dividing principle applies of the assets due to them; and the Superintendent of Insurance may either sanction such measures or refuse his sanction, and, if he refuses his sanction or if the insurer does not report to him as required by this sub-section, the provisions of sub-section (2) shall apply to the insurer forthwith.]

WINDING UP.

Winding up by the Court.

53. (1) The Court may order the winding up in accordance with the Indian Companies Act, 1913, of any insurance company and the provisions of that Act shall, subject to the provisions of this [1][Act] apply accordingly.

(2) In addition to the grounds on which such an order may be based, the Court may order the winding up of an insurance company—

(*a*) if with the sanction of the Court previously obtained a petition in this behalf is presented by shareholders not less in number than one-tenth of the whole body of shareholders and holding not less than one-tenth of the whole share capital or by not less than fifty policy-holders holding, policies of life insurance that have been in force for not less than three years and are of the total value of not less than fifty thousand rupees; or

(*b*) if the Superintendent of Insurance, who is hereby authorised to do so applies in this behalf to the Court on any of the following grounds namely:—

(i) that the company has failed to deposit or to keep deposited with the Reserve Bank of India the amount required by section 7 [2][or section 98],

(ii) that the company having failed to comply with any requirement of this Act has continued such failure [3][or having contravened any provision of this Act has continued such contravention] for a period of three months after notice of such failure [3][or contravention] has been conveyed to the company by the Superintendent of Insurance,

(iii) that it appears from the returns furnished under the provisions of this Act or from the results of any investigation made thereunder that the company is insolvent, or

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LEG. REF.

1 This word was substituted for the word "Chapter" by sec. 37, Act XIII of 1941.

2 Inserted by sec. 37, Act XIII of 1941.

3 Inserted by sec. 37, Act XIII of 1941.

SEC. 53 (1).—Court means principal Court of Original Jurisdiction (*i.e.*) the District Court. Hence District Court has jurisdiction to hear an application instituted under sec. 53 of the Insurance Act and not any particular Judge of that Court. 1940 A.M.L.J. 86. In a case where an insurance company is insolvent and it appears to the Court that if there is a winding up the policy-holders will get very little, but if the company is allowed to go on with a reduction of contract they will eventually receive the full amount of the reduced values of their policies, the Court should ascertain the wishes of the policy-holders as to whether they will prefer carrying on the company with a reduction of the amounts payable under their policies, or prefer its being wound up. I.L.R. (1944) 1 Cal. 557=1945 Cal. 157.

(iv) that the continuance of the company is prejudicial to the interests of the policy-holders.

Voluntary winding up.

54. Notwithstanding anything contained in the Indian Companies Act, 1913, an insurance company shall not be wound up voluntarily except for the purpose of effecting an amalgamation or a re-construction of the company, on the ground that by reason of its liabilities it cannot continue its business.

Valuation of liabilities.

55. (1) In the winding up of an insurance company or in the insolvency of any other insurer the value of the assets and the liabilities of the insurer shall be ascertained in such manner and upon such basis as the liquidator or receiver in insolvency thinks fit, subject, so far as applicable, to the rule contained in the Sixth Schedule and to any directions which may be given by the Court.

(2) For the purposes of any reduction by the Court of the amount of the contracts of any insurance company the value of the assets and liabilities of the company and all claims in respect of policies issued by it shall be ascertained in such manner and upon such basis as the Court thinks proper having regard to the rule aforesaid.

(3) The rule in the Sixth Schedule shall be of the same force and may be repealed, altered or amended as if it were a rule made in pursuance of section 246 of the Indian Companies Act, 1913, and rules may be made under that section for the purpose of carrying into effect the provisions of this Act with respect to the winding up of insurance companies.

Application of surplus assets of life insurance fund in liquidation or insolvency

56. (1) In the winding up of an insurance company and in the insolvency of any other insurer the value of the assets and the liabilities of the insurer in respect of life insurance business shall be ascertained separately from the value of any other assets or any other liabilities of the insurer and no such assets shall be applied to the discharge of any liabilities other than those in respect of life insurance business except in so far as those assets exceed the liabilities in respect of life insurance busienss;

(2) In the winding up of an insurance company carrying on the business of life insurance or in the insolvency of any other insurer carrying on such business where any proportion of the profits of the insurer was before the commencement of the winding up or insolvency allocated to policy-holders, if when the assets and liabilities of the insurer have been ascertained, there is found to be a surplus of assets over liabilities (hereinafter referred to as a *prima facie* surplus) there shall be added to the liabilities of the insurer in respect of the life insurance business an amount equal to such proportion of the *prima facie* surplus as is equivalent to such proportion of the profits allocated to shareholders and policy-holders as was allocated to policy-holders during the ten years immediately preceding the commencement of the winding up and the assets of the insurer shall be deemed to exceed his liabilities only in so far as those assets exceed those liabilities after such addition:

Provided that—

(*a*) if in any case there has been no such allocation or if it appears to the Court that by reason of special circumstances it would be inequitable that the amount to be added to the liabilities of the insurer in respect of the life insurance business should be an amount equal to such proportion as aforesaid, the amount to be so added shall be such amount as the Court may direct; and

(*b*) for the purpose of the application of this sub-section to any case where before the commencement of the winding up or insolvency a proportion of such profits as aforesaid of a branch only of the life insurance business in question has been allocated to policy-holders the value of the assets and liabilities of the insurer in respect of that branch shall be separately ascertained in like manner as the value of his assets and liabilities in respect of the life in-

surance business was ascertained, and the surplus so found, if any, of assets over liabilities shall, for the purpose of determining the amount to be added to the liabilities of the insurer in respect of the life insurance business be deemed to be the *prima facie* surplus.

Winding up of secondary companies.

57. (1) Where the insurance business or any part of the insurance business of an insurance company has been transferred to another insurance company under an arrangement in pursuance of which the first mentioned company (in this section referred to as the secondary company) or the creditors thereof has nor have claims against the company to which such transfer was made (in this section referred to as the principal company) then, if the principal company is being wound up by or under the supervision of the Court, the Court shall (subject as hereinafter mentioned) order the secondary company to be wound up in conjunction with the principal company and may by the same or any subsequent order appoint the same person to be liquidator for the two companies and make provision for such other matters as may seem to the Court necessary with a view to the companies being wound up as if they were one company.

(2) The commencement of the winding up of the principal company shall, save as otherwise ordered by the Court, be the commencement of the winding up of the secondary company.

(3) In adjusting the rights and liabilities of the members of the several companies among themselves the Court shall have regard to the constitution of the companies and to the arrangements entered into between the companies in the same manner as the Court has regard to the rights and liabilities of different classes of contributories in the case of the winding up of a single company or as near thereto as circumstances admit.

(4) Where any company alleged to be secondary is not in process of being wound up at the same time as the principal company to which it is alleged to be secondary, the Court shall not direct the secondary company to be wound up, unless, after hearing all objections (if any) that may be urged by or on behalf of the company against its being wound up, the Court is of opinion that the company is secondary to the principal company and that the winding up of the company in conjunction with the principal company is just and equitable.

(5) An application may be made in relation to the winding up of any secondary company in conjunction with the principal company by any creditor of, or person interested in, the principal or secondary company.

(6) Where a company stands in the relation of a principal company to one insurance company and in the relation of a secondary company to some other insurance company or where there are several insurance companies standing in the relation of secondary companies to one principal company, the Court may deal with any number of such companies together or in separate groups as it thinks most expedient upon the principles laid down in this section.

Schemes for partial winding up of insurance companies.

58. (1) If at any time it appears expedient that the affairs of an insurance company in respect of any class of business comprised in the undertaking of the company should be wound up but that any other class of business comprised in the undertaking should continue to be carried on by the company or be transferred to another insurer. a scheme for such purposes may be prepared and submitted for confirmation of the Court in acordance with the provisions of this Act.

(2) Any scheme prepared under this section shall provide for the allocation and distribution of the assets and liabilities the company between any classes of business affected (including the allocation of any surplus assets which may arise on the proposed winding up), for any future rights of every

class of policy-holders in respect of their policies and for the manner of winding up any of the affairs of the company which are proposed to be wound up and may contain provisions for altering the memorandum of the company with respect to its objects and such further provisions as may be expedient for giving effect to the scheme.

(3) The provisions of this Act relating to the valuation of liabilities of insurers in liquidation and insolvency and to the application of surplus assets of the life insurance fund in liquidation or insolvency shall apply to the winding up of any part of the affairs of a company in accordance with the scheme under this section in like manner as they apply in the winding up of an insurance company, and any scheme under this section may apply with the necessary modifications any of the provisions of the Indian Companies Act, 1913, relating to the winding up of companies.

(4) An order of the Court confirming a scheme under this section whereby the memorandum of a company is altered with respect to its object shall as respects the alteration have effect as if it were an order confirmed under section 12 of the Indian Companies Act, 1913, and the provisions of sections 15 and 16 of that Act shall apply accordingly.

Return of deposits.

59. In the winding up of an insurance company and in the insolvency of any other insurer the liquidator or assignee as the case may be shall apply to the Court for an order for the return of the [1][deposit made by the company or the insurer, as the case may be, under section 7 or section 98] and the Court shall on such application order a return of the deposit subject to such terms and conditions as it shall direct.

Notice of policy values.

60. In the winding up of an insurance company for the purposes of a cash distribution of the assets and in the insolvency of any other insurer the liquidator or assignee as the case may be in the case of all persons appearing by the books of the company or other insurer to be entitled to or interested in the policies granted by the company or other insurer shall ascertain the value of the liability of the company or other insurer to each such person and shall give notice of such value to those persons in such manner as the Court may direct and any person to whom notice is so given shall be bound by the value so ascertained unless he gives notice of his intention to dispute such value in such manner and within such time as may be specified by a rule or order of the Court.

Power of Court to reduce contracts of insurance.

61. (1) Where an insurance company is in liquidation or any other insurer is insolvent the Court may make an order reducing the amount of the insurance contracts of the company or other insurer upon such terms and subject to such conditions as the Court thinks just.

(2) Where a company carrying on the business of life insurance has been proved to be insolvent, the Court may if it thinks fit in place of making a winding up order reduce the amount of the insurance contracts of the company upon such terms and subject to such conditions as the Court thinks fit.

(3) Application for an order under this section may be made either by the liquidator or by or on behalf of the company or by a policy-holder, or by the Superintendent of Insurance and the Superintendent of Insurance and any person whom the Court thinks likely to be affected shall be entitled to be heard on any such application.

SPECIAL PROVISIONS RELATING TO EXTERNAL COMPANIES.

62. Where, by the law or practice of any country outside India in which an

LEG. REF.

[1] Substituted for the words and figures "deposit made by the company under sec. 7" by sec. 22, Act XI of 1939.

Power of Central Government to impose reciprocal disabilities on non-Indian companies.

insurer carrying on insurance business in British India is constituted, incorporated or domiciled, insurance companies incorporated in British India are required as a condition of carrying on insurance business in that country to comply with any special requirements whether as to the keeping of deposits of assets in that country or otherwise which is not imposed upon insurers of that country under this Act, the Central Government shall, if satisfied of the existence of such special requirement, by notification in the Official Gazette, direct that the same requirement, or requirements as similar thereto as may be, shall be imposed upon insurers of that country as a condition of carrying on the business of insurance in British India.

Particulars to be filed by insurers established outside British India.

63. Every insurer, having his principal place of business or domicile outside British India, who establishes a place of business within British India, or appoints a representative in British India with the object of obtaining insurance business, shall within three months from the establishment of such place of business or the appointment of such [1][representative], file with the Superintendent of Insurance—

(*a*) a certified copy of the charter, statutes, deed of settlement or memorandum and articles or other instrument constituting or defining the constitution of the insurer, and, if the instrument is not written in the English language, a certified translation thereof,

(*b*) a list of the directors, if the insurer is a company,

(*c*) the name and address of some one or more persons resident in British India authorised to accept on behalf of the insurer service of process and any notice required to be served on the insurer, together with a copy of the power of attorney granted to him,

(*d*) the full address of the principal office of the insurer in British India,

(*e*) a statement of the classes of insurance business to be carried on by the insurer, and

(*f*) a statement verified by an affidavit setting forth the special requirements, if any, of the nature specified in section 62 imposed in the country of origin of the insurer on Indian nationals;

and, in the event of any alteration being made in the address of the principal office or in the classes of business to be carried on, or in any instrument here referred to, or in the name of any of the persons here referred to, or in the matters specified in clause (*f*) above, the company shall forthwith furnish to the Superintendent of Insurance particulars of such alteration.

Books to be kept by insurers established outside British India.

64. Every insurer having his principle place of business or domicile outside British India shall keep at his principal office in British India such books of account, registers and documents as will enable the accounts, statements and abstracts which he is required under this Act to furnish to the Superintendent of Insurance in respect of the insurance business transacted by him in India to be compiled and, if necessary, checked by the Superintendent of Insurance.

PART III.

PROVIDENT SOCIETIES.

Definition of "provident society."

[2][**65.** (1) In this Part "provident society" means, a person who, or a body which, not being an insurer registered for the time being of persons (whether corporate or unincorporate) under Part II of this Act, carries on the business

LEG. REF.

1 Substituted for the word "agent" by sec. 23, Act XI of 1939.

2 Substituted (with retrospective effect) by sec. 10, Act XX of 1940.

of insuring the payment, on the happening of any of the contingencies mentioned in sub-section (2), of—

(*a*) an annuity of or equivalent to fifty rupees or less, payable for an uncertain period; or

(*b*) a gross sum of five hundred rupees or less, whether paid or payable in a lump sum or in two or more instalments over a certain period,

exclusively in both cases (*a*) and (*b*) of any profit or bonus not being a guaranteed profit or bonus.

Explanation—For the purposes of this sub-section, a period is "certain" if its duration is ascertainable in advance and "uncertain" if its duration is not so ascertainable.

(2) The contingencies referred to in sub-section (1) are the following, namely:—

(*a*) the birth, marriage or death of any person or the survival by a person of a stated or implied age or contingency;

(*b*) failure of issue;

(*c*) the occurrence of a social, religious or other ceremonial occasion;

(*d*) loss of or retirement from employment;

(*e*) disablement in consequence of sickness or accident;

(*f*) the necessity of providing for the education of a dependent;

(*g*) any other contingency which may be prescribed or which may be authorised by the Provincial Government with the approval of the Central Government.

(3) For the purposes of sub-sections (1) and (2)—

(*a*) contracts entered into before the commencement of this Act shall not be taken into account;

(*b*) two or more policies issued to one person shall, for the purposes of determining whether the limits fixed by sub-section (1) have or have not been exceeded, be deemed to be one policy if the contingencies on the happening of which the sums are payable under the policies (whether the contingencies be the same or different) relate to one person only, whether he be the policy-holder or some other person.

(4) Every person or body of persons for the time being registered as a provident society under the Provident Insurance Societies Act, 1912, and every person or body of persons for the time being registered as a provident society under this Act shall be deemed to be a provident society for all the purposes of this Act.

(5) If any question arises whether any person or body of person is or is not a provident society within the meaning of this section, the Superintendent of Insurance shall decide the question and his decision shall be final.]

Restrictions on provident societies.

[1][**66.** No provident society shall undertake any form of insurance not falling within the limits fixed by sub-section (1) of section 65, nor shall any provident society be eligible to be registered under section 3.]

Name.

67. No provident society established after the commencement of this Act shall adopt as its name, and no provident society established before the commencement of this Act shall continue after the expiry of six months from the commencement thereof to use as its name, any combination of words which fails to include the word "provident" or which includes the word "life".

Insurable interest.

68. No provident society shall receive any premium or contribution for insuring money to be paid to any person other than the person paying such premium or contribution or

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LEG. REF.

[1] Substituted (with retrospective effect) by sec. 10, Act XX of 1940.

the wife, husband, child, grand-child, parent, brother or sister, nephew or niece of such a person.

Dividing business.

69. (1) No provident society shall carry on any business upon the dividing principle, that is to say, on the principle that the benefit secured by a policy is not fixed but depends either wholly or partly on [1][the results of a distribution of certain sums amongst policies becoming claims within certain time-limits, or on the principle that the premiums payable by a policy-holder depend wholly or partly on the number of policies becoming claims within certain time-limits.]

(2) The Superintendent of Insurance shall, as soon as possible, take steps to have any provident society which carries on business on the dividing principle wound up:

Provided that, where any such provident society in existence at the commencement of this Act applies within three months of such commencement to the Superintendent of Insurance for permission to continue carrying on its business with a view meanwhile to reorganise its business in accordance with the provisions of this Act, the Superintendent of Insurance may at his discretion, with due regard to the past history of the society, permit the society to continue business for a period not exceeding two years from the date of receipt of such permission, so however that no new business on the dividing principle is undertaken by the society.

[2][(3) Where after the commencement of the Insurance (Amendment) Act, 1941, a provident society is to be wound up in pursuance of this section, or where, whether before or after the commencement of that Act, a provident society ceases to carry on business on the dividing principle, the provisions of sub-section (2) and sub-section (3) of section 52 shall, so far as may be, apply in like manner as they apply to an insurer ceasing to carry on business on the dividing principle.]

Registration

70. (1) No provident society except a provident society registered under the provisions of the Provident Insurance Societies Act, 1912, shall receive any premium or contribution until it has obtained from the Superintendent of Insurance a certificate of registration.

(2) Every application for registration shall be accompanied by—

(*a*) a certified copy of the rules of the society, and when the society is a company incorporated under the Indian Companies Act, 1913, [3][or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act repealed thereby,] a certified copy of the Memorandum and Articles of Association or where the society is not such a company a certified copy of the deed of constitution of the society;

(*b*) the names and addresses of the proprietors or directors, and the managers of the society [4][the full address of the registered office of the society, the full address of the principal office of the society in British India, the name of the manager at such office, and the name and address of some one or more persons resident in British India authorised to accept any notice required to be served on the society];

(*c*) a certificate from the Reserve Bank of India that the initial deposit referred to in section 73 has been made; [5][* *];

(*d*) a declaration verified by an affidavit that the minimum working capital required by section 72, is available; [6][and

LEG. REF.

1 Substituted for the words "the results of a distribution, amongst policies maturing for payment within certain time-limits, of certain sums" by sec. 38, Act XIII of 1941.

2 Added by *ibid.*

3 Inserted by sec. 39, *ibid.*

4 Added by sec. 38, *ibid.*

5 Omitted by *ibid.*

6 The word "and" and cl. (*e*) were added, *ibid.*

(*e*) the prescribed fee for registration being not more than two hundred rupees.]

(3) The Superintendent of Insurance may refuse to issue a certificate of registration until he is satisfied that the rules of the society comply with the provisions of this Act and that the minimum working capital required by section 72 is available, but if he is so satisfied he shall register the society and its rules.

(4) The Superintendent of Insurance may, after giving previous notice in writing in such manner as he thinks fit specifying the grounds for the proposed cancellation, and allowing the society concerned an opportunity of being heard, apply to the Court and obtain sanction for cancellation of the registration made under this section or made under the provisions of the Provident Insurance Societies Act, 1912,—

(*a*) if he is satisfied as the result of an inquiry made under section 87—

(i) that the society is insolvent or is likely to become so, or

(ii) that the business of the society is conducted fraudulently or not in accordance wih the rules thereof, or that it is in the interests of the policy-holders that the society should cease to carry on business,

(*b*) if the initial deposit or any of the further deposits required by section 73 has not been made; or

(*c*) if the society, having failed to comply with any requirement [1][or having contravened any provision] of this Act, has continued such failure [1][or contravention], for a period of one month after notice of such failure [1][or contravention] has been conveyed to the society by the Superintendent of Insurance:

Provided that the Superintendent of Insurance may, if he thinks fit, instead of applying for cancellation of the registration under sub-clause (*i*) of clause (*a*) of this sub-section make a recommendation to the Court that the contracts of the society should be reduced in such manner and subject to such conditions as he may indicate.

[2][Provided further that the Superintendent of Insurance may, without previous notice and without application to the Court for sanction,—

(*a*) cancel the registration of a provident society, which has failed to have its registration renewed; or

(*b*) cancel. on such terms and conditions as he thinks fit, the registration of any provident society which applies to him for such cancellation if he is satisfied that the society has ceased to carry on insurance business and that all its liabilities in respect of insurance policies are either satisfied or otherwise provided for.]

[3][(5) When a registration is cancelled the provident society shall not, after the cancellation has taken effect enter into any new contracts of insurance, but all rights and liabilities in respect of contracts of insurance entered into by it before such cancellation takes effect shall, subject to the provisions of section 88, continue as if the cancellation had not taken place.

(6) Where a registration is cancelled under clause (*b*) of sub-section (4), or because the society has failed to have its registration renewed, the Superintendent of Insurance may at his discretion revive the registration if the provident society, within six months from the date on which the cancellation took effect makes the deposits required by section 73 or has had an application under sub-section (3) of section 70-A accepted, as the case may be, and complies with any directions which may be given to it by the Superintendent of Insurance.]

[4] **70-A.** (1) Every provident society registered under this Act, or under

LEG. REF.

1 Inserted by sec. 38, Act XIII of 1941.
2 This proviso was added, *ibid.*
3 Added by sec. 39, *ibid.*
4 Inserted by sec. 40, *ibid.*

Renewal of registration.

the Provident Insurance Societies Act, 1912, shall have its registration renewed annually for each period of twelve months after that ending on the 30th day of June, 1942.

(2) An application for the renewal of a registration shall be made by the society to the Superintendent of Insurance before the 30th day of June preceding the period for which renewal is sought, and shall be accompanied as provided in sub-section (3) by evidence of payment of the prescribed fee which shall not exceed two hundred rupees but may vary according to the volume of insurance business done by the society.

(3) The prescribed fee for the renewal of a registration for any year shall be paid into the Reserve Bank of India, or, where there is no office of that Bank, into the Imperial Bank of India acting as the agent of that Bank, or into any Government treasury, and the receipt shall be sent along with the application for renewal of the registration.

(4) If a provident society fails to apply for renewal of registration before the date specified in sub-section (2) the Superintendent of Insurance may, so long as he has taken no action under section 88 to have the society wound up, accept an application for renewal of registration on receipt from the society of the fee payable with the application and such penalty, not exceeding the prescribed fee payable by the society, as he may require.

(5) The Superintendent of Insurance shall, on being satisfied that the society has fulfilled the requirements of this section, renew the registration and grant it a certificate of renewal of registration.

70-B. (1) Every provident society registered under section 70 before the commencement of the Insurance (Amendment) Act, 1941, shall, before the expiration of three months from the commencement of the Insurance (Amendment) Act, 1941, furnish to the Superintendent of Insurance such particulars in addition to those already supplied for the purpose of obtaining registration as are required by sub-section (2) of section 70 of this Act as amended by the Insurance (Amendment) Act, 1941.

Supplementary information and reports of alterations in particulars furnished with application for registration.

(2) Every provident society registered under the provisions of the Provident Insurance Societies Act, 1912, shall, before the expiration of three months from the commencement of the Insurance (Amendment) Act, 1941, furnish to the Superintendent of Insurance so far as it has not already done so the documents and information required by clauses (*a*) and (*b*) of sub-section (2) of section 70 to accompany an application by a provident society for registration under that section.

(3) When any alteration occurs or is made which affects any of the matters which are required under the provisions of sub-section (2) of section 70 to accompany an application by a provident society for registration under that section, the provident society shall furnish forthwith to the Superintendent of Insurance full particulars duly authenticated of such alteration.]

Prohibition of managing agents.

71. The provisions of section 32 shall apply to provident societies as they apply to insurers.

72. No provident society [1]* * * * * * * * * shall be registered unless it has a paid up capital sufficient to provide as working capital a net sum of not less than five thousand rupees exclusive of deposits made under this Act and exclusive in the case of a company of any expenses incurred in connection with the formation of the company.

Working capital.

LEG. REF.

1 The words "established after the commencement of this Act" were omitted by sec. 41, Act XIII of 1941.

Deposits.

73. (1) Every provident society shall, if established before the commencement of this Act within one year from such commencement, or if established after the commencement of this Act before the society applies for registration under section 70, deposit and keep deposited with the Reserve Bank of India in one of the offices in India of the Bank, for and on behalf of the Central Government, cash or approved securities amounting at the market value of the securities on the date of deposit to five thousand rupees, and shall thereafter [1][make in each calendar year] a further deposit amounting to not less than one-fifth of the gross premium [2][income for the proceding calendar year] (including admission fees and other fees received by the society) until the total amount so deposited and kept is fifty thousand rupees.

(2) The provisions of sub-sections (8), (9), [3][(9-A), (9-B)] and (10) of section 7 and of sub-section (1) of section 8 [4][and of section 9] shall apply to the deposits made under this section as they apply to deposits made by an insurer.

Rules.

74. (1) Every provident society [5]* * * * shall in its rules set forth—

(*a*) the name, the object and the location of the registered office of the society;

(*b*) the contingencies or classes of contingency on the happening of which money is to be paid;

(*c*) the conditions to be complied with before, and the payments to be made on, admission to the society;

(*d*) the rates of premium or contribution, and the periods for which or the times at which premiums or contributions are payable;

(*e*) the maximum amount payable to a subscriber or policy-holder;

(*f*) the nature and amounts of the benefits provided for by the society;

(*g*) the circumstances in which a bonus may be paid to a policy-holder;

(*h*) the nature of the evidence required for the proof of the happening of any contingency on which money is to be paid;

(*i*) the circumstances in which policies may be forfeited or renewed or the whole or a part of the premiums paid on a policy may be returned, or a surrender value of a policy may be granted;

(*j*) the penalties for delay in paying or failure to pay premiums or contributions;

(*k*) the proportion of the annual income of the society which may be disbursed on and the provisions to be made for meeting the expenses of the management of the society;

(*l*) the person or persons who or the authority which shall have power to invest the funds of the society;

(*m*) the provisions for appointment of auditors and their remuneration;

(*n*) the procedure to be adopted in altering the rules of the society;

(*o*) unless these are provided for in the articles of association of a society which is a company incorporated under the Indian Companies Act, 1913, [6][or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act repealed thereby,]—

(*i*) the mode of appointment and removal, the qualification and the powers of a director, manager, secretary or other officer of the society;

LEG. REF.

1 Substituted for the words "make each year" by sec. 25, Act XI of 1939.

2 Substituted for the words "income for the year", *ibid.*

3 Inserted by sec. 11, Act XX of 1940.

4 These words and figures were inserted, *ibid.*

5 The words "established after the commencement of this Act" were omitted by sec. 42, Act XIII of 1941.

6 Inserted by sec. 42, Act XIII of 1941.

(*ii*) the manner of raising additional capital, and

(*iii*) the provisions for the holding of general meetings of the members and policy-holders and for the powers to be exercised and the procedure to be followed thereat; and

(*p*) such other matters as may be prescribed.

(2) Where the rules of any provident society registered under the Provident Insurance Societies Act, 1912, fail to comply with the provisions of this section the society shall, before the expiry of twelve months from the commencement of this Act, amend the rules so as to comply with these provisions.

Amendment of rules.

75. (1) No amendment of any rule of a provident society shall be valid until it has been sent to the Superintendent of Insurance and has been registered by him.

(2) The Superintendent of Insurance on being satisfied that the proposed amendment is not contrary to the provisions of this Act shall, unless he is of opinion that the amendment unfairly affects the rights of existing members or policy-holders of the society, issue to the society an acknowledgment of the registration of the amended rule.

Supply of copy of rules

76. Every provident society shall on demand deliver free of cost to any member of the society a copy of the rules of the society and to any person other than a member a copy of such rules on the payment of a sum not exceeding one rupee.

Registered office.

77. Every provident society [1][shall have in British India a principal office] (on the outside of which it shall keep displayed its name in a conspicuous position in legible characters) to which all communications and notices may be addressed, and shall give notice to the Superintendent of Insurance of any change in the location thereof within twenty-eight days of its occurrence.

Publication of authorised capital to contain also subscribed and paid up capital.

78. Where any notice, advertisement or other official publication of a provident society contains a statement of the amount of the authorised capital of the society, the publication shall also contain a statement of the amount of the capital which has been subscribed and the amount paid up.

Registers and books.

79. Every provident society [2][shall keep at its principal office in British India]—

[3][(*a*) such registers in such form as may be prescribed;]

[4][(*b*)] a cash book in which shall be entered separately for each class of contingency separately specified in section 65 all sums received and expended by the society and the matters in respect of which the receipt or expenditure takes place;

[4][(*c*)] a ledger.

[4][(*d*)] a journal.

Revenue account, balance sheet and annual statements.

80. (1) Every provident society shall at the expiry of the calendar year prepare a revenue account and balance-sheet in the prescribed form verified in the prescribed manner, together with a report on the general state of the society's affairs and shall cause the revenue account and balance-sheet to be audited by an auditor, and the auditor shall so far as may be in the audit of a provident society have the powers of, exercise the functions vested in, and dis-

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LEG. REF.

1 Substituted for the words "shall have an office" by sec. 43, Act XIII of 1941.

2 Substituted for the words "shall keep at its registered office" by sec. 44, Act XIII of 1941.

3 This clause was substituted for the original cls. (*a*) to (*d*), *ibid.*

4 The original cls. (*e*), (*f*) and (*g*) were re-lettered, respectively, as cls. (*b*), (*c*) and (*d*), *ibid.*

charge the duties and be subject to the liabilities imposed on, an auditor of companies by section 145 of the Indian Companies Act, 1913.

(2) Every provident society shall at the expiry of the calendar year prepare with respect to that year—

(*a*) a statement showing separately for each class of contingency separately specified in section 65—

(*i*) the number of new polices effected, the total amount insured thereby and the total premium income received in respect thereof and the number of existing policies discontinued during the year with the total amount insured thereby, and

(*ii*) the total amount of claims made and the total amount paid in satisfaction thereof;

(*b*) a statement showing details of every insurance effected on a life other than the life of the person insuring; and

(*c*) a statement showing the total amount paid as allowances to agents and canvassers.

(3) Until the expiry of two years from the commencement of this Act this section [1][and section 73] shall apply to provident societies registered before the commencement of this Act under the Provident Insurance Societies Act, 1912, as if the reference to the calendar year were a reference to either the financial year or the calendar year.

Actuarial report and abstract.

81. (1) Every provident society shall once in every five years or at such shorter intervals as may be laid down by the rules of the society cause an investigation to be made into its financial condition including the valuation of its liability and assets by an actuary.

(2) The report of the actuary shall contain an abstract in which shall be stated—

(*a*) the general principles adopted in the valuation, including the method by which the valuation age of lives was ascertained,

(*b*) the rate at each age of the mortality and any other factor assumed and the annuity values used in valuation,

(*c*) the reserve values held against policies effected,

(*d*) the rate of interest assumed, and

(*e*) the provision made for expenses,

and shall have appended to it a certificate signed by a principal officer of the society that all material necessary for proper valuation has been placed at the disposal of the actuary and that full and accurate particulars of every policy under which there is a liability either actual or contingent have been furnished to the actuary for the purpose of the investigation.

(3) If the actuary finds that the financial condition of the society is such that no surplus exists for distribution as bonus to the policy-holders or as dividend to the share-holders, he shall state in his report whether in his opinion the society is insolvent and, if so, whether it should be wound up or not, and the extent to which in his opinion existing contracts should be modified or existing rates of premium should be adjusted to make good the deficiency in the assets.

Submission of returns to Superintendent of Insurance.

82. (1) The revenue account and balance-sheet with the auditor's report thereon and the report on the general state of the society's affairs referred to in sub-section (1) of section 80, [2][shall be printed and four copies of these and of the statements referred to], in sub-section (2) of section 80, shall be

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[1] LEG. REF.

[1] Inserted by sec. 26 of the Insurance (Amendment) Act XI of 1939.

[2] Substituted for the words "and the statements referred to" by sec. 45, Act XIII of 1941.

furnished as returns to the Superintendent of Insurance [1][within six months] from the end of the period to which they relate and copies of the revenue account and balance-sheet and the auditor's report thereon and of the report on the general state of the society's affairs shall, on the application of any member or policy-holder made within two years from the date on which the document was so furnished, be sent to him within fourteen days from the receipt of the application on payment of a fee of one rupee.

(2) All the material necessary for the proper valuation of the liabilities of the society under the provisions of section 81 shall be placed at the disposal of the actuary within three months from the end of the period to which such material relates, and the report and abstract referred to in section 81 shall be furnished as a return to the Superintendent of Insurance within a further period of three months.

(3) [2][The provisions of sub-section (2) of section 15 relating to the copies therein referred to shall apply to the returns referred to in sub-section (1) of this sub-section, and] the provisions of section 17 shall apply to the accounts and balance-sheet of a provident society being a company incorporated under the Indian Companies Act, 1913, [3][or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act repealed thereby,] as they apply to the accounts and balance-sheet of an insurer, [2][and the Superintendent of Insurance may exercise, in respect of returns made by a provident society and in respect of an investigation or valuation to which section 81 refers, the same powers as are exercisable by him under section 21 and section 22, respectively, in the case of an insurer].

Actuarial examination of schemes.

83. (1) Every provident society, [4][registered] after the commencement of this Act, shall cause every scheme of insurance which it proposes to put into operation, and every provident society registered before the commencement of this Act under the provisions of the Provident Insurance Societies Act, 1912 [5][shall cause any scheme which it proposes to put into operation for the first time], after such commencement to be examined by an actuary, and shall not receive any premium or contribution in connection with the scheme until the actuary has certified [6][that the rates, advantages, terms and conditions of the scheme are workable and sound], and such certificate has been forwarded to the Superintendent of Insurance.

(2) The provisions of sub-section (1) shall apply to any alteration of a scheme already in operation but the Superintendent of Insurance may, if he is of opinion that the alteration unfairly affects the interests of existing policy-holders, prohibit the alteration, and, if he does so, the society shall not put the altered scheme into operation, unless it first discharges to the satisfaction of the Superintendent of Insurance all its liabilities to those of the existing policy-holders who dissent from the alteration.

(3) Every provident society registered before the commencement of this Act under the provisions of the Provident Insurance Societies Act, 1912, shall, as soon as may be and in any event before the expiry of six months from the commencement of this Act, submit all schemes of insurance which the society has in operation at the commencement of this Act to examination by an actuary [7][and shall, before the expiration of six months from the commencement of the Insurance (Amendment) Act, 1941, send the report of the actuary], thereon to the Superintendent of Insurance.

LEG. REF.

1 Substituted for the words "within three months" by sec. 45 of Act XIII of 1941.

2 Inserted by sec. 45, Act XIII of 1941.

3 Inserted by sec. 27, Act XI of 1939.

4 This word was substituted for the word "established" by sec. 46, Act XIII of 1941.

5 Substituted for the words "shall cause any new scheme which it proposes to put into operation", *ibid.*

6 Substituted for the words "that the scheme is sound" by sec. 46, Act XIII of 1941.

7 Substituted for the words "and shall send the report of the actuary", *ibid.*

(4) The report of the actuary shall state in respect of each scheme whether [1][the rates, advantages, terms and conditions are workable and sound], and, where no actuarial report such as is referred to in section 81 has been made within the two years preceding the examination, the report shall also state whether the assets of the society are sufficient to meet its liabilities under the existing schemes, and, if not, how in the opinion of the actuary the existing contracts should be modified.

[2][(5) If the rates, advantages, terms and conditions of any scheme are not reported by the actuary to be workable and sound, the Superintendent of Insurance shall give notice to the society prohibiting the scheme, and the society shall not after its receipt of such notice enter into any new contract of insurance under the scheme, but all rights and liabilities in respect of contracts of insurance entered into by the society before receipt of the notice shall, subject to the provisions of sub-section (6), continue as if the notice had not been given.]

(6) Where a scheme is [3][prohibited] under the provisions of sub-section (5) the society shall, where its assets are sufficient to meet all existing liabilities, set apart out of its assets the sum sufficient in the opinion of the actuary to meet the liabilities incurred under the scheme so [3][prohibited], and, where its assets are not so sufficient, within three months from the date of the [4][prohibition], apply to the Court for a modification of its existing contracts or failing such modification for the winding up of the society.

Separation of accounts and funds.

84. Where a provident society effects policies of insurance in connection with more than one of the classes of contingency separately specified in [5][sub-section (2) of] section 65, the receipts and payments in respect of each such class shall be recorded in a separate account in the cash book kept in accordance with section 79.

Investment of funds.

85. (1) Every provident society shall, unless it already holds invested in Government securities or securities mentioned or referred to in clauses (*c*) and (*d*) of section 20 of the Indian Trusts Act, 1882, not less than fifty per cent. of the total assets of the society, [6][invest in such securities every increase that takes place in those assets and in that part of those assets which is held in cash as soon as practicable after the increase takes place and in any case within six months of its taking place], until the total amount so invested amounts to not less than fifty per cent. of the total assets of the society, and shall thereafter keep invested in such securities not less than fifty per cent. of the total assets of the society:

[7][Provided that for the purpose of determining the amount to be invested under this sub-section, any deposit made in cash under section 73 shall be taken into account as if such cash were Government securities amounting at the market value of the securities on the date the deposit was made to the total deposited in cash].

(2) No funds or investments of a provident society except a deposit made under section 73 shall be kept otherwise than in the name of the society [8][or in the name of a public officer approved by the Central Government].

(3) No loan shall be made out of the assets of a provident society to [9][any director, manager, managing agent, auditor, actuary, officer or partner of

LEG. REF.

1 Substituted for the words "it is actuarially sound" by Act XIII of 1941.

2 Substituted by sec. 46, Act XIII of 1941.

3 Substituted for the word "discontinued", *ibid.*

4 Substituted for the word "discontinuance", *ibid.*

5 Inserted by sec. 12, Act XX of 1940.

6 Substituted for the words "invest all surplus assets in such securities" by sec. 47, Act XIII of 1941.

7 This proviso was added, *ibid.*

8 Added by sec. 28, Act XI of 1939.

9 Substituted for the words "any director or officer of the society" by sec. 13, Act XX of 1940.

the society], except on the security of a policy of insurance held in the society and within its surrender value and no such loan shall be made to any concern of which [1][a director, manager, managing agent, actuary, officer or partner of the society is a director, manager, managing agent, actuary, officer, or partner].

[2][(3-A) Any loan prohibited under sub-section (3) made before and outstanding at the commencement of the Insurance (Amendment) Act, 1940, shall be repaid before the 1st day of January, 1941, and in case of default the director, manager, managing agent, auditor, actuary, officer or partner who has received the loan or is connected with the concern which has received the loan, as the case may be, shall cease to hold office in or be a partner of the society and shall be ineligible to hold office in or be a partner of the society until the loan is repaid.]

(4) Any director, [3][manager, managing agent, auditor, actuary, officer or partner], of a society which contravenes the provisions of sub-section (3), who is knowingly a party to the contravention, shall without prejudice to any other penalty which he may incur be jointly and severally liable to the society for the amount of the loan, and such amount, together with interest from the date of the loan at such rate not exceeding twelve per cent. per annum as the Superintendent of Insurance may fix, shall on application by the Superintendent of Insurance to any Civil Court of competent jurisdiction be recoverable by execution as if a decree for such amount had been passed by that Court.

[4][(5) The provisions of section 86-D of the Indian Companies Act, 1913, shall not apply to a loan granted to a director of a provident society being a company if the loan is one granted on the security of a policy on which the society bears the risk and the policy was issued to the director on his own life and the loan is within the surrender value of the policy.]

Inspection of books.

86. The books of every provident society shall at all reasonable times be open to inspection by the Superintendent of Insurance or any person appointed by him in this behalf or by any member or policy-holder of the society who has made an application in this behalf to the Superintendent of Insurance.

Inquiry by or on behalf of Superintendent of Insurance.

87. (1) The Superintendent of Insurance shall at least once in two years and may if he thinks fit, at any time visit personally or depute a suitable person to visit the principal office of a provident society [5][or the principal office in British India of a society having its principal place of business or domicile outside British India] and inquire into the solvency of the society and the manner in which the business of the society is conducted, or may, after giving notice to the society and giving it an opportunity to be heard, direct such an inquiry to be made by an auditor or actuary appointed by him [6][or by both an auditor and an actuary appointed simultaneously, or first by an auditor or an actuary only and afterwards by an actuary or auditor].

(2) For the purposes of any such inquiry the Superintendent or the auditor or actuary, as the case may be, shall be entitled to examine all books and documents of the society and may demand from the society or any officer of the society such explanation as he may require on any matter relating to the affairs of the society.

[7][(3) The results of any such inquiry shall be recorded in writing by the person making the inquiry, and four copies of the record shall be supplied to

LEG. REF:

1 Substituted for the words "a director or officer of the society is a director or partner" by sec. 13, Act XX of 1940.

2 Inserted by sec. 13, Act XX of 1940.

3 Substituted for the words "or officer", *ibid.*

4 Inserted by sec. 47, Act XIII of 1941.

5 Insefted by sec. 48, Act XIII of 1941.

6 These words were added, *ibid.*

7 This sub-section was substituted, *ibid.*

the Superintendent of Insurance; and when the inquiry is completed a copy of the record or of each such record where more than one are made in the course of the same inquiry, shall be sent by the Superintendent of Insurance to the society concerned and shall be open to inspection by any member or policy-holder of the society.]

[1][(4) All expenses of and incidental to any inquiry made by an auditor or actuary under sub-section (1) including any expenses incurred before the date on which the Superintendent of Insurance receives notice of an appeal under clause (*e*) of sub-section (1) of section 110 shall be defrayed by the provident society, shall have priority over other debts due from the society, and shall be recoverable as an arrear of land-revenue.]

Winding up by Court and voluntary winding up.

88. (1) The Court may order the winding up of a provident society being a company incorporated under the Indian Companies Act, 1913, [2][or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or any Act repealed thereby] and the provisions of [3][the Indian Companies ...13], shall, subject to the provisions of this Part, apply accordingly.

...) In addition to the grounds on which such an order may be based, ... may order the winding up of a provident society, if the registration ...iety is cancelled by the Superintendent of Insurance under sub-sec- ... section 70 and he applies for the winding up of the society.

... provident society being a company incorporated under the Indian ...t, 1913, [2][or under the Indian Companies Act, 1882, or under the ...nies Act, 1866, or under any Act repealed thereby], may be ...ntarily in accordance with the provisions of [3][the Indian Com- ...3], but shall not be so wound up except for the purpose of ...gamation or re-construction of the society or on the ground that ...abilities it cannot continue its business.

...ident society not being a company incorporated under the ... Act, 1913, [2][or under the Indian Companies Act, 1882, or ...ompanies Act, 1866, or under any Act repealed thereby], ...luntarily under this Act if a resolution is passed by the ...ciety should be wound up voluntarily for the purpose or ... in sub-section (3), and the Superintendent of Insurance ... he has ordered the cancellation of the registration of a ... (4) of section 70, order the winding up of the society

89. The Court may make an order reducing the ...nount of the insurance contracts of a provident ...iety upon such terms and subject to such conditions ... the Court thinks just—

...ent of Insurance as an alternative to cancelling ...der sub-section (4) of section 70 applies to the

...n liquidation the Court thinks fit;

...been proved to be insolvent, the Court thinks ...rder for the winding up of the society; or

...n an application made in this behalf by the ... an actuary, and after giving the policy- ...hat it is desirable to do so.

...of Insurance a... so... as ... f the Superintend... ...ion of a society u... s behalf; ... while a society is i... when a society has ... place of making an ... the Court is satisfied ... orted by the report of ...portunity to be heard ...

LEG. REF.

...tion was added by sec. 48 of, ...941.

... sec. 49, Act XIII of 1941.

... and figures were substituted for the words "that Act", *ibid.*

SEC. 88.—As to winding up of Provident Insurance Society, *see* 30 S.L.R. 92=1936 Sind 165.

Appointment of liquidator.

90. (1) Where a provident society is to be wound up whether under the Indian Companies Act, 1913, or under this Act, the society shall, within seven days from the date of the order of the Court ordering the winding up or the passing of the resolution authorising the winding up, as the case may be, give notice thereof to the Superintendent of Insurance, and except where the winding up is done by an order of the Court, the Superintendent of Insurance shall appoint the liquidator and shall determine the remuneration to be paid to him.

[1][Provided that if the Superintendent of Insurance is not satisfied that the assets of the society are sufficient to meet the costs of liquidation including the remuneration of the liquidator, he may decline to make such appointment, and in such a case the society shall itself appoint a liquidator who shall carry out the liquidation as if the winding up was being done by an order of the Court.]

(2) Any liquidator [2][appointed by the Superintendent of Insurance under sub-section (1)] may be removed by the Superintendent of Insurance if satisfied that the duties entrusted to him are not being properly discharged.

Powers of liquidator.

91. (1) A liquidator appointed to wind up a society shall have power—

(*a*) to institute or defend any legal proceedings on behalf of the society by his name of office;

(*b*) to determine the contribution to be made by members of the society respectively to the assets of the society;

(*c*) to investigate all claims against the society and to decide questions of priority arising between claimants;

(*d*) to determine by what persons and in what proportion the costs of the liquidation [3][including the remuneration of the liquidator and any expenses incurred under clause (*g*) of this sub-section] are to be borne;

(*e*) to give such directions in regard to the collection and distribution of the assets of the society as may appear to him to be necessary for winding up the affairs of the society;

(*f*) to summon, and enforce the attendance of, witnesses and to compel the production of documents by the same means and as far as may be in the same manner as is provided in the case of a Civil Court by the Code of Civil Procedure, 1908; and

(*g*) with the sanction of the Superintendent of Insurance, to employ such establishment and to obtain such assistance from an actuary or an auditor as may be necessary for the discharge of his duties.

(2) The liquidator shall, for settling the list of contributories and realising the amount of contributions, have the same powers as an official liquidator appointed by the Court for the winding up of a company under the Indian Companies Act, 1913.

Procedure at liquidation

92. (1) As soon as a liquidator is appointed to wind up a society he shall take charge of all property movable or immovable of the society and of all its books and documents.

(2) If any proprietor or officer of the society or any other person retains any portion of the assets of the society or fails to deliver to the liquidator any

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LEG. REF.

1 Added by sec. 50, Act XIII of 1941.

2 Substituted for the words "so appointed" by sec. 50, Act XIII of 1941.

3 These words brackets and letter were inserted by sec. 51, *ibid.*

SECS. 90-91.—When a liquidator is appointed in respect of a provident fund by the Superintendent of Insurance under sec. 90 (1) of the Act, he has no powers under sec. 91 (2) of the Act of 'realising the amount of contribution' except such powers as an official liquidator has in a winding up order of the Court. He cannot by himself make a call. The making of a call cannot be said to be merely the determination of the contribution to be made by the members within the meaning of sec. 91 (1) (*b*) of the Act. 1942 A. 136=1942 A.L.J. 47=199 I.C. 663=I.L.R. (1942) All. 26.

book or document when so required by the liquidator, he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five hundred rupees, or with both, and the Court may order the delivery of the assets or book or document to the liquidator.

(3) The liquidator shall within fifteen days of his appointment send notice by post to all persons who appear to him to be creditors of the society that a meeting of the creditors of the society will be held on a date not being less than twenty-one nor more than twenty-eight days after his appointment, and at a place and hour to be specified in the notice, and shall also advertise notice of the meeting once in the local official Gazette and once at least in two newspapers circulating in the province in which the society is situated.

(4) At the meeting so held the creditors shall determine whether an application shall be made for the appointment of any person as liquidator in the place of or jointly with the liquidator already appointed, or for the appointment of a committee of inspection, and, if they so resolve and an application accordingly is made at any time not later than fourteen days after the date of the meeting by any creditor appointed for the purpose at the meeting, the Superintendent of Insurance shall appoint a suitable person in place of or jointly with the liquidator already appointed, and if so desired a committee of inspection.

(5) The committee of inspection shall, subject to any prescribed conditions have a general power of supervision over the acts of the liquidator and shall have the right to inspect his accounts at all reasonable times.

(6) The liquidator shall, with such assistance from an actuary as may be required, ascertain as soon as practicable the amount of the society's liability to every person appearing by the society's books to be entitled to or interested in any policy issued by the society, and shall give notice of the amount so found to each such person in the prescribed manner and each such person on receiving such notice shall be bound by the value so ascertained.

(7) The liquidator shall make a valuation of the assets of the society and an estimate of the costs of the winding up, and shall on the basis of these, settle the list of contributories.

(8) The liquidator shall apply to the Superintendent of Insurance for an order for the return of the deposit made by the society under section 73 and the Superintendent of Insurance shall on such application order the return of the deposit subject to such terms and conditions as he may think fit.

(9) In administering and distributing the assets of the society the liquidator shall have regard to any directions that may be given by the creditors or contributories at a general meeting or by the Superintendent of Insurance.

(10) The liquidator shall keep books of account in which he shall record the proceedings at all meetings attended by him, all amounts received or expended by him and any other matter that may be prescribed, and these books may, with the sanction of the Superintendent of Insurance, be inspected by any creditor or contributory.

(11) If the winding up continues for more than a year, the liquidator shall summon a meeting of the creditors and contributories at the end of the first year and of each succeeding year, and shall lay before them an account of his acts and dealings and of the conduct of the winding up, and that account together with any views expressed thereon by the meeting shall be forwarded by the liquidator to the Superintendent of Insurance.

(12) So far as is not otherwise provided herein or is not otherwise prescribed under this Act, the liquidator shall so far as practicable follow the procedure to be followed by an official liquidator appointed by the Court for the winding up of a company under the Indian Companies Act, 1913.

[1][(13) The costs of the liquidation including the remuneration of the liquidator and any expenses incurred under clause (*g*) of sub-section (2) of section 91 shall, if the liquidator decides that they shall be payable out of the assets of the society, be payable in priority to all other claims.]

Dissolution of provident society.

93. (1) As soon as the affairs of a provident society are fully wound up, the liquidator shall prepare an account of the winding up showing how the winding up has been conducted and the property of the society has been disposed of and shall call a meeting of the members, creditors and contributories for the purpose of laying before it the account and giving any explanation thereof.

(2) Notice of the meeting shall be sent to each person individually and shall be advertised in the local official Gazette and in at least two newspapers circulating in the province in which the society is situated.

(3) Within one week after the meeting the liquidator shall send to the Superintendent of Insurance a copy of the account and shall report to him the holding of the meeting and its date and shall forward to him a copy of the proceedings of the meeting.

(4) The Superintendent of Insurance may return the account to the liquidator if it is incomplete or unsatisfactory and may require the liquidator to carry out any further steps necessary to complete the winding up and the liquidator shall comply with such requirement and shall submit a further report to the Superintendent of Insurance within six months.

(5) If the Superintendent of Insurance is satisfied that the affairs of the society have been fully wound up he shall register the account of the liquidator who shall forthwith make over to the Superintendent of Insurance sums, if any, remaining undisposed of, and on the expiry of three months from the registering of the account the Superintendent of Insurance shall declare the society dissolved and cause the dissolution of the society to be notified in the local official Gazette, and the liquidator shall thereupon be discharged from further responsibility.

(6) If within a period of five years from the date on which any sums have been made over to the Superintendent of Insurance under sub-section (5) an order of a Court of competent jurisdiction has not been obtained at the instance of any claimant to such sums for their disposal the said sums shall become the property of Government.

Nominations and assignments.

94. (1) The provisions of section 38 and section 39 relating to assignment, transfer and nomination in the case of life insurance policies shall, subject to the provisions of this section, apply to policies of insurance issued by any provident society covering any of the contingencies specified in clause (*a*) of section 65.

(2) No nomination shall be valid if the person nominated is not the husband, wife, father, mother, child, grand-child, brother, sister, nephew or niece of the holder of the policy.

PART IV.

MUTUAL INSURANCE COMPANIES AND CO-OPERATIVE LIFE INSURANCE SOCIETIES.

Definitions.

95. (1) In this Part—

(*a*) "Mutual Insurance Company" means an insurer, being a company [2][incorporated under the Indian Companies Act, 1913, or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act repealed thereby,] which has no share capital and of which by its constitution only and all policy-holders are members; and

(*b*) "Co-operative Life Insurance Society" means an insurer being a society registered under the Co-operative Societies Act, 1912, or under an Act

LEG. REF.

1 Added by sec. 52 of Act XIII of 1941.

2 Substituted for the words and figures "incorporated under the provisions of the Indian Companies Act, 1913", by sec. 29, Act XI of 1939.

of a Provincial Legislature governing the registration of co-operative societies which carries on the business of life insurance and which has no share capital on which dividend or bonus is payable and of which by its constitution only original members on whose application the society is registered and all policy-holders are members:

Provided that any Co-operative Life Insurance Society in existence at the commencement of this Act shall be allowed a period of one year to comply with the provisions of this Act.

(2) Notwithstanding anything contained in sub-section (1), other co-operative societies may be admitted as members of a Co-operative Life Insurance Society without being eligible to any dividend, profit or bonus.

(3) A Provincial Government may, subject to any rules made by the Central Government, empower the Registrar of Co-operative Societies of the province to register co-opeartive societies for the insurance of cattle or crops or both under the provisions of the Co-operative Societies Act in force in the province.

(4) A Provincial Government may make rules not inconsistent with any rules made by the Central Government to govern such societies, and the provisions of this Act, in so far as they are inconsistent with those rules, shall not apply to such societies.

Application of Act to Mutual Insurance Companies and Co-operative Life Insurance Societies.

96. The provisions of sections 6 and 7 and of sub-section (2) of section 20, so far as those provisions are inconsistent with the provisions of this Part shall not apply, and the provisions of this Part shall apply, to Mutual Insurance Companies and Co-operative Life Insurance Societies.

Working capital of Mutual Insurance Companies and Co-operative Life Insurance Societies.

97. No Mutual Insurance Company incorporated after the 26th day of January, 1937, and no Co-operative Life Insurance Society registered after that date under the Co-operative Societies Act, 1912, or under an Act of a Provincial Legislature governing the registration of co-operative societies shall be registered under this Act, unless it has as working capital a sum of fifteen thousand rupees, exclusive of the deposit to be made before or at the time of application for registration in accordance with sub-section (2) of section 98 of this Act and of the preliminary expenses, if any, incurred in the formation of the company or society.

Deposits to be made by Mutual Insurance Companies and Co-operative Life Insurance Societies.

98. (1) Every Mutual Insurance Company and every Co-operative Life Insurance Society shall, in respect of the life insurance business carried on by it in British India, deposit and keep deposited with one of the offices in India of the Reserve Bank of India, for and on behalf of the Central Government, a sum of two hundred thousand rupees in cash or in approved securities estimated at the market value of the securities on the day of deposit.

(2) The deposit referred to in sub-section (1) may be made in instalments, of which the first shall be a payment made before or at the time the application for registration under this Act is made [1][of not less than twenty-five thousand rupees] or such sum as with any deposit previously made by the insurer under the provisions of the Indian Life Assurance Companies Act, 1912, brings the amount deposited up [2][to not less than twenty-five thousand rupees] and the subsequent instalments shall be annual instalments made before the

LEG. REF.

1 Substituted for the words "of twenty-five thousand rupees" (with retrospective effect) by sec. 53, Act XIII of 1941.

2 Substituted (with retrospective effect) for the words "to twenty-five thousand rupees", *ibid.*

expiry of each subsequent [1][calendar year] of an amount in cash or in approved securities estimated at the market value of the securities on the day of payment of the instalment, [2][equal to not less than one-third of the gross premium] income received in the previous [1][calendar year].

[3][(3) The provisions of sub-section (7) of section 7 shall apply in respect of a Mutual Insurance Company and a Co-operative Life Insurance Society as if for the words 'under the foregoing provisions of this section' the words and figures 'under the provisions of section 98' were substituted.]

Transferees and assignees of policies not to become members.

99. No transferee or assignee of a policy issued by an insurer to whom this Part applies shall become a member of a Mutual Insurance Company of a Co-operative Life Insurance Society merely by reason of any such transfer or assignment.

Publication of notices and documents of Mutual Insurance Companies and Co-operative Life Insurance Societies.

100. Notwithstanding the provisions of section 79 and section 131 of the Indian Companies Act, 1913, a Mutual Insurance Company or a Co-operative Life Insurance Society may, instead of sending the notices and the copies of the balance-sheet, revenue account and other documents which they are required to send to the members under those sections, publish such notices or documents once in a newspaper published in the English language and in a newspaper published in an Indian language circulating in the place where the principal office of the company is situated:

Provided that, where any members of the company are domiciled in a province other than that in which the principal office of the company is situated, publication of the [4][* * * *] notice of the meetings shall be made in a newspaper or newspapers published in the principal languages of that province and circulating therein [5][and any member of the company domiciled in that province shall be entitled on application to the company to receive from it a copy of the balance-sheet and revenue account]:

Supply of documents to members.

101. Every mutual Insurance Company and every Co-operative Life Insurance Society shall, on the application of any member made within two years from the date on which any such document is furnished to the Registrar of Companies under the provisions of section 134 of the Indian Companies Act, 1913, or to the Registrar of Co-operative Socieites of the province in which the Co-operative Life Insurance Society is registered, furnish a copy of the document free of cost to the member within fourteen days of the application.

PART V.

MISCELLANEOUS.

Penalty for default in complying with, or act in contravention of this Act.

102. (1) Except as otherwise provided in this Act, any insurer who makes default in complying with or acts in contravention of any requirement of this Act and, where the insurer is a company, any director, managing agent, manager or other officer of the company, or where the insurer is a firm, any partner of the first who is knowingly a party to the default, shall be punishable with fine which may extend to one thousand rupees and, in the case of a continuing default, with an additional fine which may extend to five hundred rupees for every day during which the default continues.

LEG. REF.

1 Substituted for the word "year" by sec. 30, Act XI of 1939.

2 Substituted (with retrospective effect) for the words "equal to one-third of the gross premium" by sec. 53, Act XIII of 1941.

3 Added (with retrospective effect), *ibid.*

4 The words "balance-sheet, revenue account and" were mitted by sec. 54, Act XIII of 1941.

5 Added by sec. 54, *ibid.*

(2) [1][Any provident society as defined in Part III which makes default in complying with or acts in contravention of any of the requirements of this Act] and any director, managing agent, manager, secretary or other officer of the society who is knowingly a party to the default, [2][or contravention], shall be punishable with fine which may extend to five hundred rupees or in the case of a continuing default [1][or contravention] with fine which may extend to two hundred and fifty rupees for every day during which the default [2][or contravention] continues.

Penalty for transacting insurance business in contravention of sections, 3, 7 and 98.

103. (1) Any insurer or any person acting on behalf of an insurer, who [3][carries on] any class of insurance business in contravention of any of the provisions of section 3, [4][* *] section 7, [5][* *] or section 98, or does any one or more of the acts constituting the business of insurance [6][in relation to any insurance business [7][carried on] in contravention of any of the said sections] shall be punishable with fine which may extend to two thousand rupees.

(2) Any person knowingly taking out a policy of insurance with any insurer or person guilty of an offence under sub-section (1) shall be punishable with fine which may extend to five hundred rupees:

Provided that nothing in [8][sub-section (1) or sub-section (2)] shall apply to the business of re-insurance between the head office of an insurer in British India and the head office of an insurer not having an office in British India.

[9][(3) Any provident society or any person acting on behalf of a provident society who carries on any class of insurance business in contravention of any of the provisions of section 70, section 73 or section 83, or does any one or more of the acts constituting the business of insurance in relation to any insurance business carried on in contravention of any of the said sections shall be punishable with fine which may extend to one thousand rupees.]

Penalty for false statement in document.

104. Whoever, in any return, report, certificate, balance-sheet or other document, required by or for the purposes of any of the provisions of this Act, wilfully makes a statement false in any material particular, knowing it to be false, shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to one thousand rupees, or with both.

105. [10][(1)] Any director, managing agent, manager or other officer or

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LEG. REF.

1 Substituted for the words "Any provident society which makes default in complying with any of the requirements of Part III" by sec. 55, Act XIII of 1941.

2 Inserted by sec. 55, Act XIII of 1941.

3 Substituted for the word "transacts" by sec. 56, *ibid.*

4 The word and figure "sec. 6" were omitted, *ibid.*

5 The word and figure "sec. 97" were omitted, *ibid.*

6 Substituted for the words "in relation to any such class of insurance business" by sec. 31, Act XI of 1939.

7 Substituted for the word "transacted" by sec. 56, Act XIII of 1941.

8 Substituted for the words "this section", *ibid.*

9 This sub-section was added, *ibid.*

10 Re-numbered as sub-sec. (1) of that section by sec. 57, *ibid.*

SEC. 102.—Construction of section. As to who are liable under the section, *see* 51 L.W. 534=1940 M.W.N. 384=1940 Mad. 760 (Same person holding different capacities would be liable in all capacities.

SECS. 104 AND 107.—Merely because an offence was created by an enactment of the Central Legislature, operating in the exclusive legislative sphere of the Central Legislature, it did not follow that the provincial authorities responsible for enforcing criminal law were incompetent to prosecute or initiate prosecution for such offences. There could be nothing *ultra vires* in a Provincial Government taking steps to secure the enforcement of the law in respect of offences created by the Insurance Act or in the Advocate-General of the Province being specified in the Act as the person to control the initiation of proceedings under the Act. A valid previous sanction is essential to the jurisdiction of the Court to entertain the proceedings. 48 C.W.N. (F.R.) 66=1944 F.C. 25=(1944) F.L.J. 60=(1944) 1 M.L.J. 207 (F.C.). The Provincial Government can take proceedings for an offence under sec. 104 of the Act provided the sanction of the Advocate-General concerned is obtained. Such a sanction is not rendered invalid merely because the offences are not specified therein. 1943 O.W.N. 389=1944 Oudh 147.

Wrongfully obtaining or with holding property

employee of an insurer who wrongfully obtains possession of any property of the insurer or having any such property in his possession wrongfully withholds it or wilfully applies it to purposes other than those expressed or authorised by this Act, shall on the complaint of the insurer or any member or any policy-holder thereof, be punishable with fine which may extend to one thousand rupees and may be ordered by the Court trying the offence to deliver up or refund within a time to be fixed by the Court any such property improperly obtained or wrongfully withheld or wilfully misapplied and in default to suffer imprisonment for a period not exceeding two years.

[1][(2) This section shall apply in respect of a provident society as defined in Part III as it applies in respect of an insurer.]

Wrongfully diminishing life insurance fund.

106. [2][(1)] If on the application of [3][the Superintendent of Insurance or] an insurer or any member of an insurance company or any policy-holder or the liquidator of an insurance company (in the event of the insurer being in liquidation) the Court is satisfied that by reason of any contravention of the provisions of this Act the amount of the life insurance fund has been diminished, every person who was at the time of the contravention a director, manager, liquidator or an officer of the insurer shall be deemed in respect of the contravention to have been guilty of misfeasance in relation to the insurer unless he proves that the contravention occurred without his consent or connivance and was not facilitated by any neglect or omission on his part; and the Court shall have all the powers which a Court has under sections 235 and 237 of the Indian Companies Act, 1913, and shall also have the power to assess the sum by which the amount of the life insurance fund has been diminished by reason of the misfeasance and to order any person guilty thereof to contribute to that fund the whole or any part of that sum by way of compensation.

[3-a][(2) This section shall apply in respect of a provident society as defined in Part III as it applies in respect of an insurer.]

Notice to and hearing of Superintendent of Insurance.

[4][**106-A.** (1) When application is made to the Court for the making of any order to which this section applies the Court shall, unless the Superintendent of Insurance has himself made the application or has been made a party thereto, send a copy of the application together with intimation of the date fixed for the hearing thereof to the Superintendent of Insurance, and shall give him an opportunity of being heard.

(2) The orders to which this section applies are the following namely:—

(*a*) an order for the attachment in execution of a decree of any deposit made under section 7 or section 98;

(*b*) an order under section 9 or section 59 for the return of any such deposit;

(*c*) an order under section 36 sanctioning any arrangement for the transfer or amalgamation of life insurance business or any order consequential thereon;

(*d*) an order for the winding up of an insurance company or a provident society;

(*e*) an order under section 58 confirming a scheme for the partial winding up of an insurance company;

LEG. REF.

1 This sub-section was added by sec. 57, Act XIII of 1941.

2 Sec. 106 was re-numbered as sub sec. (1) of that section by sec. 58, *ibid.*

3 These words were inserted, *ibid.*

3-a This sub-section was added, *ibid.*

4 Inserted by sec. 14, Act XX of 1940.

SEC. 107.—*See also* notes under sec. 104, *supra*. Where the allegations made against the manager of an Insurance Company amount to offences under both the Companies Act and the Insurance Act, it would be trifling with the law to prosecute him under the Companies Act instead of under the Insurance Act. The prosecution

(*f*) an order under section 89 reducing the amount of the insurance contracts of a provident society.]

Previous sanction of Advocate-General for institution of proceedings.

107. [1][(1)] Except where proceedings are instituted by the Superintendent of insurance, no proceedings under this Act against an insurer or any director, manager or other officer of an insurer or any person who is liable under sub-section (2) of section 41 shall be instituted by any person unless he has previous thereto obtained the sanction of the Advocate-General of the province where the principal place of business in British India of such insurer is situate to the institution of such proceedings.

[2][(2) This section shall apply in respect of a provident society as defined in Part III as it applies in respect of an insurer.]

Power of Court to grant relief.

108. If in any proceedings, civil or criminal, it appears to the Court hearing the case that a person is or may be liable in respect of negligence, default, breach of duty or breach of trust but that he has acted honestly and reasonably and that having regard to all the circumstances of the case he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, the Court may relieve him either wholly or partly from his liability on such terms as it may think fit.

Cognizance of offences.

109. No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.

Appeals.

110. (1) An appeal shall lie to the Court having jurisdiction from any of the following orders, namely:—

(*a*) an order under section 3 refusing to register, or cancelling the registration of, an insurer;

(*b*) an order under section 5 directing the insurer to change his name;

(*c*) an order under section 42 cancelling the licence issued to an agent;

(*d*) an order under section 75 refusing to register an amendment of ruels;

LEG. REF.

1 Re-numbered as sub-sec. (1) of that section by sec. 59, Act XIII of 1941.

2 This sub-section was added by sec. 59, *ibid.*

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under the Companies Act should be confined to matters which are offences only under that Act. I.L.R. (1940) 1 Cal. 575 =44 C.W.N. 454=1940 Cal. 232. Sec. 107 of the Insurance Act requires the sanction of the Advocate-General before a private prosecution could be started against an insurer or any director, manager or other officer of an insurer for any offence under the Act. The section is not confined to a prosecution under sec. 41 (2) of the Act. The words "who is liable under sub-sec. (2) of sec. 41" in the section qualify the words "any person", otherwise, the words "no proceedings under this Act" would have no real meaning. I.L.R. (1940) 1 Cal. 575=44 C.W.N. 454=1940 Cal. 232. Before sanction is given by the Advocate-General, he must have proposals before him for the initiation by some person of particular proceedings of a defined nature under the Act against one or more of specified persons and he must sanction the initiation of those proceedings by that person. If proceedings are initiated by some one other than the person to whom the sanction has been given, or if proceedings substantially different from those sanctioned are in fact initiated the provisions of the section are not complied with and there will be no jurisdiction for a Court to entertain the proceedings. It cannot be held that the section requires any particular form of sanction or even that it should be always in writing. What is necessary is that if challenged by a defendant or accused person, the plaintiff or the prosecutor should be able to establish to the satisfaction of the Court that the requisites of the section have been complied with in respect of the sanction on which he relies, so that the Court can be satisfied that it has jurisdiction to entertain the particular proceedings before it. 48 C.W.N. (F.R.) 66=(1944) F.L.J. 60 =1944 F.C. 25=(1994) 1 M.L.J. 207 (F. C.). *See also* 1944 Oudh 147.

SEC. 110: APPEALS UNDER—PROCEDURE. —Appeals under sec. 110 of the Act may be made by petitions setting out the objections *seriatim* in a manner analogous to grounds of appeal. I.L.R. (1940) 2 Cal. 127=1940 Cal. 529.

(*e*) an order under section 87 directing an inquiry by an auditor or actuary; or

(*f*) an order made in the course of the winding up or insolvency of an insurer or a provident society.

(2) The Court having jurisdiction for the purposes of sub-section (1) shall be the principal Court of civil jurisdiction within whose local limits the principal place of business of the insurer concerned is situate.

(3) An appeal shall lie from any order made under sub-section (1) to the authority authorised to hear appeals from the decisions of the Court making the same and the decision on such appeal shall be final.

[1][(4) No appeal under this section shall be entertained unless it is made before the expiration of four months from the date on which the order appealed against was communicated to the appellant.]

[2][**110-A.** The Superintendent of Insurance may by general or special order delegate any of his powers or duties under this Act to any person subordinate to him. The exercise or discharge of any of the powers or duties so delegated shall be subject to such restrictions, limitations and conditions, if any as the Supeirntendent of Insurance may impose and shall be subject to his control and revision.

Regulation of powers and duties of Superintendent of Insurance.

110-B. Every document which is required by this Act or by any rule made thereunder to be signed by the Superintendent of Insurance or by any person subordinate to him or by any officer authorised by him under sub-section (1) of section 42 shall be deemed to be properly signed, if it bears a facsimile of the signature of such Superintendent, person or officer printed, engraved, lithographed or impressed by any other mechanical process approved by the Central Government.]

Signature of documents.

111. (1) Any process or notice required to be served on an insurer or provident society shall be sufficiently served if addressed to any person registered with the Superintendent of Insurance as a person authorised to accept notices on behalf of the insurer or provident society and left, at, or sent by reistered post to, the address, of such person as registered with the Superintendent of Insurance.

Service of notices.

(2) Any notice or other document which is by this Act required to be sent to any policy-holder may be addressed and sent to the person to whom notices respecting such policy are usually sent and any notice so addressed and sent shall be deemed to be notice to the holder of such policy:

Provided that, where any person claiming to be interested in a policy as transferee, assignee or nominee has given to an insurer or to a provident society notice in writing of his interest, any notice which is by this Act required to be sent to policy-holders shall also be sent to such person at the address specified by him in his notice.

112. Notwithstanding anything to the contrary contained in this Act an insurer carrying on the business of life insurance shall be at liberty to declare an *interim* bonus or bonuses to policy-holders whose policies mature for payment by reason of death or otherwise during the inter-valuation period on the recommendation of the investigating actuary made at the last preceding valuation.

Declaration of *interim* bonuses.

113. [3][(1) A policy of life insurance under which the whole of the benefits become payable either on the occurrence, or at a fixed interval or fixed intervals after the occurrence, of a contingency which is bound to happen

Acquisition of surrender values by policy.

LEG. REF.

1 Added by sec. 60, Act XIII of 1941.

2 Secs. 110-A and 110-B were insereted by sec. 15, Act XX of 1940.

3 Substituted for the original sub-secs. (1) and (2) by sec. 61, Act XIII of 1941.

shall, if all premiums have been paid for at least three consecutive years in the case of a policy issued by an insurer, or five years in the case of a policy issued by a provident society as defined in Part III, acquire a guaranteed surrender value, to which shall be added the surrender value of any subsisting bonus already attached to the policy, and every such policy issued by an insurer shall show the guaranteed surrender value of the policy at the close of each year after the second year of its currency or at the close of each period of three years throughout the currency of the policy:

Provided that the requirements of this sub-section as to the addition of the surrender value of the bonus attaching to a policy at surrender shall be deemed to have been complied with whether the method of calculation of the guaranteed surrender value of the policy makes provision for the surrender value of the bonuus attaching to the policy:

Provided further that the requirements of this sub-section as to the showing of the guaranteed surrender value on a policy shall be deemed to have been complied with where the insurer showes on the policy the guaranteed surrender value of the policy by means of a formula accepted in this behalf by the Superintendent of Insurance as satisfying the said requirements:

Provided further that the provisions of this sub-section as to the showing of the guaranteed surrender value on a policy shall not take effect, until after the expiry of six months from such date as the Central Government may, by notification in the official Gazette appoint in this behalf.

(2) Notwithstanding any contract to the contrary, a policy which has acquired a surrender value shall not lapse by reason of the non-payment of further premiums but shall be kept alive to the extent of the paid-up sum insured and the paid-up sum insured shall for the purposes of this sub-section include in full all subsisting reversionary bonuses that have already attached to the policy, and shall, where the policy is one on which the maximum number of annual premiums payabale is fixed and the premiums are of uniform amount, before the inclusion of such bonuses not less than the amount bearing to the total sum insured by the policy exclusive of bonuses the same proportion as the total period for which premiums have already been paid bears to the maximum period for which premiums were originally payable.

(3) A policy kept alive to the extent of the paid up sum insured under sub-section (2) shall not be entitled by virtue of that sub-section to participate in any profits declared distributable after the conversion of the policy into a paid-up policy.]

[1][(4)] [2][Sub-section (2) and sub-section (3) shall apply];

[3][* * * * * *].

[4][(*a*) where the paid up sum insured by a policy, being a policy issued by an insurer, is less than one hundred rupees inclusive of any attached bonus, or takes the form of an annuity of less than twenty-five rupees, or where the paid up sum insured by a policy, being a policy issued by a provident society as defined in Part III, is less than fifty rupees inclusive of any attached bonus or takes the form of an annuity of less than twenty-five rupees, or]

[5][(*b*)] where the parties after the default has occurred in the payment of the premium agree in writing to some other arrangement, or

[6][(*c*)] to policies in which the surrender value is automatically applied under the terms of the contract to maintaining the policy in force after its lapse through non-payment of premium.

LEG. REF.

1 The original sub-sec. (3) was re-numbered (4) by sec. 61, Act XIII of 1941.

2 Substituted for the words "This section shall not apply to", *ibid.*

3 The original cl. (*a*) was omitted, *ibid.*

4 Substituted for the original cl. (*b*), *ibid.*

5 The original cl. (*c*) was re-lettered (*b*), *ibid.*

6 The original cl. (*d*) was re-lettered (*c*), *ibid.*

Power of Central Government to make rules.

114. (1) The Central Government may, subject to the condition of previous publication by notification in the official Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribes—

(*a*) the qualifications to be possessed by actuaries;

[1][(*b*) the manner in which it shall be determined which of the transactions of an insurer are to be deemed for the purposes of this Act to be insurance business transacted in India or in British India, as the case may be;]

(*c*) the procedure to be followed by the Reserve Bank of India in dealing with deposits made in pursuance of this Act, including the receipt of, custody of, withdrawal of, and payment of interest on securities lodged as such deposits, and their inspection and verification by the Superintendent of Insurance;

(*d*) the form referred to in clause (*d*) of sub-section (2) of section 16;

(*e*) the manner in which the prospectuses and tables referred to in sub-section (1) of section 41 shall be published and the form in which they shall be drawn up;

(*f*) the matters to be prescribed for the purposes of section 48;

(*g*) the manner in which licences to act as insurance agents may be [2][applied for,] issued or cancelled;

(*h*) the contingencies other than those specified in clauses (*a*) to (*f*) of [3][sub-section (2) of] section 65 on the happening of which money may be paid by provident societies;

(*i*) the matters other than those specified in clauses (*a*) to (*o*) of sub-section (1) of section 74 on which a provident society shall make rules;

(*j*) the form of any account, return or register required by Part III and the manner in which such account, return or register shall be verified;

(*k*) subject to the provisions of this Act, the fees payable thereunder and the manner in which they are to be collected; [4][* *]

(*l*) the conditions and the matters which may be prescribed under sub-section (5), [5][(6)], (10) and (12) of section 92;

[6][(*m*) any other matter which is to be or may be prescribed.]

[7][* * * * *].

[8][(3) Every rules made under this section shall be laid as soon as may be after it is made before each of the Chambers of the Central Legislature, while it is in session, for a total period of one month, which may be comprised in one session or in two or more sessions, and if before the expiry of that period, or where the period for which the rule is so laid before one Chamber does not coincide with that for which it is so laid before the other, before the expiry of the later of these periods, both Chambers agree in making any modification in the rule or both Chambers agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be.]

[9][(4)] All rules made by a Local Government under the provisons of section 24 of the Provident Insurance Societies Act, 1912, and in force at the commencement of this Act shall so far as not inconsistent with the provisions of Part III continue in force and have effect as if duly made under this section until they are replaced by rules made under this section.

LEG. REF.

1 Substituted by sec. 62, Act XIII of 1941.
2 Inserted by *ibid.*
3 Inserted by sec. 16, Act XX of 1940.
4 The word "and" was omitted, *ibid.*
5 Inserted by sec. 32, Act XI of 1939.
6 Inserted by sec. 16, Act XX of 1940.
7 The proviso was omitted, *ibid.*
8 This sub-section was inserted, *ibid.*
9 The original sub-sec. (3) was re-numbered (4) by sec. 16, Act XX of 1940.

Alteration of forms.

115. The Central Government may, on the application or with the consent of an insurer, not being a company, alter the forms contained in the Schedules as respects that insurer, for the purpose of adapting them to the circumstances of that insurer:

Provided that nothing done under this section shall exempt the insurer from supplying all information required under this Act so far it is possible for the insurer to do so.

Power to exempt from certain requirements.

116. [1][(1)] The Central Government may, by notification in the official Gazette, exempt any insurer constituted, incorporated or domiciled in an Indian State [2][from any of the provisions of this Act which may be specified in the notification] either absolutely or subject to such conditions or modifications as may be specified in the notification.

[3][Provided that no such notification shall be issued unless the Central Government is satisfied that insurers constituted, incorporated or domiciled in British India are under the law or practice in such State entitled therein to benefits corresponding to those conferred by the notification or to benefits which in the opinion of the Central Government are at least equivalent thereto.]

[4][(2) This section shall apply in respect of provident societies as defined in Part III as it applies in respect of insurers.]

Summary of returns to be published.

[5][**116-A.** The Central Government shall every year cause to be published, in such manner as it may direct, a summary of the accounts, balance-sheets, statements, abstracts and other returns under this Act or purporting to be under this Act which have been furnished in pursuance of the provisions of this Act to the Superintendent of Insurance during the year preceding the year of publication, and may append to such summary any note of the Superintendent of Insurance or of the Central Government and any correspondence:

Provided that nothing in this section shall require the publication of the statements referred to in sub-section (1) of section 28.]

Saving of provisions of Indian Companies Act, 1913.

117. Nothing in this Act shall affect the liability of an insurer being a company [6][or a provident society as defined in Part III being a company] to comply with the provisions of the Indian Companies Act, 1913, in matters not otherwise specifically provided for by this Act.

Exemptions.

118. Nothing in this Act shall apply to any Trade Union registered under the Indian Trade Unions Act, 1926, or to any insurance business carried on by the Central or by a Provincial Government, or to any provident fund to which the provisions of the Provident Funds Act, 1925, apply, or, if the Superintendent of Insurance so orders in any case, and to such extent [7][or subject to such conditions or modifications] as he specifies in such order, to—

(*a*) any fund in existence and officially recognised by the Central Government before the 27th day of January, 1937, maintained by or on behalf of Government servants or Government pensioners for the mutual benefit of contributors to the fund and of their dependents, or

(*b*) any mutual or provident insurance society composed wholly of Government servants or of railway servants which has been exempted from any or all of the provisions of the Provident Insurance Societies Act, 1912.

[8][**119.** Any person may on payment of a fee of five rupees inspect the

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LEG. REF.

1 Sec. 116 was re-numbered as sub-sec. (1) of that section by sec. 63, Act XIII of 1941.
2 Substituted by sec. 17, Act XX of 1940.
3 This proviso was added, *ibid.*
4 Added by sec. 63, Act XIII of 1941.
5 Inserted by sec. 64, *ibid.*
6 Inserted by sec. 65, *ibid.*
7 Inserted by sec. 66, *ibid.*
8 Subsituted by sec. 67, *ibid.*

Inspection and supply of copies of published prospectus, etc.

documents filed by an insurer with the Superintendent of Insurance under clause (*f*) of sub-section (2) of section 3, and may obtain a copy of any such document or part thereof on payment in advance at the prescribed rate for the making of the copy.]

Determination of market value of securities deposited under this Act.

120. The market value on the day of deposit of securities deposited in pursuance of any of the provisions of this Act with the Reserve Bank of India shall be determined by the Reserve Bank of India whose decision shall be final.

Amendment of section 130, Act IV of 1882

121. To the Exception to section 130 of the Transfer of Property Act, 1882, the following words and figures shall be added, namely:—

"or affects the provisions of section 38 of the Insurance Act, 1938".

Amendment of Schedule I, Act IX of 1908.

[1][**122.** In Item No. 86 in the First Schelule to the Indian Limitation Act, 1908,—

(*a*) for the entry in the first column the following shall be substituted, namely:—

'(*a*) On a policy of insurance when the sum insured is payable after proof of the death has been given to or received by the insurers.

(*b*) On a policy of insurance when the sum insured is payable after proof of the loss has been given to or received by the insurers.';

(*b*) for the entry in the third column, the following shall be substituted, namely:—

'(*a*) The date of the death of the deceased.

(*b*) The date of the occurrence causing the loss.']

Repeals.

123. The Provident Insurance Societies Act, 1912, the Indian Life Assurance Companies Act, 1912, and the Indian Insurance Companies Act, 1928, are hereby repealed.

THE FIRST SCHEDULE.

(*See Section* 11.)

Regulations and Forms for the preparation of Balance-Sheet.

PART I.

Regulations.

1. The balance-sheet required to be prepared in respect of every class of business carried on by an insurer is, in the form in which it is set out in Part II of this Schedule (Form A), appropriate to a case where the insurer maintains a separate fund in respect of life insurance business.

2. The balance-sheet of life insurance business shall be prepared as a separate document. The balance-sheet of any class of business may be prepared as a separate document instead of being inorporated by the addition of columns and headings in the general balance-sheet, but the totals of each such separate balance-sheet (showing the total assets of the class of business, the balance at the credit of the life insurance fund or other separate fund or account, the amount of shareholders' undivided prots, and outstanding liabilities) must in any case be incorporated in the general balance-sheet.

3. If any combined balance-sheet is for any purpose issued by an insurer, it shall be in accordance with the Form set out in this Schedule, and there shall not be included among the assets shown in any such combined balance-sheet any amount in respect of any holding in or advance to any insurer whose assets and liabilities have been incorporated therein. Every combined balance-sheet must show clearly on the face thereof that it is a combined balance-sheet and must set out fully the name of every insurer whose assets and liabilities have been incorporated therein; if the assets and liabilities of any person not being an insurer are included in a combined balance-sheet the fact must be stated thereon.

4. Where any guarantee has been given by an insurer (otherwise than in the ordinary course of re-insurance business) in respect of the policies of any other insurer, the balance-

LEG. REF.

1 Inserted by sec. 68, Act XIII of 1941.

sheet of the insurer by whom the guarantee was given must show clearly the name of every insurer whose policies have been so guaranteed and the extent of the guarantee:

Provided that this regulation shall not apply where a combined balance-sheet is issued incorporating the assets and liabilities of the insurer whose policies are guaranteed.

5. Where any part of the assets of an insurer is deposited in any place outside British India as security for the owners of policies issued in that place, the balance-sheet shall state that part of the assets has been so deposited, and, if any such part forms part of the life insurance fund, shall show the amount thereof and the place where it is deposited. Where any combined balance-sheet is issued by an insurer for any purpose, the information required by this regulation shall be shown in the aggregate in respect of all the insurers whose assets and liabilities have been incorporated in the balance-sheet.

6. There shall be appended to the balance-sheet a statement in Form AA as set out in Part II of this Schedule showing the market value and the book value of the assets in India.

7. Every balance-sheet shall contain the following certificates, namely:—

(*a*) a certificate signed by the same persons as are required by this Act to sign the balance-sheet explaining how the values as shown in the balance-sheet of the Investments in Stocks and Shares have been arrived at and how the market value thereof has been ascertained for the purpose of comparison with the values so shown;

(*b*) a certificate signed by the same persons as are required by this Act to sign the balance-sheet and signed also, so far as respects the value of any items, shown in the balance-sheet under the heading of "Reversions and Life Interests", by an actuary, certifying that the values of all the assets have been reviewed as at the date of the balance-sheet, and that in their belief the assess set forth in the balance-sheet are shown in the aggregate at amounts not exceeding their realisable or market value under the several headings—"Loans", "Reversions and Life Interests", "Investments", "Agents' Balances", "Outstanding Premiums", "Interest Dividends and Rents outstanding", "Interest, Dividends and Rents accruing but not due", "Amouts due from other Persons or Bodies carrying on Insurance Business", "Sundry Debtors", "Bills Receivable", "Cash' and the several items specified under "Other Accounts".

Provided that if the persons signing the certificate are unable to certify that the assets set forth in the balance-sheet are so shown as aforesaid, a full explanation of the bases upon which the values shown in the balance-sheet have been assessed shall be given in the certificate;

(*c*) a certificate signed by the same persons as are required by this Act to sign the balance-sheet and by the auditor certifying that no parts of the assets of the life insurance fund has been directly or indirectly applied in contravention of the provisions of this Act relating to the application and investment of life insurance funds; and

(*d*) certiificates signed by the auditor (which shall be in addition to any other certificate or report which he is required by law to give with respect to the balance-sheet) certifying—

(i) that he has verified the cash balances and the securities relating to the insurer's loans, reversions and life interests, and investments;

(ii) to what extent, if any, he has verified the investments and transactions relating to any trusts undertaken by the insurer as trustee; and

(iii) in the case of a combined balance-sheet, that he has audited the balance-sheet and accounts of every insurer whose assets and liabilities are incorporated therein, or that any such balance-sheet and accounts which have not been audited by him have been certified by independent auditors. The said certificate shall contain a reference to such reservations, if any, as may have been made by any auditor upon any report or certificate given by him with respect to the balance-sheet and accounts of any insurer whose assets and liabilities are incorporated in the combined balance-sheet.

8. If the values shown in the balance-sheet in respect of "Holdings in Subsidiary Companies" or "House property (i) in India (ii) out of India" have been increased since the last previous balance-sheet, the certificate required by paragraph (*b*) of the last foregoing regulation shall state the amount of every increase not solely due to the cost of subsequent additions or, as respects holdings in controlled companies, to increased profits, and shall contain an explanation of the reason therefor.

9. For the purposes of this Schedule the following expressions have the meanings hereby respectively assigned to them, namely:—

(*a*) "combined balance-sheet" includes any combined statement made by an insurer of assets and liabilities in the form of a balance-sheet which includes the assets and liabilities of any other insurer; and

(*b*) "market value" means as respects any assets the market value thereof as ascertained from published market quotations, or, if there be no such value, its fair value as between a willing buyer and a willing seller.

PART II.
FORMS.
FORM A.
Form of Balance-Sheet.

Balance-Sheet of 19 .

	Life and Annuity Business. (1)	Other Classes of Business. (2)*	Total.		Life and Annuity Business. (1)	Other Class of Business. (3)*	Total.
	Rs. A. P.	Rs. A. P.	Rs. A. P.		Rs. A. P.	Rs. A. P.	Rs. A. P.
Shareholders' capital (each class to be stateh separately) ..				Loans :—			
Authorised :				On Mortgages of property within British India ..			
.....shares of Rs....each Rs.				On Mortgages of property outside British India ..			
subscribed :				On security of municipal and other public rates ..			
.....shares of Rs....each Rs.				On Stocks and Shares ..			
Called up :				On Insures'sPoliciesswithin their surrender value ..			
.....shares of Rs....,each Rs.				On personal security ..			
Less Unpaid calls Rs.				To Subsidiary Companies (other than Reversionary) (*f*) ..			
Reserve or Contingency Accounts(*a*)				Reversions and Life Interests purchased..			
Investment Reserve Account ..				Lans on Reversions and Life Interests..			
Profit and Loss Appropriation Balance Account.				Debentures and Debenture stocks of Subsidiary Reversionary Companies (*f*) ..			
Balance of Funds and Accounts :				Ordinary Stocks and Shares of Subsidiar Reversionary Companies (*f*) ..			
Life Insurance Fund.				Loans to subsidiary Reversionary Com panis (*f*) ..			
Fire Insurance Business Account				Investments :			
Marine Insurance Business Account				Deposit with the Reverve Bank of India (securities to be specified) ..			
[1][*] Miscellaneous Insurance Business Account [2][*m*]				Indian Government Securities ..			
Other accounts, if any (to be specified) (*l*)				Provincial Government Securities ..			
Pension or Superannuation Accounts (*b*) ..				British, British Colonial and British Dominion Government Securities ..			
Debenture Stock per cent ..				Foriegn Government Securities ..			

LEG. REF.

[1] The words " Accident and" were omitted by S. 18, Act XX of 1940.
[2] These brackets and letter were added by S. 69, Act XIII of 1941.

Form A—(*Contd.*)

	Life and Annuity Business (1)	Other Class of Business. (2)*	Total.		Life and Annuity Business. (1)	Other Class of Business. (2)*	Total.
	Rs. A P.	Rs. A. P.	Rs. A. P.		Rs. A. P,	Rs. A. P.	
Loan and Advances (*c*) ..				Indian Municipal Securities ..			
Bills payable (*c*) ..				British and Colonial Securities ..			
Estimated Liability in respect of outstanding claims, whether due or intimated (*d*) ..				Foreign Securities ..			
Annuities due and unpaid (*d*) ..				Bonds, Debentures, Stocks and other securities whereon Interest is gnaranteed by the Indian Government or a Provincial Government ..			
Outstanding Dividends ..				Bonds, Debenture, Stocks ond other Securities whereon interest is guaranteed by the British or any Colonial Government ..			
Amounts due to Other Persons or Bodies carrying on Insurance Business (*c*) ..				Bonds, Debentures, Stocks and other Securities whereon interest is guaranteed by any Foreign Government..			
Sundry Creditors (including outstanding and accruing expenses and taxes) (*c*) ..				Debenture of any railway in India ..			
Other sums owing by the insurer (particulars to be given) (*c*) ..				Debentures of any railway out of India.			
Contingent Liabilities (to be specified) (*e*) ..				Preference or guaranteed Shares of any railway in India ..			
R(.——				Preference or guaranteed Shares of any railway out of India ..			
				Railway Ordinary Stocks (*i*) in India (*ii*) out of India ..			
				Other Debentures and Debenture Stock of Companies incorporared (*i*) in India, (*ii*) out of India ..			
				Other guaranteed and preference Stocks and Shares of companies incorporated (*i*) in India (*ii*) out of India ..			
				Other Ordinary Stocks and Shares of Companies incorporated (*i*) in India (*ii*) out of India ..			
				Holdings in Subsidiary Companies (*f*) House property (*i*) in Indla (*ii*) out of India ..			

			Freehold and Leasehold ground rents and rent charges ..			
			Agents' Balances ..			
			Outstanding Premiums (*g*) [1][*d*] ..			
			Interest, Dividends and Rents outstanding (*d*) ..			
			Interest, Dividends and Rents accruing but not due (*d*) ..			
			Amounts due from other Persons or Bodies carrying on Insurance Business (*h*) ..			
			Sundry Debtors (*i*) ..			
			Bills Receivable ..			
			Cash: ..			
			At Bankers on Deposit Account ..			
			At Bankers on Current Account and in hand ..			
			At Call and Short Notice (*j*) ..			
			Other Accounts (to be specified) (*k*) ..			

LEG. REF.

[1] These brackets and letter were added by S. 69, Act (XIII of 1941)

* Assets and Liabilities, Shareholders' Capital and Reserves, not allocated to any class of business specified in column (1) must be shown in column (2).

NOTES.

(*a*) The Reserves or Contingency Accounts must be separately stated.

(*b*) If the insurer has not full and unrestricted control of the assets constituting the Pension or Superannuation Accounts, either those Account and the assets and liabilities relating thereto must be omitted from the balance-sheet or the assets of which the insurer has not such control must be clearly indicated on the face of the balance-sheet

(*c*) If the insurer has deposited security as cover in respect of any of these items, the amount and nature of the securities so deposited must be clearly indicated on the face of the balance-sheet.

(*d*) These items are or have been included in the corresponding items in the Revenue or Profit and Loss Account. Outstanding and accruing interest, dividends and rents must be shown after deduction of income-tax or the income-tax must be provided for amongst the liabilities on the other side of the balance-sheet,

(*e*) Such items as amount of liability in respect of bills discounted, uncalled capital of subsidiary companies, uncalled capital of other investments, etc., must either be shown in their several categories under the heading "Contingent Liabilities" or the appropriate items on the assets side must be set out in such details as will clearly indicate the amount of the uncalled capital

(*f*) As respects life and annuity business full particulars of holdings in and loans to subsidiary companies must be stated, giving the name of each company, the number and description of each class of shares held, the amounts paid up thereon, and the value at which the holdings in each company stand in the balance-sheet.

(*g*) Either this item must be shown net or the commission must be provided for amongst the liabilities on the other side of the balance-sheet.

(*h*) The aggregate amount owing by a subsidiary company or subsidiary companies is to be shown separately from all other assets and the aggregate amount owing to a subsidiary company or subsidiary companies is to be shown separately from all other liabilities.

(*i*) Amounts due from directors and officers must be shown separately.

(*j*) No amounts must be entered under this heading unless fully secured. If not fully secured, the amounts must be included under the heading "Sundry Debtors".

(*k*) Under this heading must be included such items as the following, which must be shown under separate headings suitably described: office furniture, good will, preliminary, formation and organisation expenses, development expenditure account, discount on debentures issued, other expenditure carried forward to be written off in future years, balance being loss on Profit and Loss Appropriation Accounts, etc. The amounts included in the balance-sheet must not be in excess of cost.

(*l*) Under the head "Other accounts, if any (to be specified)" on the left hand side, fines realised from the staff and their contribution towards the provident fund, if any, should be shown under separate sub-heads.

[1][(*m*) Where the insurer is required to maintain a separate account in respect of any sub-class of miscellaneous insurance business this heading is to be split up accordingly.]

LEG. REF.

[1] Added by S. 69 of Act XIII of 1941.

FORM AA.

Classified Summary of the [1][Assets in India] of the.....Company on 19

Class of Asset.	Book value as per (*a*) below.	Market value as per (*d*) below.	Remarks as per (*c*) below
	Rs.	Rs.	
(1) Government of India Securities :			
(2) Indian Provincial Government Securities :			
(3) Indian Municipal Port and Improvement Trust Securities including Dedentures.			
(4) Dedentures of Indian Railways			
(5) Guaranteed and Preference Shares of Indian Railways.			
(6) Annuities of Indian Railways :			
(7) Ordinary Shares of Railways in India :			
(8) Other Dedentuures of concerns in India :			
(9) Other Guaranteed and Preference Share of concerns in India.			
(10) Other Ordinary Shares of concerns in India.			
(11) Loans on the Company's policies effected in India and within their surrender value ..			
(12) Loans on Mortgage of property in India :			
(13) Lons on Personal Security to persous domiciled and resident in India.			
(14) Other loans granted in India (Particulars to (be stated) ..			
(15) Land and House property in India :			
(16) Cash on Deposit in Banks in India :			
(17) Cash in Hand and on current account in banks in India.			
(18) Agents' balances and outstanding premiums,			
(19) Interst, dividends and rents either outstanding or accrued but not due, :			
(20) Other assets in India (to be specified) :			

The statement shall show—

(*a*) the value for which credit is taken in the balance-sheet for each of the abovementioned classes of assets;

(*b*) the market value of such of the abovementioned classes of assets as has been ascertained from published quotations after deduction of accrued interest included in market prices in those cases where accrued interest is included elsewhere in the balance-sheet;

(*c*) how the value of such of the abovementioned classes of assets as has not been ascertained from published quotations has been arrived at, and

(*d*) the rates of exchange at which the values of the assets other than in rupee currency have been converted into rupees.

The market values need not be shown separately, where they are not less than the book values and a certificate to that effect is appended to the statement.

No amounts on account of any of the following items may be entered in the statement:—

Goodwill.

Preliminary, formation, organisation or development expenses.

Commission or discount on shares or debentures issued.

Commuted Commission.

Expenditure carried forward to be written off in future years.

LEG. REF.

[1] These words were substituted for "Indian Assets" by sec. 35, Act XI of 1939.

THE SECOND SCHEDULE.

(*See Section* 11.)

Regulations and Forms for the preparation of Profit and Loss Accounts.

PART I.

Regulations.

1. The items on the income side of the Profit and Loss Account and Profit and Loss Appropriation Account must relate to income whether actually received or not, and the items on the expenditure side must relate to expenditure whether actually paid or not.

2. Deductions from Interest, Dividends and Rents to be shown in respect of income-tax must include all amounts in respect of British Indian income-tax whether or not it has been or is to be deducted at source or paid direct.

3. The Interest, Dividends and Rents *less* income-tax thereon shown in the Revenue Accounts for any classes of business other than life insurance business, including annuity business may, if the insurer so desires, be included with the corresponding items in the Profit and Loss Account.

PART II.

FORMS.

FORMS B.

Form of Profit and Loss Account.

Profit and Loss Account of for the year ended 19 .

	Rs. A. P.		Rs. A P
British Indian Taxes on the Insurer's Profits (not applicable to any particular Fund or Account).*		Interest Dividends and Rents (not applicable to any particular Fund or Account). Rs Less—Income-Tax thereon Rs.	
Expenses of Management (not applicable to any particular Fund or Account).*		Profits on realisation of Investments (not credited to Reserves or any particular Fund or Account)	
Loss on Realistion of Investments (not charged to reserevs or any particular Fund or Account) :		Appreciation of Investments (not credited to Reserves or any partieular Fund or Account) :	
Depreciation of Investments (not charged to Reserves or any particular Fund or Account)		Profits transferred from Revenue Accounts)details to be given) :	
Loss transferred from Revenue Accounts (details to be given) :		Transfer Fees :	
Other Expenditure (to be specified) :		Other Income (to be specified)	
Balance for the year carried to Appropriation Account :		Balance for the year carried to appropriation Account ..	

FORM C.

Form of Profit and Loss Appropriation Account.

Profit and Loss Appropriation Account of for the year, ended 19 .

	Rs. A. P		Rs. A P
Balance being loss brought forward from last year :		Balance brought forward from last year : Rse	
Balance being loss for the year brought from Profit and Loss Account (as in Form B) :		Less— Dividends since paid in respect of last year (to be specified and if "free of tax" to be so stated)† .. Rs	

* If any sum has been deducted from this item and entered on the assets side of the balance-sheet, the amount must be shown separately.

† NOTE.—This item may be shown on the other side of the account if preferred.

FORM C (*Contd.*)

	Rs. A. P.		Rs. A. P.
Dividends paid during the year on account of the current year (to be specified and if "free of tax" to be so stated)			
Transfers to any particular Funds or Accounts (details to be given) :		Balance for the year brought from profit and Loss Account (as in from B) :	
Balance at end of the year as shown in the Balance-Sheet		Balance being loss at end of the year as shown in the Balance Sheet	

THE THIRD SCHEDULE.

(*See Section* 111.)

Regulations and Forms for the preparation of Revenue Accounts.

PART I.

Regulations.

1. Form D is, as set out in Part II of this Schedule, appropriate for life insurance business, but a separate revenue account must be prepared for every class [1][or sub-class] of business in respect of which the insurer is required to maintain a separate account.

2. Form F is, as set out in Part II of this Schedule, appropriate for fire insurance [2][and for marine insurance] business. A separate revenue account in the same form must be prepared for [3][* * *] miscellaneous insurance [1][exclusive of any sub-class of such business in respect of which the insurer is required to maintain a separate account] [4][* * * * *].

[5][* * * * * *].

[6][For a sub-class of miscellaneous insurance in respect of which the insurer is required to maintain a separate account, Form D or Form F as set out in Part II of this Schedule may be used with such modifications as the Superintendent of Insurance may authorise.]

3. If any combined revenue account is for any purpose issued by an insurer it must be in accordance with the forms specified in this Schedule and must clearly show on the face thereof that it is a combined revenue account, and must set out fully the name of every insurer required to make separate returns under this Act whose revenue and expenditure have been included therein; if the revenue and expenditure of any person not being an insurer are included in a combined revenue account, the fact must be stated thereon.

4. The items on the income side of the revenue account must relate to income whether actually received or not, and the items on the expenditure side must relate to expenditure whether actually paid or not.

5. Re-insurance premiums, whether on business ceded or accepted, are to be brought into account gross (*i.e.*, before deducting commissions) under the head of premiums.

6. As respects life insurance business the following statements shall be furnished to the Superintendent of Insurance every year showing details provided for in a Form pertaining thereto:—

(A) A statement in form DD as set forth in Part II of this Schedule.

(B) A statement in form DDD as set forth in Part II of this Schedule.

(C) A statement in form DDDD as set forth in Part II of this Schedule.

7. The following information shall be supplied in addition to the revenue account, namely, the gross premium written in India for life, fire, marine and accident and miscellaneous insurance business.

8. Any office premises which form part of the assets of a life insurance fund must be treated as an interest earning investment, and accordingly, in the revenue account for life insurance business a fair rent for the premises must be included under the heading "Interest, Dividends and Rents" and in the revenue account for every class of business for which the premises are used proper charges for the use thereof must be included under the heading "Expenses of Management".

LEG. REF.

1 Inserted by sec. 70, Act XIII of 1941.
2 Inserted by Act VII of 1944.
3 The words "accident and" were omitted by sec. 19, Act XX of 1924.
4 The words "including Workmen's Com-
6 Omitted by Act VII of 1944.
4 Added by sec. 70, Act XIII of 1941.

9. Where an insurer carries on the business of life insurance in conjunction with any other class of insurance business the expenses of management charged to the life insurance revenue account must not include more than a reasonable proportion of the common expenses and in particular, no such account must be charged with more than a fair sum for the use of any office premises having regard to the income from the various classes of business carried on and to the extent to which the premises are used for the purposes of each class of business.

10. Deductions from Interest, Dividends and Rents in respect of income-tax must include all income-tax charged on such income whether or not it has been or is to be deducted at source or paid direct; the income-tax to be shown as so deducted in the life insurance Revenue Account is British Indian, United Kingdom, Foreign and Dominion income-tax, but the income-tax to be shown as deducted in Revenue Accounts of any other classes of business is British Indian income-tax only.

PART II.

FORMS

FORM D.

Form of Revenue Account applicable to Life Insurance Business.

Revenue Account of Business. for the year ended 19 , in respect of

——	Business within India	Business out of India. (*a*)	Total.	——	Business within India.	Business out of India. (*a*)	Total.
Claims under Policies (including provision for claims due or intimated), less Re-insurance—	Rs.	Rs,	Rs.	Balance of Fund at the beginning of the year ..	Rs.	Rs.	Rs.
By death				Premiums. less Re-insurances—			
By maturity ..				(*i*) First year premiums ..			
Annuities, less Reinsurances				(*ii*) Renewal premiums ..			
Surrenders (including Surrenders of Bonus), less(Re-insurances.				(*iii*) Single premiums ..			
Bonuses in cash, less Re-Insurances				Consideration for Annuities granted, less Re insurances (*c*).			
Bounses in Reduction of premiums, less Re insurances.[1][* *]				Interest, Divdents and Rents ..			
Expenses of Management (*b*)—				Less—Income tax thereon (*d*) ..			
[2][1. (*a*) Commission to insurance agents less that on re insurances)..				Registration fees ..			
(*b*) Allowances and commission (other than commission included in sub-item (*a*) preceding)] ..				Other Income (to be specified) (*e*)			
				Loss transferred to Profit and Loss Account.			
				Transferred from Appropriation Account ..			

LEG. REF.

1 The entry "Commission to insurance agents (less that on re-insurances) was omitted by sec. 70, Act XIII of 1941.

2 This entry was substituted for the entry "1. Allowances and Commission (other than commission to insurance agents)", *ibid.*

FORM D—*contd.*

	Business within India.	Business out of India. (*a*)	Total.		Business within India.	Business out of India. (*a*).	Total.
	Rs.	Rs.	Rs.		Rs.	Rs.	Rs
2. Salaries, etc. (other than to agents and those contained in item No. 1).							
3. Travelling expenses.							
4. Directors' fees,							
5. Auditor's fees.							
[1][6. Medical fees].							
[2][7.] Law charges.							
[2][8] Advertisements							
[2][9.] Printing and Stationery ..							
[2][13,] Other expenses of management (accounts to be specified) ..							
[2][11.] Other payments (accounts to be specified) ..							
[2][12] Rents for offices belonging to and occupied by the insurer ..							
[2][13.] Rents of other offices occupied by the insurer ..							
Bad Debts ..							
United Kingdom, British Indian, Dominion and Foreign Taxes ..							
Other Expenditure (to be specified) ..							
Profit transferred to Profit and loss Account ..							
Balance of Fund at the end of the year as shown in the Balance sheet.							
Rs				Rs.			

NOTES.

(*a*) [3][****] These columns apply only to business the premiums in respect of which are [4][ordinarily paid outside India].

LEG. REF.

[1] Inserted by sec. 70 Act XIII of 1941.

[2] The original entries numbered 6 to 12 were re-numbered 7 to 13, *ibid.*

[3] The words "In the case of an insurer having his head office in British India" were omitted, *imid.*

[4] Substituted for the words "payable outside India" by sec. 19, Act XX of 1940.

[1][It any question arises whether any premiums are ordinarily paid outside India, the Superintendent of Insurance shall decide the question and his decision shall be final].

(*b*) If any sum has been deducted from this item and entered on the assets side of the balance-sheet, the amount so deducted must be shown separately. Under this item the salary paid to the managing agent or managing director shall be shown separately from the total amount paid as salaries to the remaining staff.

(*c*) All single premiums for annuities, whether immediate or deferred, must be included under this heading.

(*d*) British Indian, United Kingdom, Foreign and Dominion Income-tax on Interest, Dividends and Rents must be shown under this heading, less any rebates of income-tax recovered from the revenue authorities in respect of expenses of management. The separate heading on the other side of the account is for the United Kingdom, British Indian, Foreign and Dominions taxes, other than those shown under this item.

(*e*) Under the head "Other Income" fines, if any, realised from the staff must be shown separately. All the amounts received by the insurer directly or indirectly whether from his head office or from any other source outside [2][* *], India shall also be shown separately in the revenue account except such sums as properly appertain to the capital account.

(*f*) In the case of an insurer having his principal place of business outside British India the expenses of management for business out of India and total business need not be split up into the several sub-heads, if they are not so split up in his own country.

LEG. REF.

[1] Added by sec. 19, Act XX of 1940.

[2] The word "British" was omitted by sec. 36, Act XI of 1939.

FORM DD.

Classified statement of life insurance policies of the Company, for the year ending 19 .

—	New life insurance business in respect of which a premium has been paid in the year.				Total life insurance business in force at end of the year.		Premium income for which credit has been taken in the revenue account.
	Number of policies.	Sums insured and annuities per annum.	Single premiums (including consideration for immediate [1][or deferred] annuities and all other premiums paid at the out-set where no subsequent premium is payable).	Yearly renewal premium income.	Number of policies	Sums insured with bonuses and annuities per annum.	
		Rs.	Rs.	Rs.		Rs.	Rs.
Ordinary policies.							
In India ..							
Out of India ..							
Total ..							
Annuity contracts, etc.							
In India ..							
Out of India ..							
Total ..							
Group insurance policies.							
In India ..							
Out of India ..							
Total ..							

The amounts should be stated to the nearest rupees and after deduction of re-insurances

LEG. REF.

[1] These words were inserted by S. 36 of Act XI of 1939.

FORM DDD.

Additions to and deductions from policies of the Company for the year ending 19 .

	Ordinary life Insurance policies insuring money to be paid on death or survivance.			Annuities.	
	No.	Sum assured.	Reversionary bouns additions.	No.	Annuity per annnm.
		Rs.	Rs.		Rs,
(1) Policies at beginning of year ..					
(2) New policies issued ..					
(3) Old policies revived ..					
(4) Old policies changed and increased ..					
(5) Bonus additions allotted..					
Total ..					
Discontinued during year—					
(6) By death ..					
(7) By survivence or the happening of the contingencies insured against other than death ..					
(8) By expiry of term under temporary insurance ..					
(9) By surrender of policy ..					
(10) By surrender of bonus ..					
(11) By forfeiture or lapse ..					
(12) By change and decrease..					
(13) By being not taken up ..					
Total discontinued ..					
Total existing at end of year..					

[1][A separate statement must be given in respect of each class of life insurance business for which a separate revenue account is submitted.

Insurers having their principal place of business in British India shall give the information required in the form separately for business transacted in India and business transacted outside India and insurers having their principal place of business outside British India will furnish information regarding business transacted in India only.]

FORM DDDD.

Particulars of the policies forfeited or lapsed in the last 2[*] *year under review, less those* [3][*revived*] *and reinstated for full benefits, classified according to the year in which they were issued.*

[2][*] Year in which the policies were issued.	Number of policies forfeited or lapsed.	Sum insured under policies forfeited or lapsed.
		Rs.
Year ending 19 , being the year under review.		
Year ending 19 , being the year previous to that under review.		

LEG. REF.

[1] Added by sec. 36, Act XI of 1939.

[2] The word "financial" was omitted by *ibid.*

[3] Substituted for "revised" by *ibid.*

And so on, the number of and sum insured under policies forfeited or lapsed in the last [1][*] year under review being stated after classification according to each of the preceding years in which they were issued.

A separate statement must be given in respect of each class of life insurance business for which a separate revenue account is submitted.

Insurers having their principal place of business in British India shall give the information required in the form separately for business transacted in India and business transacted outside India and insurers having their principal place of business outside British India will furnish information regarding business transacted in India only.

FORM E.

[Omitted by Act VII of 1944].

Form of Revenue Account applicable to Marine Insurance Business.

Revenue Account of for the year ended 19 , in respect of Marine Insurance Business.

	Current year.	Last preceding year.	Previous years.	Total.		Current year.	Last preceding year.	Previous years.	Total.
	Rs.	Rs.	Rs.	Rs.		Rs.	Rs.	Rs.	Rs.
*Claims paid (less Salvages and Re-insurance) (*a*) (*c*) ..					Balance of Marine Insurance Business Account at beginning of the year				
*Commission ..					Balances ..				
*Expenses of Management (*b*) ..					Additional Reserve (if any): ..				
*Bad Debts ..					*Premiums (less Returns, Reinsurences, Brokerages and discount (*c*) ..				
United kindomBritishg Indian, Dominion and Foregn Taxes..					Interest, Dividends and Rents. Rs.				
*Other Expenditure (to be specified) ..					Less—Income-tax thereon Rs.				
Profit transferred to Profit and Loss Account ..					*Other Income (to be specified) (*d*) ..				
Balance of Marine Insurance Busines Account at end of year as shown in the Balance-sheet :					Loss transferred to Profit and Loss Account ..				
Balances ..					Transferred from Appropriation Account ..				
Additional Reserve (if any) ..									

NOTES.

(*a*) This heading must include all expenses directly incurred in settling claims.

(*b*) If any sum has been deducted from this item and entered on the assets side of the balance-sheet the amount so deducted must be shown separately.

(*c*) Where the account is furnished under the provisions of section 11 of the Insurance Act, 1938, separate figures for claims paid to claimants in [2][*] India and claimants outside [*] India, and for premiums derived from business effected in [2][*] India and effected outside [2][*] India must be given.

(*d*) All the amounts received by the insurer directly or indirectly whether from his head office or from any other source outside [2][*] India shall also be shown separately in the revenue account except such sums as properly appertain to the capital account.

*Where the account is furnished under the provisions of clause (*b*) of sub-section (2) of S. 16 of the Insurance Act, 1938, by an insurer to whom that section applies, separate figures for business within [2][*] India and busines out of [*] India must be given against

LEG. REF.

1 The word "financial" was omitted by sec. 36, Act XI of 1939.

2 The word "British" was omitted by *ibid.*

the items marked with an asterisk. Against all other items the total amount for the business as a whole may be given.

FORM F.

Form of Revenue Account applicable to Fire Insurance Business, [Marine Insurance Business and], [1]*[*Miscellaneous Insurance Business.*[2][ ].

Revenue Account of for the year ended 19 , in respect of Business.

	Rs.		Rs.
*Claims under Policies, less Re-insurance s(*a*) (*d*) :		Balance of Account at beginning of the year;	
Paid during the year .. Rs.		Reserve for Unexpired Risks .. Rs.	
Total estimated liability in respect of outstanding claims at end of the year whether due or intimated .. Rs.		Additional Reserve (if any) .. Rs.	
Total ..		*Premiums, less Re-insurance (*d*)..	
Less—Outstanding at end of previous year (*b*) .. Rs.		Interest, Dividends and Rents .. Rs.	
*Commission ..		Less—Income-tax thereon. Rs	
*Expenses of Management (*c*) ..		*Other Income (to be specified) (*e*) ..	
*Bad Debts ..		Loss transferred to Profit and Loss Account ..	
[3][United Kingdom, British India, Dominion and Foreign taxes] ..		Transferred from Appropriation Account ..	
*Other Expenditure (to be specified) ..			
Profit transferred to Profit and Loss Account ..			
Balance of Account at the end of the year as shown in the Balance-Sheet			
Reserve for Unexpired Risks, being per cent. of premium income of year .. Rs.			
Additional Reserve (if any).. Rs.			
Rs.		Rs.	

NOTES.

(*a*) This heading must include all expenses directly incurred in settling claims.

(*b*) If in any year the claims actually paid and those still unpaid at the end of that year in respect of the previous year or years are in excess of the amount included in the previous year's Revenue Account as provision for outstanding claims, then the amount of such excess must be shown in the Revenue Account.

(*c*) If any sum has been deducted from this item and entered on the assets side of the balance-sheet the amount so deducted must be shown separately.

(*d*) Where the account is furnished under the provisions of section 11 of the Insurance Act, 1938, separate figures for claims paid to claimants in [3][*] India and claimants outside [3][*] India, and for premiums derived from business as effected in [3][*] India and effected outside [3][*] India must be given.

(*e*) All the amounts received by the insurer directly or indirectly whether from his head office or from any other source outside [3][*] India shall also be shown separately in the revenue account except such sums as properly appertain to the capital account.

*Where the account is furnished under the provisions of clause (*b*) of sub-section (2) of section 16 of the Insurance Act, 1938 by an insurer to whom that section applies, separate figures for business within [3][*] India and business out of [3][*] India must be given against the items marked with an asterisk. Against all other items the total amount for the business as a whole may be given.

LEG. REF.

[1] "Accident and" were omitted by sec. 19, Act XX of 1940.

[2] The word "Including Workmen's Compensation and Motor Car Insurance Business" were omitted, *ibid.*

[3] Substituted by Act VII of 1944.

[4] The word "British" was omitted by sec. 36, Act XI of 1939.

THE FOURTH SCHEDULE.

(*See* section 13.)

Regulations for the preparation of Abstracts of Actuaries' Reports and Requirements applicable to such Abstracts.

PART I.

Regulations.

1. Abstracts and Statements must be so arranged that the numbers and letters of the paragraphs correspond with those of the paragraphs of Part II of this Schedule.

2. In showing the proportion which that part of the annual premiums reserved as a provision for future expenses and profits bears to the total of the annual premiums, in accordance with the requirements of [1][paragraph 4] of Part II of this Schedule no credit is to be taken for any adjustments made in order to secure that no policy is treated as an asset.

3. (1) The average rate of interest yielded in any year by the assets constituting a life insurance fund shall, for the purposes of [2][paragraph 5] of Part II of this Schedule, be calculated by dividing the interest of the year by the mean fund of the year; and for the purposes of any such calculation the interest of the year shall be taken to be the whole of the interest credited to the life insurance fund during the year after deduction of income-tax charged thereon (any refund of income-tax in respect of expenses of management made during the year being taken into account), and the mean fund of the year shall be ascertained by adding a sum equal to one-half of the amount of the life insurance fund at the beginning of the year to a sum equal to one-half of that fund at the end of the year, and deduction from the aggregate of those two sums an amount equal to one-half of the interest of the year.

(2) For the purposes of the calculation aforesaid either—

(*a*) all profits and income arising during the year from sums invested in reversions shall be included in the interest credited to the life insurance fund during the year; or

(*b*) such portion of the life insurance fund as is invested in the purchase of reversions, and the profits and income arising therefrom, shall be excluded from the calculation: but in that case a statement must be added to the information required under the said [2][paragraph 5], showing in respect of the portion of the fund excluded as aforesaid, the average rate of annual profit and income for which credit has been taken during the five years last preceding the valuation date, and explaining the manner in which the said average rate has been calculated.

(3) The information given in accordance with the requirements of the said [2][paragraph 5] shall show clearly by which of the methods hereinbefore in this regulation mentioned the sums invested in reversions and the profits and income arising therefrom have been dealt with.

4. Every abstract prepared in accordance with the requirements of Part II of this Schedule shall be signed by an actuary and shall contain a certificate by him to the effect that he has satisfied himself as to the accuracy of the valuations made for the purposes thereof and of the valuation data:

Provided that in the case of an abstract prepared on behalf of [3][an insurer], if the actuary who signs the abstract is not a permanent officer of [4][the insurer] the certificate as to the accuracy of the valuation data shall be given and signed by the principal officer of [4][the insurer] and the actuary shall include in the abstract a statement signed by him showing what precautions he has taken to ensure the accuracy of the data.

5. For the purposes of the Schedule the following expressions have the meanings hereby respectively assigned to them, namely:—

"extra premium" means a charge for any risk not provided for in the minimum contract premium;

"inter-valuation period" means, as respects any valuation, the period to the valuation date of that valuation from the valuation date of the last preceding valuation in connection with which an abstract was prepared under this Act or under the enactments repealed by this Act, or, in a case where no such valuation has been made in respect of the class of business in question, from the date on which the insurer, began to carry on that class of business;

"maturity date" means the fixed date on which any benefit will become payable either absolutely or contingently;

LEG. REF.

[1] Substituted for the word and figure "paragraph 3" by sec. 37, Act XI of 1939.

[2] Substituted for the word and figure "paragraph 4", *ibid.*

[3] Substituted for the words "an insurance company", *ibid.*

[4] Substituted for the words "the company", *ibid.*

"net premiums" means as respects any valuation the premiums taken credit for in the valuation;

"premium term" means the period during which premiums are payable;

"valuation date" means as respects any valuation the date as at which the valuation is made.

PART II.

Requirements applicable to an Abstract in respect of Life Insurance Business.

The following tabular statements shall be annexed to every abstract prepared in accordance with the requirements of this Part of this Schedule, namely:—

(*a*) a Consolidated Revenue Account, in the Form G annexed to this Part of this Schedule, for the inter-valuation period (except that it shall not be necessary to prepare such an account in respect of any class of business so long as the insurer deposits annually with the Superintendent of Insurance an abstract in respect of that class of business); and

(*b*) a Summary and Valuation in the Form H annexed to this Part of this Schedule of the policies included at the valuation date in the class of business to which the abstract relates; and

(*c*) a Valuation Balance Sheet in the Form I annexed to this Part of this Schedule; and

(*d*) a statement in Form DD as set forth in Part II of the Third Schedule of the additions to and deductions from the number of policies and the sums insured thereunder for each class of life insurance [1][for the inter-valuation period (except that it shall not be necessary to prepare such statement in respect of any class of business so long as the insurer deposits annually with the Superintendent of Insurance an abstract in respect of that class of business.)]

[2][* * * * * * *]

and every such abstract shall show—

1. The valuation date.

2. The general principles and full details of the methods adopted in the valuation of each of the various classes of insurances and annuities shown in the said Form H, including statements on the following points:—

(*a*) whether the principles were determined by the instruments constituting the company or by its regulations or bye-laws or how otherwise;

(*b*) the method by which the net premiums have been arrived at and how the ages at entry, premium terms and maturity dates have been treated for the purpose of the valuation;

(*c*) the methods by which the valuation age, period from the valuation date to the maturity date, and the future premium terms, have been treated for the purpose of the valuation;

(*d*) the rate of bonus taken into account where by the method of valuation definite provision is made for the maintenance of a specified rate of bonus;

(*e*) the method of allowing for—

(i) the incidence of the premium income; and

(ii) premiums payable otherwise than annually;

(*f*) the mehods by which provision has been made for the following matters, namely:—

(i) the immediate payment of claims;

(ii) future expenses and profits in the case of limited payment and paid-up-policies;

(iii) the reserve in respect of lapsed policies, not included in the valuation, but under which a liability exists or may arise; and whether any reserves have been made for the matters aforesaid;

(*g*) whether under the valuation method adopted any policy would be treated as an asset, and, if so, what steps, if any, have been taken to eliminate such assets;

(*h*) a statement of the manner in which policies on under-average lives and policies subject to premiums which include a charge for climatic, military or other extra risks have been dealt with; and

(*i*) the rates of exchange at which liabilities in respect of policies issued in foreign currencies have been converted into rupees and what provision has been made for possible increase of liability arising from future variations in the rates of exchange.

3. The table of mortality used, and the rate of interest assumed, in the valuation.

LEG. REF.

[1] These words were substituted for the word "and" by sec. 71, Act XIII of 1941.

[2] Cl. (*e*) was omitted, *ibid.*

4. The proportion which that part of the annual premiums reserved as a provision for future expenses and profits bears to the total of the annual premiums, separately specified in respect of insurances with immediate profits, with deferred profits, with profits under discounted bonus systems, and without profits.

5. The average rates of interest yielded by the assets, whether invested or uninvested, constituting the life insurance fund for each of the years covered by the valuation date.

6. The basis adopted in the distribution of profits as between the insurer and policy-holders, and whether such basis was determined by the instruments constituting the company, or by its regulations or bye-laws, or how otherwise.

7. The general principles adopted in the distribution of profits among policy-holders, including statements on the following points, namely:—

(*a*) whether the principles were determined by the instruments constituting the company, or by its regulations or bye-laws, or how otherwise;

(*b*) the number of years' premiums to be paid, period to elapse and other conditions to be fulfilled before a bonus is allotted;

(*c*) whether the bonus is allotted in respect of each year's premium paid, or in respect of each completed calendar year or year of assurance or how otherwise; and

(*d*) whether the bonus vests immediately on allocation, or, if not, the conditions of vesting.

8 (1) The total amount of profits arising during the intervaluation period including profits paid away and sums transferred to reserve funds or other accounts during that period, and the amount brought forward from the preceding valuation (to be stated separately) and the allocation of such profits—

(*a*) to interim bonus paid;

(*b*) among policy-holders with immediate participation, giving the number of the policies which participated and the sums assured thereunder (excluding bonuses);

(*c*) among policy-holders with deferred participation, giving the number of the policies which participated and the sums assured thereunder (excluding bonuses);

(*d*) among policy-holders in the discounted bonus class, giving the number of the policies which participated and the sums assured thereunder (excluding bonuses);

(*e*) to the insurer or, in the case of an insurance company, among shareholders or to shareholders' accounts (any such sums passed through the accounts during the intervaluation period to be separately stated),

(*f*) to every reserve fund or other fund or account (any such sums passed through the accounts during the inter-valuation period to be separately stated);

(*g*) as carried forward unappropriated.

(2) Specimens of bonuses allotted [1][as a result of this valuation] to policies for one thousand rupees—

(*a*) for the whole term of life effected, at the respective ages of 20, 30 and 40, and having been in force respectively for five years, ten years and upwards at intervals of ten years; and

(*b*) for endowment insurances effected at the respective ages of 20, 30 and 40 for endowment terms of fifteen, twenty and thirty years, and having been in force respectively for five years, ten years and upwards at intervals of ten years;

(*c*) for endowment insurances effected at the respective ages of 20, 30 and 40, for endowment terms of fifteen, twenty and thirty years, and having been in force respectively for five years, ten years and upwards at intervals of ten years;

together with the amounts apportioned under the various manners in which the bonus is receivable.

9. A statement in Form J annexed to this Part of this Schedule of specimen policy reserve values held or required to be held according to the methods adopted in the valuation, and specimen minimum surrender values in respect of whole life insurance policies for Rs. 1,000 with premiums payable throughout life effected at the respective ages of 20, 30, 40 and 50, and immediately on payment of the first, second, third, fourth [2][fifth,] sixth, seventh, eighth, ninth, tenth, fifiteenth and twentieth annual premium; with similar specimen policy reserve values and specimen surrender values in respect of whole life insurance policies subject to premiums payable for 20 years and of endowment insurance policies maturing at age 55.

10. A statement showing how the liability under any disability clause in a policy has been determined in the valuation with full information of the tables of sicknes or accident used for the purpose.

[3][FORM G.

Consolidated Revenue Account of for years Commencing

LEG. REF.

[1] Substituted for the words "as at the valuation date" by sec. 71, Act XIII o 1941.

[2] This word was inserted, *ibid.*

[3] Substituted for the original Form G by S. 71, Act XIII of 1941.

and ending

	Business within India (a).	Total.		Business within India (a).	Total.
	Rs.	Rs.		Rs.	Rs.
Claims under Policies (including provision for claims due or intimated), less Re-insurances—			Balance of Life Insurance Fund at the beginning of the period.		
By death ..			Premiums, less Re-insurances—		
By maturity ..			(i) First year premiums ..		
Annuities, Less Re-insurances.			(ii) Renewal premiums ..		
Surrenders (including surrenders of Bonus), less Re-insurances.			(iii) Single premiums ..		
Bonuses in cash, less Re-insurances.			Consideration for Annuities granted, less Re-insurances (c).		
Bonuses in Reduction of Premiums, less Re-insurances.			Interest, Dividends and Rents Rs. Less—Income-tax thereon (d). Rs. Registration fees.		
Expenses of Management (b) (e)—			Other Income (te be specified).		
1. (a) Commission to insurance agent (less that on Re-insurances).			Loss transferred to Profit and Loss Account.		
(b) Allowances and Commission (other than Commission included in sub-item (a) preceding).			Transferred from Appropriation Account.		
2. Salaries, etc. (other than to agents and those contained in sub-item 1 (b) preceding).					
3. Travelling expenses ..					
4. Directors' fees ..					
5. Auditors' fees ..					
6. Medical fees ..					
7. Law charges ..					
8. Advertisements ..					
9. Printing and Stationery ..					
10. Other expenses of managgement (accounts to be specified).					
11. Other payments (accounts to be specified).					
12. Rent for offices belonging to and occupied by the insurer.					
13. Rents of other offices occupied by the insurer.					
Bad debts ..					
United Kingdom, British Indian, Dominion and Foreign Taxes.					
Other Expenditure (to be specified).					
Profit transferred to Profit and Loss Account.					
Balance of Life Insurance Fund at end of the period as shown in the Balance-sheet.					
Rs.			Rs.		

NOTES.

(*a*) These columns apply to all business except business the premiums in respect of which are ordinarily paid outside India. If any question arises whether any premiums are ordinarily paid inside or outside India, the Superintendent of Insurance shall decide the question and his decision shall be final.

(*b*) If any sum has been deducted from this item and entered on the assets side of the balance-sheet, the amount so deducted must be shown separately.

(*c*) All single premiums for annuities, whether immediate or deferred, must be included under this heading.

(*d*) British Indian, United Kingdom, Foreign and Dominion income-tax on Interest, Dividends and Rents must be shown under this heading, less any rebates of income-tax recovered from the revenue authorities in respect of expenses of management. The separate heading on the other side of the account is for United Kingdom, British Indian, Foreign and Dominion taxes, other than those shown under this item.

(*e*) In the case of an insurer having his principal place of business outside British India the expenses of management for the total business need not be split up into the several sub-heads, if they are not to split up in his own country.]

FORM H.

Summary and valuation of the Policies of as at 19 .

Description of Transactions.	Particulars of the Policies for Valuation					Valuation.			
	Number of policies.	Sums Assured.	Bonuses.	Office yearly premiums.	Net yearly premiums.	Sums Assured and Bonuses.	Office yearly premiums.	Net yearly premiums.	Net Liabilities.
DIVISION I. *Insurances.*									
Group A— With immediate participation in profits.									
For whole term of life ..									
Other classes (to be specified) ..									
Extra premiums ..									
Total insurances ..									
Deduct—Re-insurances ..									
Net insurances ..									
Group B— With deferred participation in profits.									
For whole term of life ..									
Other classes (to be specified) ..									
Extra premiums ..									
Total Insurances ..									
Deduct—Re-insurances ..									
Net insurances ..									
Group C— Under discounted bonus systems ..									
For whole term of life ..									
Other classes (to be specified) ..									
Extra premiums ..									
Total Insurances ..									
Deduct—Re-insurances ..									
Net insurances .									
Total insurances with profits .	—	—	—	—	—	—	—	—	—
Group D— Without participation in profits ..									
For whole term of life ..									
Other classes (to be specified) ..									

Description of Transactions.	Particulars of the Policies for Valuation.					Valuation.			
	Number of policies.	Sums Assured.	Bonuses.	Office yearly premiums.	Net yearly premiums.	Sums Assured and Bonuses	Office yearly premiums.	Net yearly premiums	Net Liabilities.
Extra premiums ...									
Total insurances ..									
Deduct—Re-insurances ..									
Net insurances ..									
Total insurances without profits ..									
Total of the insurances shown in all groups ..									
Deduct—Re-insurances ..									
Net amount of insurances ..									
Adjustments, if any (to be separately specified).									
DIVISION II. *Annuities on Lives.*									
Immediate Annuities ..									
Deferred Annuities with return of premiums ..									
Deferred Annuities without return of premiums ..									
(Other classes to be specified) ..									
Total Annuities ..									
Deduct—Re-insurances ..									
Net Annuities on Lives ..									
Total of the results (after deduction of Re-insurances) .									

FORM I.

1. Items in this Summary are to be stated to the nearest rupee.

2. No policy of insurance upon the lives of a group of persons, whereby sums assured are payable in respect of the several persons included in the group, is to be included in Groups A, B, C or D of this Form: any such policies must be shown in a separate Group which must be added to the Form.

3. If policies without participation in profits but with a guaranteed rate of bonus are issued, they must be separately specified in Group D of this Form.

4. Policies under which there is a waiver of premiums during disability must be shown as a separate class.

5. Separate forms must be prepared in respect of classes of policies valued by different tables of mortality or at different rates of interest or involving the valuation of net premiums on different bases.

6. In cases where separate valuations of any portion of the business are required under local laws in places outside British India and reserves based on such valuations are deposited in such places, a statement must be furnished in respect of the business so valued in each such place showing the total number of policies, the total sums assured

and bonuses, the total office yearly premiums, and the total net liability on the bases as to mortality and interest adopted in each such place with a statement as to such bases respectively.

7. Office and net premiums and the values thereof must be shown after deduction of abatements made by the application of bonus.

FORM I.

Valuation Balance-Sheet of as at 19 .

Net liability under business as shown in the Summary and Valuation of Policies ..	Balance of Life Insurance Fund as shown in the Balance-Sheet.	
Surplus, if any ..	Deficiency, if any ..	

NOTE.—If the proportion of surplus allocated to the insurer, ol in the case of an insurance company to shareholders, is not uniform in respect of all classes of insurances, the surplus must be shown separately for the classes to which the different proportions relate.

FORM J.

Specimen policy reserve values and minimum surrender values under a Policy for Rs. 1,000

[1](Number of annual premiums paid up to the valuation date.)	Age at entry 20.		Age at entry 30.		Age at entry 40.		Age at entry 50,	
	Reserve value.	Minimum surrender value.	Reserve value.	Minimum surrender value.	Reserve value.	Minimum surrender value.	Reserve value.	Minimum surrender value.
1.								
2.								
3.								
4.								
5.								
6.								
7.								
8.								
9.								
10.								
15.								
20.								

NOTE.—Items in this Form to be stated to the nearest rupee.

[2][NOTE.—The reserve value is to be based on the rate of office premium payable by an insured who entered at the age shown and who had, by the valuation date, paid the number of annual premiums shown in the first column.]

LEG. REF.

[1] Substituted for the words "Number of premiums paid" by 71, Act XIII of 1941.

[2] Added by *ibid.*

THE FIFTH SCHEDULE.

(*See* section 13.)

Regulations for preparing statements of business in force and requirements applicable to such statements.

PART I.

Regulations.

1. Statements prepared under this Schedule must be prepared, so far as practicable, in tabular form and must be identified by numbers and letters corresponding with those of the paragraphs of Part II of this Schedule.

2. Except with respect to rates of premium or contribution, items in statements prepared under this Schedule are to be shown to the nearest rupee.

3. Extra premium shown in the forms of Summary and Valuation prepared under the Fourth Schedule to this Act must not be included in statements prepared under this Schedule.

4. Every statement prepared under this Schedule shall be signed by the actuary making the investigation in connection with which it is prepared.

5. For the purposes of this Schedule the following expressions have the meanings hereby respectively assigned to them, namely:—

(*a*) "annual loading" means the provision made for future expenses and profits;

(*b*) "extra premiums" means a charge for any risk not provided for in the minimum contract premium;

(*c*) "net premiums" means the premiums taken credit for in the valuation in connection with which any statement is prepared; and

(*d*) "valuation date" means as respects any valuation the date as at which the valuation is made.

PART II.

Requirements for statements applicable to Life Insurance Business.

The statements required to be prepared under this Part of this Schedule are as follows, namely:—

1. Statements, separately prepared in respect of policies with and without participation in profits, showing—

(*a*) as respects policies for the whole term of life, the rates of office premiums charged, in accordance with the published tables in use, for new policies giving the rates for decennial ages at entry from 20 to 70 inclusive; and

(*b*) as respects endowment insurance policies, the rates of office premiums charged, in accordance with the published tables in use, for new policies with original terms of ten, fifteen, twenty, thirty and forty years, giving the rates for decennial ages at entry from 20 to 40 inclusive, but excluding policies under which the age at maturity exceeds 60.

2. Statements, separately prepared in respect of policies with immediate profits, with deferred profits, with profits under discounted bonus systems, and without profits, showing in quinquennial groups—

(*a*) as respects policies for the whole term of life—

(i) the total amount assured (specifying sums assured and reversionary bonuses separately), grouped according to ages attained;

(ii) the amount per annum, after deducting abatements made by application of bonus, of office premiums payable throughout life, and of the corresponding net premiums, grouped according to ages attained; and

(iii) the amount per annum, after deducting abatements made by application of bonus, of office premiums payable for a limited number of years, and, either, the corresponding net premiums, grouped in accordance with the grouping adopted for the purposes of the valuation, or, the annual loading reserved for the remaining duration of the policies, grouped according to ages attained;

(*b*) as respects endowment insurance policies—

(i) the total amount assured (specifying sums assured and reversionary bonuses separately), grouped in accordance with the grouping adopted for the purposes of the valuation; and

(ii) the amount per annum, after deducting abatements made by application of bonus, of office premiums payable, and of the corresponding net premiums, grouped in accordance with the grouping adopted for the purposes of the valuation:

Provided that—

(*a*) as respect endowment insurance policies which will reach maturity in less than five years, the information required by sub-paragraph (3) (*i*) of this paragraph and be given for each year instead of in quinquennial groups; and

(*b*) where the office premiums payable under policies for the whole term of life for a limited number of years, or the office premiums payable under endowment insurance policies, or the corresponding net premiums, are grouped for the purposes of the valuation otherwise than according to the number of years' payments remaining to be made, or, where the sums assured under endowment insurance policies are grouped for the purposes of the valuation otherwise than according to the years in which the policies will mature for payment or in which they are assumed to mature if earlier than the true year, then, in any such case the valuation constants and an explanation of the method by which they are calculated must be given for each group, and in the case of the sums assured under endowment insurance policies a statement must also be given of the amount assured maturing for payment in each of the two years following the valuation date.

3. Statements as respects any policies in force under which premiums cease to be payable, whether permanently or temporarily, during disability arising from sickness or accident, showing the total amount of the office premiums payable.

4. Statements as respects immediate annuities on single lives for the whole term of life, separately prepared in respect of annuities on male and female lives, showing in quinquennial age groups the total amount of such annuities.

5. Statements as respects deferred annuities, separately prepared in respect of annuities on male and female lives, showing the specimen reserve values for annuities of one hundred rupees which will be produced on maturity on the basis of valuation adopted at ages, in the case of male lives, 60 and 65, and in the case of female lives 55 and 60; the said statements must show the specimen reserve values which will be produced under the table of annual premiums in use for new policies, and if under any other table of annual premiums in use for any other debarred annuity policies in force smaller reserve value will be produced, the like specimens of these must also be given.

6. Statements as respects any policies of insurance upon the lives of a group of persons, whereby sums assured are payable in respect of the several persons included in the group, showing the total claims paid since the date as at which the last statements were prepared under this Part of this Schedule or, where no such statements have been prepared, since the date on which the insurer began it carry on the class of business to which the statements relate, and the reserve for unexpired risks and outstanding claims.

THE SIXTH SCHEDULE.

(*See* section 55.)

Rule as to the valuation of the Liabilities of an insurer in Insolvency or Liquidation.

The liabilities of an insurer in respect of current contracts effected in the course of life insurance business, including annuity business, shall be calculated by the method and upon the basis to be determined by an actuary approved by the Court and the actuary so approved shall, in determining as aforesaid, take into account—

(*a*) the purpose for which such valuation is to be made,

(*b*) the rate of interest and the rates of mortality and sickness to be used in valuation, and

(*c*) any special directions which may be given by the Court.

The liabilities of an insurer in respect of current policies other than life policies shall by such portion of the last premium paid as is proportionate to the unexpired portion of the policy in respect of which the premium was paid.

THE INSURANCE (AMENDMENT) ACT, 1944.

ACT NO. VII OF 1944.

[*7th March,* 1944.

An Act further to amend the Insurance Act, 1938.

WHEREAS it is expedient further to amend the Insurance Act, 1938 (IV of 1938), for the purposes hereinafter appearing;

It is hereby enacted as follows:—

Short title.

1. This Act may be called THE INSURANCE (AMENDMENT) ACT, 1944.

[Sections 2-4:—Amendments carried out in the main Act.]

Transitory provision.

5. An insurer preparing in compliance with section 11 or section 16 of the Insurance Act, 1938 (IV of 1938), a revenue account in respect of marine insurance with reference to any year ending on any date before the 1st day of January, 1945, may prepare it in accordance with the Third Schedule to that Act either as it stood before or as it stands after its amendment by this Act.

THE INSURANCE (AMENDMENT) ACT (VI OF 1946).

[20*th March*, 1946.

An Act further to amend the Insurance Act, 1938.

WHEREAS it is expedient further to amend the Insurance Act, 1938 (IV of 1938) for the purposes hereinafter appearing: It is hereby enacted as follows:—

Short title. 1. This Act may be called THE INSURANCE (AMENDMENT) ACT, 1946.

Amendment of section 2, Act IV of 1938. 2. In section 2 of the Insurance Act, 1938 (hereinafter referred to as the said Act),—

(*a*) for clause (2), the following clause shall be substituted, namely:—

"(2) 'policy-holder' includes a person to whom the whole of the interest of the policy-holder in the policy is assigned once and for all, but does not include an assignee thereof whose interest in the policy is defeasible or is for the time being subject to any condition;"

(*b*) in clause (15), after the words "who shall" the words and figures "after the 31st day of December, 1953" shall be inserted.

Amendment of section 3, Act I Vof 1938. 3. In section 3 of the said Act,—

(*a*) in sub-section (1), after the words "from the Superintendent of Insurance a certificate of registration" the words "for the particular class of insurance business" shall be inserted;

(*b*) in clause (*g*) of sub-section (2), for the words "prescribed fee for registration being not" the words "receipt showing payment in the prescribed manner of the prescribed fee which shall not be" shall be substituted;

(*c*) in sub-section (4), for the words "may cancel the registration of an insurer if the insurer has failed to have the registration renewed" the following shall be substituted, namely:—

"may cancel the registration of an insurer—

(*f*) if the insurer has failed to have the registration renewed, or

(*g*) if the Superintendent of insurance has reason to believe that any claim upon the insurer arising in India under any policy of insurance remains unpaid for three months after final judgment in regular course of law, or

(*h*) if the insurer fails to comply with an order under section 3-B";

(*d*) in sub-section (5), for the words, brackets, letters and figures "clause (*d*) of sub-section (4), clause (*e*) of sub-section (4), or because the insurer has failed to have the registration renewed," the words, brackets, letters and figure "clause (*a*), clause (*e*), clause (*f*), clause (*g*) or clause (*h*) of sub-section (4)," shall be substituted;

(*e*) in sub-section (5-C),—

(i) for the words, brackets, letters and figures "clause (*a*) of sub-section (4), clause (*e*) of sub-section (4), or because the insurer has failed to have his registration renewed," the words, brackets, letters and figure "clause (*a*), clause (*e*), clause (*f*), clause (*g*) or clause (*h*) of sub-section (4)," shall be substituted;

(*ii*) after the word "accepted," the words, brackets, letters and figures "or satisfies the Superintendent of Insurance that no claim upon him such as is referred to in clause (*g*) of sub-section (4) remains unpaid or that he has complied with the order under section 3-B," shall be inserted;

(*f*) in sub-section (5-D), for the words, brackets and figures "a registration is cancelled under sub-section (4) and the insurer is a company incorporated under the Indian Companies Act, 1913, or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1886, or under any Act repealed thereby, the Superintendent of Insurance shall, as soon as may be," the words, brackets and figure "the registration of an insurance company is cancelled under sub-section (4), the Superintendent of Insurance may," shall be substituted;

(*g*) in sub-section (6), for the words "The Superintendent of Insurance" the words, figures and letter "Subject to compliance with the provisions of sections 5, 10 and 32 and of any order made under section 3-B, the Superintendent of Insurance" shall be substituted;

(*h*) after sub-section (6), the following sub-section shall be inserted, namely:—

"(7) The Superintendent of Insurance may, on payment of the prescribed fee which shall not exceed twenty-five rupees, issue a duplicate certificate of registration to replace a certificate lost, destroyed or mutilated, or in any other case where he is of opinion that the issue of a duplicate certificate is necessary".

Insertion of new section 3-B in Act IV of 1938. 4. After section 3-A of the said Act the following section shall be inserted, namely:—

"3-B. *Certification of soundness of terms of life insurance business.*—If, when considering an application for registration under section 3 or at any other time, it appears to the Superintendent of Insurance that the assured rates, advantages, terms and conditions offered or to be offered in connection with life insurance businesses are in any respect not workable or sound, he may require that a statement thereof shall be submitted to an actuary appointed by the insurer for the purpose and approved by the Superintendent of Insurance, any may by order in writing further require the insurer to make within such time as may be specified in the order such modifications in the said rates, advantages, terms or conditions, as the case may be, as the said actuary may report to be necessary to enable him to certify that the said rates, advantages, terms and conditions are workable and sound."

Amendment of section 4, Act IV of 1938.

5. In section 4 of the said Act,—

(*a*) in sub-section (1),—

(*i*) the words and figures "not being a provident society as defined in Part III, or a Mutual Insurance Company to which Part IV of this Act applies," shall be omitted;

(*ii*) for the words "commencement of this Act" the words, brackets, and figures "commencement of the Insurance (Amendment) Act, 1946," shall be substituted;

(*iii*) for the words "fifty rupees or less or a gross sum of rupees five hundred or less" the words "less than one hundred rupees or a gross sum of less than one thousand rupees" shall be substituted;

(*b*) to sub-section (2) the following shall be added, namely:—

"or to any policy undertaking to pay a gross sum of more than five hundred rupees or an annuity of more than fifty rupees, issued—

(*a*) by an insurer to any person in his permanent employ in respect of the life of that person, or

(*b*) under any scheme, approved by the Superintendent of Insurance and complying with such conditions, if any, as he may think fit to impose, whereby premiums due from persons employed under any employer are collected by or under the supervision of the employer,

or to any policy issued by a Mutual Insurance Company to which Part IV applies and which the Superintendent of Insurance may by order in writing exempt from the provisions of this section, for so long as the company complies with such conditions, if any, as may be prescribed."

Amendment of section 5, Act IV of 1938.

6. To sub-section (2) of section 5 of the said Act the following further proviso shall be added, namely:—

"Provided further that in the application of this section to any insurer who signs to carry on insurance business after the commencement of the Insurance (Amendment) Act, 1946, the references to an insurer in existence in sub-section (1) and this sub-section shall be construed as including references to a provident society (as defined in Part III) in existence, whether or note the society is in the course of being dissolved."

Amendment of section 9, Act IV of 1938.

7. Section 9 of the said Act shall be renumbered as sub-section (1) of that section, and to the section as so renumbered the following sub-section shall be added, namely:—

"(2) An application under this section shall, if the applicant is carrying on any insurance business in any Indian State notified, in this behalf by the Central Government in the official Gazette, be accompanied by a statement to that effect, and in such a case the Court shall not order the return of any deposit under this section unless it is satisfied, after giving notice to the chief insurance authority of the Indian State, that the liabilities of the applicant to that State in respect of the class of business concerned have been satisfied or are otherwise provided for."

Amendment of section 10, Act IV of 1938.

8. In section 10 of the said Act,—

(*a*) in sub-section (2),—

(*i*) after the words "life insurance fund" the words, brackets and figures "the assets of which shall, after the expiry of six months from the commencement of the Insurance (Amendment) Act, 1946, be kept distinct and separate from all other assets of the insurer", shall be inserted;

(*ii*) for the words "part of such fund" the words "part of the assets of such fund," and a statement, certified by an auditor showing such assets as at the close of every calendar year and as at any other date which the Superintendent of Insurance may specify, shall be furnished to the Superintendent of Insurance within a period of three months from the date to which the statement relates or within such further period, not exceeding one month, as the Central Government may in any case think fit to allow" shall be substituted;

"(2-A) No insurer carrying on life insurance business shall be entitled to be registered.

(*b*) after sub-section (2) the following sub-section shall be inserted, namely:—

for any class of insurance business in addition to the class or classes for which he has been already registered unless the Superintendent of Insurance is satisfied that the assets of the life insurance fund of the insurer are adequate to meet all his liabilitis on policies of life insurance maturing for payment."

Amendment of section 11, Act IV of 1938.

9. In clause (*c*) of sub-section (1) of section 11 of the said Act, for the words and figures "payments in accordance with the regulations contained in Part I of the Third Schedule, a revenue account in the form or forms set forth in Part II of that" the words "payments, a revenue account in accordance with the regulations, and in the form or forms, set forth in the Third" shall be substituted.

Amendment of section 15, Act IV of 1938.

10. In section 15 of the said Act,—

(*a*) in sub-section (1), after the word and figure "section 11" in both places where they occur, the words, brackets and figures "or sub-section (5) of section 13" shall be inserted;

(*b*) to sub-section (2) the words "and one shall be signed by the auditor who made the audit or the actuary who made the valuation, as the case may be" shall be added.

Amendment of section 16, Act IV of 1938.

11. In sub-section (2) of section 16 of the said Act,—

(*a*) in clause (*a*), after the word "audited" the words "by an auditor or" shall be inserted;

(*b*) in clause (*b*), for the words and figures "furnished in the form or forms set forth in Part II of" the words "furnished, prepared in accordance with the regulations, and in the form or forms, set forth in" shall be substituted.

Amendment of section 17, Act IV of 1938.

12. In section 17 of the said Act, for the words "that Act" the words "the first-mentioned Act" shall be substituted.

Amendment of section 21, Act IV of 1938.

13. In clause (*d*) of sub-section (1) of section 21 of the said Act, after the word and figures "section 16" the words and figures "or section 28" shall be inserted.

Amendment of section 22, Act IV of 1938.

14. Section 22 of the said Act, shall be renumbered as sub-section (1) of that section, and—

(*a*) in the said sub-section (1)—

(*i*) after the words "cause an investigation and valuation" the words "as at such date as the Superintendent of Insurance may specify" shall be inserted; ....

(*ii*) after the words "approved by the Superintendent of Insurance" the following shall be inserted, namely:—

"and the insurer shall place at the disposal of the actuary so appointed and approved all the material required by the actuary for the purposes of the investigation and valuation within such period, not being less than three months, as the Superintendent of Insurance may specify";

(*b*) to the section as so renumbered the following sub-section shall be added, namely:—

"(2) The provisions of sub-sections (1) and (4) of section 13, and of sub-sections (1) and (2) of section 15 or, as the case may be, of sub-section (2) of section 16, shall apply in relation to an investigation and valuation under this section:

Provided that the abstract and statement prepared as the result of such investigation and valuation shall be furnished by such date as the Superintendent of Insurance may specify."

Amendment of section 27, Act IV of 1938.

15. In section 27 of the said Act,—

(*a*) in sub-section (1),—

(*i*) after the words "British India" the words "or the United Kingdom" shall be inserted;

(*ii*) the *Explanation* shall be omitted;

(*b*) in sub-sections (1) and (2)—

(*i*) for the word brackets and figures "sub-section (3)" the words, brackets, figures and letter "sub-sections (2-A) and (3)" shall be substituted;

(*ii*) for the words "granted by him on policies of life insurance maturing for payment in India and within their surrender values", the words "granted on and within the surrender values of policies of life insurance maturing for payment in India issued by him or by an insurer whose business he has acquired and in respect of which he has assumed liability", shall be substituted;

(*c*) after sub-section (2) the following sub-section shall be inserted; namely:—

"(2-A) Where an insurer has accepted re-assurance in respect of any policies of life insurance issued by another insurer and maturing for payment in India or has ceded re-

assurance to another insurer in respect of any such policies issued by himself, the sum referred to in sub-section (1) or sub-section (2) shall be increased by the amount of the liability involved in such acceptance and decreased by the amount of liability involved in such cession'';

(*d*) in sub-section (4), for the word ''claims'' the word ''liabilities'' shall be substituted.

Amendment of section 28, Act IV of 1938.

16. In sub-sections (1), (2) and (3) of section 28 of the said Act, for the word ''statement'' whether it occurs the word ''return'' shall be substituted.

Amendment of section 29. Act IV of 1938.

17. After the second proviso to sub-section (1) of section 29 of the said Act, the following further proviso shall be inserted, namely:—

''Provided further that where any event occurs giving rise to circumstances, the existence of which at the time of the grant of any subsisting loan would have made such grant a contravention of this section, such loan shall, notwithstanding any contract to the contrary be repaid within three months from the occurrence of such event or from the commencement of the Insurance (Amendment) Act, 1946, whichever is later; and in case of default, the director, manager, auditor, actuary, officer or partner concerned shall, without prejudice to any other penalty which he may incur, cease to hold office with the insurer granting the loan on the expiry of the said three months:''

Amendment of section 31, Act IV of 1938.

18. Section 31 of the said Act shall be renumbered as sub-section (1) of that section, and to the section as so renumbered the following sub-section shall be added, namely:—

''(2) No insurer incorporated or domiciled in British India shall hold any of his assets kept in an Indian State otherwise than in the name of an authority approved by the Government of the State, or in the corporate name of the undertaking, if a company, or in the name of the partners, if a firm, or in the name of the proprietor, if an individual, except in the case of deposits made under any law of the State relating to insurance or in so far as assets are required by the law of the State to be vested in trustees.''

Amendment of section 33, Act IV of 1938.

19. In sub-section (1) of section 33 of the said Act, after the words ''himself make such investigation'' the following shall be inserted, namely:—

''utilising, if necessary at any time, the services of an auditor or actuary or both, and the insurer shall make available all books of account, registers and other documents and other information required for the purpose of the investigation by the person or persons making the investigation within such period, not being less than three months, as the Superintendent of Insurance may specify;''

Amendment of section 39, Act IV of 1938

20. To sub-section (7) of section 39 of the said Act the following shall be added, namely:—

''or has at any time applied:

Provided that where a nomination made whether before or after the commencement of the Insurance (Amendment) Act, 1946, in favour of the wife of the person who has insured his life or of his wife and children or any of them is expressed, whether or not on the face of the policy, as being made under this section, the said section 6 shall be deemed not to apply or not to have applied to the policy.''

Amendment of section 40, Act IV of 1938.

21. In section 40 of the said Act,—

(*a*) after sub-section (1) the following sub-section shall be inserted, namely:—

''(1-A) In this section and sections 41 and 43, references to an insurance agent shall be construed as including references to an individual soliciting or procuring insurance business exclusively in an Indian State notified in this behalf by the Central Government in the official Gazette and holding a valid licence as an Insurance agent under the law of that State'';

(*b*) in sub-sections (1) and (2),—

(*i*) after the words ''renewal premium'' the words ''payable on such a policy'' shall be inserted;

(*ii*) to the proviso the words ''payable on such policies'' shall be added;

(*c*) after sub-section (2) the following sub-section shall be inserted, namely:—

''(2-A) Save as hereinafter provided, no insurance agent shall be paid or contract to be paid by way of commission or as remuneration in any form any amount in respect of any policy not effected through him:

''Provided that where a policy of life insurance has lapsed, and it cannot under the terms and conditions applicable to it be revived without further medical examination of the person whose life was insured thereby, an insurer, after giving by notice in writing to

the insurance agent through whom the policy was effected an opportunity to effect the revival of the policy within a time specified in the notice, being not less than one month from the date of receipt by him of the notice, may pay to another insurance agent who effects the revival of the policy an amount calculated at a rate not exceeding half the rate of commission at which the agent through whom the policy was effected would have been paid had the policy not lapsed, on the sum payable on revival of the policy on account of arrear premiums (excluding any interest on such arrear premiums), and also on the subsequent renewal premiums payable on the policy."

Amendment of section 41, Act IV of 1938.

22. In sub-section (2) of section 41 of the said Act, for the words "one hundred rupees, unless the default is made by a person taking out or renewing or continuing policy, in which case he shall be punishable with fine which may extend to fifty rupees only" the words "five hundred rupees" shall be substituted.

Amendment of section 48, Act IV of 1938.

23. In sub-section (2-A) of section 48 of the said Act, the words "or is an insurance agent or employer of insurance agents", shall be omitted.

Insertion of new section 48-A in Act IV of 1938.

24. After section 48 of the said Act the following section shall be inserted, namely:—

"48-A. *Life Insurance agents not to be directors of life insurance companies.*—No insurance agent who solicits or procures life insurance business, and no person acting on behalf of an insurer who for the purpose of life insurance business employs insurance agents, shall be eligible to be or remain a director of any insurance company carrying on life insurance business:

Provided that any director holding office at the commencement of the Insurance (Amendment) Act, 1946, shall not become ineligible to remain a director by reason of this section until the expiry of six months from the commencement of that Act."

Insertion of new section 53-A in Act IV of 1938.

25. After section 53 of the said Act the following section shall be inserted, namely:—

"'53-A. *Unpaid-up share capital.*—Notwithstanding anything contained in any other law, in ascertaining for any purpose of this Act the solvency or otherwise of an insurer, no account shall be taken of any assets of the insurer consisting of unpaid-up share capital."

Amendment of section 58, Act IV of 1938.

26. To section 58 of the said Act, the following sub-section shall be added, namely:—

"(5) When making an order confirming a scheme under this section, the Court may make such orders as it considers necessary for the disposal of so much of the deposit made by the company under section 7 or section 98 as does not relate to the classes of insurance business, if any, which the company continues to carry on."

Amendment of section 59, Act IV of 1938.

27. In section 59 of the said Act, after the words "insurance company" the brackets, words and figures "(otherwise than in a case to which section 58 applies)" shall be inserted:

Amendment of section 65, Act IV of 1938.

28 In sub section (1) of section 65 of the said Act,—

(*a*) in clause (*a*), for the words "fifty" the words "one hundred" shall be substituted;

(*b*) in clause (*b*), for the words "five hundred" the words "nine hundred" shall be substituted.

Amendment of section 70, Act IV of 1938.

29. In section 70 of the said Act,—

(*a*) In sub-section (2)-

(*i*) in clause (*d*), after the word "affidavit" the words "made by the principal officer of the society authorised in that behalf" shall be inserted;

(*ii*) in clause (*e*), for the words "prescribed fee" the words "receipt showing payment in the prescribed manner of the prescribed fee" shall be substituted;

(*b*) in sub-section (3), for the words and figures "minimum working capital required by section 72 is available", the words, figures and letter "society complies with the provisions of sections 67, 71, 72, 73 and 73-A", shall be substituted;

(*c*) in sub-section (4),—

(*i*) in clause (*a*), after the word "satisfied" the words "from the returns furnished under the provisions of this Act or" shall be inserted;

(*ii*) after clause (*b*) of the second proviso the following word and clause shall be inserted, namely:—

"or

(*c*) cancel the registration of a provident society if he has reason to believe that any claim upon the society arising in India under any policy of insurance remains unpaid for

three months after final judgment in regular course of law";

(*d*) in sub-section (6),—

(*i*) after the word, brackets and figure "sub-section (4)," the words, brackets and letter "or clause (*c*) of the second proviso to that sub-section," shall be inserted;

(*ii*) after the word and figures "section 73" the words, brackets and letter "or satisfies the Superintendent of Insurance that no claim upon it such as is referred to in the said clause (*c*) remains unpaid" shall be inserted;

(*e*) after sub-section (6) the following sub-section shall be inserted, namely:—

"(7) The Superintendent of Insurance may, on payment of the prescribed fee which shall not exceed five rupees, issue a duplicate certificate of registration to replace a certificate lost, destroyed or mutilated, or in any other case where he is of opinion that the issue of a duplicate certificate is necessary."

Substitution of new section for section 71, Act IV of 1938.

30. For section 71 of the said Act the following section shall be substituted, namely:—

"71. *Certain provisions of Part II to apply to provident societies.*—The provisions of sections 20, 32, 46 and 53-A shall apply to provident societies as they apply to insurers, and in such application references to shareholders of an insurer shall be construed as references to members of a provident society:

Provided that a provident society may charge a fee not exceeding one rupee for supplying a copy of any document referred to in sub-section (2) of section 20."

Amendment of section 73, Act IV of 1938.

31. In sub-section (1) of section 73 of the said Act, for the words "gross premium income for the preceding calendar year" the words "premium income for the preceding calendar year as shown in the revenue account of the society" shall be substituted.

Insertion of new section 73-A in Act IV of 1938.

32. After section 73 of the said Act the following section shall be inserted, namely:—

"73-A. *Restriction on name of provident society.*—(1) A provident society shall not be registered by a name identical with that by which an insurer or another provident society in existence is already registered, or so nearly resembling that name as to be calculated to deceive, except when the provident society in existence is in the course of being dissolved and signifies its consent, or the insurer in existence signifies his consent, to the Superintendent of Insurance.

(2) If a provident society, through inadvertence or otherwise, is without such consent as aforesaid registered by a name identical with that by which an insurer or another provident society already in existence is registered, or so nearly resembling it as to be calculated to deceive, the first-mentioned society shall, if called upon to do so by the Superintendent of Insurance on the application of the insurer or the second-mentioned society, change its name within a time to be fixed by the Superintendent of Insurance:

Provided that nothing in this section shall apply to any provident society carrying on business before the commencement of the Insurance (Amendment) Act, 1946."

Amendment of section 81, Act IV of 1938.

33. In sub-section (1) of section 81 of the said Act, after the word "made" the words "as at the last day of a calendar year" shall be inserted.

Amendment of section 82, Act IV of 1938.

34. In sub-section (1) of section 82 of the said Act, the words beginning "and copies of the revenue account" and ending "a fee of one rupee" shall be omitted.

Amendment of section 85, Act IV of 1938.

35. In section 85 of the said Act—

(*a*) in sub-section (1), for the word "Government" the word "approved" shall be substituted;

(*b*) in sub-section (2), after the word and figures "section 73", the words "or under the law of any state or country relating to insurance" shall be inserted;

(*c*) to sub-section (3) the following proviso shall be added, namely:—

Provided that nothing in this sub-section shall apply to loans made by a Provident Society to a banking company:

Provided further that where any event occurs giving rise to circumstances, the existence of which at the time of the grant of any subsisting loan would have made such grant a contravention of this sub-section, such loan shall, notwithstanding any contract to the contrary, be repaid within three months from the occurrence of such event or from the commencement of the Insurance (Amendment) Act, 1946 whichever is later; and in case of default, the director, manager, auditor, actuary or partner concerned shall, without prejudice to any other penalty which he may incur cease to hold office in the society on the expiry of the said three months."

Amendment of section 86, Act IV of 1938.

36. In section 86 of the said Act, for the words "has made an application in this behalf to the Superintendent of Insurance" the words "has, on application in this behalf, been permitted, by the Superintendent of Insurance, subject to such conditions, if any, as he may impose, to make such inspection" shall be substituted.

Amendment of section 87, Act IV of 1938.

37. In section 87 of the said Act,—

(*a*) in sub-section (1), for the words "solvency of the society and the manner in which the business of the society is conducted", the words "affairs of the society" shall be substituted;

(*b*) after sub-section (4) the following sub-sections shall be inserted, namely:—

"(5) The Superintendent of Insurance may by notice in writing require the provident society to comply within a time to be specified therein (not being less than fifteen days from the receipt of the notice by the society) with any directions he may issue to remedy defects disclosed by an inquiry under this section.

(6) If the society fails to comply with any directions issued under sub-section (5), the Superintendent of Insurance may, after giving notice to the society and giving it an opportunity to be heard, apply to the Court for the winding up of the society."

Insertion of new section 87-A in Act IV of 1938.

38. After section 87 of the said Act the following section shall be inserted, namely:—

"87-A. *Amalgamation and transfer of insurance business.*—(1) The insurance business of a provident society may be transferred to any person or transferred to or amalgamated with the insurance business of any other provident society in accordance with a scheme prepared under this section and sanctioned by the Superintendent of Insurance.

(2) Any scheme prepared under this section shall set out the agreement under which the transfer or amalgamation is proposed to be effected, and shall contain such further provisions as may be necessary for giving effect to the scheme.

(3) Before an application is made to the Superintendent of Insurance to sanction any such scheme, notice of the intention to make the application together with a statement of the nature of the amalgamation or transfer, as the case may be, and of the reason therefor, shall at least two months before the application is made, be sent to the Superintendent of Insurance and certified copies, four in number, of each of the following documents shall be furnished to him, and other such copies shall during the two months aforesaid be kept open for the inspection of the members and policy-holders at the principal and branch offices of the provident societies concerned, namely:—

(*a*) a draft of the agreement or deed under which it is proposed to effect the amalgamation or transfer,

(*b*) balance-sheets in respect of the insurance business of each of the provident societies concerned in such amalgamation or transfer,

(*c*) acturial reports and abstracts in respect of the insurance business of each of the provident societies so concerned,

(*d*) a report on the proposed amalgamation or transfer, prepared by an independent actuary.

(*e*) any other reports on which the scheme of amalgamation or transfer was founded;

and the balance-sheets, reports and abstracts referred to in clauses (*b*), (*c*) and (*d*) shall all be prepared as at the date at which the amalgamation or transfer if sanctioned by the Superintendent of Insurance is to take effect, which date shall not be more than twelve months before the date on which the application to the Superintendent of Insurance is made under this section:

Provided that the Superintendent of Insurance may exempt the provident society or societies concerned from furnishing to him and from keeping open for inspection any one or more of the above documents.

(4) When any application such as is referred to in sub-section (3) is made to the Superintendent of Insurance, he may require, if for special reasons he so directs, notice of the application to be sent to every person resident in British India or in an Indian State who is the holder of a policy of any provident society concerned and may cause a statement of the nature and terms of the amalgamation or transfer, as the case may be, to be published in such manner and for such periods as he may direct, and after hearing the societies concerned, such policy-holders as apply to be heard and such other persons as he may deem fit, may sanction the arrangement if he is satisfied that no sufficient objection to the arrangement has been established and shall make such consequential orders as are necessary to give effect to the arrangement, including orders as to the disposal of any deposit made under section 73:

Provided that—

(*a*) no part of the deposit made by any party to the amalgamation or transfer shall

be returned except where, after effect is given to the arrangement the whole of the deposit to be made by the provident society carrying on the amalgamated business or the person to whom the business is transferred is completed;

(*b*) only so much shall be returned as is no longer required to complete the deposit last mentioned in clause (*a*);

(*c*) while the deposit last mentioned in clause (*a*) remains uncompleted, no accession, resulting from the arrangement, to the amount already deposited by the provident society carrying on the amalgamated business or the person to whom the business is transferred shall be appropriated as payment or part payment of any instalment of deposit subsequently due from it or him under section 73.

(5) A copy of the order under sub-section (4) sanctioning or refusing to sanction the arrangement shall be sent to each of the societies concerned and to each of the policy-holders who applied to be heard.

(6) If the scheme involves a reduction of the amount of the insurance and other contracts of the transfer or society or of any or all of the societies concerned in the amalgamation, the Superintendent of Insurance may sanction the scheme, reducing the amount of such contracts upon such terms and subject to such conditions as he may think proper, and the reduction of the contracts as sanctioned by the Superintendent of Insurance shall be valid and binding on all the parties concerned."

Amendment of section 88, Act IV of 1938.

39. For sub-section (2) of section 88 of the said Act the following sub-section shall be substituted, namely:—

"(2) In addition to the grounds on which such an order may be based, the Court may order the winding up of a provident society if the Superintendent of Insurance, who is hereby authorised to do so, applies in this behalf to the court on any of the following grounds, namely:—

(*a*) that the registration of the society has been cancelled under sub-section (4) of section 70;

(*b*) that it appears from the returns furnished under the provisions of this Act or as the result of an inquiry made under section 87 that the society is insolvent;

(*c*) that the continuance of the society is prejudicial to the interests of the policy-holders."

Insertion of new section 90-A in Act IV of 1938.

40. After section 90 of the said Act the following section shall be inserted, namely:—

"90-A. *Application of Act to liquidators.*—Notwithstanding anything to the contrary contained in the Indian Companies Act, 1913 (VII of 1913), the provisions of sections 91, 92 and 93 shall apply to any liquidator appointed to wind up a provident society, whether by the Court, the Superintendent of Insurance or the society itself".

Amendment of section 92, Act IV of 1938.

41. In sub-section (4) of section 92 of the said Act, for the words "if so desired," the words "determine the remuneration to be paid to him, and if so desired, shall also appoint" shall be substituted.

Amendment of section 94, Act IV of 1938

42. In sub-section (1) of section 94 of the said Act, after the word, brackets and letter "clause (*a*)" the words, brackets and figure "of sub-section (2)" shall be inserted.

Amendment of section 98, Act IV of 1938.

43. In sub-section (2) of section 98 of the said Act, for the words "gross premium income received in the previous calendar year" the words "premium income in the preceding calendar year as shown in the revenue account" shall be substituted.

Insertion of new section 98-A in Act IV of 1938.

44. After section 98 of the said Act the following section shall be inserted, namely:—

"98-A. *Prohibition of loans.*—The provisions of section 29 shall apply to Co-operative Life Insurance Societies as they apply to other insurers, so however that in such application the references in the second proviso to sub-section (1) of the said section to the commencement of this Act shall be construed as references to the commencement of the Insurance (Amendment), Act, 1946."

Amendment of section 105, Act IV of 1938.

45. In sub-section (1) of section 105 of the said Act, after the words "by this Act shall," the words "on the complaint of the Superintendent of Insurance made after giving the insurer not less than fifteen days' notice of his intention, or" shall be inserted.

Amendment of section 110, Act IV of 1938.

46. In sub-section (1) of section 110 of the said Act, for clause (*e*) the following clause shall be substituted, namely:—

"(*e*) an order under section 87 or section 87-A;"

Amendment of section 116-A, Act IV of 1938.

47. In the proviso to section 116-A of the said Act, for the word "statements" the words, brackets and figures "statement referred to in sub-section (2) of section 10 or the returns" shall be substituted.

Amendment of Third Schedule, Act IV of 1938.

48. In the Third Schedule to the said Act,—

(*a*) for regulation 7 the following regulation shall be substituted, namely:—

"7. In addition to the revenue account, information shall be supplied of the gross premium written direct in India, that is, the premium income without taking into account premiums on reinsurances ceded or accepted, for every class or sub-class of business in respect of which the insurer is required to maintain a separate account";

(*b*) in Form D,—

(*i*) in the first column, under the heading "Expenses of Management", item 11 shall be omitted; and items 12 and 13 shall be renumbered as items 11 and 12 respectively;

(*ii*) in the fifth column, for the words "First year premiums" the following shall be substituted, namely:—

"First year premiums, where the maximum premiums-paying period (*g*) is—

two years	.. ..	nine years	.. ..
three years	.. ..	ten years	.. ..
four years	.. ..	eleven years	.. ..
five years	.. ..	twelve years or over (including throughout life)	.. .";
six years	.. ..		
seven years	.. ..		
eight years	.. ..		

(*iii*) after note (*f*) the following note shall be inserted namely:—

"(*g*) Where the maximum premiums-paying period includes a fraction of a year, such fraction shall be ignored for the purposes of this revenue account";

(*c*) in Form DDD, after the words "separate revenue account is submitted" the words "and all amounts stated shall be total gross amounts without taking into account reinsurances ceded or accepted" shall be inserted;

(*d*) in Form DDDD—

(*i*) in the heading, for the words "*less those*" the words "*and of policies*" shall be substituted;

(*ii*) in the table, for the column headings the following shall be substituted, namely:—

"Year in which the policies were issued.	Number of policies forfeited or lapsed.	Sum insured under policies in column (2).	Number of policies revived and reinstated for full benefits.	Sum insured under policies in column (4).
(1)	(2)	(3)	(4)	(5)
		Rs.		Rs."

(*iii*) after the words "separate revenue account is submitted" the words "and all amounts stated shall be total gross amounts without taking into account reinsurances ceded or accepted" shall be inserted.

THE INSURANCE DEPOSITS (TEMPORARY REDUCTION) ACT (I OF 1941).

[*3rd March*, 1941.

An Act to provide for the reduction temporarily of the amounts payable as instalments of the sum to be deposited by an insurer under section 7 of the Insurance Act, 1938.

WHEREAS, in consequence of conditions arising out of the present war, it is expedient to provide for the reduction temporarily of the amounts payable as instalments of the sum to be deposited by an insurer under section 7 of the Insurance Act, 1938;

It is hereby enacted as follows:—

Short title and extent.

1. (1) This Act may be called THE INSURANCE DEPOSITS (TEMPORARY REDUCTION) ACT, 1941.

It extends to the whole of British India.

Definition.

2. In this Act "insurer" means an insurer as defined in clause (9) of section 2 of the Insurance Act, 1938, except that it does not include a Mutual Insurance Company or a Co-operative Life Insurance Society to which Part IV of that Act applies.

Reduction of instalments of deposit.

3. (1) An insurer entitled to the benefits of this Act shall, subject to the provisions of section 5, be deemed in respect of any instalment of the deposit to be made by him under section 7 of the Insurance Act, 1938, which he was required to pay during the year commencing on the 1st day of January, 1940, or which he may be required to pay at any time after the end of that year and so long as this section continues to have effect, to have complied with the provisions of the said section 7 as to payment of instalments of deposits, if he has paid or pays in accordance with the provisions of that section not less than one half the total amount which would have been required by that section as the instalment, had the insurer not availed himself of the provisions of this Act.

(2) If an insurer entitled to the benefits of this Act, when paying an instalment of deposit, has, in respect of any instalment due during the year commencing on the 1st day of January, 1940, paid more than one half the total amount required by the said section 7 as the instament, he may at his option have the amount of any such surplus payment appropriated to the payment of the next or any subsequent instalment of deposit required from him under the said section 7 read with sub-section (1) of this section.

(3) This section shall cease to have effect on the expiration of one year from such date as may be fixed, for the purposes of this Act, by the Central Government by notification in the official Gazette as the date of termination of the present hostilities.

Insurers entitled to the benefits of this Act.

4. An insurer shall be entitled to the benefits of this Act only if—

(*a*) he carries on life insurance business only, and

INSURANCE DEPOSITS (TEMPORARY REDUCTION ACT, SEC. 5: SCOPE AND EFFECT—'CEASE'—MEANING OF.—The intention of the Insurance Deposits (Temporary Reduction) Act is to give the benefit of sec. 4 to every Insurance Company whose case is covered by that section, and the effect of sec. 5 is that the benefit, thus accruing, should cease if in future the income of the company should continue to exceed Rs. 30,000. Sec. 5 does not mean that an insurer, otherwise entitled to the benefit of sec. 4, is not so entitled if his income exceeds that amount in the year previous to the accrual of such benefit. The word 'cease' connotes the discontinuance of something already in motion. It is an abuse of language to say that the company ceased to hold under sec. 5 of the Act a benefit which it, in fact, never acquired. 45 P.L.R. 54=1943 Lah. 107. Sec. 8 of the Act specifically relates to the removal of difficulties in determining the amount of an instalment payable. It does not oust the jurisdiction of the civil courts in any question relating to the interpretation of the statute. The question of the applicability of the Act is a pure question of law and not covered by the section. 45 P.L.R. 54=1943 Lah. 107.

(*b*) the date on which he first assumed risk on any policy issued by him was earlier than the 3rd day of September, 1939, but not earlier than the 3rd day of September, 1929.

Cesser of title to the benefits of this Act.

5. (1) An insurer otherwise entitled to the benefits of this Act shall cease to be so entitled in any year if in the preceding year his total premium income, including annuity considerations, as shown in the revenue-account prepared under the Insurance Act, 1938, exceeded rupees thirty thousand.

(2) An insurer otherwise entitled to the benefits of this Act shall cease to be so entitled in respect of any future instalment—

(*a*) if after the 1st day of January, 1941, he declares any bonus or dividend at a rate higher than the rate at which such bonuses or dividends were last declared by him before the 3rd day of September, 1939, or

(*b*) if the proportion of his renewal premium income spent by him in payment of commission and other expenses including capital expenditure, determined in accordance with Rule 25 of the Insurance Rules, 1939, exceeds in any year the proportion as so determined for the accounting period ending on the 31st day of December, 1939.

Resumption of payment of instalments in accordance with Act IV of 1938.

6. (1) When section 3 ceases to have effect, or if before that date an insurer ceases under clause (*a*) or clause (*b*) of sub-section (2) of section 5 to be entitled to the benefits of this Act, instalments of deposits shall be paid in accordance with the provisions of section 7 of the Insurance Act, 1938 (except that no insurer shall be required to pay as an instalment an amount exceeding the amount which would have been payable by him had he not availed himself of the provisions of this Act), until the last instalment required to be paid under the said section 7 has been paid, and the balance of the deposit then remaining unpaid in consequence of the reduced instalments authorised under this Act shall be paid by the insurer in such further instalments, of such amount and at such times, as the Central Government may direct.

(2) If while section 3 continues to have effect an insurer ceases in any year under sub-section (1) of section 5 to be entitled to the benefits of this Act, instalments of deposit in that year shall be paid by him in accordance with the provisions of section 7 of the Insurance Act, 1938, except that he shall not be required to pay as an instalment an amount exceeding the amount which would have been payable by him had he not availed himself of the provisions of this Act, and the provisions of sub-section (1) of this section shall apply to the payment by such insurer of any balance of the deposit due from him which remains unpaid after the last instalment required to be paid under the said section 7 has been paid.

Saving in respect of delayed payments of instalments of deposits.

7. For the purposes of the Insurance Act, 1938, an insurer entitled to the benefits of this Act who has failed to pay before the 1st day of January, 1941, an instalment of deposit due in the year 1940 shall not be liable to any consequences on that account in respect of a failure to comply with the provisions of section 7 of the said Act as to deposits if before the 15th day of February, 1941, he has paid as such instalment not less than one half the total amount required by the said section 7.

Removal of difficulties.

8. If any difficulty arises in determining the amount payable as an instalment of deposit by an insurer under this Act, the matter shall be decided by the Central Government whose decision shall be final.

THE INTEREST ACT (XXXII OF 1839).[1]

Short title given, Act XIV of 1897.

Declared in force—

Throughout British India except as regards the Scheduled Districts Act XV of 1874, S. 3.

[30*th December*, 1839.

An Act concerning the allowance of Interest in certain cases.

Preamble.

WHEREAS it is expedient to extend to the territories under the Government of the East India Company, as well within the jurisdiction of Her Majesty's Courts as elsewhere, the provisions of [2]the Statute 3rd and 4th, William IV, Chapter 42, section 28, concerning the allowance of interest in certain cases.

Power of Court to allow intereest.

1. It is, therefore, hereby enacted that, upon all debts or sums certain payable at a certain time or otherwise, the Court before which such debts or sums may be recovered may, if it shall think fit, allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such

LEG. REF.

1 Short title, "The Interest Act, 1839". *See* the Indian Short Titles Act (XIV of 1897).

2 Short title, "The Civil Procedure Act, 1833". *See* the Short Titles Act, 1836 (58 & 60 Vict., c. 14).

SEC. 1: (*See also* Notes under sec. 73, Contract Act). The Interest Act and Lord Tanterden's Act being indistinguishable cases under the English Law are relevant for the decision of questions under the former Act. 12 P. 216=1933 P. 196. *See also* 31 I.A. 116=26 A. 299 (P.C.). There is nothing in law which debars a creditor from suing for the recovery of interest alone if he has complied with the formalities required by the Interest Act and if his case is otherwise governed by the said Act. (1 C.W.N. 219, Disappr.) 134 I.C. 1028=1931 L. 457 =32 P.L.R. 546. *See also* 1938 Nag. 119= 20 N.L.J. 145=I.L.R. (1938) Nag. 482. Suit for mere interest is tenable. I.L.R. (1944) Nag. 327=1944 N.L.J. 147=1944 Nag. 122.

DELAY IN FILING SUIT, if and when ground for disallowance of interest. *See* I.L.R. (1937) Nag. 360=1937 Nag. 165; 1938 P. W.N. 186=19 Pat.L.T. 202=17 P. 350=1938 P. 600. The date upon which an execution sale is confirmed is the date upon which the money due by the judgment-debtor under the decree is paid by him and realized by the judgment-creditor through the Court. If there is no subsequent action on the part of the judgment-debtor, during the period between the receipt of the money into Court and the actual payment by the Court of the money to the judgment-creditor, which prevents or postpones that payment, no question arises of any further liability resting upon the judgment-debtor under the decree either for interest or otherwise. When no blame attaches to the judgment-debtor, he cannot be compelled to pay interest for any further period beyond the date when payment was made into Court in satisfaction of the decree. Merely because an injunction is issued at the instance of the auction-purchaser and delay is caused in payment out, the judgment-creditor cannot claim further interest from the judgment-debtor on the ground that the judgment-creditor has not been to blame for the delay. 55 L.W. 212= (1942) 1 M.L.J. 439=1942 M. 442.

ALLOWANCE OF INTEREST IN CERTAIN CASES. —The Act is only an enabling Act by which the Court is vested with a discretion to grant interest in certain cases, but does not create a right to interest in favour of creditors, which, of itself, could be made the subject-matter of a suit. 1 C.W.N. 219. But *see also* 4 Bom.L.R. 205; 40 M.L.J. 18=12 L.W. 567=1921 M. 76; 75 I.C. 64; 1923 L. 302 (1); 21 N.L.R. 16=1925 N. 451; 31 B. 354. *See also* 1937 Pat. 656=172 I.C. 744; 1940 O. W.N. 581=1940 Oudh 308 (Pronote inadmissible in evidence—Interest prior to suit not allowed in absence of any demand). *See also* 1937 Oudh 387. Claim for simple interest after principal amount has been recovered is not tenable. I.L.R. (1938) Nag. 482=20 N. L.J. 145=1938 Nag. 119. A creditor can claim interest (1) on the ground of agreement, (2) on the basis of statute, and (3) on the ground of usage. The practice of a particular creditor's shop cannot amount to usage. Nor would the mere writing on the bills that interest at 1 per cent. will be charged, amount to a contract. 16 Luck. 701= 1941 Oudh 254. *See also* 1942 O.W.N. 157 =1942 Oudh 311. Interest for the period prior to the date of the suit may be awarded, if there is an agreement for the payment of interest at a fixed rate, or it is payable by the usage of trade having the force of law, or under the provision of any substantive law entitling the plaintiff to recover interest. 65 I.A. 66=I.L.R. (1938) 2 Cal. 72=1938 P.C. 67=(1938) 1 M.L.J. 640 (P.C.). *See also* I.L.R. (1940) Mad. 50=50 L.W. 466=1939 Mad. 877=(1939) 2 M.L.J. 579; 42 C.W.N. 1004=1938 Cal. 618=I.L.R. (1938) 2 C. 590. Interest before suit cannot be decreed if the case is not covered either by the Interest Act

debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time; or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the term of payment: provided that interest shall be payable in all cases in which it is now payable by law.

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or by sec. 73 of the Contract Act. 4 C.W.N. 818=27 C. 814; 139 I.C. 158=1932 A.L.J. 733=1932 A. 505. [*N.B.*—There is however a conflict of rulings between the several High Courts on this matter. *See* cases cited below.] *See also* D.C.R. Part. II, 7; 19 P.L.R. 1902=104 P.R. 1901; 37 P.R. 1867; 54 I.C. 431 (1); 41 A. 254=49 I.C. 696; 21 I.C. 253; 40 M.L.J. 18=75 I.C. 64. It is not correct to say that Courts have power to award interest in all cases where money due is withheld. 116 I.C. 669 (2)=1929 N. 170 =25 N.L.R. 81. *See also* 1942 Sind 165= I.L.R. (1942) Kar. 346; 20 I.C. 194; 1933 C. 146; 139 I.C. 158=1932 A. 505; 1933 A. 186=55 All. 164. Act is not exhaustive of all claims as to interest and it is open to the Courts in India to award interest in cases not coming within the purview of the Act, on principles of equity. Act does not apply to an unascertained sum such as the profits of a trade. 42 M. 661=36 M.L.J. 456=52 I.C. 505. 51 M.L.J. 633=1927 M. 59; 12 P. 216 =146 I.C. 56=1933 P. 196; 35 P.L.R. 785 =1934 L. 664 (1); 1934 L. 175; 1933 M. 729 =65 M.L.J. 620=57 M. 205. *See also* 40 M.L.J. 18=12 L.W. 568=1927 M. 76=75 I. C. 64=1923 L. 302; 71 I.C. 257; 47 M.L.J. 312=1925 M. 46=81 I.C. 536; 139 I.C. 158= 1932 A.L.J. 733=1932 A. 505. If there is no agreement between the parties to pay interest, interest may be allowed by way of damages though not authorised by the Interest Act. 105 I.C. 836=4 O.W.N. 1061=1928 O. 39; 1935 C. 347=62 C. 175; 1933 A. 147; 1933 L. 127. *See also* 65 I.A. 66=I.L.R. (1938) 2 Cal. 72=42 C.W.N. 985=(1938) 1 M.L.J. 640; and where the practice of the Court is not to allow more than six per cent. interest by way of damages the principle should be adhered to. 105 I.C. 836=4 O.W.N. 1061=1928 O. 89. *See also* 139 I.C. 158= 1932 A. 505; 1937 Lah. 455. In the absence of any usage or contract, express or implied, or of any provision of law to justify the award of interest for the period before the suit, interest for such period cannot be allowed by way of damages caused by the wrongful detention of the money claimed. 22 Pat. 220=210 I.C. 426=1943 Pat. 327; (1942) 1 M.L.J. 640. Before the plaintiff can be awarded interest as damages on a debt, it must be shown that according to law or custom or usage or some special agreement, he is entitled to it. I.L.R. (1943) Kar. 242=1943 Sind 185. As to claim for interests on equitable grounds, *see* I.L.R. (1938) All. 243=1938 A.L.J. 1=1938 All. 151; 42 C.W.N. 1004= 1938 Cal. 618; 1936 Rang. 141 (Discretion of Court); 1937 P.C. 193. The Act allows the Court or an arbitrator to whom a suit on a pro-note claiming interest is referred, to award interest even though there is no provision in the pro-note for payment of interest. 1934 A.L.J. 939=1934 All. 939. Where a claim for dower is decreed it is in the discretion of the Court to award interest on the amount from the date of the institution of the suit till the recovery of the amount. 131 I.C. 115=1931 A.L.J. 197=1931 A. 403. *See also* 1935 A. 239=56 A. 711=1934 A. L.J. 230 (interest on maintenance amount payable under a will. *See also* 12 P. 869=1934 P. 99. It has, however, been held in a recent case by the Bombay High Court, that interest cannot be awarded by way of damages apart from the special provisions of the Interest Act. 1924 B. 131=25 Bom.L.R. 837. *See also* 133 I.C. 861 (1)=33 Bom.L.R. 703 =1931 B. 386. In the absence of an agreement or usage giving a right to interest and of a written demand giving notice that interest would be claimed a creditor will not be entitled to interest. 19 P.L.R. 1902=104 P.R. 1902; 22 A.L.J. 558; 1945 Pat. 196=23 Pat. 940. *See also* 1925 M. 1279=22 L.W. 490. 46 All. 625=1924 A. 711. *Per* Curiam.— "It is clear that neither under the common law nor under the Indian Contract Act can interest be claimed upon a debt unless there has been either an excess promise to pay interest or such promise is to be implied from the usage of trade or other circumstances." 8 L. 524=101 I.C. 644=1927 L. 287. *See also* I.L.R. (1938) 2 Cal. 590=42 C.W.N. 1004=1938 Cal. 618; 13 Luck. 376=1937 O. W. N. 622=1937 Oudh 387. (Pronote inadmissible being insufficiently stamped— Suit on original loan—Interest can be awarded as compensation); 1940 Oudh 308; 49 L.W. 132; 71 M. L. J. 651= 1936 M. 910. (Award of interest in claim for contribution). Interest cannot be allowed merely on the ground that the debtor delayed the payment of a debt due by him. 8 P.R. 1914=20 I.C. 194. *See also* 10 Luck. 307=1935 O. 209=152 I.C. 786=11 O. W.N. 1397; 61 C. 711; 151 I.C. 54=1934 Pesh. 8; 42 C.W.N. 1004=1938 Cal. 618= (1938) 2 C. 590; 134 I.C. 1028=1931 L. 457; 136 I.C. 719=33 P.L.R. 161; 1933 O. 146. In a suit by a beneficiary under a deed of wakf against the mutawalli for the payment of her share of profits, the payment of which had been unreasonably delayed, *held*, that the plaintiff was entitled to interest on the amount of her claim on "equitable" grounds. The mutawalli, though not a trustee stands, in respect of his obligations in the position of a quasi-trustee. 55 All. 164=1933 A.L.J. 21=1933 A. 186. *See also* 1932 A. 505; 1945 Pat. 196=23 Pat. 940. Suit on oral contract —Absence of demand—Whether interest before suit recoverable. 20 M. 481=7 M.L.J.

263. Price of goods sold—No written instrument or demand in writing—Whether interest prior to suit recoverable. 6 W.R. 283. *See also* 83 I.C. 268=1925 N. 204 (2) (No interest recoverable). In a suit for price of goods sold a claim for interest on the amount by way of damages for the delay in payment is not tenable; and such interest allowed by a Court can be disallowed in revision. 1933 L. 212=145 I.C. 157. *See also* 1933 L. 127 =145 I.C. 247; 37 P.L.R. 87=1935 L. 552; 1933 L. 556=146 I.C. 154. If in cases where Courts of Equity would grant specific performance the purchaser obtains possession of the subject-matter of the contract before the payment of the price, he must in the absence of express agreement to the contrary pay interest on his purchase money as from the date when he gets possession until the date of payment because it would be inequitable for him to have the benefit of possession of the subject-matter of the contract and also of the purchase-money. The principle of payment of interest on the purchase-money from the date of the purchase to the date of payment, applies to compulsory purchases also. 197 I.C. 186=1941 P.C. 114. *See also* I.L.R. (1942) Mad. 464=1942 Mad. 429= (1942) 1 M.L.J. 250 (case of partition) and co-sharers' liability). Interest by way of damages cannot be awarded on an unascertained amount. It can however be allowed in respect of a specified amount, namely, rent as determined on a particular date. Scope of Interest Act discussed. 12 Pat. 216=14 Pat. L. T. 140=1933 P. 196; 1934 L. 175; I.L.R. 1938 Nag. 308=1937 Nag. 345 (Suit for damages for breach of contract—Interest not allowed as it would amount to giving damages on damages); 46 L.W. 790=1938 Mad. 206=(1937) 2 M.L.J. 798 (Railway Co. liable for loss of goods—Interest given from date of plaint, not from date of loss of goods). In a suit by the lessor for recovery of the unpaid part of premium payable in respect of a lease, interest by way of damages for failure to pay as agreed can be allowed although there is no agreement as to payment of interest. 1933 A. 147. Contract of sale —Vendee let into possession—Formal sale-deed not executed and purchase-money not paid—Right of vendor to interest in equity. 1933 M.W.N. 127=1933 M. 844. *See also* 10 O.W.N. 52=1933 O. 146=(1942) M.L.R. 114 (Civil). Act does not apply where there is an agreement between the parties regulating the amount of interest. 10 M.I.A. 229. Act does not apply to a contract to pay interest implied from the dealings of the parties. 36 P.R. 1894. The language of the Act does not show that a contingency in the liability, not affecting the amount of debt or the time of payment, can in any way prevent the operation of the provisions of the first part of sec. 1. 26 C. 955. *See also* 1910 M.W.N. 731=8 I.C. 348. There is no general rule to the effect that payment and acceptance of a debt *post diem* precludes recovery of interest for the delay in payment. 4 Bom.L.R. 205. The Act has not the effect of restraining the power of the Court to allow interest in cases other than those mentioned in it. Marsh 239=1 Hay 500. *See also* 31 B. 554. This Act extends the provisions of the Statute 3 and 4 Wm. IV, c. 42, sec. 28 to India. 6 M.I.A. 32. *See* 31 I.A. 116 (P.C.) The Act is retrospective in its operation and authorizes the allowance of interest, although it was not provided for by the bond executed prior to passing of the Act. 6 M.I.A. 32. English decisions may be referred to as guide in construing the Act. 31 I.A. 116= 26 A. 229=14 M.L.J. 190 (P.C.). Interest is given under this Act by way of damages, on the ground that the debtor has wrongfully refused to pay the debt. 10 C.L.R. 561=7 C. 594. *See also* 1935 C. 347=62 C. 175. But *see also* 20 I.C. 194; 1933 Lah. 556; 1933 M. 729=65 M.L.J. 620. There can be no wrongful refusal, where there is no hand to receive payment and give a complete discharge. Thus where an Insurance Company refused payment to the executors of the assignee of an insurance policy, on the ground that they were ignorant as to the terms of the assignment, and as to whether any consideration passed or not, and that the executors should obtain the authority or concurrence of the representatives of the deceased (who was the person assured), it was *held* that the company were not liable to pay interest. 7 C. 594. A co-sharer collecting and retaining rent due to another co-sharer is liable to pay interest as damages under sec. 73, Contract Act. 139 I.C. 458=1932 A.L.J. 733=1932 A. 505. *See also* 1933 A. 186. There is nothing to prevent a party from waiving or agreeing to waive the benefit or advantage of an Act or rule made solely for the benefit or protection of the individual in his private capacity, and which may be dispensed with without infringing on any public right or public policy. 5 I.C. 285. A debt payable in kind is a debt under the Act and interest is allowable on it under the Act. 38 M. 464=30 I.C. 432 (12 Bom.L.R. 831, Diss.). It was however, laid down in a Bombay case that payment in kind is not such a debt as is contemplated by the Interest Act. 12 Bom.L.R. 831=8 I.C. 411. Act does not apply to a debt due on a foreign judgment. When judgment given in England is silent as to interest, the plaintiff cannot make the defendant liable for interest as the English statutes as to judgments carrying interest do not apply to India. 5 C.W. N. 741=28 C. 641. *See also* 75 P.R. 1909= 99 P.L.R. 1909=3 I.C. 522. A wager contract before the passing of Act XXI of 1848 is not within the scope of this Act; as the Act does not affect debts contingent in amount and time of becoming due. 7 M.I.A. 263: 57 M.L.J. 662=1929 P.C. 185 (P.C.). *See also* 26 C. 955; 1933 P. 196=12 P. 216. Refund of illegal tax—No right to interest. *See* 46 Bom.L.R. 408. The Act does not authorize the allowance of interest where the debt on which it is claimed is irrecoverable. 27 B. 330=5 Bom.L.R. 198. Interest should not be awarded on unliquidated damages. 7 B.H.C. (A.C.) 89; 32 C.L.J. 239=60 I.C.

288. *See also* 1933 P. 196=12 P. 216; 1937 Nag. 345. Court may not allow compound interest except in cases where compound interest is expressly provided for by the agreement. 1 C.W.N. 219; 1933 M. 171 and cases referred to therein. But *see also* 7 C.W.N. 876=31 C. 233. The Court has power, under this Act, to give interest *post diem* at a reasonable rate, if it be on money payable at a certain time and under a written instrument. 18 M. 242=4 M.L.J. 265. Where a mortgage instrument is silent as to *post diem* interest, although more than six years have elapsed after the due date of the bond, such interest may be recovered under this Act, and may be made a charge on the mortgaged property. 5 M.L.J. 154; 1930 M.W.N. 1240; 59 C. 722 =1932 C. 689=33 P.L.R. 735 [following 5 L. 422 (P.C.).] *See also* 1933 M. 171. But *see also* 35 A. 534. The joint effect of the Interest Act and sec. 88 of the Transfer of Property Act is in favour of the award of interest *post diem* as interest till date of payment at a reasonable rate, and as a charge upon the mortgaged property. 18 M. 248. But *see* 17 A. 581, contra. *See also* 18 M. 338 (notes); 24 C. 699=1 C.W.N. 437 (F.B.); 20 M. 371; 21 C. 274; 35 A. 534=11 A.L.J. 829=21 I.C. 253. The awarding of future interest rests on the discretion of the trial Court which will not without sufficient grounds be interfered with by the appellate Court. 139 I.C. 64=9 O.W.N. 253=1932 O. 255=8 Luck. 40. *See also* 16 Pat.. 557=18 Pat.L.T. 787=1937 Pat. 628 (Interest *pendente lite*); 1930 M.W.N. 1240; 33 P.L.R. 716. Where in a mortgage bond there is no precise definition of the rate of interest prior to default, it is not possible to draw an inference that the parties intended that after the whole amount became due, interest should be paid at the rate which can be deduced from the arrangement regarding addition of *sawai* and payment of instalments. In such a case, the Court should allow a reasonable rate of interest. Interest allowed at 12 per cent. per annum. 28 N.L.R. 1=136 I.C. 887=1932 N 39. Where under the deed of mortgage with possession, the mortgagee is to enjoy the mortgaged property in lieu of interest for a period of five years and where he is deprived of his possession without payment of the principal, he is entitled to interest even subsequent to the period of five years fixed for the redemption and the same can be made chargeable on the mortgaged property. 136 I.C. 783=1932 M. 173.

Where an order of stay of execution is made on an application by the judgment-debtor pending appeal on condition that he deposits the decree-amount in Court and that the decree-holder is to withdraw it on furnishing security it cannot be said that an order should ordinarily follow that interest should not run on the amount deposited into Court by reason of its deposit from the date of deposit. It is only just and proper that no such order should be passed. It would weigh very heavily on an impecunius decree-holder if at the instance of a well-to-do judgment-debtor he should be put in the position of losing interest on the amount of a decree which might ultimately be due to him for no other reason except that he had not the means to furnish security to enable him to draw it out. 1943 M.W.N. 590=56 L.W. 558 A.I.R 1944 Mad. 46=(1943) 2 M.L.J. 441. *See also* 1944 All. 225=I.L.R. 1944 A. 379.

INTEREST— POST-DECREE — DISCRETION OF COURT.—Though it is correct to allow interest at the bond rate up to the expiry of the period of grace, there is nothing in the Code compelling the Court to do so. The statutory authority for allowing interest at bond rate beyond the date of the preliminary decree appears to be in O. 34, r. 11 and even that only says that the Court "may" order. 140 I.C. 104=13 Pat.L.T. 545=1932 P. 332. *See also* 59 C. 722=139 I.C. 455=1932 C. 689. Where a decree for money is silent as to interest and its execution is stayed pending an appeal, the decree-holder is after the disposal of the appeal entitled to interest on the decretal amount for the period during which the stay operated. I.L.R. (1944) A. 379=1944 O. W.N. (H.C.) 81=1944 A.L.J. 401=A.I.R. 1944 A. 225. *See also* (1943) 2 M.L.J. 441 (stay of execution on deposit of decretal amount—Interest).

Security deposit—Suit for its recovery—Demand for interest not made—Interest not recoverable in equity or under Interest Act. 1944 N.L.J. 369=A.I.R. 1944 Nag. 350=I. L R. (1945) Mad. 252. Interest can be allowed under this Act as damages for the breach of contract which occurs when the debt is wrongfully detained after it has fallen due, and it can be allowed only in a suit brought within six years of such breach under Art. 116. There can be no recurring cause of action in such cases and the starting point for limitation is the date of failure to pay the money. If, however, the interest in question is "money charged on land" the article applicable would be Art. 132 and not Art. 116. 18 M. 331. Effect of Contract Act. sec. 73, On this Act *see* 7 M.L.J. 263=20 M. 481. This Act provides for the award of interest on debts in certain cases, and provides that, where the conditions required by the Act are satisfied, interest will be recoverable, but compensation under sec. 73 of the Contract Act will not be recoverable by the creditor from the debtor on the ground that the payment of the money due to him has been withheld by the debtor, unless he can show that actual loss or damage has been caused to him. 26 C. 955. *See also* 1 S.L.R. 179; 9 Bom. L.R. 439=31 B. 354; 1932 A. 505.

"MAY BE RECOVERED"—MEANING.—The expression "may be recovered" in the Act does not mean the same thing as "is sought to be recovered". 134 I.C. 1028=32 P.L.R. 546=1931 L. 457.

DEBTS OR SUMS CERTAIN PAYABLE AT A CERTAIN TIME.—*See* 9 Bom.H.C. 7; 7 B.H.C. (A.C.) 89. The sum certain upon which interest is payable under the Interest Act must be certain at the time the promise is made.

Where a mining lease provides for interest at 12 per cent. per annum on all arrears of minimum royalty, and the claim in suit, relates not only to the arrears of such minimum royalty, but also for sums in excess of the minimum royalty, the instalments of minimum royalty are sums certain payable at a certain time, and interest would therefore be payable and can be awarded on the instalments of minimum royalty in arrear, but not on the excess. 22 Pat. 220=A.I.R. 1943 Pat. 327. A power of attorney was in the following terms. "We hereby authorise our said attorney to withdraw and receive payment. . . . and pay and make over to us in proportion to our respective shares as above set forth such amount out of the said sum of Rs. 10,000 as is due thereto within a week of the encashment of the said cheque." *Held*, that a sum certain was payable at certain time in this case within the meaning of sec. 1 of the Act I.L.R. (1943) 1 Cal. 573. When by a contract, a sum of money is payable at a time certain, and upon a sum to be ascertained on a certain date, but a dispute occurs as to the amount, which is settled by the Court, interest is payable. 32 C.L.J. 239. Interest pending suit is not claimable in a suit for unliquidated damages. *See* 60 I.C. 288; 26 S.L.R. 167=1932 Sind 9. In a suit to recover the value of certain articles entrusted with the defendant, interest cannot be allowed on the amount decreed, as it will be tantamount to awarding damages upon damages. 137 I.C. 217=9 O.W. N 239=1932 O. 165. The mere fact that the contract does not come within the protection afforded by the Act is not a reason for holding that it is not controlled by the Act. The term 'payable at a certain time' in the Act refers to payment agreed between parties and not under a presumption of law. 40 M.L.J. 18=12 L.W. 567. *See also* 8 L. 524=1927 L. 287. A certain sum is not payable by the written instrument at a time certain if its payment is contingent upon events which may never happen and the amount payable is capable of ascertainment only if and when those events happen and the time for the happening of those events, if they ever do happen, may be indefinitely postponed and no interest can be allowed on such sum. 119 I.C. 615=1929 P.C. 185=57 M.L.J. 662 (P.C.).

INTEREST ON MONTHLY MAINTENANCE AMOUNT.—*See* 15 Luck. 537=1940 Oudh 305.

INTEREST ON MESNE PROFITS.—*See* 1937 P. C. 143 (P.C.)=16 P. 382=1937 (2) M.L.J. 202=64 I.A. 240; 1937 A.L.J. 297=1937 All. 328. Interest *on wages outstanding* not allowed. 1939 M.L.R. 122; in suit for accounts. *See* 1936 Rang. 141; 15 Luck. 550=1940 Oudh 257; suit for rent of shop. *See* 1938 P.W.N. 689=1938 P. 578. As to right to compound interest, *see* 1936 Rang. 141; 1936 Cal. 326; 1939 Pat. 323; 1939 Pat. 552. Interest claimed but not granted in preliminary decree cannot be allowed in final decree. 1936 Rang. 141.

INSTALMENT BOND.—In case of instalment bonds where there is a double penalty, namely, enhanced interest on defaulted instalments and an exigibility clause in case of certain defaults, the correct method in granting interest is to allow the enhanced interest on the defaulted instalments up to the date when the exigibility clause comes into operation and then from that date to allow interest at the original rate on the whole principal amount till the date of suit. From the date of suit, further interest may be allowed on the whole sum found due until the date fixed for payment. 142 I.C. 603=1933 N. 104 (Relying on 1928 N. 6).

REFUND OF TAX ILLEGALLY LEVIED BY MUNICIPALITY—INTEREST ON AMOUNT REFUNDED.—Where a levy of tax or rates by a Municipality is held illegal by a Court of law and the amount levied is refunded under order of Court, the person from whom the tax had been illegally levied is not entitled to claim interest on the amount refunded for the period during which the amount was with the Municipality. The Interest Act does not apply to such a case and the Court has no power to allow interest. Interest cannot be allowed by way of damages in a case which does not fall within the Act. I.L.R. (1944) Bom. 134=46 Bom.L.R. 408=A.I.R. 1944 Bom. 233 (1).

THE COURT MAY IF IT SHALL THINK FIT.—The Act is an enabling Act which vests the Court with a discretion; it does not create a right to interest in favour of creditors, which of itself could be made the subject-matter of a suit. 1 C.W.N. 219. *See also* 1925 N. 541. As to whether the discretion vested in the Court by this Act, in allowing or refusing interest in cases within the Act, is liable to review, *see* 7 M.I.A. 263. *See also* 562 P.W.N. 186=19 Pat.L.T. 202=17 Pat. 350=1938 Pat. 600; 1939 Pat. 323; 1938 All. 151=I.L.R. 1938 A. 243.

CURRENT RATE OF INTEREST.—Where a certain sum of money is payable by virtue of a written instrument at a certain time, the Court can under the Interest Act allow interest, if it thinks fit, at a rate not exceeding the current rate, from the time when the money is payable. Where there is no security, a rate of one per cent. per mensem, is not an unreasonable rate of interest, *see* 1939 All. 308=I.L.R. (1939) All. 329 (Pro ncte). 1939 All. 323; 16 Pat. 84=1937 Pat. 73, 1939 Pat. 552; 1939 Pat. 203.

IF SUCH DEBTS BE PAYABLE BY VIRTUE OF SOME WRITTEN INSTRUMENT.—A certificate of the Administrator-General admitting a debt to be due is not a "written instrument" because the amount mentioned therein is not payable by virtue of the certificate, which merely purports to certify the registration of the amount of the admitted debt for the purpose of convenience in administering the estate. 25 C. 54. *See also* 75 I.C. 64=1923 L. 302. It is doubtful whether a decree or an order of a Settlement Officer under sec. 40, Act XVIII of 1876, is a written instrument within the meaning of the Interest Act. 1 O.C. 94. A principal is not entitled to interest on moneys received and retained by the agent on behalf of the principal in

the absence of a contract to the contrary. 41 A. 254=17 A.L.J. 169=49 I.C. 696. Interest is not allowed in a suit for recovery of money for use and occupation, because such sums are not payable by an instrument in writing and at a certain time. 9 I.C. 221 (Oudh).

WHEN DEMAND OF PAYMENT SHALL HAVE BEEN MADE IN WRITING.—The Interest Act is applicable only when a notice is given that interest will be claimed from the date of demand till date of payment. In the absence of such a notice interest cannot be claimed under the Act. 16 Luck. 701=192 I.C. 885 =1941 Oudh 254. *See also* 1940 Pat. 384. There must also be demand in writing. Interest prior to the institution of the suit cannot be given under this Act, unless a demand of payment has been made in writing. 7 Bom.L.R. 798; 101 I.C. 57=1927 A 444. *See also* 152 I.C. 786=11 O.W.N. 1397=10 Luck. 307=1935 Oudh 209; 145 I. C. 157=1933 L. 212; 20 I.C. 299=39 P.R. 1913; 22 L.W. 490=1925 M. 1279; 1937 A. L.J. 168=1937 All. 257; 1936 Nag. 285=I. L.R. (1937) Nag. 61. In a suit to recover price of goods sold, if the claim for interest is based on an alleged agreement that is not proved, and no notice as to interest is given as required by Act XXXII of 1839, interest should be disallowed. 1933 L. 212; 10 O. W.N. 316=1933 O. 259. Where the plaintiff had made a demand of the amount due under a pronote but there was no claim for interest by way of damages from the date of demand until payment, *held*, that plaintiff was not entitled to such interest under the Act. 1933 O. 259. Where the plaintiff who had paid a sum of Rs. 1,400 towards shares which, however, were never allotted to him, sued for refund of the money, *held*, that the payment was not "a debt or sum certain payable at a certain time" within the meaning of the Interest Act, that interest was only payable "otherwise" as money had and received from the date of demand. I.L.R. 56 M. 391=141 I.C. 120=1933 M. 320=64 M.L.J. 130. Where no established usage is proved for claiming interest on the price of goods sold and delivered, interest can be awarded under the provisions of the Interest Act of 1839 from the date of demand. 32 Bom.L.R. 404. *See also* 1933 L. 212; 1933 L. 127. Where a debt or sum is not payable at a certain time, then interest is payable from the time when demand of payment shall have been made in writing, unless there was a stipulation for payment of interest, and if an agreement to pay interest cannot also be implied and the debt was not payable on demand, the plaintiff is not entitled to any interest till the filing of the suit which affords a clear intention to charge interest. 10 Pat.L.T. 373 =1929 P. 365. Interest up to the date of the suit cannot be awarded on sums payable, not under a written instrument, the payment of which has been illegally delayed, unless there is a written demand of payment. 1 M.H.C. 369 (Ref. to in 20 M. 481; 23 M. 41; 31 B. 354; 9 Bom.L.R. 439; 148 P.R. 1907). In a suit on an oral contract, where no agreement for interest or usage for payment of interest was alleged, *held*, that interest was not allowable. 20 M. 481=7 M. L.J. 263. *See also* 22 L.W. 490=1925 M. 1279. A letter of the plaintiff demanding interest on an outstanding debt retrospectively, up to the date of the demand, was held to have made it sufficiently clear by implication, that it was the intention of the plaintiff to claim interest prospectively, up to the date of payment. 23 M. 41. *See also* 93 I.C 253=1925 N. 245. Demand for retrospective interest may imply demand for prospective interests. *See* 181 P.L.R. 1991 and 23 M. 41. Demand for principal may imply demand for interest. 23 M. 41. Interest is not allowed upon the unpaid price of goods sold, unless demand has been made for the arrears. A printed headline in the tradesman's bill that interest would be charged on all arrears after a certain period is not such a demand as is contemplated by the Interest Act. 8 P.R. 1914=20 I.C. 194; 47 M.L.J. (Short Notes) 41. *See also* A.W.N. (1887) 287=10 All. 97. In the absence of any agreement to pay interest on a particular transaction or of any notice of the vendor's intention to claim interest if the debt is not paid within a certain time, a claim for interest cannot be decreed under the Act. 54 I.C. 431. In a suit by a contractor to recover money payable for work and labour done under a building contract, which provided that all works done by the contractor should be paid for by the contractor according to the rates therein specified within a reasonable time after it had been inspected and finally approved and passed: *Held*, that the provision was not one for the payment of a sum certain within the meaning of sec. 1 and that, in the absence of provision for payment of interest in the contract or any proof of demand, the Court had no power to allow interest under the Act from the time when the money became payable: *Held also*, that the Court could not award interest under the proviso to sec. 1 of the Act. 40 M.L.J. 18= 12 L.W. 567=1921 Mad. 76=1929 M.W.N. 717=60 I.C. 353.

SUCH DEMAND SHALL GIVE NOTICE TO DEBTOR THAT INTEREST WILL BE CLAIMED.—Under this Act a creditor has the option of notifying to his debtor the date from which interest will be claimed, and failure to give such notice deprives the creditor of interest. 181 P.L.R. 1901; 92 I.C. 354=1925 M. 1279. At the head of every bill of the seller of goods, the following was printed: "Interest will be charged at 12 per cent. per annum on bills not paid on presentation", *held*, that the bill was a sufficient notice under the Act. A.W.N. (1887) 287. But *see contra* 21 I. C. 194=47 M. L. J. (Short Notes) 41; 152 I. C. 786=11 O. W. N. 1397. A letter demanding interest, from which it was made clear, by implication, that it was the creditor's intention to claim interest up to the date of payment, was sufficient notice under the Act. 181 P.L.R. 1901. *See also* 23 M. 41. When a contractor is, for no fault of his own kept out of his

THE JUDICIAL OFFICERS' PROTECTION ACT (XVIII OF 1850)[1].

[*4th April*, 1850.

An Act for the protection of Judicial Officers.

Preamble. For the greater protection of Magistrates and others acting judicially; It is enacted as follows:—

Non-liability to suit of officers acting judicially, for official acts done in good faith, and of officers executing warrants and orders.

1. No Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction: Provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of; and no officer of any Court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court for the execution of any warrant or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same.

LEG. REF.

1 Short title, 'The Judicial Officers Protection Act, 1850'. *See* the Indian Short Titles Act (XIV of 1897).

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money, the principal sum, for a long time after it is due, it would be reasonable that the law should admit of interest being recoverable by way of damages. 23 M. 41. But *see also* 49 I.A. 228=1922 P.C. 247=44 A. 368=43 M.L.J. 98=12 L.W. 568; 60 I. C. 353. The existence of previous litigation upon the same subject-matter is sufficient notice in order to entitle the plaintiff to charge interest. 2 Hay, 123.

EXECUTING COURT cannot award interest; only the Court which adjudicates as to the actual debt or claim can award interest. 53 C. 735=98 I.C. 238=1926 C. 1119.

PROVIDED THAT INTEREST SHALL BE PAYABLE IN ALL CASES IN WHICH IT IS NOW PAYABLE AT LAW.—*See* (1942) 1 M.L.J. 250=I.L. R. (1942) M. 464=1942 A. 429; 65 I.A. 66 =I.L.R. (1938) 2 Cal. 72=1938 P.C. 67= (1938) 1 M.L.J. 640 (P.C.); I.L.R. 1940 M. 50=50 L.W. 466=1939 Mad. 877=(1939) 2 M.L.J. 579. The proviso to sec. 1 of the Act leaves it open to the Court to award interest where a Court of Equity would recognise the claim. A Court of Equity has full power to direct interest to be paid on collections which have been wrongly retained in his hands by a mortgagee in possession. It cannot be said that no interest can be allowed either by way of damages or otherwise on the surplus profits received by the mortgagee until the date of the institution of the suit for redemption. The discretion of the Court under sec. 34, C.P. Code, to order interest at such rate as it deems reasonable remains unfettered, with the exception that it cannot grant interest on costs at a higher rate than six per cent. Where the mortgagee is charging interest at 15 per cent. and fails to discharge a prior mortgage debt carrying interest at 15 per cent. though he has over a long period sufficient money in his hands to pay off that debt as well as his own the Court would be justified in a redemption suit in allowing interest to the mortgagor at 15 per cent. on the money wrongfully retained by the mortgagee in possession. 58 L.W. 241 =1945 M.W.N. 340=A.I.R. 1945 Mad. 297 =(1945) 1 M.L.J. 478. Neither the Interest Act nor the Contract Act affects the rule of Hindu Law, that in the case of a debt wrongfully withheld after demand of payment had been made interest becomes payable by way of damages. 9 Bom.L.R. 439=31 B. 354. But *see* 18 M.L.J. 245=31 M. 250; 7 M. L.T. 108. The Act expressly provides that interest shall be payable in all cases in which it is payable by law. And money obtained by fraud can be recovered with interest under the law. 25 M.L J. 531=21 I.C. 394. Where an improvement lease provided that the lads were to be gradually brought under cultivation and until they were so brought nothing would be payable to the Government or to the Jenmi and it further provided that the tenant should pay from the year in which Government revenue was paid rent at a certain rate, *held*, that interest could not be awarded under the Interest Act in respect of the arrears of rent claimed by the lessor: *Held also*, that interest could not be awarded under the proviso to the Act on generally equitable grounds. 31 L.W. 655 =1930 M.W.N. 438=53 M. 549=1930 Mad. 727=59 M.L.J. 359. The Interest Act is exhaustive and only such equitable grounds as have been generally recognised in Courts of Equity can be relied on in India in awarding interest on equitable grounds. The case in 42 M. 616 is not correctly decided. 31 L. W. 665=1930 M.W.N. 438 (*vide supra*).

JUDICIAL OFFICERS PROTECTION ACT: SEC. 1: SCOPE OF ACT.—The Act does not probably contemplate the protection of a Judge from a suit for damages for breach of contract, but the language of the Act is sufficiently wide to grant protection even against a suit of that nature. 52 All. 844= 1931 A.L.J. 41=1931 All. 189 (F.B.). The Act has no bearing whatsoever on the case of

a contract into which a Judge may enter according to the general law of the land. Enforceability of security bond executed in the name of the judge considered. 1931 Oudh 99=6 Luck. 601. If the act complained of against a judicial officer is in its nature judicial, and within his jurisdiction, he is not liable to be sued, even though the act was done maliciously. If, on the other hand, he acts without jurisdiction, his liability would depend, not on whether the act was malicious and without reasonable and probable cause, but on whether it was within the protection of the Act. (12 All. 115, Ref.) 1933 All. 749. (As to procedure for instituting criminal prosecution against judges and public servants, *see* Criminal Procedure Code Act V of 1898, sec. 197). By sec. 1 of the Act a judicial officer is protected if he made the order in the discharge of his judicial duties whether or not within the limits of his jurisdiction, provided that he at the time, in good faith, believed himself to have jurisdiction to pass the order. 'Jurisdiction' in the section is to be taken in the sense of authority or power to act in the matter and not in the sense of authority or power to act in a particular manner. Any person executing such an order within the 'jurisdiction' of a judicial officer is equally protected. An order of a Magistrate for the search of a shop and seizure of certain tins of oil therein, though not in the prescribed form, and the carrying out of such an order by a police officer were held to be alike protected, even though the prosecution with reference to which the order was made, ultimately failed. I.L.R. (1938) 1 Cal. 581=42 C.W.N. 50=1938 Cal. 177=9 C.W.N. 591; 1933 All. 749. The term "jurisdiction" means authority or power to act in a matter, and not authority or power to do an act in a particular manner. In the matter of warrants, the protection afforded by the section is not against suits for executing lawful warrants or orders, but against suits for executing warrants or orders, not lawful, provided that such warrants or orders have been issued by a judicial officer in a matter within his jurisdiction, and not merely in a matter in which such judicial officer has authority or power to issue the particular warrant. The term "jurisdiction" should not be construed as meaning authority or power to issue the warrant in a particular matter and in the particular manner in which it is issued. 12 A. 115. (10 M.L.J. 232 Diss.). *See also* 30 Bom. 241=7 Bom.L.R. 951; L.B.R. (1872-1892) 83; 8 C.L.J. 75; 2 M.H.C.R. 396; 36 Cal. 433=13 C.W.N. 458; 40 C.W.N. 500. An order of a Magistrate for the search of a shop and seizure of certain tins of oil, therein, though not in the prescribed form, and the carrying out of such an order by a police-officer were held to be alike protected, even though the prosecution with reference to which the order was made ultimately failed. 36 Cal. 433. Act does not apply to acts of Governor in Council. 7 Mad. 466. Secretary of State not liable for acts of judicial officer. 59 P.W.R. 1908. The protection afforded to judicial officers rests on public policy. And though thereby a malicious Judge or Magistrate may be given a protection designed not for him, but for the public interest, it does not follow that he can exercise his malice with impunity. His conduct can be investigated elsewhere and due punishment awarded. 7 Bom.L.R. 951=30 Bom. 241. Where the Judge acting in his judicial capacity takes in good faith all the proceedings which the law permits him to take, he is protected. *See* 9 I.C. 535 (All.); 45 Bom. 1989=62 I.C. 93=23 Bom.L.R. 447= 1921 B. 158. Extent of protection to judicial officers is the same as in English law. 2 M.I.A. 293. Municipal councillor acting as Magistrate under Bengal Act III of 1864 is judicial officer. 13 W.R. 346. When a Magistrate directs a general search of abuse in view of an enquiry under the Cr.P. Code in discharge of his judicial functions he may well appeal for protection under this Act. 39 Cal. 953=39 I.A. 163=23 M.L.J. 32 (P.C.), overruling 36 C. 433=9 C.L.J. 298=13 C.W. N. 458. Plaintiffs sued a Magistrate on the allegation that the latter took him into custody and brought a false charge against him. The trial Court dismissed suit as barred by this Act. *Held*, that the allegation in the plaint disclosed a cause of action to which the Act did not apply. The defence under the Act is as much a defence on the merits as any other defence such as limitation, etc., and the Judge must before dismissing the suit take such evidence in a case as in necessary to bring the case within the act. 39 A. 516= 39 I.C. 553=15 A.L.J. 541.

ILLUSTRATIVE CASES.—Where a Magistrate acts without jurisdiction in the *bona fide* belief that he has jurisdiction, he is protected by the Act, and no suit will lie. 10 M.L.J. 232. *See also* 12 A. 115. Act does not protect a Magistrate who has not acted with due care and attention. The mere absence of *mala fides* is no defence. A Magistrate cannot be said to have "in good faith" believed himself to have jurisdiction to do or order the act complained of, unless he, in arriving at that belief, acted reasonably, circumspectly and carefully. 13 B.H.C.R. (A.C.J.) 36. Where, after becoming *functus officio* a Judicial Officer adds a false satement to his order which is designed to help one of the parties, it will be a sufficient answer to a contention based upon the Judicial Officers' Protection Act, sec. 1, to say that it is impossible to believe that the defendant thought that he had jurisdiction to do the act complained of. 1942 A.L.W. 63. Suit for damages against Magistrate for false imprisonment. Magistrate had not acted in good faith believing himself to have jurisdiction, but carelessly, precipitately and without caution. This Act did not protect him from liability. 3 B.H. C.R. App. 1 (13 W.R. 13: 12 A. 115; 6 Bom. L.R. 131 Rel.). *See also* 91 A. 152=9 C 341 (P.C.). Where in connection with an application for transfer of a case pending before a Union Bench a Magistrate calls for a report from the President of the Union Bench the report made by the President in accordance with the Magistrate's direction is made in

THE KAZIS ACT (XII OF 1880).[1]

[*N.B.*—Rep. in pt., Act X of 1914, Am., Act XIV of 1932.]

[*9th July*, 1880.

An Act for the appointment of persons to the Office of Kazi.

WHEREAS by the preamble to Act XI of 1864[2] (*An Act to repeal the law relating to the offices of Hindu and Muhammadan Law officers and to the offices of Kazi-ul-Kuzaat and of Kazi, and to abolish the former offices*) it was (among other things) declared that it was inexpedient that the appointment of the Kazi-ul-Kuzaat, or of City, Town or Pargana Kazis, should be made by the Government, and by the same Act the enactments relating to the appointment by the Government of the said officers were repealed; and whereas by the usage

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LEG. REF.

1 For Statement of Objects and Reasons, *see* Gazette of India, 1880, Part V, p. 21; for the report of the Select Committee, *see ibid.*, Part V, p. 203; for discussions in Council, *see ibid.*, Supplement, pp. 345, 356 and 1203.

2 Repealed by the Repealing Act (VIII of 1868).

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due discharge of duty. The President is consequently entitled to protection under the Act. The fact that allegations which ought not to be made are inserted in it does not take away the protection. 40 C.W.N. 500. A Judge knowingly pronouncing illegal orders is responsible to the State only, and cannot be sued so long as he keeps within his jurisdiction, though he may, in certain cases and by a particular procedure, be held criminally responsible. A contrary system would produce great inconvenience by allowing "every losing party of whom there must be one in every suit, to bring an action against the Judge, and the Judge in his term, if unsuccessful, suing the other Judge who had pronounced against him." L.B.R. (1872-1892) 83. The Act is for the protection of judicial officers acting judicially, and officers acting under their orders, and never for the protection of the Police or a Magistrate in the exercise of police duties. 9 C. 341=9 I.A. 152 (P.C.). There is no law which authorises the Police or a Magistrate in the exercise of Police duties or an officer in command of a cantonment, in consequence of a *bona fide* belief that a person is dangerous by reason of actual lunacy to put him into confinement, in order that he may be visited and examined by medical officers, and to keep him in confinement, until such officers can feel themselves justified in reporting whether the person is a dangerous lunatic or not; a *fortiori*, this cannot be done in the case of a *bona fide* belief of danger from impending lunacy; so that such officer would not be protected from liability in respect of such acts. 9 C. 341=9 I.A. 152 (P.C.). The act of issuing a warrant for the arrest of the complainant to hear an order which directed him to pay compensation to the accused is not an act within the "jurisdiction" of the Magistrate within the meaning of that word, as used in this Act. 10 M.L.J. 232. A Deputy Magistrate, who without reasonable cause, delays proceeding with the trial of persons whom he keeps in jail is liable, notwithstanding the above Act, to an action in damages if the prisoners are eventually acquitted. 11 W.R. (C.) 10. A Magistrate is not warranted in convicting and imprisoning a person for disobeying an order, the legality of which was then properly under the consideration of an appellate Court. 2 B.H.C.R. (C.) 384. A Magistrate acting *bona fide*, is not liable for anything done by him in the exercise of his duty, however wrong the act may be. This Act while freeing the agent, the person who actually commits the tort complained of and who would be the person primarily responsible, from all responsibility could not have intended to leave the principal liable. 9 C.W.N. 495=1 C.L.J. 355.

PERSONS EXERCISING JUDICIAL FUNCTIONS MUST BE IN AN ENTIRELY IMPARTIAL POSITION. —They ought not to have any interest, pecuniary or otherwise, in the subject-matter of the litigation, and they must not be in such a position, but any bias in favour of one side or the other can be imputed to him. Actual bias need not be proved if the relationship is such that bias may seem likely. It is impossible to say that debtor is not, from the nature of the case, subject to bias in favour of a creditor who can call in his money. It is not enough for the Court in any it is satisfied that in a particular case no bias existed or was shown. It is necessary that the position be such that the general public may feel confident that justice has been done by an impartial tribunal, and it is of the highest importance that this principle should not be encroached upon. The Assistant Taxing Master of the High Court taxed three bills of costs of the respondent bank against the applicant. At the time he was a debtor of the respondent bank, but he did not disclose the fact at the time. *Held*, that the officer was not competent to entertain the taxation and the taxation was therefore bad *ab initio*. 40 Bom.L.R. 904=1938 Bom. 431=I.L.R. (1938) Bom. 829. *Sale* officer executing award under Madras Co-operative Societies Act—Order postponing sale is judicial—Such officer is protected under the Act. (1945) 2 M.L.J. 180=58 L.W. 411=1945 Mad. 480.

of the Muhammadan community in some parts of British India the presence of Kazis appointed by the Government is required at the celebration of marriages and the performance of certain other rights and ceremonies, and it is therefore expedient that the Government should again be empowered to appoint persons to the office of Kazi; It is hereby enacted as follows:—

Short title.

1. This Act may be called THE KAZIS ACT, 1880;

[1][* * * * *].

Local extent.

It extends, in the first instance, only to the territories administered by the Governor of Fort Saint George in Council. But any other Provincial Government may from time to time by notification in the Official Gazette, extend it to the whole or any part of the territories under its administration.

Power to appoint Kazis for any local area.

2. Whenever it appears to the Provincial Government that any considerable number of the Muhammadans resident in any local area desire that one or more Kazis should be appointed for such local area, the Provincial Government may, if it thinks fit, after consulting the principal Muhammadan residents of such local area, select one or more fit persons and appoint him or them to be Kazis for such local area.

If any question arises whether any person has been rightly appointed Kazi under this section, the decision thereof by the Provincial Government shall be conclusive.

The Provincial Government may, it if thinks fit, suspend or remove any Kazi appointed under this section who is guilty of any misconduct in the execution of his office, or who is for a continuous period of six months absent from the local area for which he is appointed, or leaves such local area for the purpose of residing elsewhere, or is declared an insolvent, or desires to be discharged from the office, or who refuses or becomes in the opinion of the Provincial Government unfit, or personally incapable to discharge the duties of the office.

Naib Kazis.

3. Any Kazi appointed under this Act may appoint one or more persons as his naib or naibs to act in his place in all or any of the matters appertaining to his office throughout the whole or in any portion of the local area for which he is appointed, and may suspend or remove any naib so appointed.

When any Kazi is suspended or removed under section 2, his naib or naibs (if any) shall be deemed to be suspended or removed, as the case may be.

Nothing in Act to confer judicial or administrative powers or,

4. Nothing herein contained, and no appointment made hereunder shall be deemed—

(*a*) to confer any judicial or administrative powers on any Kazi or Naib Kazi appointed hereunder; or

to render the presence of Kazi necessary; or

(*b*) to render the presence of a Kazi or Naib Kazi necessary at the celebration of any marriage or the performance of any rite or ceremony; or

to prevent any one acting as Kazi.

(*c*) to prevent any person discharging any of the functions of a Kazi.

LEG. REF.

[1] The words "and it shall come into force at once" were repealed by Act X of 1914.

SECS. 2 AND 4.—The Act does not confer on the Kazi the exclusive right to perform the functions which his office requires him to discharge. 25 I.C. 898=37 M. 228 (1 B.H.C. R. App. 18; 13 B. 429; 17 M.L.J. 421, Dist.).

THE KHADDAR (NAME PROTECTION) ACT (VIII OF 1934).

[13*th March*, 1934.

An Act to regulate the use of the words "Khaddar" and "Khadi" when applied as a trade description of woven materials.

WHEREAS it is expedient to regulate the use of the words "Khaddar" and "Khadi" when applied as a trade description of woven materials: It is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Act may be called THE KHADDAR (NAME PROTECTION) ACT, 1934.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

(3) This section shall come into force at once, and section 2 shall come into force in any province on such date as the [1][Central Government] may, by notification in the Official Gazette, appoint in this behalf.

Words "Khaddar" and "Khadi" to be trade description.

2. The words "Khaddar" and "Khadi", whether in English or in any Indian vernacular language, when applied to any woven material, shall be demeed to be a trade description within the meaning of the Indian Merchandise Marks Act, 1889, indicating that such material is cloth woven and hand-looms in India from cotton yarn hand-spun in India.

[Rep. in part by Acts I of 1938 and X of 1914; Amended by Acts IV of 1914; XVII of 1919, XXXVIII of 1920; XIX of 1921; XXXVIII of 1923 and VI of 1933.]

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LEG. REF. A.O., 1937.

1 Substituted for "Local Government" by

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THE LAND ACQUISITION ACT (I OF 1894).[1]

[*2nd February*, 1894.

An Act to amend the law for the acquisition of land for public purposes and for Companies.

WHEREAS it is expedient to amend the law for the acquisition of land needed for public purposes and for companies and for determining the amount of compensation to be made on account of such acquisition; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title, extent and commencement.

1. (1) This Act may be called THE LAND ACQUISITION ACT, 1894;

(2) It extends to the whole of British India; and

(3) It shall come into force on the first day of March, 1894.

2. [*Repeal.*] *Rep. partly by the Repealing and Amending Act (X of 1914), S. 3 and Sch. II and partly by the Repealing Act (I of 1938), S. 2 and Sch.*

Definitions.

3. In this Act, unless there is something repugnant in the subject or context,—

LEG. REF.

[1] For Statement of Objects and Reasons, see Gazette of India, 1892, Part V, p. 32; for Report of Select Committee, see *ibid.*, 1894, Part V, p. 23 and for Proceedings in Council, see *ibid.*, 1892, Part VI, p. 25; and *ibid.*, 1894, pp. 19, 25 to 42.

SEC. 1: SCOPE OF THE ACT.—The Act aims at protecting public interests. 29 B. 480=7 Bom.L.R. 497. Strict compliance with its provisions necessary. 97 I.C. 471 =1926 M. 1099=51 M.L.J. 338. *See also* 11 C.L.J. 612. Proceedings under this Act started with a view to gratify private spite or malice and not *bona fide* for a public purpose are not valid. (*Ibid.*) Burden of proving that an award made by a land acquisition officer is wrong lies on the claimant. 106 I.C. 909. As to *burden of proof* in case of rival claims to compensation, *see* 1927 P.C. 262=107 I.C. 347 (2)=47 C.L.J. 337 (P.C.). The Act refers only to one notice, one proceeding and one award given, taken and made regarding one holding and one ownership. 48 Cal. 892=64 I.C. 577=33 C. L.J. 509=1921 Cal. 340. It contemplates acquisition of such interests as do not belong to Government. 9 I.C. 341=9 M.L.T. 272. No provision for refund. 63 I.C. 1= 1921 L. 153. *See also* 21 I.C. 111=17 C.W. N. 1057; 35 B. 255=13 Bom.L.R. 259. Proceedings under the Act are only administrative and not judicial so far as the matter

(*b*) the expression "person interested" includes all persons claiming an things attached to the earth or permanently fastened to anything attached to the earth:

(*b*) the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be demeed to be interested in land if he is interested in an easement affecting the land:

(*c*) the expression "Collector" means the Collector of a district, and includes a Deputy Commissioner and any officer specially appointed by the Provincial Government to perform the functions of a Collector under this Act:

(*d*) the expression "Court" means a principal Civil Court of original

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does not go to the Land Acquisition Judge. 36 I.C. 621=4 L.W. 535. *See also* 51 I. C. 501. The Act provides a speedy method of determining compensation payable and the persons to whom payable. 7 A. 817. It allows an appeal to High Court and also to Privy Council since Act XIX of 1921. Privy Council cannot interfere with the figures that have been settled by High Court (as the value to be allowed for certain compulsorily acquired land) unless it can be shown that there has been some real mistake in law or some palpable omission which would invalidate the valuation. (52 I.A. 133; 52 I.A. 367, Ref. to.) 34 C.W.N. 1106=1930 P.C. 283=59 M.L.J. 392 (P.C.). Persons who have not come before Collector or Acquisition Judge can controvert the award of the Collector to a suit, and prove that they were the lawful owners of the property and were entitled to recover the amount of compensation awarded for it. [7 Cal. 388 (P.C.), Appr.] 160 I. C. 1010=1936 Pesh. 29.

CONSTRUCTION OF ACT.—Act should be expounded liberally in favour of the public and strictly against Government or company taking the land. 44 P.R. 1904; 9 I.C. 223 =9 P.W.R. 1911; 12 B.H.C.R. 250; 29 B. 480. In case of any error of procedure by any officer in applying the provisions of the Act, every presumption should be made in favour of the party likely to have been prejudiced by the error. 53 M. 921=1930 M. 836=60 M.L.J. 410. If there is any real doubt in the interpretation in matters of procedure under the Act, the benefit of doubt ought to be given to the party as against Government. 1931 M. 50=59 M. L.J. 911. Compensation for land cannot be awarded on two bases (as) both on the basis of a cocoanut tope and as it building site. 95 I.C. 577=23 L.W. 751. The *method of valuation of land* may be classified under three heads: (1) the opinion of valuators or experts; (2) the price paid within a reasonable time in *bona fide* transactions of purchase of the lands acquired or of the lands adjacent to the lands acquired and possessing similar advantages; and (3) a number of years' purchase of the actual or immediately prospective profits from the lands acquired. It is generally necessary to take two or all of these methods of valuation in order to arrive at a fairly correct valuation. 101 I.C. 269=1927 S. 168. As to valuation of property on rental basis, *see ibid.* As to valuation of residential property *see* 101 I.C. 269=1927 S. 168. The special provisions of the Act, which govern appeals under the Act, should not be extended by analogy to vary the provisions of the Court-Fees Act, a fiscal enactment which must be construed strictly. 14 P. 4=15 Pat.L.T. 548 =1934 P. 571 (S.B.).

BURDEN OF PROOF.—When Government are acquiring immovable property for a public purpose under the Act, it is for the person claiming compensation to establish his title to its affirmatively. 57 I.A. 339=58 C. 888 =1931 P.C. 1=60 M.L.J. 142 (P.C.). *See also* 66 I.A. 258=I.L.R. 1939 Kar. 363= 1939 P.C. 235=(1939) 2 M.L.J. 722 (P. C.); 106 I.C. 909.

SEC. 3 (*a*).—"Land", meaning of—Bungalow in cantonment limits. 45 B. 277=23 Bom.L.R. 148. ***See also* 34 B. 618. Land** includes trees. *See* 30 M. 151=16 M.L.J. 551. Definition of "land" is wider than under T.P. Act. Expression includes buildings, trees and standing crops. I.L.R. (1940) Kar. 396=1940 Sind 58 and also bungalows. I.L.R. (1938) All. 994=1938 A.L.J. 1171= 1938 All. 106. "Permanently fastened", meaning of. 54 C. 582=54 I.A. 187=53 M. L.J. 99 (P.C.); 1927 P.C. 172. Machinery fastened to earth is permanent and not temporary fastening. 54 C. 582 (P.C.). Fishery rights are not land. 35 C. 525=12 C.W. N. 569. *See also* 35 I.C. 97.

SEC. 3 (*b*): "PERSON INTERESTED".—The expression includes a person claiming an interest in compensation to be made on account of the acquisition of the land. 37 B. 76=14 Bom.L.R. 507. The expression does not include the Collector. 1937 R. 176=14 R. 344. The definition of a "person interested" is wide enough to cover the interest of a reversioner in the acquired land held by a widow on life estate, when he is entitled to succeed to the land on the death of the widow. 116 I.C. 335=1929 L. 736. The term includes a presumptive *shebait*. 41 C.W.N. 464. Also a lessee with a fixed term to run. 18 P.R. 1902. Also party to a valid agreement for purchase of land. 18 P.R. 1917 =37 I.C. 822. Also yearly tenant. 28 C. 152. Also a ryot. 7 C. 585. Also attaching decree-holder. 49 M. 38=97 I.C. 496=1926 M. 307. Also company or person on whose behalf acquisition is made. I.L.R. (1939) 2 Cal. 401=43 C.W.N. 973=1939 Cal. 669.

jurisdiction, unless the Provincial Government has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under this Act:

(*e*) the expression "Company" means a Company registered under the Indian Companies Act, 1882, or under the (English) Companies Acts, 1862, to 1890, or incorporated by an Act of Parliament or [1][by an Indian law], or by Royal Charter or Letters Patent: [2][and includes a society registered under the Societies Registration Act, 1860, and a registered society within the meaning of the Co-operative Societies Act, 1912]:

(*f*) the expression "public purpose" includes the provision of village sites in districts in which the Provincial Government shall have declared by notification in the Official Gazette that it is customary for the Government to make such provision: and

(*g*) the following persons shall be deemed persons "entitled to act" as and to the extent hereinafter provided (that is to say)

trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any such case, and that to the same extent as the persons beneficially interested could have acted if free from disability;

a married woman, in cases to which the English law is applicable, shall be deemed the person so entitled to act, and whether of full age or not, to the same extent as if she were unmarried and of full age; and

the guardians of minors and the committees or managers of lunatics or idiots shall be deemed respectively the persons so entitled to act, to the same extent as the minors, lunatics or idiots themselves, if free from disability, could have acted:

Provided that—

(*i*) no person shall be deemed "entitled to act" whose interest in the subject-matter shall be shown to the satisfaction of the Collector or Court to be adverse to the interest of the person interested for whom he would otherwise be entitled to act:

(*ii*) in every such case the person interested may appear by a next friend or, in default of his appearance by a next friend, the Collector or Court, as the case may be, shall appoint a guardian for the case to act on his behalf in the conduct thereof;

(*iii*) the provisions of Chapter XXXI of the Code of Civil Procedure shall, *mutatis mutandis*, apply in the case of persons interested appearing before a Collector or Court by a next friend, or by a guardian for the case, in proceedings under this Act; and

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LEG. REF.

1 Substituted by A.O., 1937, for "of the Governor-General in Council".

2 Inserted by sec. 2, Act XVII of 1919.

SEC. 3 (*d*).—"Court" mentioned in cl. (*d*) is a Court subordinate to High Court and therefore amenable to its revisional jurisdiction. 56 A. 656=1934 A.L.J. 32=1934 A. 260 (F.B.). Collector or Deputy Collector acting under the Act not a Court. 30 C. 36; not a judicial officer and cannot administer oath. 27 C. 820; 8 O.C. 118. Chief Judge of the Small Cause Court appointed by Local Government as 'special judicial officer" to perform the functions of a Court is a special Court and not "a principal Civil Court of original jurisdiction" within the meaning of sec. 3 (*d*). 54 M. 722 =1931 M. 586=61 M.L.J. 312. Decision of Sub-Judge on a reference by Collector under this Act is a decree and appealable. I.L.R. (1940) Mad. 791=51 L.W. 553=1940 Mad. 474=(1940) 1 M.L.J. 722 (F.B.).

SEC. 3 (*f*).—To constitute a public purpose in taking land, it is not necessary that the land when taken should be made available to the public at large. 39 B. 279=42 I.A. 44 =1914 P.C. 20=28 M.L.J. 179 (P.C.). *See also* 49 M. 237=1925 M. 287=48 M.L.J. 204. The erection of residential quarters at moderate rentals for Government officers in a very crowded city is a "public purpose". 13 Bom.L.R. 1097. So also acquisition of land by municipality for widening road. 24 B. 600. Building of quarters for Municipal servants. 27 Bom.L.R. 1130=1925 B. 538. For providing house-sites for Panchamas. 40 M. 237=1925 M. 837=48 M.L.J. 204= 1925 M. 837; 1931 M. 361=131 I.C. 647; 1930 M. 798=59 M.L.J. 274. Land acquired for one purpose can be used for other authorised purposes. 104 I.C. 129=1927 C. 874. [18 C. 99 (P.C.), Rel. on.] "Village site", what is. *See* 49 M. 237=1925 M. 837=49 M.L.J. 204.

(*iv*) no person "entitled to act" shall be competent to receive the compensation-money, payable to the person for whom he is entitled to act unless he would have been competent to alienate the land and receive and give a good discharge for the purchase-money on a voluntary sale.

PART II.

ACQUISITION.

Preliminary Investigation.

Publication of preliminary notification and powers of officers thereupon.

4. (1) Whenever it appears to the Provincial Government that land in any locality [1][is needed or] is likely to be needed for any public purpose, a notification to that effect shall be published in the Official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

(2) Thereupon it shall be lawful for any officer, either generally or specially authorised[2] by such Government in this behalf, and for his servants and workmen,—

to enter upon and survey and take levels of any land in such locality;

to dig or bore into the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

LEG. REF.

1 Inserted by sec. 2, Act XXXVIII of 1923.

2 For officers specially authorized in Burma, *see* Bur.R.M., Vol. I.

SEC. 4.—The need for the public purpose is the test and not the hardship on the owner. 29 B. 480; 30 C. 36. *See* 23 I.C. 765=38 B. 565.

As to *amendments* with which this section should be read when land is required for the purposse of a company, *see* sec. 38 (2). A *protected monument* may be acquired under this Act as if its preservation were a "public purpose" within the meaning of the Act. *See* sec. 10 of the Ancient Monuments Preservation Act (VII of 1904).

Market value of land to be acquired is to be considered at the date of the publication of notification under sec. 4. 25 S.L.R. 285 =131 I.C. 222=1931 S. 52. Government issued a notification under sec. 4 (1) in May, 1923, stating the need for acquiring certain lands in two named districts. It did not give the extent of the lands nor any specific description. Subsequently the Land Acquisition Act was amended by Act XXXVIII of 1923 and Government issued a second notification under sec. 4 (1) in September, 1925 which contained full details of the lands to be acquired: *Held,* that the first notification was superseded by the second one and that the value of the lands should be determined as on the date of the second notification. 1932 M.W.N. 853. Where Government owns some interest in property to be acquired, such interest may or may not be mentioned in the notification. 1936 Pesh. 217,

SECS. 4 AND 6.—Acquisition proceedings cannot be held to be illegal and void by reason of the lapse of some years between the notification under sec. 4 and the notification under sec. 6. In the case of an elaborate and complicated scheme for which the acquisition is made, the detailed revision of which necessarily takes much time, there is bound to be delay and lapse of time; and in such a case it is not open to the Court to treat the notifications and proceedings as illegal and void. 39 Bom.L.R. 1257=1938 Bom. 148. The Act postulates a public purpose, as to the existence of which Government is the Judge. The Act nowhere postulates identity in the scheme by means of which the public object is to be carried out. All that is legally necessary is that the lands which it is intended to acquire for a public purpose should be notified first under sec. 4 and then under sec. 6 of the Act. Where the object of the scheme for which the acquisition is made is unchanged, the fact that there has been a change in the method of carrying out the scheme and financing it would not make it a new scheme so as to necessitate a fresh notification under sec. 4 of the Act. 39 Bom.L.R. 1257=1938 Bom. 148. Under the Act, it is the Local Government that has to be satisfied as to the existence of a public purpose. In the case of an acquisition for a Municipality to enable it to carry out a scheme, Government is not deprived of the power to go on with the acquisition proceedings merely because in the interval between the issue of the first notifications and the final notifications the Municipality changes its mind as to the necessity for the scheme. If at the material time, that is to say, when the notifications are issued, the Municipality has approved of the scheme and has moved the Government to take action, and still approves of it, the fact that at some time between the dates of the two notifications it was of a different opinion is irrelevant. The proceedings are not on that ground illegal or *ultra vires* 39 Bom.L.R. 1257=1938 Bom. 148. No interest in favour of Government arises from the notification under sec. 4. Although the date of the notification under sec. 4 is the date at which

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches; and,

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

Payment for damage.

5. The officer so authorised shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector or other chief revenue-officer of the district, and such decision shall be final.

[1][*Objections.*

Hearing of objections.

5-A. (1) Any person interested in any land which has been notified under section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a Company may, within thirty days after the issue of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard either in person or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, submit the case for the decision of the Porvincial Government, together with the record of the proceedings held by him and a report containing his recommendations on the objections. The decision of the Provincial Government on the objections shall be final.

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.]

Declaration of intended acquisition.

6. (1) Subject to the provisions of Part VII of this, Act [2][when the

LEG. REF.

[1] Inserted by Act XXXVIII of 1923, sec. 3.

[2] Substituted for the words "whenever it appears to the Local Government" by sec. 4, *ibid.*

values are to be considered, the identity of the property is determined by the notification under sec. 6. If in the period between the two notifications a part of the property has ceased to exist, whether by act of the owner or by accident, the value of that part has not to be taken into consideration when making the award. I.L.R. (1940) Kar. 396 =187 I.C. 714=1940 Sind 58.

SEC. 5-A.—Sec. 5-A is not retrospective. 28 Bom.L.R. 582=1926 B. 369. Sec. 5-A absolutely debars a Civil Court from questioning the propriety of a notification under sec. 4. The objector has to go to the Provincial Government and the finding of that Government on his objections is conclusive. A declaration in the notification under sec. 4 that the land had been resumed by the Government of India and that the superstructure only was being acquired, does not mean that the land was resumed by the notification, for resumption is absolutely foreign to the scheme of the Land Acquisition Act. Consequently, no suit lies to declare a notification under sec. 4 invalid merely because it relates to a *fait accompli* antecedent in time to the notification, namely the resumption of the land by the Government. 266 I.C. 188=1943 Pesh. 27. Where a District Board passed a resolution to acquire certain land but there was want of good faith, Courts have jurisdiction to interfere at the instance of the owner of the land, and declare the resolution *ultra vires* and grant an injunction. The owner need not wait to seek remedy under this section. 40 C.W.N. 687=1936 C. 225.

SEC. 6: SCOPE OF SECTION.—Court has no jurisdiction to consider the legality of the acquisition on the reference. 24 L.W. 833= 1927 M. 207; 49 M. 237=1925 M. 837=48 M.L.J. 204. *See* 1926 M. 1099=51 M.L.J.

Declaration that land is required for a public purpose.

Provincial Government is satisfied, after considering the report, if any, made under section 5 A, sub-section (2)] that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders:

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

388; 51 M.L.J 849. *See also* notes under sec. 4 (supra). Sec. 6 requires the land proposed to be acquired to be specified but it does not require a plan to be prepared at that stage and made a part of the notification. Where the text of the declaration made under sec. 6 is that the whole of a certain cadastral plot was proposed for acquisition, but the plan to which reference was made in the declaration does not comprise the whole of that plot, such plan cannot, on the principle of *falsa demonstratio non nocet*, restrict the operation of the acquisition to only such portion of of the plot as would be covered by the said plan. In these circumstances, the plan can only be referred to for elucidation, where elucidation is necessary, but cannot subordinate the text of the declaration. I.L.R. (1942) 2 Cal. 378=1943 Cal. 233. Where there is not the slightest ambiguity or doubt as to what actual land was proposed to be acquired, and the only error arises from the question whether in fact the boundary line between the two districts lay to the north or the south of the specific and definite land mentioned in the declaration and actually acquired, the acquisition of the land is quite effective and valid. 76 C.L.J. 430. It is a sufficient compliance with the provisions of the proviso to sec. 6 (1), if any part of the compensation is paid out of the public funds. One anna is a part, and though a small part is nevertheless a part. 58 L.W. 430=1945 M.W.N. 511 =1945 Mad. 394=(1945) 2 M.L.J. 237 (F. B.). Sec. 6 (3) of the Act is not *ultra vires*, as it does not take away the right of suit from the subject but merely states that the Government declaration shall be conclusive evidence of the fact. 49 Mad. 237=48 M. L.J. 204=1925 M. 837. Declaration is conclusive. 66 I.C. 600=48 C. 916=1931 C. 159. A declaration under sec. 6 (1) is final, and cannot be questioned in a Court of law in the absence of an allegation or charge that the action of the Government in directing the acquisition in question is in fraud of its powers. 58 L.W. 430=1945 M.W.N. 511= 1945 Mad. 394=(1945) 2 M.L.J. 237 (F.B.); 45 All. 443. None of the provisions of the Act relating to compensation cover the case of acquisition of a highway used by the public with the consequential compensation to them. 41 B. 291=21 C.W.N. 447=43 I.A. 310 (P.C.)=1916 P.C. 3. Provisions of the Act to be strictly observed. 11 C.L.J. 612. *See also* 1926 M. 1099=51 M.L.J. 338. On this section, see also 50 M. 308=1927 M. 245 =51 M.L.J. 849; 105 I.C. 377=1927 C. 968. A notification would be conclusive evidence even where the notice had been issued subsequent to the filing of the suit for an injunction restraining Government from making the acquisition. The validity of a declaration cannot be called in question before it is in fact made. To find out if the requirement of the proviso to sec. 6 has been fulfilled, the Court should have regard to the state of things at the time of the declaration. Its validity cannot be made to depend upon some future contingent event. Where Government proposed to acquire house sites by advancing 80 per cent. of the cost in the first instance and recover the same from the grantees of the sites in the course of the next twenty years, *held*, the condition in the proviso to sec. 6 (1) was fulfilled. 1930 M. 708=59 M. L.J 274; 1929 M.W.N. 779=1930 M. 248. *See also* 1931 M. 361=1931 M.W.N. 126. A declaration under sec. 6 (3) is ordinarily conclusive of the fact that the land is needed for a public purpose or for a company. It cannot be conclusive of the liability to acquisition, if it be found that any illegality was committed at the proceedings or if there was material violation of any of the provisions of the Act in any of the stages prior to the declaration. If the declaration says that the land is required for a public purpose, whereas in fact the land is admittedly required for a company, it is difficult to see how such a declaration can be conclusive of anything. It cannot be conclusive of the fact that the land is needed for a public purpose, since that is not so; and it can hardly be conclusive of the fact that the land is required for a company, if this is not stated. But where the parties are fully aware of the purpose for which the acquisition is made, a defect in the declaration will not vitiate the acquisition proceedings. 1939 A.L.J. 757=1939 All. 557. The validity of the acquisition proceedings under the Land Acquisition Act depends upon the existence of a public purpose and not upon the question whether the whole cost of the scheme could legally be debited to the Municipality or public body on whose behalf the acquisitions are made. A notification under sec. 6 does not therefore become illegal because it seeks to acquire lands for the purpose of recouping the cost of the scheme. Where the Municipality or public body has power conferred upon it under the statute creating it, to acquire adjacent land for a particular purpose, and to dispose of that land, the fact that the scheme is to be financed or partly financed out of the proceeds cannot make the acquisition illegal. 39 Bom.L.R. 1257=1938 Bom. 148. Public purpose—Proof—Notification not conclusive—Onus. *Held*, that, on

(2) The declaration shall be published in the Official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and, after making such declaration, the Provincial Government may acquire the land in manner hereinafter appearing.

After declaration Collector to take order for acquisition.

7. Whenever any land shall have been so declared to be needed for a public purpose or for a Company, the Provincial Government, or some officer authorised by the Provincial Government in this behalf, shall direct the Collector to take order for the acquisition of the land.

Land to be marked out, measured and planned.

8. The Collector shall thereupon cause the land (unless it has been already marked out under section 4) to be marked out. He shall also cause it to be measured, and if no plan has been made thereof, a plan to be made of the same.

Notice to persons interested.

9. (1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

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the terms of the grant, the right to refuse compensation must depend on proof on the part of the Government that the land was required for a public purpose, for which purpose the Government might put in the notification as evidence on their side, but it was not conclusive for the purpose of defeating the claimant's right to compensation; that evidence led could not be considered for the purpose of defeating the Government's right to issue the notification to acquire the land, but would be relevant only for the purpose of determining the claimant's right to compensation under the *kowl*. I.L.R. (1940) Bom. 492=42 Bom.L.R. 506=1940 Bom. 260. In 1919 Government resolved to acquire the claimant's land under the Act and by arrangement with the sutidars took possession of such land. It proceeded to erect certain building on the land without the necessary notification which was not served until 4th November, 1920, when the Government notified under sec. 6 of the Act that the lands were needed for a public purpose and the Collector took order for the acquisition thereof. *Held*, that the Government officials were in possession 'not as mere trespassers' but under such a colour of title that the building erected by them on the land ought not to be included in the valuation as having become the property of the land-owner. The claimant was held entitled to compensation for occupation of the lands by the officials before notification of the 4th November, from the date when Government took possession. 56 I.A. 259=53 B. 589=1929 P.C. 163=57 M.L.J. 139 (P.C.). A declaration was made that a certain land was acquired for quarry in connection with the construction of a bridge. It contained a provision as follows: "Mines of coal, ironstone, slate or other minerals lying under the land or any particular portion of the land except only such parts of the mines and minerals as it may be necessary to dig or carry away or use in the construction of the work for the purpose of which the land is being acquired are not needed". On a reference to the Court as to whether the underground minerals had been acquired, *held*, (1) that stones other than those required for the construction of the bridge vested in the owner of the land; (2) that the stones so required came under the category of "other minerals" mentioned in the declaration. 8 P. 742=1930 P. 112.

SEC. 9.—Object of. *See* 37 A. 69=26 I.C. 795=12 A.L.J. 139. Attaching decree holder is a "person interested". 49 M. 38=97 I.C 496=1926 M. 307. "Claimant" in the Act means claimant to compensation and does not include Government as the Government does not claim compensation. 9 M.L.T. 272=9 I.C. 341. An award of Collector not made in presence of and not communicated to applicant is no award at all. 22 I.C. 652=16 O.C. 374. *See also* 51 I.C. 501=16 A.L.J. 669.

PROCEDURE.—Statement of claim by claimant is necessary. Merely sending certified copy of sale-deed is not same as a claim to the amount stated therein as sale price. *See* 7 L. 416=1926 L. 401. All that sec. 9 requires is that a person claiming should (1) specify the interest he claims (2) specify the amount he claims for such interest, and (3) give particulars of his claim to compensation. It does not require him to specify the amount of compensation he claims in respect of each of the six sub-heads referred to in sec. 23 of the Act. Failure, therefore, to specify the amount claimed in respect of any particular sub-head of sec. 23 is no bar to the Judge reviewing the award of the L.A. Officer in respect of such sub-head. 1933 S. 21=146 I.C. 1040=27 S.L.R. 84. But *see* 1936 L. 733,

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue district in which the land is situate.

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where it was held that if an item is not specified, he will not be awarded compensation for it, merely because the amount awarded does not exceed the total amount claimed, exceed the total amount claimed.

NOTICE.—Although notice under sec. 9 is imperative, non-service of notice is not fatal to the proceedings if the party has knowledge of the same. 1923 C. 513. *See also* notes under sub-Cls. (2) and (3). Collector's failure, when it is not wilful or perverse, to serve notice of the intended acquisition on the occupier or the owner as required by sec. 9, Cl. (3), and in the manner laid down in sec. 45, does not make the subsequest proceedings void. 32 S.L.R. 8=173 I.C.. 100=1938 Sind 6. Compensation—Apportionment by Collector—Party dissatisfied—No right of suit. 26 C.W.N. 506=1922 C. 4. Interest should ordinarily be allowed on compensation awarded. 40 I.C. 274. In a suit for enhancement of compensation for land acquired by a public body for the public purpose, a claim for damages does not lie in the Civil Court unless originally raised before the Collector. 46 I C. 906=145 P.W.R. 1918. *See also* 33 A. 376 =8 A.L.J. 115. A notice which is addressed to all the joint claimants and served on some of them should be regarded as good service as against the persons not personally served. (45 I.A. 222, Ref.). 61 C. 245=38 C W N. 239=1934 C. 525. Where a person interested in the property sought to be acquired has had sufficient notice of the intended acquisition, he cannot make the absence of a special notice to him, a ground of complaint. 1939 A.L.J. 85=1939 All. 130. *See also* 32 S.L.R. 8=1938 Sind 6. An occupancy raiyat in possession of a holding on whom a notice contemplated by sec. 9 (3) has not been served is entitled to question correctness of the award. 1935 P. 42. As to service on servant, *see* 1936 L. 733.

SEC. 9 (2) AND (3): NOTICE.—The provision that 15 days' time should be allowed is not repeated in Cl. (3) and therefore does not apply to a personal notice served under Cl. (3). 49 A. 145=98 I.C. 806=1927 A. 183. But *see contra* 1931 M. 323=1930 C. 471=57 C. 837. Section does not require fifteen clear days' notice. Where notice was served on the 8th and the date was the 23rd it is sufficient compliance with the statute. 12 P.L.T. 659 =1932 P. 134 The failure to issue the notice under sec. 9 (3) does not render the subsequent proceedings null and void. 76 C.L.J. 430. "To the same effect" in sub-sec. (3), meaning of. 53 M. 921=1930 M. 836= 60 M.L.J. 410. *See also* 39 A. 534=15 A.L. J. 450. A notice which calls upon the occupier to appear before Collector to inform the nature of the right he/possessed in the lands and the amount due to him out of the compensation to be given for that right is a valid notice. It cannot be said to be ambiguous or defective merely for the reason that it did not call upon him to state the amount and particulars of his claim to compensation. 53 M 921=1930 M. 836=60 M.L.J. 410. A claimant cannot be said to have waived the irregularity of a short notice simply by reason of having appeared before the Collector on the date fixed. It must be shown that the claimant knew his legal right to fifteen days' notice and was prepared to renounce the benefit of it. 53 M. 921=1930 M. 836=60 M.L.J. 410. Where the party served with notice failed to appear on the date fixed but subsequently he was permitted by the L.A. Officer to file two sale-deeds in respect of land close to the land under acquisition, *held*, that there was no valid compliance with the notice and that the officer was entitled under those circumstances to award compensation as he thought fit. In order to comply with sec. 9 (2), claimant must put forward a claim for a specific amount and the filing of the sale-deeds of the adjacent land is not sufficient for the purpose. 53 M. 533=1930 M. 618= 59 M.L.J. 33.

APPELLATE COURT.—Appellate Court can consider the question as to whether the failure of the claimant to specify the amount of his claim was with or without sufficient cause and whether the omission could be condoned where the District Judge had failed to do so. Where a claimant failed to specify the amount in the belief that he was not required to do so, such belief would afford a sufficient ground for condonation, and more so, when the claimant had placed materials showing what his expert considered to be a fair compensation. 1932 S. 21=27 S.L.R. 84.

BURDEN OF PROOF.—Where a person receives some notice and appears before the Collector and receive the money, it is for

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and registered under Part III of the Indian Post Office Act, 1866.

Power to require and enforce the making of statements as to names and interests.

10. (1) The Collector may also require any such person to make or deliver to him, at a time and place mentioned (such time not being earlier than fifteen days after the date of the requisition), a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of the statement.

(2) Every person required to make or deliver a statement under the section or section 9 shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code.

Enquiry and award by Collector.

11. On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any (person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land [1][at the date of the publication of the notification under section 4, sub-section (1)] and into the respective interests of the persons claiming the compensation and shall make an award under his hand of—

(*i*) the true area of the land;

(*ii*) the compensation which in his opinion should be allowed for the land; and

(*iii*) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or whose claims, he has information, whether or not they have respectively appeared before him.

LEG. REF.

[1] Inserted by Act XXXVIII of 1923, s. 5.

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such person to prove that he did not receive the notice required by sec. 30 N.L.R 40=1933 N. 322.

SEC. 11: SCOPE AND OBJECT.—*See* 123 P. R. 1908=4 I.C. 914. Secs. 30 and 31. *See* 34 B. 618=12 Bom.L.R. 34. Powers and duties of Collector and Court in land acquisition enquiry. 37 B. 76=15 I.C. 771=14 Bom.L.R. 507. L. A. Collector acting under this section is not a Court. 38 C. 230 =15 C.W.N. 87=8 I.C. 107. The proceeding under sec. 11 is not a judicial proceeding. Collector is not limited in making the award, to the evidence taken before the opposite party or disclosed at the inquiry and the fact that he adjourned the inquiry several times for making the award does not also extend the time for making a claim, the date for which has been already fixed under sec. 9, (30 C. 36, Ref.) 12 Pat.L.T. 659=1932 Pat. 134. Government claiming ownership—Duty of Collector. 9 M.L.T. 272=9 I.C. 341.

RYOTWARI LAND—COMPENSATION—BASIS OF ASSESSMENT.—In awarding compensation for land compulsorily acquired, the land acquisition officer should first of all estimate the value of the land, and with that value as a basis, take into consideration any other special factors, and calculate the proper compensation to be paid. If the value of the land can be directly estimated by the value of the property in the neighbourhood, then that is the best manner of estimating the value of the land acquired, provided that there has been a sale of the land at or about the time when the acquisition was notified under sec. 4. Where the sales of neighbouring land forming the basis of the award of the Land Acquisition Officer were dated January, 1926, and the notification under the Act was in November, 1938, and it appeared that in between these dates the price of paddy had appreciated to a certain extent: *Held*, that the proper method of awarding compensation was to proceed on the value of the land in the neighbourhood, at the same time making an allowance for the enhanced value in proportion to the rise in the price of paddy. In awarding compensation, whatever may be said with regard to a melwaram interest in a zamindari land or a vacant site, it would be difficult to accept the current rate of interest on gilt-edged securities as a safe guide to the multiple to be applied to the annual profits of ryotwari land. 1944 M.W.N. 103 =57 L.W. 115=1944 Mad. 271=(1944) 1 M. L.J. 142. In assessing compensation under the Land Acquisition Act the Land Acquisition Officer and the District Judge are bound

to exercise their own judgment as to the correct basis of valuation, and their judgment cannot be controlled by an agreement between the parties interested. 73 I.A. 44=I. L.R. 1946 A. 185=1946 P.C. 75=50 C.W.N. 401=1946 M.W.N. 158=(1946) 1 M.L.J. 333 (P.C.).

SEC. 11 (*ii*).—Owner can have the price of the land fixed with reference to its situation and the probable use it is likely to be put to in the near future. 61 P.W.R. 1916=35 I. C. 283. Compensation to be allowed under sec. 11 (*ii*) means the total amount of compensation awardable for the land including all the considerations mentioned in sec. 23. 22 M.L.J. 279=14 I.C. 270. Award is final only when filed. 59 I.C. 429=22 Bom.L.R. 1136. The correct *rule for determining the amount of compensation* is that the land to be acquired is to be valued in the first instance including all interests and the amount so ascertained has then to be apportioned amongst the parties interested according to their interests. (42 M. 644, Foll.) 55 C.L. J. 558=1933 C. 312. The opinion mentioned in sec. 11 (*ii*) should be that of the Collector only and of no other person. Where the award made by the Collector is based on "instructions" issued by the Commissioner, it cannot be sustained. 14 R. 209=162 I.C. 700=1936 R. 206. It would be *ultra vires* of any other authority to usurp the functions of collector under this section. 1936 Pesh. 217.

SEC. 11 (*iii*).—Where under an agreement between a landlord and tenant, the tenant accepted a fixed sum as compensaton, the landlord would be entitled to all *enhanced compensation*. 44 C.L.J. 1=1926 C. 1000. As to *compensation in case of occupancy lands see* 1926. P. 16=3 P.L.R. 111. Under the Land Acquisition Act, the amount of compensation is to be divided in proportion to the value of interests of all persons interested in the land. But the question of apportionment of the sum awarded between the several interests must not be based on hypothetical grounds. Any remote interest should not be taken into consideration. In the case of an inam village granted under a sanad providing that the inam should continue in the family so long as there may be in existence descendants of the original grantee in the male line, it cannot be said that the grantor Government has any interest which is saleable of which, the law can take note and which could be made the basis of an apportionment of compensation on compulsory acquisition of the inam village. The interest of the Government is at best a remote contingent interest, the chance of the inam coming to an end by failure of the male line. Such an interest or chance can scarcely be appreciable by a money value or a money payment. The inamdar is therefore entitled to the whole compensation money without deduction. 176 I.C. 642=40 Bom.L.R. 432=1938 Bom. 325. *See also* 73 C.L.J. 595. According to sec. 11 the Collector must, when he makes his award, take into account the interest of all parties, assess the total amount of compensation and apportion it as between the claimants. A series of awards in respect of the same property is not contemplated by the Act. If a person interested is not given anything by the apportionment, his remedy is to claim a reference challenging the award and not to ask for another award in his favour. 1939 A.L.J. 85=1939 All. 130.

AWARD BY LAND ACQUISITION OFFICER—CONTENTS OF.—The duty of the Collector under sec. 11 is to make an award in regard to three matters, *viz.*, (1) area of the land included in the award; (2) total compensation to be allowed for that land; and (3) apportionment of that compensation among all the persons interested in that land. 59 I. A. 155=54 A. 286=1932 P.C. 102=62 M. L.J. 682 (P.C.). Act does not contemplate that where more than one person is interested in a parcel of land there should be more than one award relating thereto. Each award should contain within its four corners the fixing of value of the land with which it deals, and the apportionment of that value between the various persons interested in that land. 59 I.A. 155=54 A. 286=1932 P.C. 102=62 M.L.J. 682 (P.C.). The Board of Trustees for Improvement of Calcutta has power to enter into a contract for settling the price of the land with the owner before proceedings under the Land Acquisition Act are started. In the land acquisition proceedings, the Collector is under no obligation to disregard the contract and to proceed to determine the market value under sec. 11 of the Act. He should rather respect the contract and make an award on its basis. If a reference is made by the Collector under sec. 18, the Improvement Tribunal is not bound to take evidence of market value and to award compensation on its basis. The contract between the owner and the Board which is a perfectly valid one and which can be enforced in a Civil Court would prevent the owner from leading any evidence relating to market value before the Improvement Tribunal or in proceedings upon any other footing than that of the contract. I.L.R. (1938) 1 Cal. 231=41 C.W.N. 1291=66 C.L.J. 134 =1937 Cal. 680.

SECS. 11 AND 26: AWARD UNDER—DIFFERENCE.—Under sec. 26 the award of the Court is not the same as an award by the Collector under sec. 11. An award by the Collector under sec. 11 must include the apportionment of the compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him. That forms no part of the award as defined in sec. 26. Hence an award of Court under sec. 26 cannot be deemed to be a decree executable against the Collector. 1933 R. 176=11 R. 344.

SECS. 11 AND 34.—Although the Collector, after he has made his award under sec. 11, is not competent to amend it or make a supple-

12. (1) Such award shall be filed in the Collector's office, and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested.

Award of Collector when to be final.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

13. The Collector may, for any cause he thinks fit from time to time, adjourn the enquiry to a day to be fixed by him.

Adjournment of enquiry.

14. For the purpose of enquiries under this Act the Collector shall have power to summon and enforce the attendance of witnesses, including the parties interested or any of them, and to compel the production of documents by the same means, and (so far as may be) in the same manner, as is provided in the case of a Civil Court under the Code of Civil Procedure.

Power to summon and enforce attendance of witnesses and production of documents.

15. In determining the amount of compensation, the Collector shall be guided by the provisions contained in sections 23 and 24.

Matters to be considered and neglected.

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mentary award, except in cases of clerical errors or other mistakes or omissions apparent on the face of the record, he is not in any way incompetent to enter into a compromise with the claimants who have got a reference under sec. 18, Land Acquisition Act, and pay them an extra sum of money on the basis of such settlement on condition of their withdrawing the reference. An entry of such an order for payment in the award statement kept in Form A prescribed in Appendix 7 of the Civil Accounts Code does not amount to an amendment of the award itself. The award statement is, therefore, not inadmissible in evidence. 73 C.L.J. 595 =43 C.W.N. 1185.

SEC. 12.—The Local Government has power to appoint a special Collector, but once appointed, it has no power to interfere with his award or ask him to substitute a smaller amount. 36 B. 599=14 Bom.L.R. 592. A separate suit for the recovery of the value of the land acquired is not maintainable. 48 I. C. 702=29 C.L.J. 53.

NOTICE.—Notice under sec. 12 (2) is not properly served on the manager of the office of the receiver of an estate in the absence of the Receiver: The notice must be served in the way provided by sec. 45 (3) of the Act. 33 M.L.J. 472=42 I.C. 235. *See also* 16 O.C. 374=22 I.C. 652.

ACQUIRING OFFICER'S AWARD—MODIFICATION—BURDEN OF PROOF.—The acquiring officer's award is strictly speaking not an award at all but an offer. But if his award is not accepted and the matter is taken into Court the proceedings are thenceforward judicial in character. The party claiming enhanced compensation is more or less in the position of a plaintiff and must produce evidence to show that the award is inadequate. If he has no evidence the award must stand and if he succeeds in showing *prima facie* that the award is inadequate, Government must support the award by producing evidence. 35 Bom.L.R. 763=1933 B. 361.

SEC. 14.—The Government is a person interested within the meaning of sec. 14 in the amount of compensation paid to a *Gountia* in Sambalpur in respect of *bhogra* land and is also entitled to a share of the compensation. Leaving the tenant's portion, the landlord in such cases will be entitled to sixteen years' purchase of the annual rent. The simple method of apportioning this amount is to award one-fourth as the *Gountia's* share and the balance to the Government. 11 P.L.T. 374=1931 P. 131.

SEC. 15.—*See* Notes under ss. 23 and 24. *See also* 33 B. 325; 11 I.C. 838=252 P.L.R. 1911; 103 P.L.R. 1909. The actual lay out of a site at the time of acquisition should be taken as the most lucrative way of utilizing it at that time. 1931 L. 364. On acquisition due allowance must be made for the probable use which would have given the dispossessed owner the best return and not merely its present use or disposition. The presumption must always be that a man makes the best use of his own property. It is not sufficient to rely on hypothetical building schemes but the owner must show that he was going to make a certain use of his property which would have brought him profits or that he would have made such use of it had he not been prevented by unavoidable circumstances if he wishes the Court to give an enhanced value to that property on acquisition by Government. (1931) L. 207, Foll. 1931 L. 364.

SECS. 5, 23 AND 24.—Even where the only possible purchaser of the land's potentiality is the authority that has obtained the

Taking possession.

Power to take possession.

16. When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon [1][vest absolutely in the Crown], free from all encumbrances.

Special powers in cases of urgency.

17. (1) In cases of urgency, whenever the Provincial Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), take possession of any waste or arable land needed for public purposes or for a Company. Such land shall thereupon [1][vest absolutely in the Crown], free from all encumbrances.

(2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station, the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the Provincial Government, enter upon and take possession of such land, which shall thereupon [1][vest absolutely in the Crown] free from all encumbrances:

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

(3) In every case under either of the preceding sub-sections the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in section 24; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

LEG. REF.

[1] Substituted by A.O., 1937.

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compulsory powers, the arbitrator in awarding compensation must ascertain to the best of his ability the price that would be paid by a willing purchaser to a willing vendor of the land with its potentiality in the same way that he would ascertain it in a case where there are several possible purchasers and he is no more confined to awarding the land's 'poramboke' value, (*i.e.*) value of similar lands without its potentialities, in the former case than he is in the latter. 66 I.A. 104=I.L.R. (1939) Mad. 532=43 C.W.N. 557=1939 P.C. 98=(1932) 2 M.L.J. 45 (P.C.).

SEC. 16: SCOPE OF SECTION.—Acquisition of land under sec. 16 vests the land in the Government free of all "incumbrances" which include a right of passage to the public. 41 B. 291=21 C.W.N. 447=43 I.A. 310 (P.C.). The word "incumbrance" in sec. 16 means some burden created by acts or omissions of human beings. It does not mean a burden or obligation created by nature. The acquisition under the Act of a portion of a bed of a river does not therefore, extinguish the burden upon it to pass the running water downwards to the lower riparian owners. I.L.R. (1943) 1 Cal. 172=76 C.L.J. 67=47 C.W.N. 130=1943 Cal. 128. Several fishery in a navigable river cannot be regarded as an encumbrance on the land, that is on the subjacent soil, and it would not accordingly be destroyed on a compulsory acquisition of the subjacent soil by the force of the provisions of sec. 16. 48 C.W.N. 537 =A.I.R. 1944 Cal. 315. Making of an award and taking possession of the land by the Collector vest the property absolutely in the Government. 43 M. 280=37 M.L.J. 618=53 I.C. 646. After the Government has taken possession of the land proposed to be acquired, it cannot withdraw from the acquisition. It is bound to complete the proceedings, make an award and give compensation. 14 N.L.J. 17 (Rev.). Encumbrances include easements. 46 C.W.N. 136=1943 Cal. 35=I.L.R. (1942) 1 Cal. 488. Even an easement of necessity which comes into existence at the time of acquisition is extinguished. 6 L. 329=1925 L. 523; 1936 A.L.J. 1160=1936 A. 879. On this section, *see also* 36 M. 373=22 M.L.J. 445.

[1][(4) In the case of any land to which, in the opinion of the Provincial Government, the provisions of sub-section (1) or sub-section (2) are applicable, the Provincial Government may direct that the provisions of section 5-A shall not apply, and, if it does so direct, a declaration may be made under section 6 in respect of the land at any time after the publication of the notification under section 4, sub-section (1).]

PART III.

REFERENCE TO COURT AND PROCEDURE THEREON.

Reference to Court.

18. (1) Any person interested who has not accepted the award may, by written application to the Collector, required that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

LEG. REF.

[1] Inserted by Act XXXVIII of 1923, sec. 6.

SEC. 18: SCOPE OF SECTION.—Conditions precedent. 26 O.C. 324=1924 O. 127. The intention of the Act is that Court should hold a separate inquiry and its proceedings are not a mere continuation of that of the Collector's. They are judicial proceedings and the decision must be based on evidence before Court or on admission made by the opposite party. Evidence before Collector cannot be considered as evidence before Court except with the consent of parties. 8 R. 364=127 I.C. 733=1930 R. 346. Sec. 18 of the Land Acquisition Act contemplates four kinds of objection, which are set forth in sub-sec. (1). Sub-sec. (2) requires the claimant to state the grounds of his objection. There is a sufficient compliance with sec. 18 (2) if the application for reference states on which of the four heads of objection detailed in sub-sec. (1) the applicant proposes to rely. Once it is ascertained that the objection taken is only to the amount of compensation, that alone is the matter referred and Court has no power to determine or consider anything beyond it. But that does not mean that when an objection to the amount of compensation has been taken, the Court has no jurisdiction to work out the amount of compensation in a manner different from that which has been adopted in the statement of objections. The Court would have jurisdiction to award compensation on a different or new basis in a proper case, though no express objection was taken on that basis and no specific claim for compensation to that effect was urged before the land acquisition officer. The rule enacted in sec. 18 (2) in one of procedure rather than of jurisdiction. I.L.R. (1938) M. 479=1937 M.W.N. 773=46 L.W. 492=1937 Mad. 902. *See also* 66 I.A. 145 =I.L.R. 1939 All. 460=1939 P.C. 133=(1939) 2 M.L.J. 98 (P.C.). Jurisdiction of Courts under the Act is a special one and is strictly limited by the terms of secs. 18, 20 and 21. It only arises when specific objection has been taken to Collector's award, and it is confined to a consideration of that objection. Where the only objection taken is to the amount of compensation, that alone is the "matter" referred, and the Court has no power to determine or consider anything beyond it, as, for instance, an objection to the measurement of the land. 57 I.A. 100 =57 C. 1148=1930 P.C. 64=58 M.L.J. 223 (P.C.). The Collector has power to make a reference under sec. 18 on certain specified conditions. The Court is bound to satisfy itself that the reference made to it by the Collector complies with the specified conditions. I.L.R. (1944) Bom. 90=46 Bom.L.R. 375=1944 Bom. 200. It is the duty of the Collector before he makes the reference under sec. 18 to decide on the materials before him and if he decides to make and does make a reference, it is not open to the Land Acquisition Court to go behind it. If it is not open to the High Court or any other authority to interfere when the Land Acquisition Officer refuses to make a reference his decision must be equally final when he decides to make and does make a reference. Where the Collector, as the Land Acquisition Officer, mentioned in a letter to the Subordinate Judge that he had doubts whether the reference should be made but the order of reference was worded as if it was a judicial order and gave the reason for reference and the names of the persons interested and the amount as required by the Act: *Held*, (1) that in the absence in the order of reference of mention as regards the propriety of making the reference, the validity of the reference could not be questioned. (2) It is not obligatory on the part of the Collector to give notice to interested persons whom he is not aware of. If he chooses to give notice, then that person will have to apply within six weeks for a reference being made. But if no notice is given, then the period of limitation within which to apply will be six months. 56 L.W. 85=1943 M.W.N. 49=1943 Mad. 327=(1943) 1 M.L.J. 66. If a claim for compensation for injurious affection on account of severance under the item "thirdly" in sec. 23 has not been made in reply to a notice under sec. 9 of the Act, such a claim cannot be made or allowed for the first time in a reference to the Court under sec. 18 of the Act. I.L.R. (1941) Kar. 217=196 I.C. 285 =1941 Sind 152. On a reference to a Court,

(2) The application shall state the grounds on which objection to the award is taken.

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the matters for decision may include either a question as to the total amount of compensation, a question in which the Collector is clearly interested, or a dispute between the parties claiming amongst themselves as to the person or persons to whom compensation should be paid, a question in which the Act does not consider the Collector to be interested. On such a reference the Court has not to decide whether or not the Collector had been so negligent that he should be required to pay the compensation twice over to different persons, and a question of that sort is one which can only be decided satisfactorily in a seprate suit. 1933 R. 176=11 R. 344. Application not mentioning ground for reference, but mentioning that proceedings should be postponed till decision of suit regarding validity of acquisition and that compensation was low, is not application under sec. 18, though Collector makes reference on such application; District Judge gets no jurisdiction to decide it. 49 A. 212=25 A.L.J. 35=97 I.C. 566=1926 A. 766. But *see also* 99 I.C. 269=1927 M. 282. Proceedings under the Act resulting in an award are merely administrative and not judicial and the decision therein binds the Collector only. 51 I.C. 501=16 A.L.J. 669. *See also* 36 I.C. 621=4 L.W. 535. If the owner desires a judicial ascertainment of the value of his property, he can ask the Collector to do it according to sec. 18. 51 I.C. 501=16 A.L.J. 669. No formalities are required in asking for a reference. A letter written by the claimant to the L.A. Officer stating his non-acceptance of the amount awarded and requesting a reference to the High Court is sufficient. 155 I.C. 280=1935 M. 379 (2). Tenant or sub-tenant can claim to be heard even though he has no saleable interest. 1925 C. 197=39 C.L.J. 574. Where part of the property sought to be acquired was in the possession of a tenant and he had filed an objection setting out his claims, and an award is made in favour of the owner without any reference to the claims of the tenant and the tenant applies more than a year after the award for a consideration of his claims, which is summarily rejected on the ground that he should have appealed, this order of the Land Acquisition Officer does not amount to an award and no valid reference could be made in respect of it under sec. 18. 180 I.C. 882=1939 A.L.J. 85=1939 All. 130. Under the Act there are two perfect and *distinct forms of procedure* contemplated. The first is necessary for fixing the amount of compensation and this is an award from which a limited right of appeal to the High Court is given by sec. 54. The second is when a question of title arises between conflicting claimants as regards the title to the compensation money in Court. 45 M. 320=1922 P.C. 80=43 M.L.J. 78=49 I. A. 129 (P.C.). When the Collector on such a dispute arising between the parties places the money under the control of the Court and the parties proceed to litigate their rights to the money, the decision of the Court on such a dispute is a decree and is appealable to the High Court and the Privy Council. It is in no sense an award and the restriction on the right of appeal imposed by sec. 54 does not govern the case. 45 M. 320 (P.C.). Where the owner of the shop, acquired for the Municipal Committee, being aware that there would be compulsory acquisition for widening the road on behalf of the Municipal Board enters into a sale with a false consideration so as to obtain a large amount by way of compensation, he is not entitled to more than the real price of the house. High rental value for taxation is immaterial where owners have voluntarily agreed to a high assessment so as to obtain extra compensation. I.L.R. (1944) All. 358=1944 All. 216.

APPLICATION OF THE SECTION.—Sec. 18 does not apply to the determination of the questions of title to and the investment of money. 13 I.C. 550=237 P.W.R. 1912. It requires only the grounds of the objection to be given, and by 'grounds' is meant such of the four grounds mentioned in sec. 18 (1) as are relied upon. 66 I.A. 145=I.L.R. (1939) All. 460=1939 P.C. 133=(1939) 2 M.L.J. 98 (P.C.). Reference to Civil Court under the Act is the only remedy of the owners or claimants. 52 P.R. 1913 (Supp.)=17 I.C. 684. Where there is a dispute as to who is the actual claimant to the compensation the Divisional Judge can decide questions of title to the money. 13 I.C. 550=237 P.W.R. 1912. A reference under sec. 30 is made solely on the question of title by the acquisition officer of his own motion, whilst the reference under sec. 18 is made on the application of a person interested in the compensation money. 53 I.C. 589=97 P.R. 1919. A case referred under sec. 18 is subject to the limitation contained in sec. 26 and not merely any particular objection, and the District Judge has power and is bound to consider the question of the compensation awarded in its entirety. 54 I.C. 920. The reference to the Court by the Collector relates to the total amount of compensation to be awarded by the Court and nothing in the Act prevents the Judge from awarding a less sum on any one of the items, though he cannot award a less sum in total than the Collector's award. 22 M.L.J. 379=14 I.C. 270. When a case is referred by the Collector to the Court, the whole case is referred and not any particular objection. 22 M. L.J. 379. The words "require that the matter be referred by the Collector for the determination of the Court" in sec. 18 (1), merely mean that the point on which the Collector's award is disputed may be referred to the Court at the instance of a claimant. When such a dispute has been referred to the Court, the scope of the enquiry before the Court should be limited within

the bounds of the dispute which had actually arisen before the Collector. Therefore, on a reference made to the Court for the determination of the amount of compensation, the Court has no jurisdiction to allow the claimant to amend his application by increasing his claim to a figure far beyond that which he claimed before the Collector. I.L.R. (1943) 1 Cal. 69. *See also* (1943) 1 M.L.J. 278=1943 M. 337.

BURDEN OF PROOF.—In a reference to the Court the award of the acquisition officer is *prima facie* evidence and the burden is on the claimant to show that the award is wrong. 96 I.C. 279=1926 M. 961; 1934 L. 97. *See also* I.L.R. (1938) 1 Cal. 231=41 C.W.N. 1291=66 C.L.J. 134=1937 Cal. 680. Initially the burden of proving that the Collector's award is wrong is on the claimant, but where District Judge has assessed the value of land acquired by the Secretary of State at a particular rate and the Secretary of State is disputing the assessing value, the burden of proving that the assessing value is wrong is placed on the Secretary of State. (1926 M. 961, Expl. and Dist.) 118 I.C 541=1929 L. 112; 1934 L. 97. In cases of reference under sec. 18, the Collector is a defendant and has to support his award. He must do so by producing evidence and establishing the facts upon which he relies. He cannot rely upon any statement in his award that the amount awarded per *katha* of land is based on the average price per *katha* contained in a number of *kabalas* or sale-deeds, without proving those *kabalas* on which he relies. The *kabalas* must be produced, and proved if not admitted by the other party, and evidence must be given on behalf of the Collector as to where the lands, which are the subject-matter of the *kabalas* are situate, and as to the nature of the lands. It is enough for the Collector to obtain information from the registration office about the average sale price of several *kabalas* relating to lands, without causing the *kabalas* themselves to be produced in Court. 21 Pat.L.T. 9=1940 Pat. 362.

PRESUMPTION.—In the absence of any definite evidence the Court may presume that the *interests of the landlord and of the occupancy tenant* exclusive of specific amounts spent on extraordinary improvements of the land are in the ratio of 10: 6; but if there are other considerations, that presumption may be rebutted. 55 A. 897 =1934 A.L.J. 8=1934 A. 239 (F.B.).

NECESSARY PARTY.—*See* 1940 Pat. 362. When the Collector acquired certain land on behalf of a Municipality and the Collector made a reference under sec. 18 of the Act, *held*, that to such a proceeding the Municipality was not a necessary party. 7 R. 20 =117 I.C. 247=1929 R. 115. In proceedings under sec. 18 wherein ownership is claimed by Government and denied by other parties having admittedly some interest, the Secretary of State need not be made a party. 9 M.L.T. 272=9 I.C. 341. As to addition of parties, *see* 31 C.W.N. 384=1927 C. 352. The principle of O. 1, r. 10 (2), C.P. Code, does not apply to proceedings under the section. 31 C.W.N. 384, *ibid.*

PERSONS INTERESTED.—Although Government can neither be a claimant nor 'person interested' under the Act, yet its title can be decided, if an adverse title is set up by a claimant. 1936 Pesh. 217. An award was with respect to three survey numbers which were in dispute in a Civil Court between two claimants, *A* and *B*. Prior to the notification in the acquisition proceedings *A* had obtained a decree in the trial Court against *B* with respect to two out of the three survey numbers *B* had appealed, but *A* had not but could have filed cross-objections with regard to the third survey number: *Held*, that *A* was a person interested in the third survey number also. 1931 P.C. 39=60 M. L.J. 399 (P.C.). A presumptive *shebait* of *debutter* property is a 'person interested' and can ask for a reference under this section. 41 C.W.N. 464. Also company on whose behalf acquisition is made. 43 C.W.N 973=1939 Cal. 669=I.L.R. (1939) 2 Cal. 401. As to right of heir of recorded tenant under C.P. Tenancy Act to object to award of compensation, *see* 1936 P. 542. Where a case is referred to the District Judge on objections being raised to the award of the L.A. Officer and the case on appeal to the High Court by some of objectors is again remanded to the District Judge an objector who has not taken part in the proceeding before the District Judge and those who have not appealed from the order of the District Judge, are not entitled to intervene as objectors on remand. 1933 L. 948=35 P.L.R. 221.

POWER OF COLLECTOR TO MAKE REFERENCE. —A Collector's authority to make a reference as the agent of Government is restricted by sec. 18. 11 I.C. 690=7 N.L.R. 88. *See also* 1934 A.L.J. 32=1934 A. 260 =56 All. 656 (F.B.).

GROUNDS OF REFERENCE.—Grounds of reference, if should be stated in detail. 58 I.C. 631 (1)=24 C.W.N. 716. A highly *technical objection* that the application requiring the Collector to make a reference was not made by the proper person should be taken at the first opportunity when it might possibly have been met by making a fresh application, and if not so taken, must be considered to have been waived. 131 I.C. 552=1931 P.C. 39=60 M.L.J. 399 (P.C.). Where in respect of certain Bungalows, both the Government as well as the owner, claimed the ownership of the site and the Collector found the Government to be the owner of the site and awarded compensation for buildings alone, a reference to the District Judge in respect of that order under sec. 18 of the Land Acquisition Act is competent and the District Judge ahs jurisdiction to deal with such a reference. 1939 A. 34=1938 A.L.J. 1161.

WHO CAN CLAIM REFERENCE.—As to whether a *Hindu reversioner* can claim a reference, *see* 105 I.C. 219=1927 M. 867. *See also* 41 C.W.N. 764 (Presumptive *shebait*).

Person entitled defending proceedings under the Act—Another person found entitled in appeal can continue the proceedings. 1928 M. 89. Persons who have received notice and who have appeared before the Collector at the time of the apportionment of the compensation money must, if they object to that apportionment make an application under sec. 18 of the Act and are not entitled to avail themselves of proviso (3), sec. 31 (2) of the Act and are therefore debarred from filing a civil suit. 147 I.C. 877=30 N.L.R. 40=1933 Nag. 322. *See also* I.L.R. (1939) 2 Cal. 401=43 C.W.N. 973=1939 Cal. 669. (A company or local authority for whom land is acquired is a person interested and can claim a reference under this section).

RECEIVER.—An acceptance of the award by the receiver who is appointed by the Court to an estate and directed to accept the award on behalf of the claimants where the appointment was "without prejudice to the contentions of the parties" as to the inadequacy of the compensation money, will not take away the right of a claimant to make a reference. Though a party is not actually present when the award is drawn up and signed, when a receiver appointed by the Court for the estate is directed to accept the award on behalf of the claimants and he appears before the Collector on the date when the award is drawn up and signed and accepts the award, that is a sufficient representation of the parties concerned, and the party who is not actually present is also represented and comes within the terms of sec. 18 (2) (*a*). 38 C.W.N. 844=61 C. 1041=1934 C. 758.

LIMITATION.—The Court has power when a reference is made under sec. 18 to go into the question of limitation. This is specially so in a case where the Collector himself has included the question of limitation as part of the reference in his letter accompanying the reference and has not decided the question himself. When the Land Acquisition Officer purports to act under Part III of the Act he acts as a judicial officer and not merely as an agent or mouthpiece of the Government. 1945 M.W.N. 775 (2)=(1945) 2 M.L.J. 559. Under sec. 18 (2) (*a*) of the Act, an award cannot be said to be made until it is drawn up and signed by the Collector. It is not "made" when it is settled what the award is going to be. Hence the starting point of limitation under sec. 18 (2) (*a*) is the date on which it is so drawn up and signed. 38 C.W.N. 844=61 C. 1041=1934 C. 758. Where objections to an award are filed more than six months after the date of the award and after a reference has been made to the District Judge and the objections are forwarded to the District Judge who dismisses them summarily on the ground of their being barred by time it is not open to the objector thereafter to file a suit for a declaration and reagitate trict Judge is final. 1945 O.W.N. (H.C.) trict Judge is final. 1945 O.W.N. (H.C.). 315=1945 A.L.J. 525. The reference within six months of the date of the award is within time under sec. 18 (2) (*b*). 49 I.C. 355. *See also* 1943 Mad. 327=(1943) 1 M.L.J. 66. No extension of time is allowable on the ground of minority under sec. 18. 64 P.R. 1914=25 I.C. 448. After a reference has been made by the Collector it is not open to the Secretary of State to plead before the Court that the application by the owner was barred by limitation and that the reference ought not to have been made. 1923 A.L.J. 752=1932 A. 597. The final determination of the question as to whether the application for a reference under sec. 18 is barred by time or not must be made by the District Judge. The L.A. Officer has no jurisdiction to refuse to make the reference even if in his opinion the application is not in time under cl. (*a*) or cl. (*b*) of sub-sec. (2) of sec. 18 of the Act. 7 Luck. 578=137 I.C. 68=1932 O. 180. On this point, *see also* 1926 R. 135.

AWARD WHEN VALID.—An award signed by the Collector as L. A. Officer satisfies the requirements of the law as regards signature and official designation for the purposes of this Act. 48 P.R. 1914=24 I.C. 379. The actual payment of the compensation is not part of the Collector's award which is complete as soon as the Collector apportions the amount of the compensation between the parties. 17 I.C. 395 (1). A Collector's award under the Act becomes complete on the very day on which it is made, not when it is afterwards directed to be paid to claimant. 14 I.C. 537.

OMISSION TO CLAIM.—Omission to claim —Failure of landlord to demand reference —Tenant obtaining extra—Rights of party. 38 C.L.J. 265=1924 C. 158. A person who though a party to a reference did not press his claim to any part of the compensation, is not entitled to reopen the question in a civil suit. 32 I.C. 922. In a land acquisition case, no question for which the objector has not asked the Collector to make a reference to the Civil Court under Sec. 18 can be noted. 180 P.L.R. 1914=24 I.C. 903.

APPEAL.—There is strictly speaking no right of appeal against an order of the District Judge declining to make an award on a reference under sec. 18. But the order refusing to make an award and remanding the case to the Collector clearly involves a material irregularity in the exercise of the special jurisdiction, which gives power to the High Court to interfere in revision with that order. 57 L.W. 467=1944 Mad. 539 =(1944) 2 M.L.J. 130. *See also* I.L.R. (1943) 1 Cal. 69. Where a District Judge directs the return of a reference made to him under sec. 18, on the ground that he has no jurisdiction to deal with it, his order is not open to appeal to the High Court but the appeal, if preferred may be converted into a revision petition. 1938 A.L.J. 1161 =1939 All. 34.

REVISION—CONFLICT OF RULINGS.—The Collector making a reference under sec. 18 acts judicially and his proceedings are there-

Provided that every such application shall be made—

(*a*) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(*b*) in other cases, within six weeks of the receipt of the notice from the

fore subject to revision by the High Court or Chief Court. 67 P.R. 1916=36 I.C. 213; 38 C.W.N. 844=1934 C. 758=61 C. 1041; 45 C.W.N. 792; 1938 A.L.J. 1181; 16 O.C. 374=22 I.C. 652; 1932 O. 180=137 I.C. 68; but see *contra* 47 B. 699=25 Bom.L.R. 398 =1923 B. 290; 54 All. 1085=1932 A.L.J. 769=1932 A. 568 (F.B.); 54 A. 282=1932 A. 598; 1930 L. 242=127 I.C. 711 (2); 1933 L. 242; 26 N.L.R. 309=1930 N. 271; I.L.R. (1938) Nag. 149; 1937 N. 12; 12 R. 275=1934 R. 118; 4 L.W. 535=36 I.C. 621; I.L.R. (1941) Lah. 100=1940 Lah. 299 =43 P.L.R. 408; I.L.R. (1938) 1 Cal. 400= 41 C.W.N. 1301=1937 Cal. 705; 1938 A.L.J. 1161. But a mandamus may be issued in a proper case directing him to do a particular act. 36 I.C. 621=4 L.W. 535. It is competent for the High Court to interfere in revision in a suitable case with a decision of the Court on a reference made under sec. 18 (1). The Calcutta Improvement (Appeals) Act, 1911, by allowing an appeal from certain decisions of the tribunal to the High Court has the effect of making the tribunal a Court subordinate to the High Court within the meaning of sec. 115, C. P. Code. I. L.R. (1943) 1 Cal. 69.

REFERENCE.—A reference made by the Collector to a Court under sec. 18 is neither a suit nor an appeal. The Court is, therefore, not competent to refer a case for the opinion of the High Court under O. 46, r. 1, C.P. Code. I.L.R. (1945) Nag. 399= 1945 N.L.J. 274=1945 Nag. 146. The jurisdiction of the Court to entertain the reference is not ousted though the compensation money awarded by the Collector has been paid out. The Court has inherent power to re-call the money improperly paid out. 21 I.C. 111=17 C.W.N. 1087. *See also* 63 I.C. 1=1921 L. 153; 1930 Mad. 576=59 M.L.J. 30. Under sec. 18 a reference can only be made by a written application to the Collector requiring that the matter be referred for the determination of the Court. 26 O.C. 324=1924 O. 127. Proceedings under Part III amount to a new inquiry by the District Judge and not an appeal. 36 M. 395= 25 M.L.J. 17=12 I.C. 436. Can a District Judge ask the Collector to revise his award after reference to him under sec. 30. (*Ibid.*)

REVIEW.—The Collector acting under sec. 18, Land Acquisition Act, has no power to review his own order. 54 A. 282=1932 A. 598.

PAYMENT OF MONEY.—The right of a person to have a reference under sec. 18 is not affected by the opposite party having taken out the money from the Collectorate behind his back. 1 Pat.L.T. 143=56 I.C. 126. The Collector should not permit the money to be withdrawn before the expiry of the term fixed by sec. 18 for objecting to the award and applying for reference. 56 I.C. 126. L.A. Judge with whom a sum of money is deposited to a lunatic's credit cannot refuse compliance with the order of a District Judge in his lunacy jurisdiction directing payment of the money to the lunatic's natural guardian. 37 I.C. 110=20 C. W.N. 975.

AMENDMENT OF STATEMENT.—In an application for a reference under sec. 18 all that an applicant has to do is to state that he objected to the amount of compensation awarded; it is not incumbent on him to state whether he claimed compensation at a higher rate originally demanded by him or whether he limited it to some lesser amount. The Court has power to award compensation at the higher rate than originally claimed notwithstanding that in the application for reference only a lower rate is mentioned. The fact that a lower rate is claimed in the application does not necessitate an amendment of the statement of the claim, as without such amendment the Court has power to award the higher rate. 57 L.W. 179=1943 M.W.N. 213=1943 Mad. 337=(1943) 1 M.L. J. 278. But *see also* I.L.R. (1943) 1 Cal. 69. The Court hearing a reference has the power to allow the reference petition to be amended, subject to the limitation that it cannot allow an amendment which would have the effect of introducing a new matter which had not been referred to it for decision by the Collector under sec. 18. Accordingly, where the matter referred to Court by the Collector is the objection to the amount of compensation, the Court has power to allow an amendment of the petition of reference by substituting a higher figure than that asked for in the petition. I.L.R. (1943) 1 Cal. 69, dissented from. 49 C.W.N. 206= 1945 Cal. 312; *see also* (1943) 1 M.L.J. 278. A reference petition would be quite in order, even if no amount is mentioned therein, where the reference raises an objection to the amount of the compensation awarded by the Collector. 49 C.W.N. 206=A.I.R. 1945 Cal. 312.

RIGHT OF SUIT—JURISDICTION.—In a land acquisition case party dissatisfied with award or with apportionment of compensation cannot have remedy by suit in Civil Court. 28 C.W.N. 506=1922 C. 4; 147 I.C. 877=30 N.L.R. 40=1933 N. 322. Where there is no adjudication by the Collector as to apportionment of compensation nor reference to District Court there is nothing to prevent a Civil Court from adjudicating a dispute between rival claimants. 92 I.C. 484=1926 L. 321.

SEC. 18, PROVISO.—References which become absolutely barred by the proviso to sec. 18 will only be those to which Government is a party. 43 P.L.R. 153=1941 Lah. 268=I.L.R. (1942) Lah. 50.

SEC. 18 (2) (*b*).—The expression "*date*

Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever shall first expire.

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of the award'' being indefinite, the Legislature meant the date of the filing of the award to be the date contemplated in cl. (*b*), sub-sec. (2) of sec. 18. If limitation is to start, it ought to start from the date of the filing of the award and not from the making of it. The date of the award is not the date on which it is filed. A comparison of secs. 11 and 12 will show that the date of making an award is meant by the Act to be different from the date on which the award is to be filed. Sec. 18 (2) proviso refers to the former. The date of the award is the date on which a formal declaration is made by the Collector of the amount of compensation and of the person to whom the same is payable. 27 A.L.J. 1186=1929 A. 769.

SECS. 18, 19 AND 20: POWERS OF COLLECTOR AND COURT.—The decision on a question of limitation on an application under sec. 18 rests with the Collector and not with the District Judge. Sec. 19 also indicates that the question of limitation is to be decided by the Collector. The District Judge cannot sit as a Court of Appeal over the Collector when the latter has come to the conclusion that the application is made within time. The function of the District Judge is confined to giving a decision on the objections raised. 189 I.C. 534=1940 Pesh. 35. Making a reference is an act within the jurisdiction and authority of the Collector Having made the reference it is not open to the Collector or the Secretary of State to say that the reference was wrongly made, although the ground for saying so may be that the application by the owner was belated. The ''Court'' does not sit on appeal over the Collector and the Act does not give any authority to the ''Court'' either in express terms or by implication to go behind the reference. 27 A.L.J. 1186=1929 A. 769.

SECS. 18 AND 21.—The jurisdiction of the Court on a reference by the Collector is a special jurisdiction. If the only objection is to the amount of compensation, that alone is the matter referred to and the Court has no power to determine or consider anything beyond what is referred. The question of title to the land acquired is therefore not relevant in a reference on the question of the amount of compensation only, because in an inquiry as to the amount of compensation the only question is how much more the claimant is to get and how much more is the Government to pay. The only question is the additional amount of compensation. It does not involve the determination of the question of the right to claim or the liability to pay any additional compensation. 187 I.C. 364=44 C.W.N. 411=1940 Cal. 56. Where in respect of a dispute as to the apportionment of compensation between a proprietor and three mukarraridars, a reference is made by the Collector under sec. 18 on applications by the proprietor and one of the makarraridars, the Court having seizin of the reference has power to investigate the claim of the other mukarraridars also, although there is no reference on their behalf and an application by them for reference would be beyond time under proviso (*a*) to sec. 18 of the Act. Their claims, or, in other words, the valuation of their interest could not be lost sight of or left undetermined in valuing the interest of the proprietor or the co-sharer mukarraridars. In complying with sec. 21 the Court has to consider the claims of the other mukarraridars as well. 12 B. R. 425=223 I.C. 553.

SEC. 18 TO 28: JURISDICTION—REMAND TO COLLECTOR FOR FRESH INQUIRY AND AWARD—LEGALITY.—The jurisdiction of the Court under secs. 18 to 28 is a jurisdiction to inquire into objections to the Collector's award and to make an award itself after hearing the relevant evidence. The Act does not empower the Court to remand the case to the Collector for fresh inquiry and for a further award. 57 L. W. 467=1944 Mad 539=(1944) 2 M.L.J. 130.

SECS. 18 AND 30.—The Collector must refer a question of title if required to do so by an application received within the prescribed time, but if an application is received after that time, he then has the option of referring the matter to the District Judge or refusing to do so and if the Collector, while forwarding the reference himself mentions that the application is received after the prescribed time, it is to be presumed that he is intentionally making a reference under sec. 30 of the Act. 43 P.L.R. 153=1941 Lah. 268=I.L.R. (1942) Lah. 50. The three main points of distinction between secs. 18 and 30 of Land Acquisition Act are that sec. 30 leaves the Collector with a power or discretion in the matter, which he does not possess under sec. 18; that the subject-matter of reference under sec. 30 is limited to cases in which Government is not directly interested and that sec. 18 alone contains a definite provision for limitation. 43 P.L.R. 153=1941 Lah. 268=I.L.R. (1942) Lah. 50.

SECS. 18 AND 31.—On a reference made to the Court under sec. 18 or sec. 31 of the Act, it is not open to the Court to decide the amount of compensation payable to a party who never asked for a reference and to give him a decree for anything more than what was awarded by the Land Acquisition Officer, in the absence of a reference made to the Court at the instance of such person. On a reference under sec. 18, the jurisdiction of the Court is confined to considering and pronouncing upon the objection which has been raised in the written application for the reference. I.L.R. (1941) Mad. 753=1941 Mad. 660=(1941) 1 M.L.J. 527.

Collector's statement to the Court.

19. (1) In making the reference, the Collector shall state for the information of the Court, in writing under his hand,—

(*a*) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon;

(*b*) the names of the persons whom he has reason to think interested in such land;

(*c*) the amount awarded for damages and paid or tendered under sections 5 and 17 or either of them, and the amount of compensation awarded under section 11; and

(*d*) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by, the parties interested respectively.

Service of notice.

20. The Court shall thereupon cause a notice specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons, namely:—

(*a*) the applicant;

(*b*) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded; and

(*c*) if the objection is in regard to the area of the land or to the amount of the compensation, the Collector.

SECS. 19 (1) (*d*): BURDEN OF PROOF.—The onus is on the claimant to show that the award is calculated on a wrong basis, but if the award was made without taking any evidence, the Collector has to justify his award under sec. 19 (1) (*d*). 24 I.C. 141=27 M. L.J. 106. As to mode of valuation, *see* 11 C.L.J. 612=6 I.C. 457. *See also* 36 C. 967.

SECS. 19 AND 31: TENANTS NOT MADE PARTIES TO REFERENCE—MATTER HOW TO BE DEALT WITH.—Where the Collector fails to name all persons interested in the land when he makes the reference, it is only a mere irregularity and it does not vitiate the reference. Where the tenants are not made parties to a reference, in their absence the matter would have to be dealt with as one between *malguzar* and the Collector. If the Collector has paid the *malguzar* too little he must make good the difference and the fact that he has possibly overpaid the tenants must be ignored so far as the reference proceedings are concerned. I.L. R. (1942) Nag. 740=1942 N.L.J. 303=A. I.R. 1942 Nag. 86.

SEC. 20.—Notice to Collector is necessary only in a case where the objection is in regard to the area of the land or to the amount of compensation. 1933 R. 176=11 R. 344. Reference to tribunal on question of amount of compensation—Tribunal declaring claimant to be entitled to enhanced compensation—Declaration based on compromise between claimants to property—Secretary of State for India is necessary party. 44 C.W. N. 411=1940 Cal. 56.

SEC. 20 (*c*).—Under sec. 20 (*c*), Secretary of State is not interested as a party in the distribution or apportionment of the compensation. 20 A.L.J. 604=1922 A. 438 (2). If a person to whom a wrong award of compensation is alleged to have been made is not impleaded as a party respondent to the appeal by a claimant, the Court cannot award him any relief. 1922 A. 438. The term "interested" in sec. 20 (*b*) is wide enough to include both, the persons interested in supporting or opposing the applicant for reference; that means cl. (*b*) must have reference to parties having conflicting claims to the compensation either whole or part, as against the applicant and otherwise. 223 I. C. 553. Where a reference is made at the instance of the owners of a dominant tenement on the ground that the Collector's award in their favour was too low, the Collector ought to be given notice under sec. 20, in addition to the owner of the servient tenement, and the case should be tried not as an apportionment case but as a valuation case, which under the provisions of the Calcutta Improvement Act could be tried only by the Tribunal composed of the President and the two assessors. 49 C.W.N. 203=79 C.L.J. 105=A.I.R. 1945 Cal. 142.

Restriction on scope of proceedings.

21. The scope of the inquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection.

Proceedings to be in open Court.

22. Every such proceeding shall take place in open Court, and all persons entitled to practise in any Civil Court in the province shall be entitled to appear, plead and act (as the case may be) in such proceeding.

Matters to be considered in determining compensation.

23. (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration—

SEC. 21.—In competition between landlord and tenant the reasonable course is to find the value of the land as a whole first. The question of rights between the landlord and tenant is to be raised subsequently as between them. The valuation of the land should be ascertained by considering cases of similar sales. It is not a proper method of approach to value the different interests separately unless it is quite clear what the rights of the different parties are and unless the evidence affords instances of dealings in exactly the same rights as are in question. 58 C. 1345=1935 I.C. 438=1932 C. 143. *See also* 92 I. C. 484=1926 L. 321; cited under sec. 18, *supra*.

SEC. 23.—Sec. 23 is not exhaustive. It does not direct that no other matters than those specified in the section may be taken into account. In special cases the Court may take other matters into consideration. 44 Bom.L.R. 57=1942 Bom. 105=47 Bom.L. R. 893=(1942) Bom. 403. Assesment of compensation—Agreement between parties not binding on District Judge. *See* 50 C.W. N. 401=(1946) 1 M.L.J. 333 (P.C.).

MARKET-VALUE.—The market-value of land is roughly the price which an owner willing, and not obliged to sell, might expect from a willing purchaser. 18 I.C. 638=17 C.L.J. 34; 1926 M. 732=50 M.L.J. 566; 5 R. 799. *See also* 57 I.C. 301=23 O.C. 89. In land acquisition proceedings decisions as to market values in so far as they are determined by prices paid by the purchaser recently should not be harsh or unduly depreciative; I. L.R. (1945) Nag. 847=1945 N.L.J. 418. The expression 'market-value' in sec. 23 means in the case of land, its value measured by a consideration of the prices that have been obtained in the past for land of similar quality and in similar positions. 66 I.A. 104= I.L.R. (1939) Mad. 532=43 C.W.N. 557=1939 P.C. 98=(1939) 2 M.L.J. 45 (P.C.). The phrase "market value of the land" as used in sec. 23 (1) means "value to the owner". The value of the land to the owner therefore must be the basis for the determination of the compensation. But the standard must be not a subjective standard but an objective one. Ordinarily, the objective standard would be the price that an owner willing and not obliged to sell might reasonably expect to obtain from a willing purchaser with whom he was bargaining for the sale of the property. The property must be valued not only with reference to its condition at the time of the declaration but its potential value must be taken into consideration. In assessing the potential value any advantage due to the carrying out of the scheme for which the property is compulsorily acquired must be excluded. The value to the owner may also be determined by capitalizing the rent. If the land is likely to continue to produce the same rent which is being paid for it, that rent does offer the basis on which the value is to be calculated. If the rent that is paid represents a fair local rate at the time and is not a fancy rent, there is some certainty that the same rent would be paid. 48 C.W.N. 609. The market value referred to in sec. 23 means the market value of the concrete piece of land to which the notification under sec. 4 of the Act applies and not separate interests in it. The normal method is to take the market value of the land and then to apportion that amongst the different interests; but the Act does not lay down any hard and fast rule and in special cases it may be desirable to adopt a different method by valuing separately each interest in the land. 44 Bom.I.R. 57=I.L.R. (1942) Bom. 403=1942 Bom. 105. Lands are bought and sold by bargaining. Land acquisition operations are carried on at places where for generations there has not been any sale of land whatsoever. The place is such where no one wants to buy land. In such cases where there is no prevailing price of land nor any standard of comparison, market value must be ascertained by finding out the income which the land was bringing to the owner and then capitalizing it on the principle of reinstatement. 1938 Pat. 618. In determining compensation under sec. 23 what has to be done first is to find out what is the market value of the land itself irrespective of any consideration as to how it is held. The next step would be to apportion the value among the several parties holding distinct and separate interests in the land. 1929 A.L.J. 522=1929 A. 525. The function of the Court in awarding compensation under the Land Acquisition Act is to ascertain the market value of the land at the date of the notification under sec. 4 (1). The number of years' purchase which should be adopted in a given case must vary with individual cases and must be decided upon the material placed before the Court. Where definite material is not forthcoming either in the shape of sales of neighbouring land at or about the date of the notification or otherwise the Court can only proceed to do th best it can under the circumstance. In the absence of evidence, the twenty years' purchase should be adopted

as the basis for fixing the market value and that is the rule ordinarily adopted in practice. 55 L.W. 763=A.I.R. 1942 Mad. 739=(1942) 2 M.L.J. 512=I.L.R. (1943) Mad. 127. *See also* 1943 All. 238. Methods of valuation of land acquired under the Act may be classified under three heads, *viz.*, (1) the opinion of experts, (2) the price paid within a reasonable time in *bona fide* transactions of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages, (3) and a number of years' purchase of the actual or immediately prospective profits of the lands acquired. 1933 S. 57. *See also* 1938 Sind 225. The Privy Council is bound by the terms of the Act, which deals in secs. 23 and 24 with the considerations that are to be taken into account in determining the value of the land. 33 C.W.N. 549=1929 P.C. 112=56 M.L.J. 750 (P.C.). Market value—Determination of. *See* 33 A. 733=11 I.C. 815. *See also* 41 C. 967=18 C.W.N. 884; 106 I.C. 909. There is no difference between Engish and Indian Law as to determining the market value of land compulsorily acquired. 5 R. 799=1928 R. 65. Market value—Criteria for determining. 12 I.C. 202=4 Bur.L.T. 250. Market value—Considerations—Speculation as a basis for determining market value, how far allowable. 48 B. 190=25 Bom.L.R. 1182=1924 B. 161. *See also* 12 L.L.J. 280=1931 L. 207=120 I.C. 117; 1931 S. 52. The market value of a plot of land is to be determined as a whole having regard to the sales in the vicinity. 48 B. 190. *See also* 56 M.L.J. 127=1928 P.C. 305; 22 I.C. 78; 1931 S. 56. But a sale of land for a nominal sum influenced by the religious and charitable motives cannot be taken as a criterion for the market value of another plot. 1936 L. 599. The expression "market value" means the value which a parcel of land would realise if sold in the market. 48 B. 190. Hypothetical building schemes of development are the most clear bases of valuation in case of compensation for compulsory acquisition. 16 Bom.L.R. 55 (P.C.); 24 Bom.L.R. 782=1922 B. 399. Hypothetical building schemes—Probable investment and return must be estimated through a surveyor. *See* 112 I.C. 797=1928 L. 263. In considering what is the fair market value of the land, it is right to take into account not only the use to which the land is being put at the time of the acquisition, but its market value if laid out in the most lucrative and advantageous way in which the owners could dispose of it. Where it has a potential value which is not merely speculative, it ought to be taken into consideration. 1935 R. 157; 1936 L. 599. Market-value—Price paid by owner—How far evidence of value. 23 I.C. 542 (2). Market value—Adaptability for possible use in particular way, how far basis for valuation. 1921 C. 193=25 C.W.N. 1002=57 I.C. 25. Where property was leased two years after a declaration for its acquisition the present rent is not a conclusive test as to its market value at the date of acquisition. 24 I.C. 65=181 C.W.N. 531. Alienation of property subject to lease—Rent reserved as the basis of valuation—Other circumstances which may be considered. *See* 1928 C. 522=112 I.C. 706=32 C.W.N. 421. Owner keeping land vacant after declaration—Claim for compensation on that ground—Maintainability—Lessee as owner for the purposes of the section. *See* 1929 C. 20. Potential value of the land to be considered. 1926 C. 1000=44 C.L.J. 1=95 I.C. 459; 97 I.C. 775=1926 L. 618. On acquisition due allowance must be made for the probable use which would have given the dispossessed owner the best return and not merely its present use or disposition. The presumption must always be that a man makes the best use of his own property. It is not sufficient to rely on hypothetical building schemes but the owner must show that he was going to make a certain use of his property which would have brought him in profits or that he would have made such use of it had he not been prevented by Court to give an enhanced value to that property on acquisition by Government. 1931 L. 364=135 I.C. 183; 12 L. 117=1931 L. 207; 64 I.C. 146. Where the price paid for property has been influenced by a boom which is followed by a fall in prices, the Court should make a reasonable deduction while awarding compensation. 1933 S. 57=145 I.C. 795. The market value of the property is to be determined with reference to the future utility, but it must not be entirely conjectural. (3 I.C. 277 Ref.) 131 I.C. 222=1931 S. 52 *See also* 1939 C. 143=68 C.L.J. 90. If a Court puts a fictitious value on the property on account of its potentiality for building purposes, then it is an inclusive rate and nothing can be allowed in addition for the trees. 28 Bom.L.R. 548=95 I.C. 513=1926 B. 365. *See also* 1931 S. 52. Propriety of valuing land as a building site and at the same time upon on the footing of produce of trees. *See* 1926 M. 945 (2). The value of the bare site and cost of the building may, in the case of a building used as the personal residence of the owner, be borne in mind, when estimating the market value; it is only in rare instances that a reliable estimate will be obtained by adding the cost of the building to the value of the bare site. Land is a marketable commodity of one description and land with buildings on it is a marketable commodity of another and a different description. (34 B. 486; 60 P.R. 1918 and 19 Bom.L.R. 907, Rel. on.) 1933 S. 57=145 I.C.=795. Where in cases of compulsory acquisition of lands it is not possible to ascertain the value of the lands acquired except by reference to transactions relating to lands with buildings on them in the neighbourhood, it is permissible to separate the value of the land itself from the value of the buildings on the land for the purposes of comparison with sales and other dispositions of property, in the neighbourhood. 47 Bom.L.R. 874. *See also* (1941) 2 M.L.J. 75=1941 M. 684. In calculating the value of the price previously

paid for a portion of the same area affords infinitely the best material which can possibly exist if the prices remain stationary. 1922 L. 327. *See also* 1929 P.C. 92=57 M.L.J. 81 (P.C.). Building surrounded by garden land —Compulsory acquisition—Mode of valuation —Twenty times the net annual rental. 44 M. L.J. 132=1923 M. 332. In a case of acquisition of a site in a city, the market value for purposes of sec. 23 is the potential value of the property at the time of acquisition which would be paid by a willing buyer to a willing seller when both are actuated by the business principles prevalent in the locality at the time The proper manner of determining the value is by capitalizing the annual income. 5 L. 707=121 I.C. 898=1930 O. 223. The land acquired was an irregularly shaped piece by the sea and was covered by the sea at various times and for ordinary purposes was practically useless. It was, however capable of being used for salt works: *Held*, that the present market value of that potentiality would decide the amount of compensation. 33 C.W.N. 549=1929 P.C. 112=56 M.L.J. 750 (P.C.). Buildings and land—Valuation —Repairs—Allowance for. 1923 M.W.N. 54 =1923 M. 31. Market value—Speculations as to effect of suggested development on prices—How far to be taken into account. 24 I.C. 141=27 M.L.J. 106. *See also* 1931 S. 671. In determining the market value four things have to be considered, *viz*, firstly, the price paid within a reasonable time for the land itself; secondly, the rents and profits received on account thereof shortly before the acquisition; thirdly, the prices paid for adjacent land possessing similar advantages; and fourthly, the opinion of valuators or experts. 1933 S. 124=143 I.C. 699. The objection that averages may be influenced by coincidence when they are based on the sale of all and sundry kinds of property, is not applicable to inferences drawn from the successive sales of the same property. 1933 S. 124=143 I.C. 699. The valuation with reference to one plot which is very close to the acquired land cannot form the basis of valuation with regard to the lands far apart but where the distance between the plots is so negligible as 75 yards it does not make any difference when valuing a land on the locality if the valuation is based on a document with reference to one plot in the locality which is of the same description with similar advantages as the other plots. Similarly land outside the Municipal limits can be valued in the same way as land in close proximity to the Municipal area. 1933 C. 312=143 I.C. 367. The mere fact that the High Court has in a particular case given 16 years' purchase to a person claiming compensation under the Land Acquisition Act is not a sufficient basis for giving 16 years' purchase in all such cases. The matter depends entirely upon the circumstances of each case. 175 I.C. 1007=19 Pat.L.T. 774=1938 Pat. 266. Evidence—Expert opinion—Evidentiary value of. 1933 S. 124=143 I.C. 699. Where the so-called "expert witnesses" give no data in support of their opinions, their evidence should be rejected. (1924 L. 548, Foll.) 1931 L. 364=135 I.C. 183. *See also* 68 C. L.J. 90=1939 C. 143.

BASIS OF COMPENSATION.—*See* 66 I.A. 104=I.L.R. (1939) Mad. 532=1939 P.C. 98=(1939) 2 M.L.J. 45 (P.C.). *Toka* land—Compensation for interest of tenants—How fixed. 25 Bom.L.R. 794=1923 B. 417. Use to which land is put on date of notice is a right basis of valuation. 26 A.L.J. 69 (F.B.); 1928 A. 147=50 A. 470. Wrongful act of Municipal Corporation—Owner deprived of facilities for irrigation—Land subsequently acquired by Corporation—Compensation—Basis 22 I.C. 306. Lands fit to be used as building sites—Municipality refusing to permit building on lands which it intends to acquire —Propriety—Valuation must be on basis of building sites and not otherwise. 39 Bom.L. R. 142=1937 B. 177.

HOUSE PROPERTY IN CANTONMENT AREA.—A return of 12 per cent. per annum, may be taken to be fair and reasonable for an investment of money in house property in a cantonment area; compensation payable in respect of such a property can be calculated on that basis. I.L.R. (1938) A. 994=1939 A. 106=1938 A.L.J. 1171. *See also* 38 P.L. R. 1071=1936 Lah. 1010. In respect of land held by a person on cantonment tenure the Government retain the power of resumption at any time on giving one month's notice. If they give that notice they are required to pay the value of such buildings as may have been authorised to be erected. The correct principle in valuing under the Land Acquisition Act such a building apart from the site is to ascertain the cost of reproducing the buildings at the time of the compulsory acquisition allowing for depreciation in consideration of the age and condition of the buildings, and for the cost of necessary repairs, and there is no room for assessing, upon an assumed rental basis, the compensation for the valuation of the buildings as materials standing upon a site, but liable to be removed at any moment. I.L.R. (1942) All. 601=44 Bom.L.R. 788=55 L.W. 472=1942 A.L.J. 380=46 C.W.N. 921=A.I.R. 1942 P.C. 35= (1942) 2 M.L.J. 289 (P.C.). The statutory allowance of 15 per cent. compensation under the Land Acquisition Act does not apply to a case where bungalows built on a site leased on what is known as cantonment tenure are concerned and the site is resumed by Government under the power vested in it by the terms of the lease. I.L.R. (1943) All. 878= 210 I.C. 392=1943 A.L.J. 545=1944 All. 13. Quarries—Appointment of compensation— Interest of Government—*Toka* tenure. 47 B. 218=24 Bom.L.R. 471=1922 B. 254. *See also* 56 M.L.J. 127 (P.C.); 1928 P.C. 305. The special adaptability of the land acquired, for a particular purpose cannot be ignored in determining its market value. 25 C.W.N. 677=1922 C. 386=49 C. 83. Market value affords a good test for calculating value of lands to be acquired and the calculation should be based upon a prudent business method, such as the nature of the land and the purpose

for which it was used and for which it is acquired. 252 P.L.R. 1911=11 I.C. 838. The rate at which nearest lands with similar advantages have been sold within a short period before and after the notification should be taken into account. (*Ibid*). *See also* 9 I.C. 228=98 P.W.R. 1911. Under sec. 23 in determining the market value of the land to be acquired, the sale prices of similar types of land in similar positions in the past as well as after the notification under sec. 4 (1) of the Act, the fact that the land was at the time of determining its value being used for building purposes, a proposal to convert the sub-division in which the land was situate into a district resulting in acceleration of high price for the land, can all be taken into account even though the aforesaid factors have come into being after the notification under sec. 4 (1) of the Act. 194 I.C. 212.=1941 Pesh. 32. It is wrong to say that only the lease money of the land in dispute could be considered for arriving at its value and not the lease money accruing from the lands in the vicinity. The market value of the acquired land is to be ascertained from recent instances of sale in the same or in the adjoining locality and from the average rental of these and similar lands in the vicinity. (34 Cal. 599, Foll.) 193 I.C. 215=1941 Pesh. 13. The owner is entitled to the value obtainable in open market for the land if put to its lucrative use. 45 M.L.J. 339=1924 M. 252. The special adaptability for building purposes can be taken into consideration, where in the case of lands which are at the time of the acquisition agricultural in character—English and Indian Law considered. (*Ibid.*) But *see* 165 I.C. 316=1926 P. 542. As to compensation for severance, *see* 28 Bom.L.R. 576=96 I.C. 316=1926 B. 372. Property ceasing to exist in between notifications under secs. 4 and 6—Value cannot be taken into account. *See* I.L.R. (1940) Kar. 396=1940 Sind 58. In considering the claim of the owner, the value to be paid for is the value to the owner as it existed at the date of taking, not the value to the taker. The value to the owner consists in all advantages which the land possesses, present or future, but it is the present value alone of such advantages that falls to be determined. Again the value to be assessed is the value to the old owner who parts with his property and not the value to the new owner who takes it over. Where the old owner takes the property subject to restrictions, it is necessary to inquire how far these restrictions affect the value. In determining the burden of the restrictions one circumstance to consider is the chance of such a restriction being determined. When there was evidence to show that the area acquired was so situate as to make it possible that within a reasonable period some of it would become a building site, some allowance was made for such a possibility. 1933 M. 190=145 I.C. 604. Where the land acquired is intended to be used as a road, the claimant is entitled to compensation for depreciation in the value of the rest of his land in consequence of such use. 1933 S. 21=146 I.C. 1040=27 S.L.R. 84. In estimating compensation for severance both the actual and prospective use of the land must be considered. 1933 S. 21. The potential value of the land as a building site could be taken into consideration in fixing the compensation. 26 S.L.R. 321=131 I.C. 178 =1931 S. 67; 68 C.L.J. 90. Amount claimed under each sub-head, if need be specified. 1933 Sind 21=146 I.C. 1040. As to mode of valuation with reference to buildings in cantonment area, where owner is only a licensee in respect of the site, *see* 18 L. 54=33 P. L.R. 1071=164 I.C. 408=1936 L. 1010. *See also* I.L.R. 1938 All. 994=1939 All. 106; 1938 A.L.J. 1171. Where there is an agreement between the Government and a person claiming compensation under the Land Acquisition Act that the claimant would get the price of the holding calculated on a rental basis at a certain sum per month plus the statutory compensation, the price is to be calculated on the net value to the claimant of the property and such net value can be arrived at only after the usual deductions for cess and ground rent. 175 I.C. 1007=19 Pat.L.T. 774=1938 Pat. 266.

MARKET-VALUE, DATE OF.—The market value is the value to the seller of the property in its actual condition at the time of expropriation with all its existing advantages and with all its possibilities, excluding any advantage due to the carrying out of the scheme for the purpose for which the property is compulsorily acquired. 26 S.L.R. 321=1931 S. 67=131 I.C. 178; 163 I.C. 172 =1936 R. 226; 40 C.W.N. 1143=1936 C. 688. *See also* 223 I.C. 553; 17 S.L.R. 288=1925 S. 112=I.L.R. (1940) Kar. 396=1940 Sind 58 (No compensation for portion of property lost before acquisition). The market value of the land to be acquired is to be considered at the date of the publication of the notification under sec. 4. 25 S.L.R. 285=1931 S. 52=131 I.C. 222. "Value" means the market value of the property. It may be affected by, but cannot be governed by the procedural laid down in the lease for fixing renewal premia. 1933 S. 57. *See also* 56 I.A. 210=7 R. 227= 1929 P.C. 126=56 M.L.J. 795; 56 M.L.J. 750 =1929 P.C. 112 (P.C.). The market value of the property is to be determined with reference to the future utility but it must not be entirely conjectural. 1931 S. 52. It depends on the circumstances of each case at what rate the property should be capitalized. 1931 S. 52. The Government on 31st may, 1922, published a declaration under sec. 6 that the appellant's land was required for a public purpose. That declaration included besides the land which they desired to take from the appellants, certain land belonging to other people. The Government changed their mind about acquiring the land of the other people and accordingly on 6th October, 1923, they published another declaration under sec. 6, specifying the same land belonging to them, but at the same time, announcing that the former declaration was cancelled. ***Held***

that the only notification which gave the right to take this land was the second notification and therefore the date must be the date taken in determining the amount of compensation to be awarded. 56 I.A. 210=7 R. 227=1929 P. C. 126=56 M.L.J. 795 (P.C.). *See also* 1936 L. 599. Where some time after the publication of a notification under sec. 4 (1), a second notification wider than the first was issued and embraced not only the land covered by it but more land of the claimant in addition and the earlier notification was neither cancelled nor superseded, it was held that as regards the proceedings under the Act, the market-value of the property must be taken as from the date of the first notification in respect of land covered by it and not as from the date of the subsequent notification. But where under the Works of Defence Act an earlier declaration was cancelled by a later one, it was held that it was the date of the second notification which must be taken into consideration as regards the market value of the property concerned. 1941 Rang.L.R. 50 =1941 Rang. 225.

WORKS OF DEFENCE ACT (1903),—Compensation— Market-value —Market value—Relevant date—Earlier and later notifications. *See* 197 I.C. 595.

COMPENSATION — PRINCIPLES APPLICABLE. —The value of land should be calculated with reference to the most lucrative and advantageous way in which the land might be used. The special adaptability of the land acquired cannot be ignored in the determination of its market value. Such value consists of all advantages which the land possesses present or future, but, it is the present value alone of such advantages that falls to be determined. The operative effect of special adaptability or future utility must be estimated not by idle speculation and unpractical imagination but by prudent business considerations such as would weigh with an intending purchaser at the imaginary market which would have ruled had the land been exposed for sale when it was subjected to compulsory acquisition. 8 P. 793=1929 P. 733; 58 C.L.J. 38=1934 C. 97. If the owner wants compensation for the land irrespective of the consideration that it is a land used to grow a certain crop and then separately claims compensation for the loss of income from the crop, he cannot be penalised simply because he claimed under two heads what he ought to have claimed under the head of market value. The fact that the claim under one head was placed somewhat low and a higher claim was made under another head, should not stand in the way of giving full market value to the owner which may be held to be a fair market value in respect of these lands. 17 Pat. 760=1938 Pat. 618. Where land was situated within municipal limits surrounded by three roads and a line of railway; *held*, the land near the railway godown possessed a high potential value and assessing its value at four annas a yard was held not wrong. 118 I.C. 541=1929 L. 112. An owner of land is entitled to the value to himself of the property in its actual condition at the time of expropriation with all its then existing advantages and with all its future possibilities excluding only any advantages due to the carrying out of the scheme for the purposes for which the property is being acquired. 33 C.W.N. 458=1929 P.C. 92=57 M.L. J. 81 (P.C.). Government should not reduce compensation payable, by merely announcing in advance its intention of acquiring a piece of land and thus throwing a 'cloud' on its market price before issuing notifications required by the Act. 1936 L. 599.

MARKET VALUE—GUIDING PRINCIPLES — POST-NOTIFICATION TRANSFERS—REFERENCE TO — PERMISSIBILITY — In valuing immovable property the Court is justified in taking a broad view as favourable to the owner as the evidence permits. But the findings must be based on evidence and legitimate deductions from it and if there is an appeal both the evidence and deductions are subject to reconsideration by the Court of appeal. In determining the value of land post-notification transactions need not necessarily be ignored. But if a considerable interval has elapsed the Court will attach little value to the subsequent sale. 35 Bom.L.R. 763=1933 B. 361. In a land acquisition proceeding the owner of the land acquired is entitled to rely on a sale deed relating to land in the vicinity of his land executed a day after the notification in the Gazette, when it is proved that the deed was executed in pursuance af an agreement entered into before the notification and that earnest money was paid by the vendee in pursuance of the agreement to sell. Such a deed is not only relevant but is good evidence of the market value of the land on the date on which the notification was issued. 55 L.W.460 =1942 M.W.N. 456=1942 Mad. 665= (1945) 2 M.L.J. 137.

"LOSS OF BUSINESS," MEANING OF.—The expression "loss of business" does not mean the profit that a person will make by using the corpus, (*e.g.*, in the case of manufacturing bricks) the result of which would be that after some lapse of time the property would be altogether valueless. It means that a man pursuing some trade or business is compelled to give it up or carry it on elsewhere which would give him less profit than what he was making at the former place. Where the owner claimed compensation on the ground that he intended to use a part of the land acquired for the purpose of making bricks but the operations themselves had not been begun and there was nothing to show that such operations could not otherwise be conducted in the vicinity, *held*, that the claim on the ground of alleged loss of business was not sustainable. 56 C. 819=1929 C. 826.

AGRICULTURAL LAND.—Compensation in respect of agricultural land should be allowed on the basis of 20 years' purchase, in a case where the average annual income of the land is expected in perpetuity and the owner obtains it without any effort other than the signing of a lease. 25 S.L.R. 304=134 I.C. 1002 =1931 S. 168. *Per* Macpherson, J.—Although in most of the decisions, the cost of cultivation to be deducted from the value has been

taken to be one-third and the number of years purchase at twenty those rules which might have been appropriate to pre-war times cannot be applied to post-war conditions in Chota Nagpur. Having regard to the conditions of tenancy, the limited right of sale, lack of demand and several other adverse conditions, the cost of cultivation may well be fixed at one half and the multiplier of years purchase at fifteen. 1932 P. 134=12 Pat.L.T. 659. *Per* Fazal Ali, J.—"Once it is found that the main principle on which the lands have been valued is correct, it is neither usual nor proper for the High Court to lightly disturb the conclusion arived at by the Courts which must be assumed to be familiar with the local conditions merely because more than one view is possible as to what are mere details". 12 Pat.L.T. 659. In awarding compensation based on rent actually received, regard should be had to the question whether the lease was one for a considerable period and the rent received was an amount which was likely to be received for a lengthy period. If it was a long lease or one which was not likely to be determined early, the rent may be taken as an index to the value. If, on the other hand, it is a short lease and the bargain was one such as the landlord was hardly ever likely to get once again it cannot be made a basis for computing the market value. 34 Bom.L.R. 1457=1933 B. 37.

SEC. 23 (2): SCOPE.II depends on the circumstances of each case at what rate the property should be capitalized. 25 S.L.R. 285 =131 I.C. 222=1931 S. 52.

INAM LAND.—In determining the compensation payable for *inam* land under the Act the element of non-transferability of the land cannot enter into consideration . The publication of the declaration under sec. 6 has the effect of removing all restrictions on the rights of the owner and consequently lifts the embargo on its transferablity. So after the declaration, the *inam* land stands on the same footing as any freehold land. 142 I.C. 364= 1933 N. 208. *See also* 40 Bom.L.R. 432=1938 Bom. 325. Where the inam was granted in pre-British period to the ancestor of the present holder as remuneration for service as a *Kazi, held,* that even if the grant meant an assignment of revenue and not of land, it was capable of being regarded as an alienated land within the meaning of sec. 4 (17), Berar Land Revenue Code, 1896 and sec. 2 (2) of the Berar Land Revenue Code 1928; and as the grant had been confirmed under R. 4 of the Berar Inam Rules the grantee was a superior holder with an interest in the land and not a mere licensee. 142 I.C. 364=1933 N. 208. Even if no action is taken under sec. 31 (3) of the Act, the fact that the land was service inam cannot be ignorant, in computing the amount of compensation. Sec. 31 does not exclude the operation of sec. 23: on the other hand it pre-supposes the determination of the pecuniary value of the right or interest in the land held by the claimant in accordance with the direction contained in sec. 23; and sec. 31 (3) comes into operation only at the time of awarding a money compensation. 142 I.C. 364=1933 N. 208.

HOUSE PROPERTY AND BUILDINGS.—Where the subject to be valued for purposes of compensation is a building apart from the site, the value of the building has to be fixed by ascertaining the cost of reproducing the building at the present time and then allowing for depreciation in consideration of the age of the building and for the costs of such repairs as might be required apart from depreciation. 44 C.W.N. 5=66 I.A. 258=I.L.R. (1939) K. 363=50 L.W. 406=1939 P.C. 235=(1939) 2 M.L.J. 722 (P.C.). It has long been the practice of the Court in this Presidency to calculate the profits from any form of landed property as equal to the profits made by investing money in gilt-edged securities. In arriving at the proper value of a site with building thereon for the purpose of awarding compensation under the Land Acquisition Act the compulsory acquisition being at a time when the interest obtainable on Government securities is 3 per cent. the proper and correct course would be to capitalise the annual rental value of the property a 33 1|3 years' purchase. 54 L.W. 724=1941 Mad. 684=(1941) 2 M.L.J. 75. House property—Rent income —Compound appurtenant to house but in possession of cultivating tenant. 40 A. 367=44 I.C. 923=16 A.L.J. 301. House property— Onus—Principle of assesment, when based on rental value. 11 I.C. 62. House property— Valuation. 25 I.C. 393. In valuing house sites the value of the adjoining land, which is unfit for building purposes should not be taken as the basis. 14 I.C. 625=1912 M.W. N. 460. *See also* 1938 Cal. 75 (Premises abutting on common passage with an interest therein—Acquisition of path—Valuation). Where except for a small portion of land, the land in dispute had no value as a building site because the demand for buildings was limited, the value of the land should be assessed on the basis of what was its worth as an agricultural land. 1933 L. 508=146 I.C. 556.

FRONTAGE.—Frontage of 100 feet should be allowed. 112 I.C. 797=1928 L. 263 (33 B. 235, Rel. on). Where the value of the land in a popular locality, to be acquired under the Act, is to be determined, frontage, *i.e.*, immediate contiguity to highway and where there is no frontage, propinquity and easy access to high road are the powerful elements of the value to be taken into consideration. 1936 C. 346.

BUILDING— DIFFERENCE BETWEEN FRONTAGE AND BACK.—A differentiation may be made in the properties acquired between frontage and back but no ratio can be fixed between the values of the former and of the latter as such case will turn on its own merits. The depth of frontage is a matter of importance and it can be best settled by assuming that the owner of a property will make the best possible use of it and that the actual "lay out" of the property at the time of acquisition was the most advantageous and lucrative, it being open to the owner to show that, owing to special circumstances such as minority or litigation or poverty or unbusinesslike me-

thods, full advantage had not been taken of the property. 1931 L. 364=135 I.C. 183.

BUILDING WITH WALLS OF ARCHITECTURAL BEAUTY.—Where a land is acquired which contains walls of architectural beauty, the value of the walls cannot be assessed from that standpoint but only with regard to the materials used. 1933 L. 948. *See also* 1937 M.W.N. 1006.

RIGHT OF PRIVACY—INFRINGEMENT OF—COMPENSATION FOR.—The infringement of the right of privacy is an appropriate subject for compensation. 61 I.C. 245=38 C.W.N. 239=1934 C. 525.

BELTING SYSTEM—VALUE OF—FRONT AND BACK LANDS—SOUNDNESS OF DISTINCTION.—The value of belting system, though widely used, depends much on a variety of facts. It may be appropriate in the case of lands in populous and important towns, such as Calcutta. But in localities where land is sold by *bighas* or acres, and there is no real evidence of any proportionate diminution in value, the system must be regarded as unsatisfactory. Of course, there is a distinction in value between front lands and back lands everywhere, but that would not justify a recourse to the belting system in each and every case. It is a highly artificial system and cannot be resorted to as a hard and fast rule. 59 C. 921=1923 C. 25. *See also* 68 C. L.J. 90. A Municipality has no right or power under the District Municipal Act to refuse permission to build upon lands which the Municipality intends to acquire, and by this means prevent building sites from being used for building and thereby render them valueless, so that the Municipality may be enabled to acquire them under the Land Acquisition Act at a reduced valuation. In spite of the refusal of the Municipality to permit building, the lands must be valued on the basis of building sites and not otherwise; in other words the refusal of permission to build cannot be taken into account in valuing the lands for purposes of acquisition. 168 I.C. 705=39 Bom.L.R. 142=1937 Bom. 177.

FRUIT-BEARING TREES.—Fruit-bearing trees may be valued at twenty times the annual rental. 25 I.C. 393. In the case of a cocoanut tope, ten years' income may be fixed as the market-value. 23 L.W. 336=93 I.C. 639=1926 M. 945 (2). A land which has been assessed as a garden cannot also be assessed as an agricultural land. 1933 L. 948. *See also* 43 I.C. 17 (2)=2 P.L.J. 615.

LANDLORD AND TENANT.—Where a claim to apportionment of compensation between landlord and tenant is involved, the reasonable course is to find the value of the land as a whole first. The right between the landlord and tenant is to be raised subsequently as between them and not between the Secretary of State and the tenants. The valuation of the land should be ascertained by considering cases of similar sales. It is not a proper method of approach to value the different interests separately, unless it is quite clear what the rights of the different parties are and unless the evidence affords instances of dealings in exactly the same rights as are in question. 58 C. 1345=135 I.C. 438=1932 C. 143. *See also* 55 A. 897 =148 I.C. 100=1934 A.L.J. 8=1934 A. 239 (F.B.); 1933 C. 312=143 I.C. 367; 13 P. 221=150 I.C. 27=1934 P. 168; 42 C.W.N. 1191=1938 Cal. 740. In cases of apportionment of the compensation amount between the landlord and the tenant, it is almost impossible to lay down any rigid rule. In the vast majority of cases the apportionment is bound to appear arbitrary. The ratio of apportionment between them may be different in different cases and would depend on the particular facts admitted or proved. Where there is no evidence one way or the other it has to be made only on general considerations —namely to divide it according to the relative value of the interest of the landlord and tenant. Ratio of ten to six as between landlord and tenant was held to be fair. 1941 N.L.J. 620 The value of the interest of the superior holder must be included in the award and not deducted from the value of the occupant's interest. 25 Bom.L.R. 480=1924 B. 54. *See also* I.L.R. 1938 M. 431=46 L.W. 877=(1937) 2 M.L.J. 744. Where the landlords are by local custom entitled to a share of one-fourth of the purchase-money on the transfer of an occupancy holding, the right should be taken into account when the occupancy holding is acquired by the Government and the landlord is entitled to receive one-fourth of the compensation paid to the *raiyat* though unlike in the case of a private transfer the landlord has no power to withhold his approval to the acquisition. 11 P. 485=13 P.L.T. 46=1932 P. 120. The occupancy tenants usually pay to their landlords land revenue plus *malikana* at different rates. If the Court should assume that land revenue was equal to half the rent paid by a non-occupancy tenant, the proportion of the interest of the landlord and the occupancy tenant may be fairly taken to be the same as that between the *malikana* and the land revenue. 132 I.C. 698=1931 L. 649. Landlord and tenant—Amount paid to occupancy tenant—Land valued at a certain amount—Surplus, whether zamindar entitled to—Valuation of zamindar's interest—Proper course as to—Unpaid surplus to go to Government —Considerations in assessing compensation for zamindar's interest. 27 A.L.J. 522=1929 A. 525. *See also* I.L.R. 1938 M. 431=1938 M. 33=(1937) 2 M.L.J. 744; 1942 Nag. 32.

RULE AS TO 20 YEARS' PURCHASE—APPLICABILITY TO ONE WHO ONLY HOLDS A LEASE.—It is only a full owner of land who normally gets compensation on the basis of 20 years' purchase. There is no reason why a person who holds a lease should get compensation on the same basis. What he would get would depend upon the terms of the lease and the length of time that he might be expected to remain in possession of the property. 1943 A.L.J. 87=1943 O.W.N. (H.C.) 208=1943 All. 238. *See also* (1942) 2 M.L.J. 512=1942 Mad. 739.

FREE-HOLD AND LEASE-HOLD LANDS.—The

difference between a freehold piece of land and a piece of land leased for 999 years at a nominal rent and with no restrictive covenants would be purely sentimental. But, where there are restrictive covenants as time passes and the land changes hands, it becomes difficult to enforce the covenants between freeholders, while it is not difficult to enforce covenants against lessees. Covenants are more detrimental in the case of leaseholds than in the case of freeholds. 44 Bom.L.R. 57=1942 Bom. 105=I.L.R (1942) Bom. 403.

LESSEE UNDER LEASE FOR 99 YEARS FROM GOVERNMENT WITH PROSPECT OF BECOMING RYOTWARI PATTADAR—VALUATION—BASIS OF. —Where at the time of the issue of a notification under sec. 4 of the Land Acquisition Act, a person has a lessee's interest in the land sought to be acquired (he being a lessee under a lease from Government for 99 years), together with the prospect of having the land converted into a ryotwari tenure at the end of the period of the lease, and there is no reason to believe that the Government would not grant the lessee a ryotwari tenure at the end of his period or during it if he applied therefor, the market value of his interest, for the purpose of assessing compensation should be based on all the rights which the lessee has and on his potential rights. If the holding of the land under a ryotwari tenure had a value that value must increase the market value of the lessee's interest and that factor must therefore be considered in fixing the value of the lessee's right in the land. I.L.R. (1942) Mad. 831=1942 Mad. 596=55 L.W. 468=(1942) 2 M.L.J. 218.

ORCHARD LAND.—In valuing orchard land, regard is to be had—(1) to the recent selling price of a similar land in the neighbourhood; (2) to the suitability of the land for orchard purposes; and (3) to its situation with regard to the market. 43 I.C. 17 (2)=2 Pat.L.J. 615. *See also* 1933 L. 948.

NURSERY.—Where land with nursery is acquired, valuation should include the value of plants in the nursery which have come into existence between the date of the publication of declaration of intention to acquire and the date on which the Collector takes possession. 40 C.W.N. 1034.

QUARRY.—The compensation payable in respect of quarry must be based on the amount of workable stone likely to be got therefrom taken at a rate to be determined from the evidence. 44 I.C. 1. Special adaptability of a land as quarry is an element for consideration when the land is compulsorily acquired and the basis is the present value of the expected output. 44 M. 264=39 M.L.J. 623=1921 M. 324. Land used for quarrying building stone—Rate of valuation—Circumstances to be considered. 1928 P.C. 305=31 Bom. L.R. 241=56 M.L.J. 127 (P.C.).

Certain waste lands which had been leased out as a limestone quarry were sought to be acquired under the Land Acquisition Act. The lease was for 10 years and contained a clause for renewal for a further term of 10 years subject to certain conditions. The lessee claimed to be compensated for the value of all the limestone in the quarry less the cost of quarrying it. *Held*, that the claim of the lessee could not be allowed in the Central Provinces where the Land Acquisition (Mines) Act is not in force. There is no compensation which can be awarded to the owner of mines in this province as mines are owned by Government and further there is no question of compensation to any one having rights in the surface since the land is waste land and the surface rights are in Government. What is to be determined is the compensation to which the lessee is entitled by virtue of his having taken a lease for certain number of years from Government to work this particular quarry, and the market value of the lease has to be ascertained. *Held, further*, that although it is possible for a renewal clause in a lease to have a market value, it has no such value in this case. I.L.R. (1945) Nag. 847=1945 N.L.J. 418.

INQUIRY AS TO OTHER PROPERTY.—Where part of a person's land is acquired for a sewage depot, the close proximity of the depot to the other adjoining land of the person would lower its value; and compensation may be awarded for damage likely to be sustained. 22 I.C. 354=18 C.L.J. 244. *See also* 106 I.C. 909. An owner of land acquired for public purposes is entitled to be compensated for injuries to other lands notwithstanding the benefits that might accrue to him from the execution of the project. 31 I.C. 259.

PRICE ACCEPTED BY OTHER OWNERS OF ADJACENT LANDS, IF A GUIDE.—Where a Court ignores all the considerations pertinent to a claimant's own lands and finds itself exclusively on the evidence as to the price accepted for other plots (acquired at the same time) the conditions of which were not fully before it, the principle applied by the Court in awarding compensation on the basis of compensation accepted by the owners of other lands is erroneous. (1925 N. 292 reversed) 114 I.C. 587=1929 P.C. 92=57 M.L.J. 81 (P.C.).

DISTINCT INTERESTS.—It is competent to a judge to direct a portion of the compensation money to be paid towards the costs of the proceedings by which the money came to be awarded to an administratrix having a limited power of alienation. 65 I.C. 209 (39 C. 33, Ref.). The interest of the Government in Noabad hill lands is to be valued at 30 times the present rental. 24 I.C. 65=18 C. C.W.N. 531. Distinct interests—Occupancy rights—Mode of assessment. 14 I.C. 163 Land acquired subject to occupancy rights of tenants—Mode of valuation. 42 M. 644=5] I.C. 656=36 M.L.J. 455. When there are distinct interests in the land *melwaram* and *kudivaram*, compensation must be awarded for both and not in respect of one alone 29 I.C. 8. *See also* 51 A. 765=1929 A. 525; 1942 Nag. 32. Where there is a right of way over a polt of land the proper way to appraise the value is by fixing the value of the entire plot and deducting therefrom the costs, etc., incurred in making the roadway. 56 C. 989

=193 O.C. 230. Reversion—Value of. 168 I. C. 253=1928 N. 277. Where Government is seeking to acquire land subject to an easement, it has to pay compensation to the landowner, *i.e.*, the owner of the servient tenement, and also to the owner of the easement, the value of the easement bears no relation to the value of the servient tenement. It cannot be assumed that the value of an easement or restrictive covenant to the person entitled thereto is the same as the amount by which the existence of that easement or covenant depreciates the value of the land subject thereto. 44 Bom.L.R. 57=1942 Bom. 105=I.L.R. (1942) Bom. 403. If the owner of an easement claims compensation for the acquisition of the easement, he is clearly entitled to compensation under the Act and the compensation is the value of the easement to him. If it happens that the easement is of no great value, then Government may acquire both the servient tenement and the easement at a price which is less than the market value of the land free from the easement. The value of the whole is greater than the combined value of the parts, and the increased value of the parts, and the increased value arising from the union of interests necessarily belongs to Government in whose hands the union takes place. Easements or restrictive covenants must prejudicially affect the value of the land, and it is impossible to say that the existence of those covenants though they may be of no benefit to the person entitled to enforce them, depreciates the land by only a nominal sum. There is nothing in the Act to suggest that any person interested is to be paid for anything except the interest which he possesses. 44 Bom. L.R. 57=1942 Bom. 105=I.L.R. (1942) Bom. 403. Where a possible contingent right to the land acquired is vested in a superior proprietor by way of reversion, even if the right is such as a right in embargo and may never fertilise, when Government compulsorily acquires the land from the usufructuary occupants whoever they are, the superior proprietor is entitled to a portion of compensation money in respect of his possible right to reversion which is cut off for ever by the compulsory acquisition. 128 I.C. 660=1930 P.C. 261 (P.C.). Where the premises acquired is a servient tenement the owner thereof would not be entitled to the "full market value" of his property. The easement depreciates its value to him, and the owner of the dominant tenement would be entitled to compensation for the loss of his right. It would follow from this that on the compulsory acquisition of the servient tenement a sum of money should be deducted from its "full market value" and the balance only should be awarded to its owner. But the sum so deducted would not necessarily be the value of the easement which may be more or may be less. Where the value of the easement is more than the sum deducted from the "full market value" of the servient tenement, the excess must be paid by the Government to the owner of the dominant tenement. 49 C.W.N. 203 =79 C.L.J. 105=1945 Cal. 142.

BURDEN OF PROOF AND EVIDENCE.—Where a claimant challenges the valuation made by the Special Land Acquisition Officer, the burden of proof is on him to prove that the valuation is insufficient and unfair. The price paid within a reasonable time in *bona fide* transactions relating to the land is the most cogent evidence of market value. So also admissions in solemn deeds by parties to a litigation. No doubt evidence of offers in respect of the land has to be considered by the Court but the probative value of such evidence is very low, for, offers alleged in land acquisition proceedings are scarcely ever *bona fide*. They can easily be arranged without any loss or inconvenience to either party; so, also, although the opinion of experts is evidence in such cases its value is not great and it would not be possible to place reliance on this kind of evidence unless it is supported by or coincided with other evidence; and where such evidence is not only not supported by or coincident with the best evidence in the case, but there is such divergence or disagreement on material points between the evidence of the so-called experts, no reliance can be placed over it. Moreover, even experienced architects and municipal land surveyors cannot be regarded as valuators or experts merely because in the course of their business or duty they have had an occasion to value some property here and there. 1938 Sind 225. The putting of written interrogatories to an expert witness for submission of written answers later on is an unusual procedure. 68 C.L.J. 90=1939 C. 143. Where in order to enable the determination of the market value of the acquired property, an award accepted by an owner of an adjacent property is produced in evidence, it is not obligatory on the part of the Government to examine such owner with reference to the circumstances under which the award came to be accepted. The Government using an accepted award, may or may not examine the owner or the person interested. 42 C.W.N. 27. That an award made by a L.A. Officer is wrong lies on the claimant. 106 I.C. 939. Compulsory acquisition of land—Rival claimants to compensation—Burden of proof. 107 I.C. 347 (2)=47 C.L.J. 387 (P.C.)=1927 P.C. 262.

QUESTION OF FACT.—Rule as to ascertainment of value is not a question of fact. 56 C. 989. It is for the appellant to show that the assessment of the L.A. Officer is too low. (106 I.C. 909; 34 C. 599, Rel. on.) 1931 L. 364.

MISCELLANEOUS.—The Court has to see in each case whether the evidence adduced displaces the amount awarded by the Collector. 46 I.C. 221 (1)=22 C.W.N. 659. Whether a public body acquiring land for one specific purpose can use it for other purposes. 22 I.C. 354=18 C.L.J. 244. A Subordinate Court cannot reduce the amount of compensation awarded by the Collector even though there was a mistake in his calculation. 16 L. W. 891=1923 M. 31. An award of compensation under the Act cannot be made on speculations and hypothetical schemes of future development of the land. 15 I.C. 672. *See*

first, the market-value of the land at the date of the publication of the [1][notification under section 4, sub-section (1)];

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earning;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

sixthly, the damage (if any) *bona fide* resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

(2) In addition to the market-value of the land as above provided, the

LEG. REF.

[1] Substituted for the words "declaration relating thereto under sec. 6" by Act XXXVIII of 1923, sec. 7.

also on this point. 34 B. 486=11 Bom.L.R. 1176=6 I.C. 278; 3 I.C. 273=10 Bom.L.R. 660=33 B. 325; 38 B. 37=21 I.C. 32)=15 Bom.L.R. 845; 16 Bom.L.R. 55 P.C.); 21 I. C. 270=309 P.L.R. 1913; 1928 L. 263. Owner keeping land vacant after declaration—Claim for compensation on that ground—Maintainability. 108 I.C. 251=1929 C. 20

PRIVY COUNCIL, PRACTICE OF.—In an appeal under the Act from the decision of the High Court which reversed the judgment of the Special L.A. Judge and affirmed the award of the Collector, where the appellant was unable to make out that there was any wrong application of principle by the High Court in rejecting the evidence of an expert on which the Special Judge chose to act, or that any important point in the evidence was overlooked or misapplied, the P.C., refused to disturb the conclusions of the High Court. 57 I.A. 223=1930 P.C. 249 (2)=59 M.L.J. 70 (P.C.).

POWER TO ENFORCE CONTRACT IN ABSENCE OF CONTRACTING PARTIES.—The L.A. Officer and the Court dealing with the matter on a reference from him have only to decide the market value of the property, subject to the considerations mentioned in that and the following sections. Neither the L.A. Officer nor the Court has power to enforce a contract as such in the absence of the contracting parties. 155 I.C. 280=1935 M. 279 (2).

SEC. 23, CLAUSE FOURTHLY—APPLICABILITY—"LOSS OF INCOME"—MEANING OF.—The loss of income which is contemplated in Clause fourthly of sec. 23 is the loss of personal income to the owner of the land. It contemplates a case in which, on account of the acquisition of a certain land, the value of other properties of the owner has deteriorated or the owner has suffered loss of his own income not derived from the land itself. The clause has no application in case the loss of income complained of is the loss of the income of the property itself which is being acquired. That loss of income is a factor to be taken into consideration in fixing the market-value of the land itself which the owner is to get under Clause firstly, sec. 23. The price of land is fixed on the basis that the owner should get full compensation for the loss of the income which he was getting from the land and this compensation is the market value of the land acquired. Therefore for the land itself the owner is not entitled to get anything more than the market value of the land and the statutory compensation payable to him under the law. He cannot get the market value of the land and then compensation for the loss of income from the land itself. 1938 Pat. 618=17 Pat. 760=20 Pat.L.T. 2093. The word "damage" in sec. 23 (1) (*iv*), must be construed as damage in carrying on a lawful business in a lawful manner and if the earnings of such a business are injuriously affected by reason of the acquisition, then the claimant would be entitled to compensation in respect thereof. But when the business is not one which is legally carried on, *i.e.*, when the business carried on is not one in accordance with law, the damage resulting from the stoppage of such a business is not "damage" within the meaning of sec. 23 (1) (*iv*) and no compensation can be awarded under that head. 47 Bom.L.R. 853. The expression "loss of earnings" in sec. 23 (*iv*), means loss of earnings from a business which at the time of the acquisition was a going concern. Any provable diminution in the value of the good will in his trade consequent on the taking of the premises in which such trade is carried on and the consequential loss of his earnings would come within the term "earnings". It would not however, include prospective earnings. 47 Bom.L.R. 893.

SEC. 23 (2).—Award of 15 per cent. on market value on compulsory acquisition is a

Court shall in every case award a sum of fifteen per centum on such market-value, in consideration of the compulsory nature of the acquisition.

Matters to be neglected in determining compensation.

24. But the Court shall not take into consideration—

first, the degree of urgency which has led to the acquisition;

secondly, any disinclination of the person interested to part with the land acquired;

thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit;

fourthly, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration under section 6, or by or in consequence of the use to which it will be put;

fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired;

sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put; or

seventhly, any outlay or improvements on, or disposal of, the land acquired, commenced, made or effected without the sanction of the Collector after the date of the publication of the [1][notification under section 4, sub-section (1)].

Rules as to amount of compensation.

25. (1) When the applicant has made a claim to compensation, pursuant to any notice given under section 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under section 11;

LEG. REF.

[1] Substituted for the words "declaration under sec. 6" by Act XXXVIII of 1923, sec. 8.

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statutory amount of compensation in addition to the market value; and the Court has no power to deprive a claimant of that amount on the ground that he has not previously claimed it specifically. 145 I.C. 526=1933 A. 742; 1936 L. 599. "Land" includes "trees" and 15 per cent. is to be allowed on the total value including "trees". 48 A. 498=24 A.L. J. 583=1926 A. 689. The provision of this sub-section is not applicable to acquisitions under the Land Acquisition (Mines) Act. 15 P. 510=17 Pat.L.T. 279=1936 P. 513. Secs. 23 to 25 are applicable to acquisitions under the Bombay Municipal Boroughs Act. *See* I. L.R. (1937) Bom. 632=39 Bom.L.R. 329 =1937 Bom. 432.

SECS. 23 AND 24: OBJECT OF.—These sections only lay down rules for determining the market value and do not create any right on the part of the owners of the lands or the holders of interests therein to obtain compensation on the footing of their respective rights as at the date of the declaration. 60 C. 281=37 C.W.N. 14=1938 C. 522.

SECS. 23, 24 AND 25.—Applicability—Proceedings under sec. 198, Bombay Municipal Boroughs Act. 15 per cent. in addition to compensation—Award of—Legality. *See* I.L.R. (1937) Bom. 632=39 Bom.L.R. 329=1939 B. 432.

SEC. 24.—If the owner of a land invests more capital in the land after the publication of notification, he does so at his risk. 51 I.C. 501=16 A.L.J. 669. Excess area not really existing, but appearing in revenue records is not to be paid for. 42 I.C. 905=60 P.R. 1917. When agricultural land is acquired for *mandi,* the compensation should be assessed at the amount which similar land in the neighbourhood would fetch for purposes of agriculture. 57 P.R. 1913=17 I.C. 764.

SEC. 24 (5).—Sub-sec. (5), means that in valuing the land acquired, on the date of the notification under sec. 4 (1) of the Act; it must be valued as it then stood, and not as it would stand when the land had been acquired and used for the purpose for which it was acquired. But it does not mean that the possibility that a particular purchaser of land will give a higher price for it by reason of its possession a special adaptability must be disregarded merely because the land will be more valuable in his hands when he exploits that adaptability than it would be if left in the hands of the vendor who was unable to exploit it. 66 I.A. 104=I.L.R. (1939) Mad. 532=43 C.W.N. 557=1939 P.C. 98=(1939) 2 M.L.J. 45 (P.C.). *See also* I.L.R. (1938) M. 479=46 L.W. 492=1937 Mad. 902.

SEC. 25.—Where after a reference was made to the Court and the party sought before the Court to supplement his claim by the addition of two new items, *held,* that the Court had no jurisdiction to entertain such newly preferred claims. 1930 M. 576=59 M.L.J. 30. Widow's claim before acquiring officers does not preclude reversioners from claiming larger amount before District Judge. 45 M. 421 =42 M.L.J. 298=1922 M. 100 (2). The word "applicant" is sec. 25 is used to describe the person who puts in a written application under sec. 18 for having his objection to the

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector.

Form of awards.

[1][26. (1)] Every award under this part shall be in writing signed by the Judge, and shall specify the amount awarded under clause *first* of sub-section (1) of section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

LEG. REF.

[1] Sec. 26 was renumbered as sub-sec. (1) of sec. 26 by sec. 2 of Act XIX of 1921.

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award referred for decisions to a Civil Court. 45 M. 421. Claimants are estopped from getting more from the Judge than what they claimed before the Collector and on the same principle their legal representatives will also be bound. 45 M. 421. *See also* 7 L. 416=1926 L. 401; 61 C. 245=38 C.W.N. 239=1934 C. 525. But *see also* 50 M.L.J. 566=1926 M. 732; 60 M.L.J. 410=53 M. 921=1930 M. 836. When Government made settlements in the Province of Agra, both permanent and temporary, as settlement of rights in the soil only, stone quarries were treated as a monopoly of Government and no rights of zamindars were recognized in stone quarries; and hence a zamindar whose land is acquired by Government under the Act cannot claim compensation for *kankar*, which comes under the definition of mineral, and which is essentially the property of Government. 53 All. 658=1931 A.L.J. 660=1931 A. 394. Collector's award—District Judge—Power to modify award. 42 I.C. 905=60 P.R. 1917. *See also* 27 S.L.R. 84=1933 S. 21=146 I.C. 1040. There is nothing in sec. 25 (1) which precludes the District Judge from introducing variations in different items that make up the award so long as the total amount is not reduced. 159 C. 257=1935 L. 653; 1936 Pesh. 217. Where no sufficient reason is given for not putting forward a claim under sec. 9, the Judge should not interfere with the award of the Collector. 37 A. 69=26 I.C. 795=12 A.L.J. 1319. Refusal or omission to appear according to sec. 9 (2) without sufficient cause, disentitles a claimant from getting a greater sum than that awarded by the Collector. 33 A. 376=9 I.C. 423=8 A.L.J. 115. A notice under sec. 9 was sent to the claimant by registered post so that he could make his claim for compensation. The claimant was a religious head and guru and did not attend to business affairs himself, but had a manager for that purpose. The notice was addressed to him at his residence; the receipt for it was signed by his clerk who passed on the notice to the claimant's manager. No steps were taken on the notice and there was no appearance. It appeared that the manager had been guilty of mismanagement and was dismissed and he did not inform the guru about the receipt of the notice: *Held*, that the claimant had shown "sufficient reason" within the meaning of sec. 25 for not appearing before the Collector pursuant to the notice under sec. 9. 46 Bom.L.R. 696=1945 Bom. 49. Where the claimants did not put in their claims at the time required by the notice under sec. 9, but did so later, the amount which the Court can award is governed by sec. 25. 1933 S. 124=143 I.C. 699. The fact that the Collector adjourned the inquiry *sine die* for making the award does not by itself extend the time for making the claim already fixed by the notice under sec. 9. 12 Pat.L.T. 659=1932 P. 134. *See also* 22 M.L.J. 379=14 I.C. 270; 57 C. 270; 57 C. 837=34 C.W.N. 323=1930 C. 471. Omission to prefer claim—Effect. 9 I.C. 582 (2)=13 C.L.J. 159. *See also* 4 I.C. 1146=138 P.W.R. 1909.

SEC. 25 (1), (2) AND (3) AND SEC. 9 (3).—Even a personal notice under sec. 9 (3) should give the occupier of land an interval of fifteen days for stating his claim for compensation. A notice fixing a shorter term is in contravention of the statute and amounts to a 'sufficient reason' within the meaning of sec. 25 (3) for the omission of the claimant to make his claim and the stringent provisions of sec. 25 (2) cannot be applied to such a case. (39 A. 534; 50 M.L.J. 566, foll.; 49 A. 145, not foll.) 53 M. 921=1930 M. 836=60 M.L.J. 410. *See also* 57 C. 837=34 C.W.N. 323=1930 C. 471. *Per* Macpherson, J.—Even though a notice issued under sec. 9 may have been defective in several particulars regarding the date, the name or description of the area proposed to be acquired, that is not a sufficient reason for not making the claim, if, in pursuance of the notice, the party has appeared at the time and place specified and raised objections regarding measurement but failed to specify the amount claimed as compensation. 12 Pat.L.T. 639=1932 P. 134. Where the owner of a certain land failed to submit his claim for compensation in pursuance of the notice under sec. 9 and the I.A. Officer awarded certain compensation but the owner preferred a claim for enhancement in the Civil Court. *Held*, that the Court was precluded by sec. 25 (2) of

[1][(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2, clause (2) and section 2 clause (9), respectively, of the Code of Civil Procedure, 1908.]

Costs.

27. (1) Every such award shall also state the amount of costs incurred in the proceedings under this part, and by what persons and in what proportions they are to be paid.

(2) When the award of the Collector is not upheld, the costs shall ordinarily be paid by the Collector, unless the Court shall be of opinion that the claim of the applicant was so extravagant or that he was so negligent in putting his case before the Collector that some deduction from his costs should be made or that he should pay a part of the Collector's costs.

LEG. RE.

[1] Inserted by sec. 2 of Act XIX of 1921.

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the Act from enhancing the amount awarded by the officer. 53 M. 533=1930 M. C18 =50 M.L.J. 33.

SEC. 26 (2).—The new sub-sec. (2) of sec. 26 of the Act does not have the effect of enabling an appeal to His Majesty in Council from a judgment and decree of the High Court, Calcutta, on appeal from an award of the Calcutta Improvement Tribunal in respect of land compulsorily acquired under the Calcutta Improvement Act. (39 I.A. 197, Ref.)=51 I. A. 259=1931 P. C. 149 =61 M.L.J. 864 (P.C.). Under sec. 26 (2), 'judgment' includes a decision of the High Court in a L.A. appeal from an award of the L.A. Judge. The decision in such appeal is appealable under cl. 15, Letters Patent (Calcutta). I.L.R. (1937) 1 Cal. 699=40 C. W.N. 1143=1936 C. 688. Where there were several connected references under the Act and they were all disposed of by a single award, and appeals were preferred in all the cases: *Held*, that a copy of the award must accompany the memorandum in each appeal. 6 L. 218=94 I.C. 145=1925 L. 438; 104 I.C. 281. Although sec. 26 requires the Judge to specify in his award the several particulars referred to therein, it is sufficient for the L. A. Officer under sec. 11 to state what he considers to be a fair compensation to be allowed for the whole of the land under acquisition and how it should be apportioned, Sec. 25 refers to the whole claim made by the claimant, and the whole amount of compensation awarded to him under sec. 11, and empowers the Judge to alter the award of the L.A. Officer under any one or more of the sub-heads by either decreasing or increasing the amount awarded, provided he did not award less than the total amount awarded by the officer or more than the total amount claimed before that officer by the claimant. 27 S.L.R. 84=1933 S. 21. Award under secs. 11 and 26—Difference between. *See* 1933 R. 176=11 R. 344, cited under sec. 11, *supra*.

SEC. 27.—The same method of calculating costs should be adopted in land acquisition cases as in ordinary suits. 37 I.C. 730=126 P.R. 1916. A claimant for compensation in a land acquisition matter is in the position of a plaintiff who has sued to recover a sum of money and when it is found that he is not entitled to success under the provisions of the law relating to the subject, there is no ground upon which the tribunal hearing the claim could deprive the opposite party, the Secretary of State, of the costs to which he would be entitled under the ordinary provisions of the law. There is no justification for refusing such costs on sentimental grounds. 1942 O.W.N. 131=1942 A.L.J. 141 =1942 All. 186=200 I.C. 634. For a case where Collector was ordered to pay claimant's costs though claim was extravagant, *see* 1928 L. 263. The word "persons" in sec. 27 (1) of the Land Acquisition Act cannot be construed as referring only to persons who are parties to the proceedings. The language of sec. 27 (1) is clear, and must on the face of it give power to the Court to order costs to be paid by a person whether he be an actual party or not. A person who is present before the Court as trustee of a devasthanam, though he has no personal interest in putting forward the claim, may be made liable for costs. Sec. 27 (1), in no way conflicts with or limits or restricts the provisions of sec. 35, C.P. Code. Reading sec. 27 (1) of the Land Acquisition Act with sec. 35, C.P. Code, it must be held that the Court has jurisdiction in a suitable case to direct the costs to be paid by the trustee of a devasthanam personally although he merely represents the devasthanam in the proceedings, when he makes a most extravagant claim and acts recklessly and when it would be unjust to call upon the real party (devasthanam) to meet the burden of costs. 52 L.W. 660=1941 Mad. 198=(1940) 2 M.L.J. 753. Where the Collector awarded compensation at Rs. 26 a cent and the claimant appealed claiming at Rs. 31 and the Court awarded compensation at Rs. 28 but disallowed his costs: *Held*, that under the circumstances the Collector should have been directed to pay the claimants costs, because the claim was not extravagant and there was no negligence in putting it forward. 1932 M.W.N. 853. *See also* 1937 M.W.N. 1006. The general rule is that costs should follow the event. The appellate Court should interfere with the exercise of discretion by the lower Court as to costs when there has been any misapprehension of facts, or violation of any established principle or where there has been no exercise of discretion at all. Where, in certain land acquisi-

28. If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of six per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court.

Collector may be directed to pay interest on excess compensation.

PART IV.

APPORTIONMENT OF COMPENSATION.

29. Where there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award and as between such persons the award shall be conclusive evidence of the correctness of the apportionment.

Particulars of apportionment to be specified.

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tion proceedings, the Court refused to award costs to the Government, because the uncertainty of the market created by the boom and its aftermath were greatly responsible for the exaggerated demands put forward by the owners before the Judge: *Held*, that the reasons were inadequate to deprive the successful Government of their costs in the lower Court. 53 B. 178=30 Bom.L.R. 1622=1929 B. 64. Once a proper reference comes before the Court, the order passed in an award, whether the Judge gives an additional amount or not, or whether the Acquisition Officer's decision is not upheld for some other reason, and there should be a direction regarding the costs. Where the award of the Collector was not upheld by the Court because the Government had backed out of the acquisition after the reference was made: *Held*, that the claimant was entitled to his costs. 1931 M. 26 (1)=59 M.L.J. 682. Sec. 27 (2) is limited to the proceedings in the Court of first instance. Costs of the proceedings in the higher Courts are at their discretion. 33 Bom.L.R. 1210=1931 B. 520.

Sec. 28.—Under sec. 28, it is within the discretion of a Court to declare interest where a larger amount of compensation has been given than was awarded by the Collector. 53 All. 658=1931 A.L.J. 660=1931 A. 394. The claimant is entitled to interest on the excess amount awarded by the District Court from the date of possession by the Collector up to the date of actual payment of such excess in Court and not up to the date of the award only. 1933 S. 21=146 I.C. 1040=27 S.L.R. 84. Interest can be awarded only from the date when Collector takes possession and not from the date of award. 1926 M. 732=50 M.L.J. 566. When the amount is enhanced by the District Judge, claimant is entitled to interest on the difference. 1928 L. 263=112 I.C. 797. *See also* I.L.R. (1941) All. 54=1940 A.L.J. 960=1941 All. 135 (Interest awarded under the section not chargeable to income-tax).

SEC. 29.—Principles of apportionment of compensation among *zamindar*, *jotedar* and *raiyat*. 40 C. 64=17 C.W.N. 1001=18 I.C. 551. Where the *jagirdar* or intermediate tenure-holder claims compensation to the extent of the amount which the *zamindar* had agreed to grant abatement in the rent, it is necessary for him to show that he has a permanent interest, that the landlord had parted with his *prima facie* right to enhance the rent and that the rent was *mokarrari*. *Prima facie* the *zamindar* has the whole of the interest; it is for the tenure-holders to show of what part of the interest the *zamindar* has divested himself in their favour. 140 I.C. 385=36 C.W.N. 866=1933 C. 21. In apportioning the compensation between landlord and tenant, the Court should proceed on the principle of ascertaining what is the value of the interest of the landlord on the one land and that of the tenant on the other and apportion the compensation according to those values. 32 P.L.R. 864=1932 L. 123 (2). Apportionment of compensation—Objection not taken—Effect on award. 11 C. 304. On this section, *see also* 33 B. 483=11 Bom.L.R. 674; 17 Bom.L.R. 192; 18 C.W.N. 531; 34 B. 618; 16 C.L.J. 301; 1 L.W. 767.

SECS. 29 AND 30.—As between lessor and lessee the acquisition should not place either party in a better or a worse position than he was before the acquisition. The acquisition transforms the property into a certain sum of money, but the rights of the parties relatively to this sum ought to be the same as they were with reference to the property. Where a property is subject to a lease, theoretically speaking, the total compensation for the property should be the sum total of the compensation payable in respect of the interests of lessor and lessee. If the total compensation is not however arrived at by separately calculating the interest of lessor and lessee, the amount should be divided between them in such proportions as would represent the value of their respective interests, whatever is obtained by one party, the other takes the balance, and this ensures to each payment of the proportionate value of his interest. In an apportionment between lessor and lessee, it ought not surely to make a difference whether the lessor's or the lessee's interest is first valued and paid for. 67 C.L.J. 532=42 C.W.N. 1191=1938 Cal. 740. Land and buildings thereon owned separately—*Principle of apportionment* discussed. *See* 54 I.A. 213=54 C. 669=53 M.L.J. 158 (P.C.).

30. When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court.

Dispute as to apportionment.

PART V.

PAYMENT.

31. (1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

Payment of compensation or deposit of same in Court.

SEC. 30: SCOPE OF.—The section deals with apportionment only and not with a claim to abatement of rent by a tenant part of whose tenure has been acquired. 50 I.C. 798 (1). Difference between secs. 30 and 18. *See* 43 P. L.R. 153=1944 Lah. 268. Apportionment of valuation among different interests in the land acquired. 35 A. 9=10 A.L.J. 403. Apportionment of compensation in case of occupancy holding. 13 I.C. 420. *See also* 1926 P. 16; 37 C.W.N. 702=146 I.C. 579=1933 C. 767; 29 N.L.R. 31=1933 N. 114. There is no general rule of general application applicable to apportionment between a landlord and a tenant with a permanent right of occupancy. What is sometimes called a rough and ready method has to be adopted, taking into consideration all the circumstances of the case. I.L.R. (1937) 1 Cal. 699=40 C.W.N. 1143=1936 C. 688. Landlord's share—Apportionment — Malabar Law—"*Vilakku money*". 28 I.C. 8=1 L.W. 767. Apportionment by the Collector between the Zamindar and his tenant which was referred to the Court on the application of the Zamindar cannot be disputed by the tenant. 25 I.C. 803=8 S.L.R. 18. Where the interests of the landlord and the tenant were separately assessed and the landlord failed before the Collector to prove that the tenant was a tenant at will, the landlord could not claim anything out of the sum which has been assessed as the value of occupancy holding, unless he joined the Collector as a party and objected to the valuation made on the proprietary interest. 42 I. C. 787. The Collector can make a reference to the Civil Court after paying out compensation to one of the claimants. 33 I.C. 253 =20 C.W.N. 816. Objection to award by one of the claimants—Other claimant if entitled to any portion of the excess amount allowed. 53 I.C. 238=23 C.W.N. 720; 40 C.W.N. 1143=I.L.R. (1937) 1 Cal. 699=1936 C. 688 (Case of landlord and tenant). Where the terms of a lease debar a pattadar from claiming any abatement of rent on account of compulsory acquisition of land in his tenure, he is entitled to the whole compensation. 17 I.C. 168=16 C.L.J. 209 (30 C. 801, Ref.). As to jurisdiction to entertain a suit, *see* 13 I.C. 651=1912 M.W.N. 163. The jurisdiction of the Court dealing with a reference under sec. 30 of the Land Acquisition Act is confined to a consideration of the dispute that is expressly referred to it by the Collector. An addition of parties may indeed be made when the persons who desire to be added as parties do not raise any new dispute but want to place other materials before the Court in connection with the dispute that is referred to it by the Collector. But it cannot be permitted in a case where the question sought to be raised is entirely a new one and is not covered by the reference made by the Collector. I.L.R. (1941) 2 Cal. 394=45 C. W.N. 912; 1942 Cal. 53. A *melwaramdar's* interest in a land cannot be valued merely at 20 years' purchase of the rent. 50 M. 706 =1927 M. 489=52 M.L.J. 295. [*See also* notes under sec. 23.] Where a reference is made by a Collector under sec. 18, no other Civil Court can determine the same rights between the same parties. 52 P.R. 1913=17 I. C. 684. *See also* 43 P.L.R. 153=1941 L. 268.

PERSON INTERESTED—RIGHT TO COME IN AS PARTY TO REFERENCE.—In the case of a reference by the Collector under sec. 30 a "person interested" within the meaning of sec. (3) (*b*) of the Act can apply to the Court to be joined as a party to the reference made by the Collector, although his name does not appear in the reference made, provided the questions raised by him is in essence the dispute referrd. I.L.R. (1942) Kar. 157=201 I.C. 639=1942 Sind 82.

RES JUDICATA.—Decision as to title to property acquired is *res judicata* in subsequent civil suit. (1941) 1 M.L.J. 408.

APPEAL.—The decision of a Court on a reference made under sec. 30 is a portion of an award and consequently an appeal lies under sec. 54. 53 I.C. 539=97 P.R. 1919; 1933 B. 187=57 B. 314=144 I.C. 710=35 Bom.L.R. 276; 49 L.W. 238=1939 Mad. 716; 1942 Pesh. 60=202 I.C. 155. (*See also* notes under sec. 54.) The decision of a Subordinate Judge's Court on a reference made by the L.A. Officer under sec. 30 is not an award within the meaning of that Act and consequently an appeal from that decision, where the subject-matter of the *lis* is less than Rs. 5,000, does not lie to the High Court but lies to the District Court. 52 M. 142=1929 M. 351=56 M.L.J. 357. *See also* 1929 M. 223= 56 M.L.J. 387.

SEC. 31: DUTY OF GOVERNMENT.—It is the duty of Government under sec. 31 to deposit in Court the whole of the compensation money which it may be required to deposit by the

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted.

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Act, free from any deduction. 37 B. 76=14 Bom.L.R. 507. Compensation paid to wrong person—Remedy of person entitled. 49 M. 519=93 I.C. 651=50 M.L.J. 412=1926 M. 492 (1). Where the Collector has paid the amount of compensation, the Court cannot direct him to pay again to some one else, unless he has shown such negligence that he could be rightly held liable to do so. 1933 R. 176=11 R. 344. Karta of a joint Hindu family is allowed to withdraw the compensation money. 118 I.C. 851=1929 C. 379. Where the L.A. Officer, after a person is adjudicated an insolvent, erroneously pays to his mortgagee a certain amount as compensation instead of paying the same to the Official Receiver who has no notice under sec. 31 of the proceedings, the Official Receiver has a right to sue for the recovery of the amount paid. 121 I.C. 876=1930 S. 75. Default in payment of arrears of revenue—Acquisition by Government—Award setting off arrears of revenue—Subsequent sale—Relative rights of purchaser and prior proprietor to compensation. 37 C.W.N. 14. Where the Collector awards compensation in L.A. proceedings, the persons awarded can bring an action in a civil court for their portion of the compesation money, if the question has not been decided by the Collector. 83 P.R. 1919=49 I.C. 657. When the Civil Court comes to the conclusion that the Collector has paid compensation to the wrong party, the decree in favour of the right party should not be against Government, but should be against the party who had been paid by the Collector. 33 I.C. 253=20 C.W.N. 816. The Secretary of State is not a necessary party to such suit. 165 I.C. 924=1936 Pesh. 198. The proviso to sub-sec. (2) clearly provides for such an emergency and makes the person who may have received the whole or any part of any compensation under the Act to pay the same to the person lawfully entitled thereto. (*Ibid.*) *See also* 1 Pat.L.T. 143=56 I.C. 125. Where a *malik makbuza* plot (in a mahal which had been leased in perpetuity), was acquired by the Government and the L.A. Officer allowed, the perpetual lessee compensation for loss of the revenue and also a certain sum to the malguzar, *held*, that neither the L.A. Officer nor the Court to whom the matter of compensation was referred had any authority to decide what lease money should be paid in future and that the proprietor and the lessee should come to an agreement on the point or have the matter decided by a competent Court. 20 N.L.R. 31=1923 N. 114. Where rival calimants come before the Court on a reference under sec. 31, the Court has a duty to decide which of the claimants is entitled to the money deposited in Court. There is no provision in the Act which authorizes the Court to refer the parties to a separate suit. 48 L.W. 450=1938 Mad. 955=(1939) 1 M.L.J. 306. The proper procedure in every case of apportionment of compensation is, first to determine the market value of the land and then to apportion that among the various persons interested, having regard to the interest each possesses. The landlord is to be paid ¼ of the sum ascertained as market value and the ¾ has to be paid to the tenant. I.L.R. (1942) Nag. 740=1942 N.L.R. 303=1942 Nag. 86.

APPLICABILITY.—Sec. 31, Cl. (2) applies to the case of a shebait. 40 C. 895=22 I.C. 272=19 C.W.N. 652. The owner of an unenfranchised service inam is incompetent to alienate within the meaning of secs. 31 (2) and 32 (1). 25 I.C. 600. So also the holder of an impartible estate. 58 M. 442=1935 M. 215=68 M.L.J. 575.

APPEAL.—Though the order determining the apportionment of the compensation is not an award within the meaning of sec. 54, it is in the nature of a decree and an appeal lies against it. 57 Bom. 314=35 Bom.L.R. 276=1933 B. 187. *See also* 53 I.C. 589. An order of the District Judge allowing a Hindu widow to withdraw money deposited by the Collector under sec. 31 is not appealable under sec. 54. 31 I.C. 677=19 C.W.N. 1290.

SEC. 31 (2).—In law all the co-sharers are entitled to enjoy and possess the common property jointly, and if one of them asserts an exclusive title to any portion of such property and ousts his co-sharers from enjoyment or possession of the same, the latter can sue for joint possession in respect of that item without suing for partition of the entire joint estate. When a joint property is acquired under the Land Acquisition Act, the enjoyment, which the co-owners are entitled to under the Act, is to get proportionate shares of the compensation money that is given by the award. Consequently, if one co-sharer receives anything in excess of his share or the whole amount of the compensation money he is bound to refund it to the true owners, and this right is recognized by the proviso to sec. 31 (2). A suit by a co-sharer for his share of the compensation money falls under sec. 31 (2) and cannot be regarded as a partition suit. 46 C.W.N. 212=1941 Cal. 635.

SEC. 31 (2), PROVISO.—The Act creates a special jurisdiction and provides a special remedy for persons aggrieved by anything done in the exercise of that jurisdiction. That jurisdiction is exclusive. A party who is served with notice under sec. 9 of the Act is bound, if he is dissatisfied with the award,

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18.

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section the Collector may, with the sanction of the Provincial Government, instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grnt of other lands in exchange, the remission of land-revenue on other lands held under the same title, or in such other way, as may be equitable having regard to the interests of the parties concerned.

(4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.

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to apply for a reference under sec. 19. If he disables himself from availing of it by accepting the compensation without any protest or, if for any other reason he does not apply under sec. 18, he cannot be allowed to re-open the question of the right to the amount of compensation by means of a regular suit, against the persons alleged to have wrongfully received the same. 9 O.W.N. 1176=1933 O. 100. *See also* I.L.R. (1941) M. 753=1941 M. 600=(1941) 1 M.L.J. 527; 1933 N. 322=147 I. C. 877=30 N.L.R. 40. When the Collector wrongly refuses to make a reference, the general liability will arise of the person taking the land for damages in the Civil Court. 37 P.L.R. J. & K. 8.

SEC. 31 (2), PROVISO 3.—The third proviso to sec. 31 (2), applies only to persons whose rights have not been adjudicated upon in pursuance of the special procedure. A person whose rights have been adjudicated upon and who has not appealed therefrom cannot, therefore, maintain a suit for recovery of the compensation money. 47 C.W.N. 619. Applicability—Daughters of owner claiming share in compensation—Collector making reference to Court—Daughters and other assignees appearing—Assignment by consent recognized by Court—Claim of assignees for share in compensation adjudicated upon and rejected—Order not appealed against—Assignees have no right to bring separate suit. I.L.R. (1939) Kar. 152=1939 Sind 66.

SEC. 31 (2), LAST PROVISO.—Sec. 31 (2), last proviso, apparently contemplates a civil suit. It does not create a right to get a refund of the money but simply recognizes the right which exists independently of the section. 46 C.W.N. 212=1941 Cal. 635.

SEC. 31 (4).—*See* 73 C.L.J. 595, cited under sec. 1, *supra*.

SECS. 31 AND 32.—As to persons who are competent to contract, *see* sec. 11 of the Indian Contract Act (IX of 1872). A widow holding a life estate under the Customary Law is a "person not competent to alienate" within the meaning of secs. 31 and 32 of the Act. 116 I.C. 335=1929 L. 736. *See also* 60 C.L.J. 88=62 C. 154=1935 C. 29. Where land belonging to an impartible estate is acquired under the Act, the compensation money should not be paid over to the holder for the time being, but should be converted into other land to form part of the impartible estate which will not thus suffer from the acquisition and hence the acquisition officer is right in depositing the money under sec. 31. 58 M. 442=68 M.L.J. 575=1935 M. 215. The words "if there be no person competent to alienate the land" in sec. 31 (2) must necessarily apply to a case where there is no present title in the person who has come forward as a claimant to the compensation fixed by the Collector. Secs. 31 and 32 provide for the case of persons who by reason of a personal disability have no absolute power to alienate and are intended to protect the interest of reverisoners, when land is taken away from the possession of such persons who hold it only on a life-estate or similar limited estates, such as minors, lunatics, Hindu widows, administrators, etc., where the legal estate is in one person and the beneficial estate in another. In the case of an inam granted as a personal inam to the family of the grantee, the grantee having a heritable estate in full proprietorship, the grant being of the soil and conveying a full interest in the land without any condition in restraint of alienation, the inamdar and his assigns are owners of the villages and have an interest in the land and are entitled to the benefit of that interest. Such a person cannot be said to have no power to alienate the land within the meaning of sec. 31 (2) of the Act. Such an inamdar does not fall under secs. 31 and 32. The amount of compensation awarded for acquisition of such inam lands cannot therefore be directed to be deposited in Government securities and interest alone directed to the inamdar. He is entitled to receive the full amount of compensation in cash. 40 Bom.L.R. 432=1938 Bom. 325.

Investment of money deposited in respect of lands belonging to persons incompetent to alienate.

32. (1) If any money shall be deposited in Court under sub-section (2) of the last preceding section and it appears that the land in respect whereof the same was awarded belonged to any person who had no power to alienate the same, the Court shall—

(*a*) order the money to be invested in the purchase of other lands to be held under like title and conditions of ownership as the land in respect of which such money shall have been deposited was held, or

(*b*) if such purchase cannot be effected forthwith, then in such Government or other approved securities as the Court shall think fit;

and shall direct the payment of the interest or other proceeds arising from such investment to the person or persons who would for the time being have been entitled to the possession of the said land, and such moneys shall remain so deposited and invested until the same be applied—

(i) in the purchase of such other lands as aforesaid; or

(ii) in payment to any person or persons becoming absolutely entitled thereto.

SEC. 32: APPLICABILITY OF SECTION.—Sec. 32 applies to cases where the possessor of the land has a limited interest in it and does not govern the case of land incapable of alienation in whosoever hands it may be. 40 B. 254=33 I.C. 464=17 Bom.L.R. 1140. Sec. 32 does not vest the acquisition Court with such power as to retain the money in its possession in spite of the directions of a competent Civil Court. 1928 C. 402=107 I.C. 738. The case of a Hindu widow does not come within the purview of sec. 32. 11 I.C. 304. Court can deal with application by *shebait* for grant of money for repairs. 39 C. 33=10 I.C. 491. A Hindu widow comes within the scope of sec. 32. I.L.R. (1945) Nag. 392=1945 N.L.J. 92=A.I.R. 1945 Nag. 115.

SEC. 32 (1) (*a*): ENQUIRY AS TO VALUATION—PROCEDURE.—The President of the Calcutta Improvement Tribunal acting under sec. 32, is a Judge and is bound to exercise his functions in a judicial manner. Where he referred the question of valuation to an outside expert and, on receipt of his report, adopted it without giving the parties concerned an opportunity to examine or cross-examine him, *held*, that the procedure was illegal. 59 C. 1272=36 C.W.N. 848=1932 C. 844. The parties interested in the properties forming the subject-matter of investigation are not parties to the proceedings under the Act for appraising the offers. 59 C. 1272=36 C.W.N. 848=1932 C. 844.

SEC. 32 (1) (*b*) (*ii*).—Sec. 32 (1) (*b*) (*ii*) contemplates a case where the disability has ceased or the estate vests absolutely in a full owner after the termination of the limited estate. It pre-supposes a valid deposit under sec. 32 (1) and cannot have any reference to a case where the property is found not to belong either wholly or in part to the person in whose favour the award is made and in whose name the money lies deposited, but to some person not a party to the award at all. 46 C.W.N. 212=1941 Cal. 635. Sec. 32 of the Land Acquisition Act invests the Court with certain powers in regard to the moneys deposited under sec. 31 (2). It lays on the Court the duty to order the moneys deposited in the purchase of other lands, and, even in the case of moneys that have been invested in Government or other approved securities, the Court is also given power to have them re-invested in the purchase of other lands. It is a judicial function which has to be performed by it in accordance with the procedure usually attributed to it, after hearing the parties and taking the necessary evidence. The Court has to be satisfied as to the propriety of the purchase, the value and title of the land before it can make an order for investment. It is no doubt true that the purchase has to be made through the Collector. The Court can refer the matter to the Collector and direct him to review all the evidence and any information which the parties may place before him and to consider the same along with the information which he would independently obtain and to submit a report. On receipt of the report of the Collector, the Court should hear the parties and pass appropriate orders. But the Collector's report is not final and conclusive. It is open to the Court to have the opinion of an expert taken as regards the valuation of the land, etc.; it may disregard the report of the Collector and arrive at an independent valuation after consideration of the report and direct the purchase accordingly. The order ultimately to be passed is a judicial order made by the Court. 1937 Mad. 948=(1937) 2 M.L.J. 429. Under sec. 32 (1) (*b*) payment of interest has to be made to "the person or persons who would for the time being have been entitled to the possession of the said land". These words suggest that the payees may from time to time be different persons and may change. The Court is directed not to make one order for payment which is to last but to direct payment to the persons who would have been entitled for the time being, that is, the persons who would from time to time be entitled to possession. The section impliedly direct that the Court

(2) In all cases of moneys deposited to which this section applies the Court shall order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the Collector, namely:—

(*a*) the costs of such investments as aforesaid:

(*b*) the costs of the orders for the payment of the interest or other proceeds, of the securities upon which such moneys are for the time being invested, and for the payment out of Court of the principal of such moneys, and of all proceedings relating thereto, except such as may be occasioned by litigation between adverse claimants.

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should hold an enquiry to ascertain from time to time who such persons are. 47 P.L. R. 250=A.I.R. 1945 Lah. 257.

ILLUSTRATIVE CASES.—The land acquired by the Calcutta Improvement Trust tribunal belonged to a *Thakur* ordinarily managed by *Shebaits*. In a suit relating to that debutter estate, a receiver had been appointed by the Court to take possession of the properties. The tribunal proposed to invest the compensation money in the purchase of other lands on the ground that there was no one competent to alienate the land. *Held*, that as the receiver represented not only the *Shebaits* but also the *Thakur* he was competent to alienate the land and so sec. 32 was not applicable. Secondly, even otherwise under sec. 32 (*b*), the receiver appointed by the Court was a person who had become absolutely entitled to the amount and to whom the Tribunal was consequently bound to pay and the Tribunal had no discretion to invest it on the purchase of other lands. 36 C.W.N. 370=1932 C. 660. Under sec. 32 (1) of the Act, the Calcutta Improvement Tribunal has jurisdiction, even after once adopting the alternative in sec. 31 (1) (*b*), and has power, impliedly conferred on it, to order the money to be re-invested in the purchase of land. 59 C. 1272=36 C.W.N. 848=1932 C. 844. The effect of Murshidabad Act (XV of 1891 amended by Act XXV of 1923) is that, in spite of certain powers conferred on the Secretary of State, no right of ownership or disposition is conferred on the Secretary of State and the Nawab Bahadur continue as a limited owner but with the income intercepted in certain circumstances. Where such lands are proposed to be acquired, the tribunal has jurisdiction to act under sec. 32 (1) of the Act. 59 C. 1272=36 C. W.N. 848=1932 C. 844.

MEANING OF TERMS.—The words "power to alienate" in sec. 32 refer only to alienation to the Collector but not to alienations in general. 11 I.C. 304. Expenditure of money to save land comprised in the estate inherited by the widow from her husband, from an impending sale is not an investment "in the purchase of lands" within the meaning of the section. 41 I.C. 810=26 C.L.J. 123. Court-fee. *See* 39 C. 906=17 C.W.N. 933 =14 I.C. 724.

ACQUISITION OF HINDU WIDOW'S INTEREST. —The President of the Calcutta Improvement Trust has jurisdiction to re-invest money invested in G. P. Notes, being the compensation money in respect of the acquisition of the interest of a Hindu window, in the purchase of other lands, and, in this matter, he acts as a Judge and must exercise his function in a judicial manner and in the interest of the person for whom the money is held in trust. The primary consideration for the Court is the interest of the person for whose benefit the legislature has given the power. 60 C.L.J. 88=62 C. 154=1935 C. 29. *See also* 1929 L. 736.

PROCEDURE.—The Act does not lay down any procedure which is to be followed in the matter of re-investment in lands of money already deposited in G. P. Notes. But the Court should hear the person who is interested in the money, before it decides whether it is desirable or advantageous that the money which has remained invested in G. P. Notes, without any objection from any body, should be re-invested in the purchase of other lands in view of the grounds alleged by such person. 60 C.L.J. 88=1935 C. 29. The President of the Calcutta Improvement Tribunal has no jurisdiction under sec. 32 of the Act to issue a notice to a party to show cause why the compensation money invested in Government securities should not be re-invested in lands. Such a notice is also wrong in law. Where there is an investment of the compensation money in Government securities, already made as far back as 20 years, sec. 32 does not make a re-investment in land obligatory. 60 C.L.J. 227=1935 C. 248.

SEC. 32 (2): CONSTRUCTION—"REASONABLE CHARGES AND EXPENSES"—ATTORNEY.—As it was considered necessary to engage the services of an attorney for the purchase of lands advertised for sale by the Registrar of the High Court on the original side, by way of investment of money deposited in respect of acquired lands belonging to a person incompetent to alienate property, an attorney was engaged with the approval of the Special L.A. Judge. He made the necessary investigation as to the suitability, market value and title, and did other things incidental to the completion of the purchase. The attorney having submitted a bill of costs, *held*, that he was entitled to reasonable remuneration for the work done by him by way of "reasonable charges and expenses" within the meaning of sec. 32 (2) of the Act, and that the said charges and expenses were payable by the Collector, although the purchase was effected not immediately after the deposit but only subsequently. 39 C.W.N. 251=1935 C. 119.

Investment of money deposited in other cases.

33. When any money shall have been deposited in Court under this Act for any cause other than that mentioned in the last preceding section, the Court may, on the application of any party interested or claiming an interest in such money, order the same to be invested in such Government or other approved securities as it may think proper, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider will give the parties interested therein the same benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be.

Payment of interest.

34. When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of six per centum per annum from the time of so taking possession until it shall have been so paid or deposited.

PART VI.

TEMPORARY OCCUPATION OF LAND.

Temporary occupation of waste or arable land.

Procedure when difference as to compensation exists.

35. (1) Subject to the provisions of Part VII of this Act, whenever it appears to the Provincial Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a Company, the Provincial Government may direct the Collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding three years from the commencement of such occupation.

(2) The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof for such term as aforesaid, and for the materials (if any) to be taken therefrom, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payments as shall be agreed upon in writing between him and such persons respectively.

(3) In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Court.

APPEAL.—*See* 6 O.C. 157; 29 M. 117. A decision that Hindu widow comes within the scope of sec. 32 hardly partakes of the character of a decree. The order would be revisable rather than appealable. I.L.R. (1945) Nag. 392=1945 N.L.J. 92=A.I.R. 1945 Nag. 115.

REVISION.—*See* 1937 M. 948=(1937) 2 M. L.J. 429.

SEC. 34.—The basis of this section is that the right to receive interest takes the place of the right to retain possession. 59 M. 433 =1936 M. 199=71 M.L.J. 69. A claimant is entitled to interest from the date on which the Collector took possession of the properties acquired up to the date on which compensation is paid or deposited. 106 I. C. 909. The award of a District Judge in L.A. proceedings has the same force as a decree of a Civil Court. Where such award does not mention interest, the Court executing the award has no power to grant the same. 9 Mys.L.J. 55. 'Deposited' means the actual fact of deposit in the place indicated in sec. 31 (2). The fact that a deposit made by the Collector was erroneous and was due to an error of judgment on his part as to whether the claimant is entitled to receive the money from his hands is immaterial. Even in such a case, no liability to pay interest would be incurred. 40 C. W.N. 989=165 I.C. 716 (2)=1936 C. 525. Under sec. 34, the claimant is entitled to interest at 6 per cent. per annum from the time of possesison by Government until the sum or compensation is paid or deposited and the mere existence of an agreement between the parties, that the claimant should take away the materials on the land to be acquired, does not disentitle the claimant to the statutory interest, unless it is shown that the consideration for that agreement was that the claimant should relinquish his statutory claim of interest. 19 Pat.L.T. 774 =1938 Pat. 266.

SECS. 35 AND 36 (2).—Temporary occupation when assessable—Compensation. 30 I.C. 245=37 A. 347.

Power to enter and take possession and compensation on restoration.

36. (1) On payment of such compensation, or on executing such agreement or on making a reference under section 35, the Collector may enter upon and take possession of the land, and use or permit the use thereof in accordance with the terms of the said notice.

(2) On the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by agreement, and shall restore the land to the persons interested therein:

Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the Provincial Government shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a Company.

Difference as to condition of land.

37. In case the Collector and persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the Collector shall refer such difference to the decision of the Court.

PART VII.

ACQUISITION OF LAND FOR COMPANIES.

Company may be authorized to enter and survey.

38. (1) [1][* * * * * * * * * *]. The Provincial Government may authorize any officer of any Company desiring to acquire land for its purposes to exercise the powers conferred by section 4.

(2) In every such case section 4 shall be construed as if for the words "for such purpose" the words "for the purposes of the Company" were substituted; and section 5 shall be construed as if after the words "the officer" the words "of the Company" were inserted.

Industrial concern to be deemed company for certain purposes.

[2][**38-A.** An industrial concern, ordinarily employing not less than one hundred workmen owned by an individual or by an association of individuals and not being a Company, desiring to acquire land for the erection of dwelling-houses for workmen employed by the concern or for the provision of amenities directly connected therewith shall, so far as concerns the acquisition of such land, be deemed to be a Company for the purposes of this part, and the references to Company in sections 5-A, 6, 7, 17 and 50 shall be interpreted as references also to such concern.]

LEG. RE.

1 The words "Subject to such rules as the Governor-General of India in Council may from time to time prescribe in this behalf" were omitted by Act XXXVIII of 1920.

2 Newly added by Act XVI of 1933.

SEC. 38-A.—The necessity for the insertion of this new sec. 38-A has been explained as follows:—The L.A. Act, 1894, makes it possible, where the previous consent of the Local Government has been obtained, to acquire land compulsorily on behalf of companies, provided that the land is needed for a work "likely to prove useful to the public". The Royal Commission on Labour have recommended that the Act be so amended as to enable land to be thus acquired where it is needed for the housing of labour, either by companies or by other employees. They stated that, in a number of instances brought to their notice, land eminently suitable for the development of housing schemes ahd been held at random by the owners, fantastic values being placed upon it as a result of the construction of factories and other industrial concerns in the neighbourhood. The provision of adequate housing for workmen is one of the urgent needs of Indian industry, and the Bill seeks to give effect to the Commission recommendation. (*Statement of Objects and Reasons.*)

Previous consent of Provincial Government and execution of agreement necessary.

39. The provisions of sections 6 to 37 (both inclusive) shall not be put in force in order to acquire land for any Company, unless with the previous consent of the Provincial Government, nor unless the Company shall have excuted the agreement hereinafter mentioned.

Previous enquiry.

40. (1) Such consent shall not be given unless the Provincial Government be satisfied [1][either on the report of the Collector under section 5-A, sub-section (2), or] by an enquiry held as hereinafter provided,—

[2][(*a*) that the purpose of the acquisition is to obtain land for the erection of dwelling-houses for workmen employed by the Company or for the provision of amenities directly connected therewith, or

(*b*) that such acquisition is needed for the construction of some work, and that such work is likely to prove useful to the public.]

(2) Such enquiry shall be held by such officer and at such time and place as the Provincial Government shall appoint.

(3) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code ofCivil Procedure in the case of a Civil Court.

Agreement with Provincial Government.

41. [3][* * * * * * * * *] If the Provincial Government is satisfied [3][after considering the report, if any, of the Collector under section 5-A, sub-section (2) or on the report of the officer making an enquiry under section 40], that [4][the purpose of the proposed acquisition is to obtain land for the erection of dwelling-houses for workmen employed by the Company or for the provision of amenities directly connected therewith, or that,] the proposed acquisition is needed for the construction of a work, and that such work is likely to prove useful to the public, it shall [5][* * * * * * * * * * * * * * * *] require the company to enter into an agreement with the [6][Provincial Government] providing to the satisfaction of the Provincial Government for the following matters, namely:—

(1) the payment to [7][the Provincial Government] of the cost of the acquisition;

(2) the transfer, on such payment, of the land to the Company;

(3) the terms on which the land shall be held by the Company;

LEG. REF.

[1] The words "either on the....or" were inserted by Act XXXVIII of 1923, sec. 9.

[2] Substituted by Act XVI of 1933. The old sub-cls. (*a*) and (*b*) stood as follows:

(*a*) that such acquisition is needed for the construction of some work, and

(*b*) that such work is likely to prove useful to the public.

[3] At the beginning of this section the words "Such officer shall report to the Local Government the result of the enquiry, and" were omitted by Act XXXVIII of 1923, sec. 10 and after the word "satisfied" the words "after considering the report.....under sec. 40" were inserted by the same Act.

[4] Inserted by Act XVI of 1933.

[5] The words "subject to such rules as the Governor-General of India in Council may from time to time prescribe in this behalf" were repealed by Act XXXVIII of 1920.

[6] Substituted by the A.O., 1937, for the words "Secretary of State for India in Council".

[7] Substituted by *ibid* for "Government".

SEC. 39.—In order to constitute a binding agreement the intention of the parties must be distinct and common to both. An agreement does not admit of difference. 58 C.L.J. 138. The L.A. Court gets jurisdiction only on a reference being made to it by the Collector, and its jurisdiction is confined to disposing of the matter so referred. It has no jurisdiction under the Act to consider the legality of the acquisition or of the reference. 99 I.C. 530=1927 M. 114.

[1][(4) where the acquisition is for the purpose of erecting dwelling houses or the provision of amenities connected therewith, the time within which, the conditions on which and the manner in which the dwelling-houses or amenities shall be erected or provided; and

(5) where the acquisition is for the construction of any other work, the time within which, and the condition on which, the work shall be executed and maintained, and the terms on which the public shall be entitled to use the work.]

Publication of agreement.

42. Every such agreement shall, as soon as may be after its execution, be published [2][* * * * * * *] in the Official Gazette and shall thereupon (so far as regards the terms on which the public shall be entitled to use the work) have the same effect as if it had formed part of this Act.

Sections 39 to 42 not to apply where Government bound by agreement to provide land for companies.

43. The provisions of sections 39 to 42, both inclusive, shall not apply and the corresponding sections of the Land Acquisition Act, 1870, shall be deemed never to have applied, to the acquisition of land for any Railway or other Company, for the purposes of which, under any agreement [3][with such company, the Secretary of State for India in Council, the Secretary of State, or any Government in British India is, or was,] bound to provide land.

How agreement with Railway Company may be proved.

44. In the case of the acquisition of land for the purposes of a Railway Company, the existence of such an agreement as is mentioned in section 43 may be proved by the production of a printed copy thereof purporting to be printed by order of Government.

PART VIII.

MISCELLANEOUS.

Service of notices.

45. (1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under section 4, by the officer therein mentioned, and, in the case of any other notice, by or by order of the Collector or the Judge.

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, this service may be made on any adult male member of his family residing with him; and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in the Court-house, and also in some conspicuous part of the land to be acquired:

LEG. REF.

1 Substituted by Act XVI of 1933. The old cls. (4) and (5) stood as follows:—

(4) the time within which, and the condition on which, the work shall be executed and maintained; and

(5) the terms on which the public shall be entitled to use the work.

2 Omitted by A.O., 1937.

3 Substituted by *ibid.*

SEC. 43.—In view of the provision in sec. 43 of the Land Acquisition Act that Ch. VII of the Act does not apply to the case of acquisition of land for a railway, such land is presumably acquired by the Government under the earlier sections of the Act, and becomes the property of the Government and not the property of the Railway Company. I.L.R. (1937) All. 511=1937 A.L.J. 249=1937 All. 428.

SEC. 45: NOTICE UNDER SEC. 9—SENT BY REGISTERED POST—IF VALID SERVICE.—A notice under sec. 9 may be validly served by sending by registered post to the person concerned, if the Collector or Judge so directs, under sec. 45 of the Act. 46 Bom.L.R. 696 =1945 Bom. 49.

SEC. 45 (3).—Temporary absence of a person to be served with notice, does not fall within the words "cannot be found" in cl. (3), sec. 45. 50 I.C. 70=17 A.L.J. 268.

Provided that, if the Collector or Judge shall so direct, a notice may be sent by post, in a letter addressed to the person named therein at his last known residence, address or place of business and registered under Part III of the [1][Indian Post Office Act, 1866, and service of it may be proved by the production of the addressee's receipt.

Penalty for obstructing acquisition of land.

46. Whoever wilfully obstructs any person in doing any of the acts authorised by section 4 or section 8, or wilfully fills up, destroys, damages or displaces any trench or mark made under section 4, shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding one month, or to fine not exceeding fifty rupees, or to both.

Magistrate to enforce surrender.

47. If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender of the land to himself, and, if not a Magistrate, he shall apply to a Magistrate or (within the towns of Calcutta, Madras and Bombay) to the Commissioner of Police, and such Magistrate or Commissioner (as the case may be) shall enforce the surrender of the land to the Collector.

Completion of acquisition not compulsory, but compensation to be awarded when not completed.

48. (1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damages suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be to the determination of the compensation payable under this section.

49. (1) The provisions of this Act shall not be put in force for the pur-

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LEG. REF.

[1] *See* now the Indian Post Office Act (VI of 1898).

SEC. 48.—The power of withdrawal given to the Government by sec. 48 does not render the agreement void for want of mutuality. 44 B. 797=58 I.C. 621=21 Bom. L.R. 1014. Where the Government decides to withdraw from the acquisition but no notification under sec. 48 (1) is issued as required by r. 5 of the rules framed under the Act, it is open to the Government to proceed with the acquisition if it changes its opinion as to withdrawal. A renotification under secs. 4 and 6 of the Act is not necessary and the acquisition would be quite lawful. (1946) 1 M.L.J. 337=59 L.W. 245. Sec. 48 of the Land Acquisition Act does not apply to the case in which there is no voluntary withdrawal by the Government but the proceedings come to an end by reason of a decree declaring the proceedings invalid. In such a case the proceedings automatically drop and the aggrieved party is left to choose his remedy in the ordinary Civil Courts. The Act does not provide a cheap remedy for such a grievance. The jurisdiction exercised by the Civil Court under the Act is a restricted one and the Court has no right to widen it and to act in contravention of the Act. 177 I.C. 958=1938 N.L.J. 54=1938 Nag. 169. The power to award compensation under sec. 48 (2) is conferred on the Collector and not on the Court; and the Court can have no jurisdiction unless the Collector in the first instance made an award and made a reference under Part III of the Act. 1938 N.L.J. 54=1938 Nag. 169. When proceedings are taken on behalf of a Municipal Board, the Board cannot withdraw, but the Government can. 51 I.C. 501=16 A. L.J. 669. There is nothing in this section to indicate or suggest that it is not open to the acquiring authority to make acquisition of any portion of the land in respect of which notice under sec. 9 has been issued. 41 C.W.N. 437. After acquisition and taking over possession there can be no withdrawal—Property must be reconveyed by Government to the owner to reinstate him in its ownership. 1927 R. 14=4 R. 291.

SEC. 49: RIGHT UNDER—WHEN AVAILABLE. —Sec. 49 requires that the claimant should be "owner" of the land to be acquired as well as of the house, manufactory or building of which he maintains it to be a part. Unity of ownership is a necessary pre-requisite. 45 C.W.N. 370=1941 Cal. 625=197 I.C. 365.

Acquisition of part of house or building.

pose of acquiring a part only of any house, manufactory or other building, if the owner desire that the whole of such house, manufactory or building shall be so acquired:

Provided that the owner may, at any time before the Collector has made his award under section 11, by notice in writing, withdraw or modify his expressed desire that the whole of such house, manufactory or building shall be so acquired:

Provided also that, if any question shall arise as to whether any land proposed to be taken under this Act does or does not form part of a house, manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the Court and shall not take possession of such land until after the question has been determined.

In deciding on such a reference the Court shall have regard to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory or building.

(2) If, in the case of any claim under section 23, sub-section (1) *thirdly*, by a person interested, on account of the severing of the land to be acquired from his other land, the Provincial Government is of opinion that the claim is unreasonable or excessive, it may, at any time before the Collector has made his award, order the acquisition of the whole of the land of which the land first sought to be acquired forms a part.

(3) In the case last hereinbefore provided for, no fresh declaration or other proceedings under sections 6 to 10, both inclusive, shall be necessary; but the Collector shall without delay furnish a copy of the order of the Provincial Government to the person interested, and shall thereafter proceed to make his award under section 11.

MEANING OF TERMS.—'House' includes godowns pertaining to it and used for servants' dwelling. 37 I.C. 11=43 C. 665. An under-tenant is a person interested in the acquisition of land and so an "owner" for the purpose of sec. 49 and is competent to apply for a reference to the Civil Court. 13 I.C. 470=16 C.W.N. 927. The expression "owner" which occurs in sec. 49 of the Act is nowhere defined in the Act, and though the expression "person interested" as explained in sec. (3) (*b*) must obviously include "owner", the connotation of the two terms are by no means coincident. A "person interested" who cannot be strictly considered an owner, cannot avail himself of the rights conferred by sec. 49. The rights of a zamindar, a tenure-holder, the holder of a building lease, an occupancy raiyat, may conceivably ulfil the conception of ownership within the meaning of sec. 49 in certain circumstances. But each case must depend upon its own special facts. 45 C.W.N. 370= 1941 Cal. 625. "Award" means compensation in some form or other, whether it be the amount or its disposal. 23 C.W.N. 378 =50 I.C. 732=46 C. 861. The decision of a preliminary question raised on a reference under sec. 49 is not an award. (*Ibid.*) "Award or any part of the award" in sec. 54 means the decision or any part thereof as embodied in a formal document and would not include the judgment on which it is based. So it does not include the decision of the Court on a reference under sec. 49. 17 I.C. 117 (27 M. 353; 30 A. 176; 10 C.W.N. 250, Cons.). A decision under sec. 49 will not prevent a claimant from obtaining compensation for severance under sec. 23, sub-sec. (1), cl. (3). 17 I.C. 117. Acquisition of a portion of land—Owner desiring acquisition of whole—Fresh declaration—Effect. 28 I.C. 489=17 Bom.L.R. 192.

SEC. 49 (1) AND (2): APPLICABILITY AND SCOPE.—It cannot be held that sec. 49 (2) only applies to houses or buildings. Sec. 49 (1) applies to acquiring a part of a house, manufactory or other building, and compels the Local Government to acquire the whole of the same if the owner desires it. It does not give them the option which under sec. 49 (2) they possess in the case of an open plot of land. I.L.R. (1941) Kar. 217=196 I.C. 285=1941 Sind 152.

APPEAL.—No appeal lies to the High Court from an order of the Judge on a reference under sec. 49 which does not amount to an award. 23 C.W.N. 378=50 I.C. 732=46 C. 861. The order of Court on a reference by the Collector under sec. 49, proviso should be regarded as a decree from which an appeal lies to the High Court. 1931 M.W.N. 1266 =55 Mad. 391=1932 M. 55.

REVISION.—The refusal of a Collector to make a reference to the Civil Court, under the second proviso to sec. 49, the question whether the land proposed to be acquired did or did not form part of the petitioner's house, is a ministerial act, and the Collector does not thereby constitute himself a Court subordinate to the High Court. His order is, therefore, not subject to revision by the

Acquisition of land at cost of a local authority or company.

50. (1) Where the provisions of this Act are put in force for the purpose acquiring land at the cost of any fund controlled or managed by a local authority or of any Company, the charges of and incident to such acquisition shall be defrayed from or by such fund or Company.

(2) In any proceeding held before a Collector or Court in such cases the local authority or Company concerned may appear and adduce evidence for the purpose of determining the amount of compensation:

Provided that no such local authority or Company shall be entitled to demand a reference under section 18.

Exemption from stamp-duty and fees.

51. No award or agreement made under this Act shall be chargeable with stamp-duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

Notice in case of suits for anything done in pursuance of Act.

52. No suit or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after tender of sufficient amends.

Code of Civil Procedure to apply to proceedings before Court.

53. Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure shall apply to all proceedings before the Court under this Act.

High Court. 1938 Rang.L.R. 623=1939 Rang. 6.

SEC. 50.—Company or other local authority of a person interested and can ask for reference. I.L.R. (1939) 2 Cal. 401=43 C.W.N. 973=1939 Cal. 669. From sec. 50, it is clear that the party for whom the land is acquired can only assist the Collector on the question of the amount of compensation to be paid to the claimant. It cannot apparently assist the Collector on the question of the area acquired, though this may affect the amount of the compensation. The Secretary of State through the Collector is therefore a necessary party to an appeal to the High Court as well as to the proceedings before the District Judge. 1936 L. 564. *See also* 13 C.W.N. 116=4 I.C. 332. Persons not made parties to the reference need not be added by the Civil Court. 7 I.C. 10. Purchaser of property, at revenue sale added as a party—Revisional powers of High Court. See 6 I.C. 546=11 C.L.J. 420. A suit filed against the Provincial Government and the Nagpur Improvement Trust for a declaration that certain land acquisition proceedings for the purposes of the Trust are illegal, is not liable to be dismissed as against the Government for the reason that it is barred by limitation as against the Trust, when the suit is within time as against the Government. The plaintiff could have sued the Government alone, without claiming any relief against the Trust and the Trust was a proper party rather than a necessary party to the suit. I.L.R. (1945) Nag. 300=1945 N.L.J. 183=1945 Nag. 129.

SEC. 50 (2) AND SEC. 18.—A company or local authority on whose behalf land is being acquired is a "person interested" within the meaning of sec. 3 (*b*) of the Act, if it has an interest in the lands that are the subject of acquisition, and it has, therefore, a right to demand a reference under sec. 18 of the Act. This right is not taken away by the proviso to sec. 50 (2) of the Act. The proper interpretation of the proviso to sec. 50 (2) is that it relates only to that subsection and makes it clear that a company or local authority has not been granted a power to demand a reference as to compensation, by virtue of the power given therein to appear and adduce evidence before the Collector or the Court on the subject. It does not, therefore, take away the rights which the company or the local authority might enjoy as claimants or persons interested under sec. 18 of the Act. I.L.R. (1939) 2 Cal. 401=43 C.W.N. 973=1939 Cal. 669.

SECS. 50 AND 54.—Right of appeal—Acquisition at the instance of Municipal Committee—Proceedings on reference—Government discharged—Subsequent order of compensation under sec. 48 against Municipal Committee—Appeal by latter is incompetent. *See* 1938 N.L.J. 54=1938 Nag. 169.

SEC. 52: APPLICABILITY OF SECTION.—Sec. 52 does not apply to proceedings commenced by an owner of property to restrain the Calcutta Corporation and Improvement Trust from taking further steps in some pending land acquisition proceedings. 66 I. C. 600=48 I.C. 916=1921 C. 159.

SEC. 53: SCOPE OF SECTION.—Sec. 53 has the operation of putting proceedings before the Court on the same footing as proceedings in a suit. 36 B. 360=15 I.C. 512=14 Bom.L.R. 325.

[1][54. Subject to the provisions of the Code of Civil Procedure, 1908, applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act, to the High Court from the award, or

Appeals in proceedings before Court.

LEG. REF.

[1] Submitted by Act X of 1921, sec. 3.

APPLICABILITY.—Sec. 53 applies to an earlier stage in the proceedings before an award and has nothing to do with an appeal from the High Court. 39 I.A. 197=40 C. 21=23 M.L.J. 276=16 .C. 188 (P.C.). An appeal does not exist in the nature of things. A right of appeal from any decision of any tribunal must be given by statute. 40 C. 21 (P.C.). The section confers on the High Court only an authority to hear appeals from awards. It does not confer any power to act as a Court of appeal from the decrees of the Court specially constituted under the Local Rules. 54 M. 722=61 M. L.J. 312=1931 M.W.N. 290=33 L.W. 528 =1931 M. 586. In cases of acquisition of immovable property under sec. 10 of the Ancient Monuments Preservation Act, 1914, an appeal lies from the award of the Court under secs. 53 and 54 of the L.A. Act. 42 B. 100=43 I.C. 480=19 Bom.L.R. 937. Whether under the Act proceedings by way of execution can be taken to enforce the award, *see* 31 M.L.J. 827=38 I.C. 373=5 L.W. 472. On this section *see* 35 B. 146=8 I.C. 166; 22 B. 802; 36 B. 360=14 Bom.L.R. 325 (Second appeal). Award under the Act is not a decree or order capable of execution under C.P. Code. 35 B. 146=8 I.C. 166 =12 Bom.L.R. 839.

AWARD AND DECREE—DISTINCTION—APPEAL.—An award is nothing but a statement of the area of land, the compensation to be allowed and the apportionment among the persons interested in the land of whose claims the Collector has information. But when the sum has been deposited in Court under sec. 31, sub-sec. (2), the function of the award has ceased and the decision of a Court on the subsequent dispute between interested people as to the extent of their interests is not an award but a decree, from which no appeal is competent. 33 L.W. 528 =54 M. 722=1931 M. 586. *See also* 56 M.L.J. 378. The decision of a Court as to the right of the contending parties on a reference under sec. 30 of the Act is not an "award" within the meaning of sec. 54 of the Act and an appeal does not lie to the High Court from such a decision, but such a decision is a "decree" within the meaning of sec. 2 (2) of the C.P. Code and an appeal lies from it under sec. 96 of the same Code, which is made applicable to proceedings under the Act. As the appeal is under the C.P. Code and not under the L.A. Act, the forum of the appeal from such a decision of a subordinate Judge will not always be the High Court, but will depend upon the amount involved in the appeal. [49 I.A. 129; 45 M. 320 (P.C.), Ref. to.] *See* 54 M. 722=1931 M. 586. The Court-fee payable on such an appeal is the *ad valorem* fee under Art. I of the Sch. I of the Court-Fees Act. Sec. 8 of the Act does not apply to such an appeal. 115 I.C. 345=1929 M. 223=56 M. L.J. 387. *See also* 52 M. 142=1929 M. 351 =56 M.L.J. 357, cited under sec. 30.

REVIEW.—Whether a L.A. Court can review an award passed by it under the Act. *See* 31 M.L.J. 827=38 I.C. 373. Sec. 53 applies to "the Court". It does not apply to proceedings before the Collector under sec. 18. 54 A. 282=1932 A. 598. A District Judge is competent to review his own order apportioning the compensation money paid on compulsory acquisition of land between the parties entitled to it. 1 P.L.T. 219=58 I.C. 510=5 P.L.J. 253. No provision of the Act forbids the application of the C.P. Code, O. 47, to the proceedings under the Act. (*Ibid.*).

REVISION.—In dealing with the acquisition of property the Calcutta Improvement Trust Tribunal is acting as a "Court" under the L.A. Act and under sec. 115, C.P. Code, as well as under sec. 107 of the Government of India Act; the High Court is entitled to interfere with the order passed by the President of the Tribunal. 139 I.C. 180=36 C.W.N. 370=1932 C. 660. (*See also* notes under sec. 18, *supra* as to revision.)

PRIVY COUNCIL—INTERFERENCE BY—CONDITIONS.—In appeals involving questions of valuation, the decree complained of will not be interfered with by the Privy Council unless same erroneous principle has been invoked or some important piece of evidence has been overlooked or has been misapplied. 1929 P.C. 92=57 M.L.J. 81 (P.C.). *See also* 59 I.A. 155=54 All. 286=1932 P.C. 102=62 M.L.J. 682 (P.C.).

REFUND.—It is a rule of law that if a party wrongly takes from the Court moneys deposited by his opponent the Court can enforce refund of the amount with interest. 35 B. 255=10 I.C. 818=13 Bom.L.R. 259. But *see also* 63 I.C. 1=1921 L. 153. The power to recall for records from another Court is a power which is inherent in the Judge of the L.A. Court. 43 C. 239=34 I.C. 263=20 C.W.N. 360.

SEC. 54.—An order under sec. 54 is appealable. 37 I.C. 11=43 C. 665. *See also* 39 C. 393. [In view of the amendment of the section by Act XIX of 1921, sec. 3, the decisions that stated that there was no right of appeal to the Privy Council are no longer good law.] An appeal lies against an order by a District Judge on a reference under the second proviso to sec. 49 (1) determining a question as to whether the land proposed to be acquired does or does not form part of a house or building within the meaning of sec. 49 (1). 24 Pat. 524=1945 Pat.

from any part of the award, of the Court, and from any decree of the High Court passed on such appeal as aforesaid an appeal shall lie to His Majesty in Council subject to the provisions contained in section 110 of the Code of Civil Procedure, 1908, and in Order XLV thereof.]

461. The Board will not review the decree of an Indian appellate Court in land acquisition proceedings merely upon questions of value, unless the judgment cannot be supported as it stands, either by reason of a wrong application of principle or because some important point in the evidence has been overlooked or misapplied. 59 I.A. 155 =54 A. 286=1932 P.C. 102=62 M.L.J. 682 (P.C.). A decision in case of a dispute among rival claimants as regards title to compensation money is appealable to the Privy Council. 43 M.L.J. 78=49 I.A. 129=45 M. 320 (P.C.); 1922 P.C. 30. *See also* 52 I.A. 367 =49 M.L.J. 233=49 B. 700=30 C.W.N. 336 =1925 P.C. 211 (P.C.). There is nothing to exclude an appeal from an order relating to the distribution of compensation money under the Civil Procedure Code. I.L.R. (1939) Kar. 152=180 I.C. 681=1939 Sind 66. Only a final award or part thereof is appealable. 7 L. 337=94 I.C. 249=1926 L. 442. A reference under sec. 31 (2) of the Land Acquisition Act is made under sec. 18 of the Act. When such reference is made the Court makes an award under sec. 26 and it has the force of a decree. It is an award of Court and appealable under sec. 54 of the Act. 1941 O.W.N. 1325=1941 O.A. 1005. Order dismissing the case for default is neither award nor part of an award and, therefore, no appeal lies therefrom. 157 I.C. 382=1935 Pesh. 92. Though the order determining the apportionment of the compensation is not an award within the meaning of sec. 54, it is in the nature of a decree and an appeal lies against it. 57 B. 314=35 Bom.L.R. 276 =1933 B. 187=144 I.C. 710. Sec. 54 does not give a right of appeal from an award of a single Judge on the original side of the High Court. 28 I.C. 260 (1)=8 L.B.R. 163. Sec. 54 does not affect the right of appeal from the judgment of a single Judge of the High Court to a Division Bench under cl. 10 of the Letters Patent. 3 L. 420=1923 L. 275. No second appeal lies to the High Court from an award by a District Court on appeal from an award made by an Assistant Judge's Court under the Act. 36 B. 360= 15 I.C. 512=14 Bom.L.R. 325. *See also* 38 B. 337=23 I.C. 614 (1)=16 Bom.L.R. 72. The decision of the High Court on an appeal under sec 54 is not a judgment within cl. 15 of the Letters Patent and is not therefore open to appeal. 41 M. 943=35 M. L.J. 110=49 I.C. 27. An award under Part III of the Act is neither a decree nor an order. 28 I.C. 260 (1)=8 L.B.R. 163. Sec. 54 only gives an appeal to the High Court from an award or any part of an award. Where there was nothing as an award by the Civil Court, the High Court can only interfere by way of revision. 11 I.C. 690 =7 N.L.R. 88. Sec. 54 indicates that an appeal shall be only from the award or any part of the award. The addition of the word "only" after appeal must be taken to signify that the Legislature intended that an appeal should not be from any order unless such an order can be construed as an award. The words "in any proceeding" in the section do not have the effect of extending the right of appeal. 54 C. 712=102 I. C. 479=1927 C. 533; 59 M. 554=1936 M. 514=71 M.L.J. 76. No appeal is competent under sec. 54 from an order of the Divisional Court rejecting a reference under sec. 18 on the ground that the application to the Collector was time-barred under sub-sec. (2), cl. (1) of that section. 104 I.C. 397 (and cases referred to therein). Sec. 54 makes no departure from the ordinary rule of the C. P. Code that the memorandum of objections should not be confined to the subject-matter of the appeal. 35 M.L.J. 83=48 I.C. 1003. Collector is a necessary party in an appeal to High Court. *See* 166 I.C. 575=1936 Lah. 564. New point not raised before District Judge cannot be raised in appeal to High Court. 21 Pat.L.T. 9=1940 Pat. 362. As to appeal from a decision on reference under sec. 32 (2), *see* 17 Luck. 506 =1942 Oudh 141.

SPECIAL CASES.—Where a District Judge dismissed a reference as time barred, no appeal lies to the High Court against his order. 39 I.C. 637 (1). An order passed on an application for setting aside a decision by the L.A. Judge *ex parte* as the claimant was not present when the case was called is not appealable as the order is not an award. 15 I.C. 925=39 C. 393. No appeal lies from the dismissal of an application to set aside an *ex parte* award made in the course of L.A. proceedings. (39 C. 393 and 54 C. 312, Foll.; 11 C.W.N. 430, Diss.) 59 C. 1057=1932 C. 558. So the memorandum of appeal from an application to set aside an *ex parte* award cannot be converted into a memorandum of appeal from the award itself, when the latter has become barred by time. 59 C. 1057=36 C.W.N. 352=1932 C. 558. An order directing refund of the money paid as compensation under the Act is not an award or a portion of an award within sec. 54 and hence is not appealable. But it may be revised if the order be passed without jurisdiction. 63 I.C. 1=3 Lah.L.J. 421=1921 L. 153. Award giving compensation to three persons in certain shares—Objections by them regarding amount—Reference made by Collector—Two of them absent——Decree passed in favour of person who appeared and case of others dismissed for default—Restoration petition dismissed —Appeal—Revision. 1935 Pesh. 92. Order of Assistant Judge apportioning compensation money deposited in Court—Appealability—Subject-matter not exceeding Rs. 5,000 —Forum—Appeal lies to District Judge, not to High Court. I.L.R. (1941) Kar. 133= 1941 Sind 100.

55. (1) The Provincial Government shall [1][* *] have power to make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement, and may from time to time alter and add to the rules so made;

Power to make rules.

[2][* * *].

(2) The power to make, alter and add to rules under sub-section (1) shall be subject to the condition of the rules being made, altered or added to after previous publication.

(3) All such rules, alterations and additions shall [3][* * *] be published in the Official Gazette, and shall thereupon have the force of law.

THE LAND ACQUISITION (MINES) ACT (XVIII OF 1885).[4]

Am., Act. XXXVIII of 1920, Act XX of 1937.
Declared in force—
in the Sonthal Parganas, Reg. III of 1872, S. 3, as amended by Reg. III of 1899, S. 3;—
in the Angul District Reg. III of 913, S. 3.

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LEGISLATIVE REF.

1 The words "subject to the control of the Governor-General in Council" which were inserted by Act IV of 1914 were omitted by Act XXXVIII of 1920, sec. 2 and Sch. I.

2 Proviso which was added by Act XXXVIII of 1920, sec. 2 and Sch. I, was omitted by A.O., 1937.

3 The words "when sanctioned by the Governor-General in Council" were omitted by Act IV of 1914, sec. 2 and Sch., Part I.

4 For the Statement of Objects and Reasons, *see* Gazette of India, 1885, Pt. V, p. 145; for Report of the Select Committee, see *ibid.*, Pt. IV, p. 264; and for Proceedings in Council, see *ibid.*, Supplement, pp. 336 and 1520; and *ibid.* Extra Supplement dated 14th March, 1885, p. 41. This Act has been declared to be in force in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation (III of 1872), sec. 3, as amended by the Sonthal Parganas Justice and Laws Regulation (III of 1899), sec. 3, Ben. Code; in Angul and the Khondmals, *see* the Schedule to the Angul District Regulation (I of 1894).

LIMITATION.—The limitation for preferring an appeal to the High Court, under sec. 54 is that prescribed by Art. 156 of Limitation Act. 43 M. 51=37 M.L.J. 110=53 I. C. 405.

PARTIES TO APPEAL.—The only respondent in an appeal from land acquisition case is the Secretary of State, and if his name is omitted, there is in fact no appeal. 18 I.C. 37=59 P.R. 1913.

MISCELLANEOUS.—A decision that Government could take only that portion which they desired and they should not be compelled to take the whole holding is not an award but a preliminary decision decreeing no compensation. 21 I.C. 179=15 Bom.L.R. 802. Award—Amendment on ground of error—Appeal—Award by Court, amount of. 64 I. C. 624=44 A. 86=1922 A. 203.

SECS. 54 AND 26.—The word "only" in sec. 54 does not restrict the right of appeal but is intended to make it celar that the forum of appeal in land acquisition cases is always the High Court and that section does not affect the right of appeal from the judgment of one Judge to a Division Bench under cl. 10 of the Letters Patent. Sec. 26 clearly makes the award of a Civil Court a judgment and decree, and it necessarily follows that the decision of the High Court on appeal from such judgment and decree is also a judgment and decree. I.L.R. (1944) Nag. 780=1944 N.L.J. 267=1944 Nag. 284.

[16*th October*, 1885.

An Act to provide for cases in which Mines or Minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870.[1]

WHEREAS it is expedient to provide for cases in which mines or minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870;[1] It is hereby enacted as follows:

Short title, commencement and local extent.

1. (1) This Act may be called THE LAND ACQUISITION (MINES) ACT, 1885; and

(2) It shall come into force at once.

(3) It extends in the first instance to the territories administered by the Governor of Madras in Council and the Lieutenant-Governor of Bengal; but any other Provincial Government may, from time to time, by notification in the Official Gazette, extend this Act to the whole or any specified part of the territories under its administration.

Saving for mineral rights of the Crown.

2. Except as expressly provided by this Act, nothing in this Act shall affect the right of [2][the Crown] to any mines or minerals.

Declaration that mines are not needed.

3. (1) When the Provincial Government makes a declaration under section 6 of the Land Acquisition Act, 1870,[3] that land is needed for a public purpose or for a Company, it may, if it thinks fit, insert in the declaration a statement that the mines of coal, iron-stone, slate or other minerals lying under the land or any particular portion of the land, except only such parts of the mines or minerals as it may be necessary to dig or carry away or use in the construction of the work for the purpose of which the land is being acquired, are not needed.

(2) When a statement as aforesaid has not been inserted in the declaration made in respect of any land under section 6 of the Land Acquisition Act, 1870,[3] and the Collector is of opinion that the provisions of this Act ought to be applied to the land, he may abstain from tendering compensation under section 11[4] of the said Land Acquisition Act in respect of the mines, and may—

(*a*) when he makes an award under section 14[5] of that Act, insert such a statement in his award;

(*b*) when he makes a reference to the Court under section 15[5] of that Act, insert such a statement in his reference; or

(*c*) when he takes possession of the land under section 17[6] of that Act, publish such a statement in such manner as the Provincial Government may, from time to time, prescribe.

(3) If any such statement is inserted in the declaration, award or refe-

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LEG. REF.

1 *See* now the Land Acquisition Act, 1894.

2 Substituted by A.O., 1937, for "the Government".

3 *See* now sec 6 of the Land Acquisition Act (I of 1894).

4 *See* now sec. 11 of the Land Acquisition Act (I of 1894).

5 *See* now sec. 19 of the Land Acquisition Act (I of 1894).

6 *See* now sec. 17 of the Land Acquisition Act (I of 1894).

SEC. 1.—The principle of sec. 23 (2) of the Land Acquisition Act is not applicable to acquisitions under this Act. 15 Pat. 510 =17 Pat.L.T. 279=1936 Pat. 513.

SEC. 3 (1): EXCEPTION TO RESERVATION —CONSTRUCTION.—The words "except only such parts as it may be necessary to dig .....in the construction of the work, for the purpose of which the land is being acquired" in sec. 3 (1) of the Land Acquisition (Mines) Act, should be narrowly construed so as to include only such parts of the minerals as may be actually necessary to dig in constructing the work. I.L.R. (1941) 1 Cal. 189=45 C.W.N. 553=1941 Cal. 465. *See also* 8 Pat. 742=1930 Pat. 112.

SECS. 3 AND 7: "MINERALS LYING UNDER" —MEANING OF—MINERALS LYING BENEATH ADJACENT LAND.—The expression "minerals lying under the land" used in the Land Acquisition (Mines) Act, can mean nothing else than minerals lying vertically under the land. The natural meaning of the words "lying under" or under-lying" (between which there is no difference) is lying vertically under. Minerals beneath or under adjacent land cannot be included. 72 I.A. 11 =47 Bom.L.R. 621=I.L.R. (1945) Kar. 127 P.C.=1945 P.C. 56=49 C.W.N. 295=(1945) 1 M.L.J. 249 (P.C.).

rence, or published as aforesaid, the mines of coal iron-stone, slate or other minerals under the land or portion of the land specified in the statement, except as aforesaid, shall vest in [1][the Crown] when the land so vests under the said Act.

Notice to be given before working mines lying under land.

4. If the person for the time being immediately entitled to work or get any mines or minerals lying under any land so acquired is desirous of working or getting the same, he shall give the Provincial Government notice in writing of his intention so to do sixty days before the commencement of working.

Power to prevent or restrict working.

5. (1) At any time or times after the receipt of a notice under the last foregoing section and whether before or after the expiration of the said period of sixty days, the Provincial Government may cause the mines or minerals to be inspected by a person appointed by it for the purpose; and

(2) If it appears to the Provincial Government that the working or getting of the mines or minerals, or any part thereof, is likely to cause damage to the surface of the land or any works thereon, the Provincial Government may publish [2][* * *] a declaration of its willingness, either—

(*a*) to pay compensation for the mines or minerals still unworked or ungotten, or that part thereof, to all persons having an interest in the same; or

(*b*) to pay compensation to all such persons in consideration of those mines or minerals, or that part thereof, being worked or gotten in such manner and subject to such restrictions as the Provincial Government may in its declaration specify.

(3) If the declaration mentioned in case (*a*) is made, then those mines or minerals, or that part thereof, shall not thereafter be worked or gotten by any person.

(4) If the declaration mentioned in case (*b*) is made, then those mines or minerals, or that part thereof, shall not thereafter be worked or gotten by any person save in the manner and subject to the restrictions specified by the Provincial Government.

[3][(5) Every declaration made under this section shall be published in such manner as the Provincial Government may direct.]

Mode of determining persons interested and amount of compensation.

6. When the working or getting of any mines or minerals has been prevented or restricted under section 5, the persons interested in those mines or minerals and the amounts of compensation payable to them respectively shall, subject to all necessary modifications, be ascertained

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LEG REF.

1 Substituted by A.O., 1937, for "the Government".

2 The words "in such manner as the Governor-General in Council may from time to time direct", were repealed by Act XXXVIII of 1920, sec. 2 and Sch. I.

3 Inserted by *ibid.*

SEC. 5.—Whenever the Government makes a declaration under sec. 5 (2), the working of the mines is restricted for all time and "by any person", and Government becomes liable to compensate all persons having an interest in the working of the mine and thus affected by the restrictions imposed. The compensation is thus in no case restricted to the actual worker. The restrictions which are imposed must *ex necessitate rei* be permanent. Having regard to the scheme of the Act, piecemeal dealing with the total interest in the coal is not contemplated, and the embargo which is to be perpetual involves payment of compensation to all interests affected. The moment the declaration is made, the full amount of compensation becomes payable by reason of the coal coming under a perpetual embargo. 15 Pat. 510=17 Pat.L.T. 279=1936 Pat. 513.

SECS. 5 AND 6: SCOPE AND EFFECT OF.—The object of the Land Acquisition (Mines) Act is that all persons interested shall be compensated when the person entitled to work the mines has been restricted. The effect of secs. 5 and 6 of the Act is merely to provide that the restriction shall not be imposed unless the Government be willing to compensate all persons interested. The obligation to compensate follows upon the imposition of the restrictions and is not dependent on an announcement by the Government that they are willing to pay such compensation. The effective part of the declaration is the restriction which would have

in the manner provided by the Land Acquistion Act, 1870,[1] for ascertaining the persons interesed in the land to be acquired under that Act, and the amounts of compensation payable to them, respectively.

If Provincial Government does not offer to pay compensation, mines may be worked in a proper manner.

7. (1) If before the expiration of the said sixty days the Provincial Government does not publish a declaration as provided in section 5, the owner, lessee or occupier of the mines may, unless and until such a declaration is subsequently made, work the mines or any part thereof in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the local area where the same are situate.

(2) If any damage or obstruction is caused to the surface of the land or any works thereon by improper working of the mines, the owner, lessee or occupier of the mines shall at once, at his own expense, repair the damage or remove the obstruction, as the case may require.

(3) If the repair or removal is not at once effected, or, if the Provincial Government so thinks fit, without waiting for the same to be effected by the owner, lessee or occupier, the Provincial Government may execute the same and recover from the owner, lessee or occupier the expense occasioned thereby.

Mining communications.

8. If the working of any mines is prevented or restricted under section 5, the respective owners, lessees and occupiers of the mines, if their mines extend so as to lie on both sides of the mines the working of which is prevented or restricted, may cut and make such and so many airways, headways, gateways or water-levels through the mines, measure or strata, the working whereof is prevented or restricted, as may be requisite to enable them to ventilate, drain and work their said mines; but no such airway, headway, gateway or water-level shall be of greater dimensions or section than may be prescribed by the Provincial Government in this behalf, and, where no dimensions are so prescribed, not greater than eight feet wide and eight feet high, nor shall the same be cut or made upon any part of the surface or works, or so as to injure the same, or to interfere with the use thereof.

Provincial Government to pay compensation for injury done to mines;

9. The Provincial Government shall, from time to time, pay to the owner, lessee or occupier of any such mines extending so as to lie on both sides of the mines, the working of which is prevented, or restricted, all such additional expenses and losses as may be incurred by him by reason of the severance of the lands lying over those mines or of the continuous working of those mines being interrupted as aforesaid, or by reason of

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LEG REF.

[1] *See* now the Land Acquisition Act, 1894.

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effect against the whole world. 15 Pat. 510 =17 Pat.L.T. 279=1936 Pat. 513.

SEC. 6: COMPENSATION—AWARD OF LUMP SUM ON ARBITRATION.—When the compensation payable under sec. 6 has been arrived at by arbitration proceedings and awarded in a lump sum, it is not permissible to go into evidence in order to explain the award, although it may well be that there has been an over-payment. 15 Pat. 510=17 Pat.T. T. 279=1936 Pat. 513.

MINES WORKED BY LESSEE UNDER LOYALTY HOLDERS—COMPENSATION FOR.—In the case of mines worked by a lessee under royalty holders, the amount of compensation jointly payable to the royalty holders and the lessee cannot exceed in the aggregate the value of the coal locked up, which would otherwise have been raised and sold, less the working costs. The value so ascertained has to be divided up amongst the claimants, each of the lessors or royalty holders taking out of such sum his appropriate royalty, and the balance going to the lessee working the mine as his profit. The payment by the Government of the whole amount of compensation to one of the several claimants is no defence to a claim by another claimant who has lost his profit by reason of the restrictions imposed by the Government. 15 Pat. 510=17 Pat.L.T. 279=1936 Pat. 513.

AMOUNT OF COMPENSATION—PRIVATE AGREEMENT AS TO—ENFORCEABILITY.—Notwithstanding the provisions of sec. 6, it is competent for the parties to enter into an agreement as to the amount of compensation payable under the Act, and an agreement so made can be enforced in the ordinary way. 15 Pat. 510=17 Pat.L.T. 279=1936 Pat. 513.

SEC. 7.—*See* 72 I.A. 11=I.L.R. 1945 Kar. P.C. 127=1945 P.C. 56=(1945) 1 M.L.J. 249 (P.C.), cited under **sec. 3, *supra.***

the same being worked in such manner and under such restrictions as not to prejudice or injure the surface or works, and for any minerals not acquired by the Provincial Government which cannot be obtained by reason of the action taken under the foregoing section; and if any dispute or question arises between the Provincial Government and the owner, lessee or occupier as aforesaid, touching the amount of those losses or expenses the same shall be settled as nearly as may be in the manner provided for the settlement of questions touching the amount of compensation payable under the Land Acquisition Act, 1870.[1]

and also for injury arising from any airway or other work.

10. If any loss or damage is sustained by the owner or occupier of the lands lying over any such mines, the working whereof has been so prevented or restricted as aforesaid (and not being the owner, lessee or occupier of those mines), by reason of the making of any such airway or other works as aforesaid, which or any like work it would not have been necessary to make but for the working of the mines having been so prevented or restricted as aforesaid, the Provincial Government shall pay full compensation to that owner or occupier of the surface lands for the loss or damage so sustained by him.

Power to officer of Provincial Government to enter and inspect the working of mines.

11. For better ascertaining whether any mines lying under land acquired in accordance with the provisions of this Act are being worked, or have been worked, or are likely to be worked so as to damage the land or the works thereon, an officer appointed for this purpose by the Provincial Government may, after giving twenty-four hours notice in writing, enter into and return from any such mines or the works connected therewith; and for that purpose the officer so appointed may make use of any apparatus or machinery belonging to the owner, lessee or occupier of the mines, and use all necessary means for discovering the distance from any part of the land acquired to the parts of the mines which have been, are being or are about to be worked.

Penalty for refusal to allow inspection.

12. If any owner, lessee or occupier of any such mines or works refuses to allow any officer appointed by the Provincial Government for that purpose to enter into and inspect any such mines or works in manner aforesaid, he shall be punished with fine which may extend to two hundred rupees.

If mines worked contrary to provisions of this Act, Provincial Government may require means to be adopted for safety of land acquired.

13. If it appears that any such mines have been worked contrary to the provisions of this Act, the Provincial Government may, if it thinks fit, give notice to the owner, lessee or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making safe the land acquired, and the works thereon, and preventing injury thereto; and if, after such notice, any such owner, lessee or occupier does not forthwith proceed to construct the works necessary for making safe the land acquired and the works thereon, the Provincial Government may itself construct the works and recover the expense thereof from the owner, lessee or occupier.

Construction of Act when land acquired has been transferred to a local authority or Company.

14. When a statement under section 3 has been made regarding any land, and the land has been acquired by the Government, and has been transferred to, or has vested, by operation of law, in a local authority or Company, then sections 4 to 13, both inclusive, shall be read as if for the words "the Provincial Government" wherever they occur in those sections [2][except in section 5, sub-section (5), and section

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LEG REF.

[1] *See* now the Land Acquisition Act (I of 1894).

[2] Inserted by sec. 2, and Sch. I, Act XXXVIII of 1920.

8,] the words "the local authority or Company, as the case may be, which has acquired the land", were substituted.

15. [*Pending cases.*] *Rep. by the Repealing and Amending Act (XX of 1937), S. 3 and Sch. II.*

Definition of local authority and Company.

16. In this Act—

(*a*) "local authority" means any municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of any municipal or local fund; and

(*b*) "Company" means a Company registered under any of the enactments relating to Companies from time to time in force in British India, or formed in pursuance of an Act of Parliament or by Royal Charter or Letters Patent.

This Act to be read with Land Acquisition Act, 1870.

17. This Act shall, for the purposes of all enactments for the time being in force, be read with and taken as part of the Land Acquisition Act, 1870.[1]

THE LAND CUSTOMS ACT (XIX OF 1924).

No.	Year.	Short title.	Amendments.
XXI	1924	The Land Customs Act.	Amended, Acts XIX of 1931, III of 1937.

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SECTIONS.
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2. Definitions.
3. Appointment of Land Customs Officers.
4. Establishment of Land Customs stations and determination of routes.
5. Permit for goods passing across frontier.
6. Personal baggage.
7. Penalties.
8. Goods not to be passed on certain days or at certain times.
9. Application of Act VIII of 1878.
10. *Omitted.*
SCHEDULE.

[30*th September*, 1924.

An Act to consolidate, amend and extend the Law relating to the levy of duties of customs on articles imported or exported by land from or to territory outside [2][*British*] *India.*

WHEREAS it is expedient to consolidate, amend and extend the law relating to the levy of duties of customs on articles, imported or exported by land from or to territory outside [2][British] India; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Act may be called THE LAND CUSTOMS ACT, 1924.[3]

(2) It extends to the whole of British India [4][* *].

(3) It shall come into force on such date[5] as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) any reference to the passing or import or export of goods "by land" shall be deemed to include the passing or import or export of goods by any inland water-way constituting a foreign frontier or part of a foreign frontier;

LEG REF.

[1] *See* now Land Acquisition Act (I of 1894).

[2] Inserted by Act III of 1937.

[3] For Statement of Objects and Reasons, *see* Gazette of India, 1924, Pt. V, p. 112; and for Report of Select Committee, see *ibid.*, p. 135.

[4] Words 'except Aden' omitted by A.O., 1937.

[5] This Act was brought into force on the 13th December, 1924, *see* Gen. R. & O., Vol. V, p. 616.

(*b*) "Chief Customs authority" means the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924, and includes, in relation to any power or duty[1] which the Central Government may, by notification in the Official Gazette, transfer from the Central Board of Revenue [2][and entrust to a Provincial Government or an officer of a Provincial Government under section 124 (1) of the Government of India Act, 1935, that Government or officer as the case may be];

(*c*) "Collector of Land Customs" means a Collector of Land Customs appointed under section 3;

(*d*) "dutiable goods" means any article on which a duty of land customs is leviable by virtue of a notification issued under section 5 of the Indian Tariff Act, 1894;

(*e*) "foreign frontier" means the frontier separating any foreign territory from any part of British India;

(*f*) "foreign territory" means any territory [3][* *] which has been declared under section 5 of the Indian Tariff Act, 1894, to be foreign territory for the purposes of that Act;

(*g*) "land customs area" means any area adjoining a foreign frontier for which a Collector of Land Customs has been appointed under section 3; and

[4][* * * * * *].

Appointment of Land Customs Officers.

3. (1) The Central Government may, by notification in the Official Gazette, appoint,[5] for any area adjoining a foreign frontier and specified in the notification, a person to be the Collector of Land Customs and such other persons as [2][it] thinks fit to be Land Customs Officers.

(2) The Central Government may delegate, [6][* *] to the Chief Customs authority any power conferred upon [2][it] by sub-section (1) and [6][* *] the Chief Cutsoms authority may delegate[7] to any Collector of Land Customs any power to appoint Land Customs Officers which has been so delegated to it.

Establishment of Land customs stations and determination of routes.

4. The Chief Customs authority may, by notification[8] in the Official Gazette,—

(*a*) establish land customs stations for the levy of land customs in any land customs area, and

(*b*) prescribe the routes by which alone goods or any class of goods, specified in the notification, may pass by land out of or into any foreign territory, or to or from any land customs station from or to any foreign frontier.

Permit for goods passing across frontier.

5. (1) Every person desiring to pass any goods, whether dutiable goods or not, by land out of or into any foreign territory shall apply in writing, in such form[9] as the Chief Customs authority may by notification in the Official Gazette prescribe, for a permit for the passage thereof, to the Land Customs Officer in charge of land customs station established in a land customs area adjoining the foreign frontier across which the goods are to pass.

LEG REF.

1 For the transference of such powers and duties to the Local Government of Burma, Gen. R. & O., Vol. V, p. 616.

2 Substituted by A.O., 1937.

3 Words 'other than territory forming part of a State in India' omitted by Act III of 1937.

4 Cl. (*h*) definnig 'Official Gazette' omitted by A.O., 1937.

5 For notification making such appointments, *see* Gen. R. & O., Vol. V, pp. 616-617.

6 Words referring to Local Government omitted by A.O., 1937.

7 For Notification making such delegations, *see* Gen. R. & O., Vol. V, p. 617.

8 For such Notifications, see *ibid.*, pp. 618-620.

9 For Notification prescribing such form, *see* Gen. R. & O., Vol. V, p. 620.

(2) When the duty on such goods has been paid or the goods have been found by the Land Customs Officer to be free of duty, the Land Customs Officer shall grant a permit certifying that duty has been paid on such goods or that the goods are free of duty, as the case may be.

(3) Any Land Customs Officer, duly empowered by the Chief Customs authority in this behalf, may require any person in charge of any goods which such Officer has reason to believe to have been imported, or to be about to be exported, by land from, or to, any foreign territory to produce the permit granted for such goods; and any such goods which are dutiable and which are unaccompanied by a permit or do not correspond with the specification contained in the permit produced, shall be detained and shall be liable to confiscation:

Provided that nothing in this sub-section shall apply to any imported goods passing from a foreign frontier to a land customs station by a route prescribed in that behalf.

(4) The Chief Customs authority may, by notification[1] in the Official Gazette, direct that the provisions of this section, or any specified provisions thereof, shall not, in any land customs area specified in the notification, apply in respect of goods of any class or value so specified.

Personal baggage.

6. A Land Customs Officer empowered in this behalf by the Chief Customs authority shall pass free of duty any goods imported or exported by land by any passenger, if he is satisfied that the goods are the passenger's personal baggage in actual use.

Penalties.

7. [2][(1)] Any person who—

(*a*) in any case in which the permit referred to in section 5 is required, passes or attempts to pay any goods by land out of or into any foreign territory through any land customs station without such permit; or

(*b*) conveys or attempts to convey to or from any foreign territory or to or from any land customs station any goods by a route other than the route, if any, prescribed for such pasasge under this Act; or

(*c*) aids in so passing or conveying any goods or, knowing that any goods have been so passed or conveyed, keeps or conceals such goods or permits or procures them to be kept or concealed;

shall be liable to a penalty not exceeding, where the goods are not dutiable fifty or, where the goods or any of them are dutiable, one thousand rupees, and any dutiable goods in respect of which the offences has been committed shall be liable to confiscation.

LEG REF.

1 For such a Notification, *see* Gen. R. & O., Vol. V, p. 621.

2 Sec. 7 has been numbered as sub-sec. (1) and sub-secs. (2) and (3) newly added by Act XIX of 1931.

SEC. 7: CARRYING NON-DUTIABLE GOODS WITHOUT PERMIT—ENQUIRY INTO OFFENCE.—Where a person carries non-dutiable goods from foreign territory to British territory without a permit, the offence if any, would be one to be dealt with only by the Land Customs Officer himself under sec. 7 and would not constitute an offence for which a complaint could be made to a Magistrate. 1933 M. 888 (2)=65 M.L.J. 837.

SEC. 7 (1) (*c*): ONUS.—The onus is on the prosecution to prove that the goods were taken by land from foreign territory to British territory at a time when such goods are dutiable. 1933 M. 888 (2)=65 M.L.J. 837. When a person is charged for an offence under sec. 7 (1) (*c*) of the Land Customs Act the onus is on the prosecution to show that dutiable goods had been taken by land form a foreign territory. Where the case for the prosecution was that the accused had previously purchased certain bars of silver in Karaikal, had arranged to bring them to a place in British India and was caught in the processs of removing them from that place to another place in British India, (2) that in the case of non-dutiable was not liable to be convicted in the absence of proof that the goods had been passed by land from the French territory into British India. (2) that in the case of non-dutiable goods, for which the accused had no permit, the offence could be dealt with only by the Land Customs Officer under sec. 7 and would not constitute an offence for which a complaint could be made to a Magistrate. Where the confession of the accused is the only evidence against him, it must be taken as a whole and nothing can be read into it which is not contained there. 65 M.L.J. 837=1933 M. 888 (2).

[1][(2) Where any dutiable goods, or any goods in respect of which a notification under sectio n19 of the Sea Customs Act, 1878, prohibiting the bringing or taking by land of such goods into British India or any specified part thereof, has been issued, are passed by land out of any foreign territory and the Land Customs Officer is of opinion that an offence under sub-section (1) has been committed in respect of such goods and that the penalty provided in that sub-section is inadequate, he may make a complaint to a magistrate having jurisdiction.

(3) Such magistrate shall thereupon inquire into and try the charge brought against the accused person and, upon conviction. may sentence him to imprisonment of either description for a term which may extend to six months, or to fine not exceeding one thousand rupees, or to both, and may confiscate the goods in respect of which the offence has been committed.]

Goods not to be passed on certain days or at certain times.

8. No goods other than personal baggage or goods belong to [2][the Crown] or mails shall be delivered or passed at any land customs station, except with the special permission of the Land Customs Officer in charge thereof,—

(*a*) on any public holiday within the meaning of section 25 of the Negotiable Instruments Act, 1881, or on any day on which the passage and delivery of goods at such land customs station has been prohibited by the Chief Customs authority by notification, in the Official Gazette; or

(*b*) on any day except between such hours as the Chief Customs authority may, by a like notification,[3] appoint.

Application of Act VIII of 1878.

9. (1) The provisions of the Sea Customs Act, 1878, which are specified in the Schedule, together with all notifications, orders rules or forms issued, made or prescribed thereunder, shall, so far as they are applicable, apply for the purpose of the levy of duties of land customs under this Act, in like manner as they apply for the purpose of the levy of duties of customs on goods imported or exported by sea.

(2) For the purpose of such application the said provisions, notifications, orders, rules and forms may be construed with such alterations as may be necessary or proper to adapt them for the said purpose, but not so as otherwise to affect the substance thereof, and in particular—

(*a*) references to bills of entry and to shipping bills shall be deemed to be references respectively to applications for permits to import and applications for permits to export such as are referred to in section 5;

(*b*) references to a Chief Customs Officer shall be deemed to be references to a Collector of Land Customs;

(*c*) references to a Customs Collector shall be deemed to be references to a Land Customs Officer for the time being in charge of a land Customs

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LEG. REF.

1 Sec. 7, renumbered as sub-sec. (1) and (2) and (3) newly added by Act XIX of 1931.

2 Substituted for 'Government' by A.O., 1937.

3 For such Notification, *see* Gen. R. & O., Vol. V, pp. 622-623.

SEC. 7 (2).—Under sec. 7 (2) a Land Customs officer is competent to make a complaint to a Magistrate. In view of the Notification of the Governor-General in Council under sec. 3 (1) of the Act, appointing all Sub-Inspectors of Customs to be Land Customs is competent to prefer a complaint under sec. 7 (2), because he is a Land Customs officer. 47 L.W. 576=1938 Mad. 712 =(1938) 1 M.L.J. 815. Where two persons were charged and convicted by a Sub-Magistrate for offences under secs. 7 (1) (*a*) and (*c*) respectively of the Land Customs Act because certain goods were smuggled into British India from the adjoining French territory by them, but the Sub-Divisional Magistrate on appeal while confirming, the findings of fact held that the complaint filed by the Sub-Inspector of Land Customs was not competent in order to adjudicate upon the value of the goods exceeding Rs. 50: *Held*, that by the Government Notification under sec. (2) was a Land Customs Officer and hence competent to make the complaint to Magistrate. Therefore the convictions and sentence were right. (1938) 1 M.L.J. 815 =47 L.W. 576=1938 Mad. 712.

station or duty authorised to perform all, or any special, duties of an officer so in charge;

(*d*) references to a custom-house shall be deemed to be references to a land customs station;

(*e*) references to a customs-port shall be deemed to be references to a land customs area;

(*f*) references to a foreign port shall be deemed to be references to foreign territory;

(*g*) references to goods brought by sea to, and to goods shipped or brought for shipment at, a customs port shall be deemed to be references respectively to goods brought across a foreign frontier into a land customs area and to goods brought to a land customs station for export;

(*h*) references to Officers of Customs shall be deemed to be references to Collectors of Land Customs or Land Customs Officers appointed under this Act;

(*i*) references to persons on board of any vessel or boat in any port or to persons landing shall be deemed to be references to persons who have entered a land customs area from foreign territory; and

(*j*) references to "this Act" shall be deemed to be references to the Sea Custom Act, 1878, as applied for the purposes of this Act, or to this Act, as the case may require.

10. [*Omitted by Act III of* 1937.]

THE SHEDULE.

(*See Section* 9.)

Provisions of the Sea Customs Act, 1878 *which are made applicable for the purpose of the levy of duties of land customs.*

Sections 4, 8 to 10, 21, 23, 25, 26, 29 to 36, 37, (except the proviso), 38 to 40 [1][Section 88,] Section 167, Nos. 1 8, 9, 37 to 40, and 72 to 80, Sections [2][168] to 176, 178 to 181; 182 to 184, 186 to 197 and 200 to 204.

N.B.—Extracts from the Land Customs (Amendment) Act (III of 1937). —The followng extracts from the Land Customs (Amendment) Act (III of 1937) may also be read in connection with this Act:—

Repeals.

Section **6.** (1) The Acts mentioned in the Schedule are hereby repealed to the extent specified in the fourth column thereof.

(2) All notifications published and all rules and orders made, or deemed to have been made, under any of those Acts and in force immediately before the commencement of this Act shall, so far as they are not inconsistent with the Land Customs Act, 1924, be deemed to have been published and made under that Act. [*Vide* Section 6 of Am. Act III of 1937.]

THE SCHEDULE.

ENACTMENTS REPEALED.

[*See Section* 6 (1).]

Year.	No.	Short title.	Extent of repeal.
		Acts of the Governor-General in Council.	
1844	VI	The Madras Inland Customs Act, 1844.	So much as has not been repealed.
1857	XXIX	The Bombay Land customs Act. 1857.	So much as has not been repealed.

LEG. REF.

[1] Inserted by Act III of 1937.

[2] Substituted for '169' by Act III of 1937.

Year.	No.	Short title.	Extent of repeal.
1874	XV	The Laws Local Extent Act, 1874.	So much of the Second Schedule as relates to Act VI of 1844.
1901	XI	The Amending Act, 1901.	So much of the First Schedule as relates to the Madras Inland Customs Act, 1874, and the Inland Customs (Amendment) Act, 1893.
1920	XXXIII	The Devolution Act, 1920.	So much of the First Schedule as relates to Act XXXI of 1857.
		Acts of the Indian Legislature.	
1934	XIV	The sugar (Excise Duty) Act, 1934.	Sub-section (2) of section 6.
1934	XXXII	The Indian Tariff Act, 1934.	Section 7.
		Madras Act.	
1893	II	The Madras Inland Customs (Amendment) Act, 1893.	The whole.
		Bombay Acts.	
1915	III	The Bombay Decentralization Act, 1915.	The Second Schedule.
1921	II	The Bombay Short Titles Act, 1921.	So much of the Schedule as relates to the Bombay Land Customs Act, 1857.

THE LANDHOLDERS' PUBLIC CHARGES AND DUTIES ACT (II OF 1853).[1]

Short title given, Act XIV of 1897.

Declared in force—

throughout British India except as regards the Scheduled Districts Act: XV of 1874, S. 3;

in the Sonthal Parganas Reg. 3 of 1872, S. 3 as amended by Reg. 3 of 1899, S. 3;

in Upper Burma (except the Shan States) Act XIII of 1898, S. 4.

[*4th February*, 1853.

Act to remove doubts as to the liability of all subjects of Her Majesty to the same jurisdiction as Natives in respect of public and Police duties and public charges incident to the holders of land or their local Agents or Managers.

Preamble.

WHEREAS by virtue of Act No. IV of 1837 it is lawful for any subject of Her Majesty to acquire and hold in perpetuity, or for any term of years property in land, or in any emoluments issuing out of land, in any part of the territories under the Government of the East India Company;

and whereas doubts have arisen whether all subjects of Her Majesty acquiring or holding property in land or in any emoluments issuing out of land, or acting as local agents or managers of such property, are subject to the same jurisdiction as Natives for enforcing the discharge of public and police duties incident to the holding of such property, or for the enforcement of public charges and assessments upon or in respect thereof;

and whereas it is just and reasonable that all persons who may think fit to hold such property, or to be the local agents or managers thereof, should be

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LEG. REF.

1 "The Landholders' Public Charges and Duties Act, 1853." *See* the Indian Short Titles Act XIV of 1897.

liable to the public burthens and duties incident thereto, and in case of neglect or refusal to discharge the same, should be subject to the same jurisdictions as Natives;

It is therefore declared and enacted as follows:—

Non-exemption from public charges or duties of landholders, etc., by reason of place of birth, or of descent.

1. No person whatever, being the owner, holder or farmer of any property in land or in any emoluments issuing out of land, in any part of the said territories, whether in perpetuity or for a term, or, being a local agent or manager of any such property, is, by reason of his place of birth, or by reason of his descent, exempt from any public charge or assessment, or from any duty connected with the police, or with the salt or opium revenue, or from any duty whatsoever of a public nature, to which he would otherwise be subject, as the owner or holder of such property, or as a local agent or manager thereof.

Amenability to laws, etc., for default in respect of such charges and duties.

2. For the non-payment of any such public charge or assessment, or for the breach of any such duty as aforesaid, or for any neglect or misconduct in the discharge thereof, every person, whatever may have been his place of birth, or his descent, shall be subject to the same laws, regulations and procedure, and to the same jurisdiction, as if he were a Native of the said territories.

THE LAND IMPROVEMENT LOANS ACT (XIX OF 1883).[1]

Year.	No.	Short title.	Amendments.
1883	XIX	The Land Improvement Loans Act, 1883.	Repealed in part, XII of 1891; XVI of 1908, S. 93. Repealed in part and amended, VIII of 1906. Amended, XVIII of 1889; IV of 1914.

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1. Short title.
Local extent, Commencement.
2. Acts XXVI of 1871 and XXI of 1876 repealed.
3. "Collector" defined.
4. Purposes for which loans may be granted under this Act.
5. Mode of dealing with applications for loans.
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8. Order granting loan conclusive on certain points.
9. Liability of joint borrowers as among themselves.
10. Power to make rules.
11. Exemption of improvements from assessment to land revenue.
12. Certain powers of Provincial Government to be exercisable by Board of Revenue or Financial Commissioner.

[12*th October*, 1883.

An Act to consolidate and amend the law relating to loans of money by the Government for agricultural improvements.[2]

LEG. REF.

1 For the Statement of Objects and Reasons, *see* Gazette of India, 1882, Pt. V, p. 954; for Report of the Select Committee, see *ibid.*, 1883, Supplement, p. 1296; for proceedings in Council, see *ibid.*, 1882, Supplement, pp. 494 and 1697; *ibid.*, 1883, Supplement, p. 2071.

2 Instruments executed by persons taking loans or by their sureties, as security for the repayment of such loans, are exempted from stamp-duty—*see* the Indian Stamp Act, 1889, Sch. I, Art. 40. Exemption (1), General Acts, Vol. V and Notification under sec. 9, Gen. R. and O., and sec. 2 (2) of this Act.

WHEREAS it is expedient to consolidate and amend the law relating to loans of money by the Government for agricultural improvements; It is hereby enacted as follows:—

Short title.

1. (1) This Act may be called THE LAND IMPROVEMENT LOANS ACT, 1883.

Local extent, commencement.

(2) It extends to the whole of British India, but shall not come into force in any part of British India, until such date as the Provincial Government [1][* * *] may by notification in the Official Gazette, appoint in this behalf.

Acts XXVI of 1871 and XXI of 1876 repealed.

2. (1) The Land Improvement Act, 1871, and Act XXI of 1876 (*An Act to amend the Land Improvement Act,* 1871), shall, except as regards the recovery of advances made before this Act comes into force and costs incurred by the Government in respect of such advances, be repealed.

(2) When in any Act, Regulation or Notification passed or issued before this Act comes into force, reference is made to either of those Acts, the reference shall, so far as may be practicable, be read as applying to this Act or the corresponding part of this Act.

"Collector" defined.

3. In this Act, "Collector" means the Collector of land-revenue of a district, or the Deputy Commisisoner, or any officer empowered by the Provincial Government by name or by virtue of his office to discharge the functions of a [2]Collector under this Act.

Purposes for which loans may be granted under this Act.

4. (1) Subject to such rules as may be made under section 10, loans may be granted under this Act, by such officer as may, from time to time, be empowered in this behalf by the Provincial Government, for the purpose of making any improvement, to any person having a right to make that improvement, or, with the consent of that person, to any other person.

(2) "improvement" means any work which adds to the letting value of land, and includes the following, namely:—

(*a*) the construction of wells, tanks and other works for the storage, supply or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture;

(*b*) the preparation of land for irrigation;

LEG. REF.

1 The words "with the previous sanction of the Governor-General in Council" in secs. 1 and 4 (*f*) were repealed by sec. 2 of the Land Improvement and Agriculturists' Loans (Amendment) Act, 1906 (VIII of 1906), General Acts, Vol. VI.

2 *Cf.* S. 3 (10) of the General Clauses Act (X of 1897). For officer empowered in Sind, *see* Bombay, Gazette, 1901, Part I, p. 1094.

SEC. 4.—The words of sec. 4, are unambiguous and can only be held to apply to improvements which have not been effected at the time when the loan was granted and cannot be held to apply to improvements which had already been carired out at the time when the loan was made. Therefore the Government cannot be allowed to have priority in respect of advances applied for and made after the improvements were carried out with funds belonging to a private individual. A comparison of sec. 4 of the Land Improvement Loans Act and sec. 4 of the Agriculturists' Loans Act would show that if a loan would be granted under the Land Improvement Loans Act, it would not be granted under the Agriculturists' Loans Act. I.L.R. (1939) Mad. 1017=1939 Mad. 711 (1939) 2 M.L.J. 23. A mortgagee under the Land Improvement Loans Act cannot be given priority in respect of lands other than those for whose benefit the loan was granted. There is no justification for giving priority in respect of a mortgage of properties which are not intended to be benefitted by the loan granted under the Act. 1938 M.W.N. 289=1938 Mad. 583. A loan granted for the purpose of weeding the land and for making a stone pavement in a part of it is one for a purpose which falls under the Land Improvement Loans Act. A loan for such a purpose does not come under the Agriculturists' Loans Act. 41 Bom.L.R. 257=1939 Bom. 183.

(*c*) the drainage, reclamation from rivers or other waters, or protection from floods or from erosion or other damage by water, of land used for agricultural purposes or waste land which is culturable;

(*d*) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes;

(*e*) the renewal or reconstruction of any of the foregoing works, or alterations therein or additions thereto; and

(*f*) such other works as the Provincial Government [1][* * * * *] may, from time to time, by notification in the Official Gazette, declare to be improvements for the purposes of this Act.

Mode of dealing with application for loans.

5. (1) When an application for a loan is made under this Act, the Officer to whom the application is made may, if it is, in his opinion, expedient that public notice be given of the application, publish a notice, in such manner as the Provincial Government may, from time to time, direct, calling upon all persons objecting to the loan to appear before him at a time and place fixed therein and submit their objections.

(2) The Officer shall consider every objection submitted under sub-section (1), and make an order in writing either admitting or overruling it:

Provided that, when the question raised by an objection is, in the opinion of the officer, one of such a nature that it cannot be satisfactorily decided except by a Civil Court, he shall postpone his proceeding on the application until the question has been so decided.

Period for repayment of loans.

6. (1) Every loan granted under this Act shall be made repayable by instalments (in the form of an annuity or otherwise) within such period from the date of the actual advance of the loan, or, when the loan is advanced in instalments [2][from the date of the advance of the instalment actually paid] as may, from time to time, be fixed by the rules made under this Act.

(2) The period fixed as aforesaid shall not ordinarily exceed thirty-five years.

(3) The Provincial Government [3][* * * * *] in making [3][* * * * *] the rules fixing the period shall, in considering whether the period should extend to thirty-five years, or whether it should extend beyond thirty-five years, have regard to the durability of the work for the purpose of which the loan is granted, and to the expediency of the cost of the work being paid by the generation of persons who will immediately benefit by the work.

Recovery of loans.

7. (1) Subject to such rules as may be made under section 10, all loans granted under this Act, all interest (if any) chargeable (thereon) and costs (if any) incurred in making the same, shall, when they become due, be recoverable by the Collector in all or any of the following modes, namely:—

LEG. REF.

1 The words "with the previous sanction of the Governor-General in Council" omitted by Act (VIII of 1906), sec. 2.

2 Substituted for "from the date of the actual advance of the last instalment" by sec. 2 of Act XVIII of 1899.

3 The words "and Governor-General in Council" and the words "and sanctioning" were repealed by sec. 3 of Act VIII of 1906.

SEC. 7.—The effect of sec. 7 (1) (*e*) is to create a charge upon the property for the benefit of which the loan is taken. 1939 N. L.J. 235. *See also* 69 P.R. 1869; 25 Mad. 572. A loan advanced under the Land Improvement Loans Act is, subject to the proviso to sec. 7 (*c*), a first charge on the land for the improvement of which the loan is advanced; and the statutory charge created by sec.7 is enforceable against the land even in the hands of a *bona fide* purchaser for value without notice of the charge. The purchaser cannot seek to exempt the land he has purchased from the charge by replying on sec. 100, T.P. Act. 41 Bom.L.R. 257= 1939 Bom. 183. The words of the proviso to sec. 7 clearly mean that the interests of third parties (*e.g.*, the rights of an occupancy tenant) are protected, but that the interest of the borrower and the interest of a mortgagee or charge holder from the mortgagor

(*a*) from the borrower—as if they were arrears of land-revenue due by him;

(*b*) from his surety (if any) as if they were arrears of land-revenue due by him;

(*c*) out of the land for the benefit of which the loan has been granted—as if they were arrears of land-revenue due in respect of that land;

(*d*) out of the property comprised in the collateral security (if any)—according to the procedure for the realisation of land-revenue by the sale of immovable property other than the land on which that revenue is due:

Provided that no proceeding in respect of any land under clause (*c*) shall affect any interest in that land which existed before the date of the order granting the loan, other than the interest of the borrower, and of mortgagees of, or persons having charges on, that interest and, where the loan is granted under section 4 with the consent of another person, the interest of that person, and of mortgagees of, or persons having charges on, that interest.

(2) When any sum due on account of any such loan, interest, or costs is paid to the Collector by a surety or an owner of property comprised in any collateral security, or is recovered under sub-section (1) by the Collector from a surety or out of any such property, the Collector shall, on the application of the surety of the owner of that property (as the case may be), recover that sum on his behalf from the borrower, or out of the land for the benefit of which the loan has been granted, in manner provided by sub-section (1).

(3) It shall be in the discretion of a Collector acting under this section to determine the order in which he will resort to the various modes of recovery permitted by it.

Order granting loan conclusive on certain points.

8. A written order under the hand of an officer empowered to make loans under this Act granting a loan to, or with the consent of, a person mentioned therein, for the purpose of carrying out a work described therein, for the benefit

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with regard to the property would be extinguished by a sale under sec 7 (1) (*c*) even though the mortgage may have been created before the date of the loan. 195 IC. 849=43 Bom.L.R. 600=1941 Bom. 300. The Government has a first charge on the land for the takavi loan granted to the agriculturist for improving that land. 26 N.L.R. 340=1930 N. 195=13 N.L.J. 23; 1926 All. 574. Proceedings of Collector in recovering loans under sec. 7 (1) "as if they were arrears of land revenue" is neither a "suit" nor execution of decree of Court. 109 I.C. 145=5 Rang. 806=1928 Rang. 81. The non-inclusion of condition 14 of the conditions appended to form I annexed to the rules under the Land Improvement Loans Act, in a bond for a takavi loan under the Act, as provided by R. 12 of the rules, does not have the effect of depriving the Collector of the power to proceed under sec. 7 (1) (*c*) of the Act. 182 I.C. 635=41 Bom.L.R. 257=1939 Bom. 183. It is clear on a perusal of sec. 7 that it was the intention of the Legislature that the liability for the takavi loan should rest primarily on the land for the benefit of which the loan was taken. Sub-Cl. (3) of sec. 7 gives the Collector absolute discretion to determine the order in which he should resort to the various modes of recovery permitted by the section. 41 Bom.L.R. 157=1939 Bom. 183. The failure of the Collector to send a copy of the order to the Sub-Registrar for registration as required by sec. 89 of the Registration Act cannot affect the operation of sec. 7 of the Land Improvement Loans Act. The Registration Act itself provides no penalty for non-compliance with the provisions of sec. 89. There is also no provision in the Land Improvement Loans Act which requires that a copy of the order sanctioning the loan should be sent to the Sub-Registrar. 41 Bom.L.R. 257=1939 Bom. 183. Sec. 161, U.P. Land Revenue Act has to be read with sec. 7 of this Act. 24 A.L.J. 718=1926 All. 574.

SEC. 7 (1) (*a*).—"Borrower"—Meaning of —Discharge of original borrower and substitution of assignee in his place—Effect. *See* 44 Bom.L.R. 668=1942 Bom. 300.

SECS. 7 AND 12.—Under sec. 7 the land for which the advance is made for improvement is a security to the Government for the purpose of securing the repayment of advance. 27 I.C. 391. Where the certificate executed by the Collector at the time of granting loan and registered under sec. 12 stated that, for repayment of the loan with interest, the immovable property specified in the margin and the land on which the improvement was to be made was hypothecated to the Government, the Government obtains a perfectly good charge on the land and is entitled to enforce the charge by sale in the ordinary manner. 27 I.C. 391. The language of the proviso to sec. 7 (1) shows the intention of the Legislature to give land improvement loans priority over existing encumbrances. 18 N.L.J. 193.

of land specified therein, shall, for the purposes of this Act, be conclusive evidence—

(*a*) that the work described is an improvement within the meaning of this Act;

(*b*) that the person mentioned had at the date of the order a right to make such an improvement; and

(*c*) that the improvement is one benefiting the land specified.

Liability of joint borrowers as among themselves.

9 When a loan is made under this Act to the members of a village community or to any other persons on such terms that all of them are jointly and severally bound to the Government for the payment of the whole amount payable in respect thereof, and a statement showing the portion of that amount which as among themselves each is bound to contribute is entered upon the order granting the loan and is signed by each of them and by the officer making the order, that statement shall be conclusive evidence of the portion of that amount which as among themselves each of those persons is bound to contribute.

Power to make rules

10 The Provincial Government [1][* * * * * *] may, from time to time, by notification in the Official Gazette, make rules consistent with this Act to provide for the following matters, namely:—

(*a*) the manner of making applications for loans;

(*b*) the officers by whom loans may be granted;

(*c*) the manner of conducting inquiries relative to applications for loans, and the powers to be exercised by officers conducting those inquiries.

(*d*) the nature of the security to be taken for the due application and repayment of the money, the rate of interest at which, and the conditions under which, loans may be granted, and the manner and time of granting loans;

(*e*) the inspection of works for which loans have been granted;

(*f*) the instalments by which, and the mode in which, loans, the interest to be charged on them and the costs incurred in the making thereof, shall be paid;

(*g*) the manner of keeping and auditing the accounts of the expenditure of loans and of the payments in respect of the same; and

(*h*) all other matters pertaining to the working of the Act.

Exemption of improvements from assessment to land-revenue.

11. When land is improved with the aid of a loan granted under this Act, the increase in value derived from the improvement shall not be taken into account in revising the assessment of land-revenue on the land:

Provided as follows:—

(1) Where the improvement consists of the reclamation of waste-land, or of the irrigation of land assessed at unirrigated rates, the increase may be so taken into account after the expiration of such period as may be fixed by rules to be framed by the Provincial Government [2][* * * * * *];

(2) nothing in this section shall entitle any person to call in question any assessment of land-revenue otherwise than as it might have been called in question if this Act had not been passed.

[3][12. The powers conferred on Provincial Government by sections 4

LEG. REF.

[1] The words "subject to the control of the Governor-General in Council" were omitted by Act IV of 1914, sec 2 and Sch., Part I.

[2] The words "with the approval of the Governor-General in Council" omitted by Act VIII of 1906, sec. 5.

[3] Inserted by Act IV of 1914, sec. 2 and Sch., Part. I.

Certain Powers of Provincial Government to be exercisable by Board of Revenue or Financial Commissioner.

(1), 5 (1) and 10 may, in a Province for which there is a Board of Revenue or a Financial Commissioner, be exercised in the like manner and subject to the like conditions by such Board or Financial Commissioner, as the case may be: Provided that rules made by a Board of Revenue or Financial Commissioner shall be subject to the Control of the Provincial Government.]

THE INDIAN LAW REPORTS ACT (XVIII OF 1875).[1]

Year.	No.	Short title.	Amendments.
1875	XVII	The Indian Law Reports Act, 1875.	Repealed in part, XII of 1876. Amended, XXXVIII of 1920; XXXII of 1925 and XXXIV of 1926.

[13*th October*, 1875.

An Act for the improvement of Law Reports.

[*Preamble.*] *Omitted by the Government of India (Adaptation of Indian Laws) Order*, 1937.

Short title.

1. This Act may be called THE INDIAN LAW REORTS ACT, 1875.

Local extent.

It extends to the whole of British India;

Commencement.

and it shall come into force on such day as the Central Government notifies in this behalf in the Official Gazette.

2. [*Repeal of Act II of* 1875.] *Rep. by the Repealing Act*, 1876 (*XII of* 1876).

Authority given only to authorised reports.

3. No Court shall be bound to hear cited, or shall receive or treat as an authority binding on it, the report of any case [2][decided on or after the said day by any Court in British India which is a High Court for the purposes of the Government of India Act, 1935] other than a report published under the authority of [3][any Provincial Government].

Authority of judicial decisions.

4. Nothing herein contained shall be construed to give to any judicial decision any further or other authority than it would have had if this Act had not been passed.

THE LAWS LOCAL EXTENT ACT (XV OF 1874).

Year.	No.	Short title.	Amendments.
1874	XV	Laws Local Extent Act.	Repealed in part, VIII of 1875; XII of 1876; XVIII of 1877; VI of 1878; XI of 1878; XXVI of 1881; X of 1882; VIII of 1887; IX of 1877; VII of 1889; XIII of 1889; VIII of 1890; XII of 1891; IV of 1894; IX of 1894; XI of 1901; I of 1903; IV of 1922; XXI of 1923; XII of 1927; III of 1937 and I of 1938. Amended, XII of 1891.

LEG. REF.

1 For the Statement of Objects and Reasons, *see* Gazette of India, 1875, Pt. V, p. 139; for Proceedings in Council, see *ibid.*, Extra Supplement, dated 31st July, 1875, p. 5, and *ibid.*, Extraordinary, dated 25th October, 1875, p. 1.

2 Substituted by A.O., 1937 for "decided by any of the said High Courts or by the Chief Court of Oudh on or after the said day".

3 Substituted by A.O., 1937 for "any Local Government".

SECS. 3 AND 4.—Object of sec. 3, *see* 28 C. 289; 4 C.W.N. 732; 28 C. 171 (duly certi-

THE LAWS LOCAL EXTENT ACT (XV OF 1874).[1]

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SEVENTH SCHEDULE.
[*Repealed.*]

[*8th December*, 1874.

An Act for declaring the local extent of certain Enactments, and for other purposes.

Preamble.

WHEREAS it is expedient to declare the local extent of certain Acts passed by the Governor-General of India in Council, the Legislative Council of India, and the Council of the

LEG. REF.

[1] For the Statement of Objects and Reasons, *see* Gazette of India, 1870, Pt. V, p. 153; and for proceedings in Council, *see ibid.*, 1871, Supplement, pp. 1074 and 1218; and *ibid.*, 1874, Supplement, pp. 1885 and 1976.

fied copy of a law report decision is admissible). Unauthorized reports are on the same footing as unreported cases. 24 O.C. 319=1921 O. 257. But *see also* 4 Rang. 146=1926 Rang. 164 (F.B.). (Decision reported in a private publication not authorized by any Local Government is not absolutely binding). The Court has a discretion to hear a case cited from an unauthorised report. In exercising its discretion in any particular occasion, the Court should give due weight to the practice prevailing in the Courts with reference to any particular report the decision from which is cited at the bar. I.L.R. 1931 M. 366=130 I.C. 190=1931 M. 71=1930 M. W.N. 955. All that the Law Reports Act does is to ensure that Judges who have no access to the decisions themselves shall be provided with accurate copies of them. If an officially certified copy of a judgment of the High Court were to be produced in a lower Court, the lower Court would be bound to treat it in the same way as it would an officially reported judgment. A lower Court is bound by an unpublished ruling of its own High Court but not by an *obiter dicta*. Hence a single Judge of the High Court is bound by the decision of the Division Bench, even though the decision is not reported. It is the decision and not the opinion of the Court nor the report of it that makes the precedent. I.L.R. (1944) Nag. 342=1944 N. L.J. 1=1944 Nag. 44 (F.B.). The Act has no application to a decision of the Privy Council, and a Court is at liberty to refer to an authorized report of a decision of the Privy Council, and if satisfied that it is a correct report, it is bound to follow it. 48 M. 846=1926 M. 20=49 M.L.J. 498. A view expressed in a judgment of a High Court which has not been officially published even without reasons is entitled to respect, and any examination of it ought to start with the

Governor-General of India assembled for the purpose of making Laws and Regulations;

And whereas it is also expedient to consolidate the laws relating to the local extent of certain Acts and Regulations in the Presidencies of Fort St. George and Bombay, and in the Lower and the North-Western Provinces of the Presidency of Fort William in Bengal;

It is hereby enacted as follows:—

Short title.

1. This Act may be called THE LAWS LOCAL EXTENT ACT, 1874.

Interpretation clause

2. In this Act the expression "Scheduled Districts" means the territories mentioned in the sixth schedule hereto annexed.

Local extent of Acts in first schedule.

3. The Acts mentioned in the first schedule hereto annexed are now in force throughout the whole of British India, except the Scheduled Districts.

Local extent of enactments in second schedule.

4. The enactments mentioned in the second schedule hereto annexed are now in force throughout the whole of the territories now subject to the Government of the Governor of Fort Saint George in Council, except the Scheduled Districts subject to such Government.

Local extent of enactments in third schedule.

5. The enactments mentioned in the third schedule hereto annexed are now in force throughout the whole of the territories now subject to the Government of the Governor of Bombay in Council, except the Scheduled Districts subject to such Government.

Local extent of enactments in fourth schedule.

6. The enactments mentioned in the fourth schedule hereto annexed are now in force throughout the whole of the territories now subject to the Government of the Lieutenant Governor of Bengal except the Scheduled Districts subject to such Government.

Local extent of enactments in fifth schedule.

7. The enactments mentioned in the fifth schedule hereto annexed are now in force throughout the whole of the territories now subject to the Government of the Lieutenant Governor of the North-Western Provinces of the Presidency of Fort William except the Scheduled Districts subject to such Government.

Savings.

8. Nothing herein contained shall—

(*a*) bar the power of the Central Government or the Provincial Government, under any law for the time being in force, to extend to any place any Act mentioned in the said first schedule;

(*b*) extend any Act empowering the Provincial Government to extend the same or any part thereof, or affect in any manner the exercise of such power;

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assumption that it is correct and has good reasons behind it. But it is not to be followed blindly, like one that is officially published, though good reasons must be found for not following it. 1925 N 414=8 N.L.J. 153= 93 I.C. 850. Digest of Civil Rulings is no authority. 26 N.L.R. 178=1930 N. 270. It is reprehensible of compilers of law reports to omit to report the judgment of the appellate Court reversing the decision in a case which they have reported. A decision in second appeal should rarely be reported until any appeal preferred against it under the Letters Patent has been determined. 10 P. 522=12 Pat L.T. 308=1932 P. 5. Subordinate Courts are bound to follow a decision of a Bench of the High Court. 48 All. 432=24 A.L.J. 430= 1926 All. 346. Where the facts of the case are not stated in the report of an official publication, the report would be useless and misleading. *See* 27 I.A. 110=27 Cal. 951 at P. 965=4 C.W.N. 631=10 M.L.J. 356.

(*c*) affect the operation of any Act or Regulation heretofore extended to or declared to be in force in any of the Scheduled Districts;

(*d*) revive any enactment which has been repealed either generally or with reference to some special subject;

(*e*) [*Rep. by Act VIII of* 1887];

(*f*) [*Rep. by the Amending Act* (*XII of* 1891)];

(*g*) [*Rep. by the Guardians and Wards Act* (*VIII of* 1890)].

(*h*) [*Repealed by Act* (*VIII of* 1887];

(*i*) [Rep. by the Repealing and Amending Act (IV of 1894)];

(*j*) extend to any of the Towns of Calcutta, Madras and Bombay any law not now in force therein;

[1][*jj*] extend to Pargana Bhadoni or Pargana Kera Mangror in the Mirzapur District, or to Pargana Kaswa Raja in the Benares District, any law not now in force therein];

(*k*) affect the operation of any enactment not mentioned in any of the schedules hereto annexed.

9. [*Enactments repealed.*] *Rep. by the Repealing Act* (*XII of* 1876).

FIRST SCHEDULE.[2]

(*See* section 3.)

ACT OF THE SUPREME COUNCIL.

Year and Number.			Subject.
1837.	IV	..	Power to acquire land.
1838.	XXV	..	Wills executed before the 1st January, 1866.
1839.	XXIX	..	Power, when marriage was contracted before 1st January, 1866.
1839.	XXX	..	Inheritance where discent took place before 1st January, 1866.
,,	XXXII	..	Interest.

LEG. REF.

1 Inserted by sec. 15 of the Benares Family Domains Act (XIV of 1881).

2 Act XV of 1874 having been repealed, so far as it relates to the following enactments, by the Acts noted against each, the references to those enactments have been omitted from this schedule:—

Enactments omitted. Acts.	Repealing Acts. Acts.
XXVI of 1836 ..	XII of 1927.
VI of 1840 ..	XXVI of 1881.
XI of 1841 ..	VIII of 1887.
XVIII of 1841 ..	XI of 1878.
XIX of 1841 ..	XII of 1927.
IX of 1842 ..	XII of 1891.
XII of 1842 ..	VIII of 1887.
XX of 1847 ..	XII of 1927.
XXXIV of 1850 ..	The A O. 1937
XXX of 1852 ..	XII of 1927.
XXXIII of 1852 ..	VIII of 1887.
XVIIII of 1854 ..	XII of 1891.
III of 1858 ..	The A. O., 1937.
I of 1859 ..	XXI of 1923.
III of 1859 ..	VIII of 1887.
VIII of 1859 .. } XIV of 1859, S 15 .. } XV of 1859 .. }	XII of 1891.
XXVII of 1860 ..	VII of 1889.
IX of 1861 ..	VIII of 1890.
XXIII of 1861 .. } VI of 1863 .. }	XII of 1889.
VI of 1864 ..	XII of 1927.
XI of 1865 ..	IX of 1887.
XXI of 1865 .. } V of 1866 .. }	XII of 1927. XII of 1891.
X of 1866 ..	IX of 1887.
X of 1867 ..	XII of 1891.
X of 1868 ..	
XV of 1869 .. } I of 1870 .. }	XII of 1927,

Year and Number.			Subject.
1841,	X	..	Registration of Ships.
1843,	V	..	Slavery.
1850,	V	..	Coasting Trade.
,,	XI	..	Navigation Laws.
[1]1850,	XII	.	Default of Public Accountants.
,,	XVIII	..	Protection of Judicial Officers.
,,	XIX	..	Binding of apprentices.
,,	XXI	..	Non-forfeiture of rights by loss of Caste.
,,	XXXVII	..	nquiries into the behaviour of Public Servants.
1853,	II	..	Burdens on land.
1854,	XXXI	..	Barring entails: Conveyances by married women.
1855,	XI	..	Mesne profits and improvements.
,,	XII	..	Executors and Administrators.
,,	XIII	..	Compensation for loss occasioned by death caused by actionable wrong.
,,	XXIII	..	Administration of mortgaged estates in cases of descents occurring or devises made before the 1st January, 1866.
,,	XXIV	..	Penal servitude.
,,	XXVIII	..	Interest.
1856,	IX	..	Bills of Lading.
,,	XI	..	Desertion by European Soldiers.
,,	XV	..	Marriage of Hindu Widows.
[2]1857,	XI	..	*Offences against the State.*
[2] ,,	XXV	..	*Forfeiture by Mutineers.*
[3] ,,	XXXV	..	*Estate of Lunatics not subject to jurisdiction of Supreme Courts.*
,,	[3]XXXVI	..	*Lunatic Asylums.*
1859,	IX	..	Section 16, 17, 18 and 20—Forfeitures.
1860	XXI.	..	Registration of Societies.——
1862,	III	..	Government Seal.
1863,	XVI	..	Excise Duty payable on Spirits used in Arts and Manufactures.
,,	XXIII	..	Claims to waste-lands.
,,	XXXI	..	Gazette of India.
1864,	III	..	Foreigners.
1865,	III	..	Common Carriers.
,,	XV	..	Marriage and Divorce among Parsees.
1866,	XXI	..	Dissolution of Marriages of Native Converts.
,,	XXVIII	..	Trustees and Mortgagees' Powers.
1867,	XXV	..	Printing Presses, etc.

SECOND SCHEDULE.[4]

(*See* section 4.)

LEG. REF.

[1] Act XII of 1850 is repealed locally in Assam by the Assam Land Revenue Regulation, 1886 (I of 1886), Assam Code.

[2] These Acts were repealed by sec. 3 and Sch., of Act IV of 1922.

[3] These Acts were repealed by the Indian Lunacy Act, 1912 (IV of 1912).

[4] Act XV of 1874 having been repealed so far as it relates to the following enactments, by the Acts noted against each, the references to those enactments have been omitted from the schedule:—

Enactments omitted.	Repealing Acts.
Mad. Reg. III of 1802. S. 11 ..	XII of 1891.
Acts. V of 1802, S 30 ..	XI of 1901.
XIII of 1802 ..	Do.
I of 1805 ..	
II of 1807 ..	XII of 1891.
IV of 1816 ..	
IX of 1816, S. 43 ..	
XIV of 1816 ..	
V of 1816 ..	XII of 1927.
I of 1812 ..	
II of 1819 ..	
IV of 1821, S. 4 ..	The A.O., 1937
III of 1831 ..	XII of 1876,
VII of 1832 ..	VI of 1878
XI of 1932 ..	
XIV of 1832 ..	XIII of 1899.

(*a*).—MADRAS REGULATIONS.

Year and Number.	Subject.
[1] 1802, III (S. 1, part of S. 16 only).	Procedure of Civil Courts.
[1] „ XIX (S. 2) ..	Covenanted Civil Servants forbidden to lend.
[1] „ XXV ..	Settlement of Land-revenue.
[1] „ XXVI (Ss. 1, 2 and 3 only) ..	Registration of maiguzari land.
[1] „ XXIX ..	Karnams
[1] 1803 I ..	Board of Revenue.
[1] „ II ..	Conduct of Collectors, etc.
[2] 1804, V ..	Courts of Wards.
1806, II [3][(S. 7 cl. second]) ..	Collectors and Karnams.
[4] 1808, VII ..	*Martial law.*
1816, XI ..	Sections 8, 9, 10—Heads of villages : section 11, cl. 1—stolen property : Section 13—Discovery of corpses : Section 14—Register of persons confined by heads of villages: and Section 47—Magistrates charged with maintenance of peace
[5] „ XII ..	Reference of claims regarding land and produce to Villages and District Panchayats.
1817, VII ..	Maintenance of Bridges, etc : Escheats.
„ VIII (S. 9 only) ..	Sale for arrears of revenue of estate belonging to Native Officer or Soldier.
1822 IV ..	Explanation of Madras Regulation XXV of 1802.
„ VII (cl. 1 of S. 3 only) ..	Native Officers in Revenue and other Public Departments.
„ IX ..	Embezzlement by public servants and malversation in revenue-matters.
1823, III ..	
1823, VII ..	Powers of Subordinate and Assistant Collectors
1829, V ..	Hindu Wills and Estates,
1830, I ..	Prohibition of Widow burning.
1831. V (S. 7 cl. 2 only) ..	Liability of Ministerial Officer for reception of improperly stamped document.
[6] „ VI ..	Hereditary Village Offices.
[7] „ X ..	Prohibition of Sale of Estate of Minors for Arrears of Revenue
1832. III ..	Limitation fon Suits against orders of Revenue Authorities under Madras Regulation VII of 1828

LEG. REF.

1 This Regulation has been repealed locally by Madras Act II of 1894.

2 Act XV of 1874, so far as it relates to the portions of Madras Regulation V of 1804, which were repealed by the Guardians and Wards Act, 1890, is repealed by the latter Act. The Regulation was repealed by Madras Act I of 1902 (Madras Court of Wards Act).

3 Parts of secs. 1 and 7 were originally referred to in this schedule. Of the entire Regulation only the second clause of sec. 7 is now in force, *see* Pt. III of the Schedule to the Repealing Act, 1876 (XII of 1876).

4 Repealed by sec. 3 and Sch. of Act IV of 1922.

5 Madras Regulation XII of 1816 has been repealed by Madras Act IV of 1897 (the Madras Survey and Boundaries Act) so far as it applies to cases of claim to lands or crops, the validity of which claims may depend upon the determination of an uncertain and disputed boundary or land-mark.

6 Repealed by Madras Act III of 1895 (Madras Hereditary Village Offices Act).

7 Act XV of 1874, so far as it relates to Madras Regulation X of 1831, sec 3, is repealed by the Guardians and Wards Act, 1890 (VIII of 1890). So much of the Regulation as is now in force is printed in the Madras Code, Vol. I.

(*b*) .—ACTS OF THE SUPREME COUNCIL RELATING TO THE MADRAS PRESIDENCY.[1]

Year and Number.			Subject.
[2] 1837,	XXXVI	..	Criminal Jurisdiction of Collectors.
[2] 1839,	VII	..	Tahsildars.
[2] 1840,	VIII	..	Wards of Panchayats.
[3] 1846,	I	..	Pleaders.
[2] 1849,	X	..	Commissioners of Revenue.
[3] 1853,	XX	..	Pleaders.
1857,	VII	..	Uncovenanted Agency.
1858,	I	..	Compulsory Labour.
1859,	XXIV	..	Police.

THIRD SCHEDULE.[4]

(*See* section 5.)

(*a*).—BOMBAY REGULATIONS.

Year and Number			Subject.
1827,		..	Section 21 (caste questions);[5] * * *
"	IV	..	Section 26[6] (law applicable to suits); section 6-9 clauses *second* and *third*[6] (attachment and distraint of crops).
[6] "	V	..	Preamble; section 9 (acknowledgments of debt; section 14 (interest): section 15 (mortgages and pledges).
"	VIII	..	Administration of Estates.
"	XII	..	Second 19 (Magistrate's power to make rules;)

LEG. REF.

1 Act XV of 1874 having been repealed so far as it relates to the following enactments, by the Acts noted against each, the references to those enactments have been omitted from this schedule:—

XII of 1838	..	VI of 1878.
XVII of 1840	..	XII of 1891.
VII of 1852	..	III of 1837.
VI of 1844	..	XII of 1927.
IX of 1846	..	XI of 1901.
X of 1855, S. 10	..	VIII of 1887.
XIV of 1855	..	
XXI of 1855	..	XII of 1927.
VIII of 1856	..	VIII of 1890.
XIV of 1858	..	XII of 1927.
XXVIII of 1860	..	II of 1891.
XI of 1869	..	XVIII of 1877.
XXIV of 1869	..	XVIII of 1902.

2 Repealed by Madras Act I of 1902 (Madras Court of Wards Act).

3 As to the repeal of Acts I of 1846 and XX of 1853 in the Madras Presidency, *see* secs. 1 and 42 of the Legal Practitioners' Act, 1879 (XVIII of 1879).

4 Act XV of 1874 having been repealed so far as it relates to the following enactments, by the Acts noted against each, the references to those enactments have been omitted from this schedule:—

Enactments omitted, Bom. Reg.	Repealing Acts.
XII of 1827, preamble ..	
XVI of 1827	
XXI of 1827, Ss. 1-16, 46, 54-73.	XII of 1891.
XXII of 1827, Ss. 18-20, 45-47.	XIII of 1889.
XXV of 1827	... The A.O 1937.

5 Certain words omitted by S. 2 and Sch. of the Repealing Act, 1927 (XII of 1927).

6 Bom. Code.

Year and Number.			Subject.
[1] 1827,	XIII	..	section 20 (standards of weights and measures) section 27, clause 2 (supervision of suspected persons): section 37, clauses *first* and *second* (responsibility of villages for robberies). Section 34, clause *third* (letter substituted for summons).
,,	XXII	..	Sections 40, 41, 42, 43, (passage of troops).
[2] 1830,	V	..	Section 1 (Revenue Commissioners): section 2 clauses 1, 2, 3 (Collectors and Sub-Collectors),
	XXI	..	Civil jurisdiction of Jagirdars.
1831.	XV	..	Village Patels.
1832,	II	..	Realization of Revenue.
1833.	V	..	Heredilary Officers.

(*b*)—ACTS OF THE SUPREME COUNCIL RELATING TO THE BOMBAY PRESIDENCY.[3]

Year and Number.			Subject.
1838,	XVI	..	Judiciary.
,,	XVII	..	Sureties.
1838,	XIX	..	Coasting Vessels.
1839,	XX	..	Revenue.
1840,	XV	..	Agent of Foreign Sovereigns.
[4]1842,	XIII	..	Revenue.
[4] ,,	XVII	..	Revenue Commissioners.
1844,	XIX	..	Abolition of Town Duties.
[5]1846,	I	..	Pleaders.
[4] ,,	III	..	Section 1, 5 and 6—Boundary Marks.
[5]1853,	XX	..	Pleaders.

FOURTH SCHEDULE.[7]

(*See* section 6.)

(*a*).—BENGAL REGULATIONS (LOWER PROVINCES).

Year and Number.			Subject.
[6]1793	I	..	Perpetual Settlement.
,,	II	..	Collection of Land-Revenue.

LEG. REF.

1 Bom. Code.

2 Bom. Reg. IV of 1827, sec. 69 and Bom. Regs. V of 1830, XV of 1831, II of 1832 and V of 1833, are repealed locally by the Bombay Land Revenue Code, 1879 (Bom. Act V of 1879), Bom. Code.

3 Act XV of 1874 having been repealed so far as it relates to the following enactments, by the Acts noted against each, the references to those enactments have been omitted from this schedule:—

Enactments omitted. Acts.		Repealing Acts. Acts.
XI of 1843	..	XII of 1891.
III of 1852	..	
XXI of 1852	..	

Enactments omitted. Acts.		Repealing Acts Acts.
X of 1855, S. 10.	..	XI of 1901.
VIII of 1856	..	IX of 1894.
XX of 1864	..	VIII of 1890.

4 Acts XVIII of 1838, XII and XVII of 1842 and III of 1846 are repealed locally by the Bombay Land-Revenue Code, 1879 (Bom. Act V of 1879), Bom. Code.

5 As to the repeal of Acts I of 1846 and XX of 1853 in the Bombay Presidency, *see* secs. 12 and 42 of the Legal Practitioners' Act, 1879, (XVIII of 1879).

6 Ben. Code.

7 Act XV of 1874 having been repealed so far as it relates to the following enactment,

Year and Number.	Subject.
1793[1] VIII ..	Rules for Decennial Settlement.
,, XI ..	Native laws of inheritance to Revenue-paying land.
,, XIX ..	Title to lands exempt from Revenue.
,, XXXVII ..	Title to lands exempt from Revenue under badshahi grants.
,, XXXVIII ..	Section 1—Preamble: Section 2—Prohibition of loans by Covenanted Servant.
1794, III ..	Sections 13, 16, 17, 18, 19, and 20—Arrears of Revenue.
1979 V ..	Wills and Intestacies of Natives.
1800, VIII ..	Pargana Register of Lands.
1801, I ..	Arrears of Revenue: Division of Joint Estates.
[1] 1804, X ..	*Punishment by courts-martial of certain State offences.*
1806, XI ..	Passage of Troops.
1810, XIX ..	Maintenance of Bridges, etc., Escheats.
1812, V ..	Collection of Land-revenue.
,, XI ..	Removal of Foreign Emigrants.
1817, XX ..	Section 29—Crimanal process in Salt and Opium Departments: Section 30 clauses 1, 2 and 5—Building fort; Collecting sepoy and stores; Encroaching on roads.
[3] 1819, II ..	Resumption of Revenue-free lands.
1821, IX ..	Powers of Collectors and Magistrates.
[2] 1812, III ..	*Boards of Land-Revenue.*
,, XI ..	Section 36—Khas management of purchases by Government: Section 38—Non liability of Government for errors of Courts.
1823, VI ..	Indigo Contracts.
,, VII ..	Prohibition of loans to Covenanted Civil Servants.
1825, VI ..	Passage of Troops.
,, IX ..	Defaulting Malguzars.
,, XI ..	Ailuvion and diluvion.
,, XIII ..	Settlement of resumed Lakhiraj land.
,, XIV ..	Authority to confirm Lakhiraj tenure: Native grants.
1827, III ..	Section 5—Evidence.
,, V ..	Management of Estates bnder attachment.
1828, III ..	Appeals from decisions of Revenue Authorities.
,, IV ..	Section 1 and section 2, clause 4—Time during which Collectors are to be considered engaged in making settlements.
1829, I ..	Commissioners of Revenue and Beard of Revenue
,, XVII ..	Widow-burning.
1830, V ..	Section 1 and 5—Indigo Contracts.

LEG. REF.

by the Acts noted against each, the references to those enactments have been omitted from this schedule:—

Enactments omitted. Beng. Reg.	Repealing Acts.
XLVIII of 1793 ..	XII of 1891.
III of 1794, S. 12 ..	XII of 1876
LVIII of 1795, Ss. 3 & 4 ..	XII of 1891
XV of 1797 ..	
I of 1798 ..	
XVII of 1806, Ss. 7 & 8 ..	
XX of 1810 ..	XIII of 1889
XI of 1811 ..	XII of 1891.
XIX of 1814 ..	

Enactments omitted. Beng. Reg.	Repealing Acts.
V of 1817 ..	VI of 1878.
XX of 1817, Ss. 28 & 32.	XII of 1391.
III of 1818	The A O. 1937.
VI of 1819 ..	XII of 1891.
XX of 1825 ..	X of 1882.
IV of 1827 ..	XII of 1876.

[1] Repealed by sec. 3 and Sch. of the Special Laws Repeal Act, 1922 (IV of 1922).

[2] Repealed by the Bengal Board of Revenue Act, 1913 (Beng. Act II of 1913), Beng. Code.

[3] Ben. Code.

(*b* ACTS OF THE SUPREME COUNCIL RELATING TO THE LOWER PROVINCES.

Year and Number.	Subject.
1836, X ..	Indigo Contracts.
,, XXI ..	Creating Zilas.
1841, XII ..	Section 2—No Interest on arrears of Land-revenue.
1847, XI ..	Assessment of new lands.
1848, XX ..	Land-revenue.
[2]1850, XLIV ..	*Board of Revenue.*
[3]1855, XXXII ..	Embankments.
1856, XII ..	Civil Court Amins.
1857, XIII ..	Opium.
1858, XXXI ..	Settlement of Alluvion.
1859, XI ..	Sales for Arrears of Revenue.

FIFTH SCHEDULE.

(*a*).—BENGAL REGULATIONS (NORTH-WESTERN PROVINCES).[4]

Year and Number.	Subject.
1793, XXXVIII ..	Section 1—preamble : Section 2—prohibition of loans by Covenanted Servants.
1799, V ..	Wills and Administration to Natives.
[6]1804, X ..	*Punishment by Courts-martial of certain State Offences.*
1806, XI ..	Passage of Troops.
1812, XI ..	Removal of Foreign Emigrants.
1812, XI ..	Section 38—Non-liability of Government for errors of Courts.
[5] 1823, VI ..	Indigo Contracts.
,, VII ..	Prohibition of loans to Covenanted Civil Servants.
1825, VI ..	Passage of Troops.
,, XI ..	Alluvion and Dereliction.
1827 III ..	Section 5—Evidence.
,, V ..	Management of Estate under Attachment.
1829 XVII ..	Widow-burning.
1830, V ..	Sections 1 and 5—Indigo Contracts.
1831, XI ..	Sections 1, 2, 5. 6, Police powers of Tahsildars.
1833, IX ..	Deputy Collectors.

LEG. REF.

[1] Act XV of 1874 having been repealed so far as it relates to the following enactments, by the Acts noted against each, the references to those enactments have been omitted from this Schedule:—

Enactments omitted. Acts.	Repealing Acts. Acts.
XX of 1836 .. }	XII of 1891.
XI of 1938 .. }	
XIX of 1853, S, 26 ..	I of 1903.
XX of 1856 .. }	XII of 1891.
XXI of 1856 .. }	
XL of 1858 ..	XIII of 1890.
XXIII of 1860 ..	XII of 1891.

[2] Repealed by the Bengal Board of Revenue Act, 1913 (Bengal Act II of 1913), Beng. Code.

[3] Act XXXII of 1855 has been repealed locally in Bengal by the Bengal Embankments Act, 1873 (Bengal Act VI of 1873).

[4] Act XV of 1874 having been repealed so far as it relates to the following enactments, by the Acts noted against each, the references to those enactments have been omitted from this schedule:—

Enactments omitted. Beng. Reg.	Repealins Acts. Acts.
I of 1798 .. }	
XVII of 1806, Ss. 7 & 8 .. }	XII of 1891.
XIX of 1810 .. }	
XX of 1810 .. }	XIII of 1889
V of 1817 .. }	XII of 1881
III of 1818	The A.O. 1937
VI of 1819	XII of 1891
XI of 1825 ..	X of 1882
VI of 1831, S. 6 .. }	XII of 1891
XI of 1831, Ss. 4 & 8 .. }	
I of 1883 .. }	VIII of 1877

[5] U.P. Code (6).

[6] Repealed by sec. 3 and Sch. of the Special Laws Repeal Act, 1922 (IV of 1922).

(*b*) ACTS OF THE SUPREME COUNCIL RELATING TO THE NORTH-WESTERN PROVINCES.[1]

Year and Number.			Subject.
1836,	X	..	Indigo Contracts.
1854,	XVI	..	Police.
1856,	XII	..	Civil Court Amins.
	XX	..	*Choukidars.*
1857,	XIII	..	Opium.

SIXTH SCHEDULE.

(*See* sections 2, 3, 4, 5, 6 and 7.)

PART I.

SCHEDULED DISTRICTS, MADRAS.

I.—In Ganjam.

(1) The Gumsur Mahahs, including Chokapad.
(2) The Surada Mahahs.
(3) The Chinna Kimedi Mahahs.
(4) The Pedda Kimedi Mahahs.
(5) The Bodaguda Mahahs.
(6) The Surangi Mahahs.
(7) The Parlakimedi Mahahs.
(8) The Muttas of Koiada and Ronaba (otherwise called Srikarma).
[(9) *The Chighatti Mahah.*] *Rep. by the Repealing and Amending Act,* 1891 (*XII of* 1891).
(10) The Juiada Mahah.
(11) The Jalantra Mahah.
(12) The Mandasa Mahah.
(13) The Budarashinghi Mahah.
(14) The Kuttingia Mahah.

II.—In Vizagapatam.

(1) The Jeypur Zamindari.
(2) Golconda Hills, west of the River Boderu.
(3) The Madugol Mahahs.
(4) The Kasipur Zamindari.
(5) The Panchipenta Mahahs.
(6) Mondemkolla, in he Merangi Zamindari.
[3][(7) The Konda Mutta of Merangi.]
Kurpam.
(8) The Gumma and Konda Muttas of
(9) The Kottam, Ram and Konda Muttas of Palkonda.

III.—In the Godavari Districts.[4]

(1) The Bhadrachalam Taluq.
(2) The Rakapilli Taluq.
(3) The Rampa Country.

IV.—In the Indian Ocean.

The Laccadive Islands, including Minicoy.

PART II.

SCHEDULED DISTRICTS, BOMBAY.

I. The Province of Sindh.
II. [*The Panch Mahals.*] *Rep. by the Panch Mahals Laws Act,* 1885 (*VII of* 1885), *with effect from the 1st May,* 1895.
III. Aden.[5]
IV. The villages belonging to the following Mehwassi Chiefs:—
(1) The Parvi of Kathi.
(2) The Parvi of Nal.
(3) The Parvi of Singpur.
(4) Walwi of Goahalli.
(5) The Wasawa of Chikhli.
(6) The Parvi of Nawalpur.

PART III.

SCHEDULED DISTRICTS, BENGAL.

I. The Jalpaiguri and Darjeeling [6][Districts.]
II. The Hill Tracts of Chittagong.
III. The Sonthal Parganas.

LEG. REF.

1 Act XV of 1874 having been repealed so far as it relates to the following enactments, by the Acts noted against each, the references to those enactments have been omitted from this schedule:—

Enactments omitted. Acts.	Repealing Acts. Acts.
XXI of 1836 ..	I of 1903.
XIX of 1858, S. 26 ..	
XL of 1858 ..	VIII of 1890.

2 Act XX of 1856 has been repealed in United Provinces by United Provinces Act II of 1914, sec. 41.

3 This clause was substituted for the original claue (''(7) The Konda Mutta of Belgaum'') by the Repealing and Amending Act, 1891 (XII of 1891).

4 The Ducharti and Guditeru Muttas in the Golconda Hills have been transferred from the Vizagapatam to the Godavari District. *See* Fort St. George Gazette, 1881, Pt. I, p. 336.

Certain villages and estates in the Godavari District became Scheduled Districts for the purposes of the Scheduled Districts Act, 1874, but they are not ''scheduled districts'' within the meaning of the Laws Local Extent Act, 1874.

5 Aden ceased to be part of British India from 1st April, 1937.

6 Substituted for ''Divisions'' by the Amending Act, 1891 (XII of 1891).

IV. The Chutia Nagpur Division.[1-2]

V. The Mahals of Angul and Banki.[3]

PART IV.

SCHEDULED DISTRICTS, NORTH-WESTERN PROVINCES.

I. [*The Jhansi Division, comprising the Districts of Jhansi, Jalaun and Lalatpur.*] *Rep. by the North-Western Provinces and Oudh Act,* 1890 (*XX of* 1890), *sec.* 8 (1) *with effect from the* 1*st April,* 1891.

II. The province of Kumaun and Garhwal.

III. The Tarai Parganas, comprising—Baspur, Kashipur, Jaspur, Rudarpur, Gadarpur, Kilpuri, Nanak-Mattha and Bilheri.

IV. In the Mirzapur District—

(1) The tappas of Agori Khas and South Kon in the Pargana of Agori.

(2) The tappa of British Singrauli in the Pargana of Singrauli.

(3) The tappas of Phulwa, Dudhi and Barha in the Pargana of Bichipar.

(4) The portion lying to the South of the Kaimor Range.

[V. The Family Domains of the Maharaja of Benares, comprising the following parganas:—Bhadohi and Kheyra Mangror in the Mirzapur District; Kaswa Raja in the Benares District.] Rep. by the Benares Family Domains Act, 1881 (XIV of 1881), sec. 14, with effect from the 24th September, 1881.

VI. The tract of country known as Jaunsar Bawar in the Dehra Dun District.

PART V.

SCHEDULED DISTRICTS, PUNJAB.

The Districts of [4]Hazara, Peshawar Kohat, Bannu, Dera Ismail Khan, Dera Ghazi Khan, Lahaul and Spiti.

PART VI.

[5]SCHEDULED DISTRICTS, CENTRAL PROVINCES.

Chattisgarh Zamindaris.

1. Khariar.
2. Bindra Nawagarh.
3. Sahezpur.
4. Gandai.
5. Silheti.
6. Barbaspur.
7. Thakurtola.
8. Lohara.
9. Gondardehi.
10. Fingeswar.
11. Pardaria.
12. Pendra.
13. Matin.
14. Uprora.
15. Kenda.
16. Lapha.
17. Chhuri.
18. Korba.
19. Chapa.
20. Bora Sambhar.
21. Phuljhar.
22. Kolabira.
23. Rampur.

Chanda Zamindaris.

1. Ahiri.
2. Ambagarh Chauki.
3. Aundhi.
4. Dhanora.
5. Dudhmala.
6. Gewarda.
7. Jharapapra.
8. Khutgaon.
9. Koracha.
10. Kotugal.
11. Mauramgaon.
12. Panabaras.
13. Palasgarh.
14. Rangi.
15. Sirsundi.
16. Sonsari.
17. Chandala.
18. Gilgaon.
19. Pawi Mutanda.
20. Pategaon.

Chhindwara Jagirdaris.

1. Harai.
2. Chhater.
3. Gorakhaghat.
4. Gorpani.
5. Bhaktagarh.
6. Bardagarh.
7. Pachmarhi.
8. Partabgarh.
9. Almod.
10. Sonpur.

LEG. REF.

[1-2] The Thanas of Raipur and Khattra, which formerly formed portions of the Chutia Nagpur Division, have been transferred to the District of Bankura, and ceased to be a Scheduled District on the 1st October, 1879. *See* the Raipur and Khattra Laws Act, 1879 (XIX of 1879), Beng. Code.

THE ESTATE OF PORAHAT now forms part of the Chutia Nagpur Division Scheduled District for the purposes of the Scheduled Districts Act, 1874, *see* the Porahat Estate Act, 1893 (II of 1893), sec. 3 (B. and O. Code); but it is not a "scheduled district" within the meaning of the Laws Local Extent Act, 1874.

[3] The Mahal of Banki ceased to be a Scheduled District on the 1st April, 1882, *see* the Banki Laws Act, 1881 (XXV of 1881) (B. and O. Code); and that Act declared that all enactments then in force in Cuttack but not in Banki, should forthwith be in force in Banki, and that all enactments then in force in Banki, but not in Cuttack should thereupon be deemed to have been repealed as regards Banki.

The Khondmals in Orissa, which now form part of the Angul District, *see* the Angul Laws Regulation, 1913 (III of 1913) B. and O. Code, have become a Scheduled District for the purpose of the Scheduled Districts Act, 1874 (XIV of 1874), *see* Appendix B to that Act, printed, *supra;* but they are not "scheduled districts" within the meaning of the Laws Local Extent Act, 1874.

[4] Portions of the districts of Hazara, Bannu and Dera Ismail Khan and the districts of Peshawar and Kohat now form the N.W. Frontier Province, *see* Gazette of India, 1901, Pt. I, p. 857.

[5] The taluks of Nugur, Albaka and Cheria which were transferred to the Madras Presidency with effect form 1st July, 1909, had, from the 17th January, 1905, become scheduled districts within the meaning of the Scheduled Districts Act, 1874.

11. Bariam Pagara.

PART VII.

The Chief Commisisonership of Coorg.

PART VIII.

The Chief Commisisonership of the Andaman and Nicobar Islands.[1]

PART IX.

The Chief Commissionership of Ajmer and Merwara.

PART X.

The Chief Commisisonership of Assam.[2]

[Part XI:—The Hill Tracts of Arakan.] Rep. by A.O., 1937.

[Part XII:—The Pargana of Manpur.] Rep. by the Repealing Act (I of 1938), sec. 2 and Sch.

[Part XIII:—The Cantonment of Morar.] Rep. by the Amending Act (XII of 1891).

SEVENTH SCHEDULE:—

Enactments.

Repealed.] Rep. by the Repealing Act (XII of 1876).

THE LEGAL PRACTITIONERS ACT (I OF 1846).

Year.	No.	Short title.	Amendments.
1846	1	The Legal Practitioners Act.	Repealed in part. XVI of 1874, XII of 1876; XII of 1861. Repealed (locally). XX of 1865; IX of 1884, S. 9. Repealed, in part and amended, XII of 1891. Amended, XX of 1853, S. 4.

CONTENTS.

1. 2 & 3. (Repealed.)
4. Office of pleader open to person duly certificated.
5. Right of barrister to plead in all Courts.
6. Enactment to cease to have force, except for Specified purposes.
7. Private agreement between Parties and pleaders. Calculation of pleaders' fees out of costs awarded in regular Suits.
In other cases.
8. Enforcement of private agreements.
9. Remuneration for opinions.
10. Power to Sadar Amin to fine pleader. Appeal.
11. Rules applied.
12. Power of Munsif to fine pleader.
13. Act not to affect certain Vakils.

(*7th January* 1846).

An Act for amending the law regarding appointment and remuneration of pleaders in the Courts of the East India Company.

1, 2 & 3. (*Repeal of Enactments.*) Rep. by the Repealing Acts VI of 1874.

LEG REF.

[1] The Little Cocos Island has been transferred to the administration of the Governor of Burma and ceased to be a Scheduled District on the 29th November, 1882, *see* the Little Cocos and Preparis Islands Laws Act, 1883 (VIII of 1883), Bur. Code.

[2] The Lushai Hills, which include the North and South Lushai Hills and the Mokokchang Sub-division of the Naga Hills District have now become Scheduled Districts for the purposes of the Scheduled Districts Act, 1874 (XIV of 1874), *see* Appendix B to that Act, *supra*, but they are not Scheduled Districts within the meaning of the Laws Local Extent Act, 1874.

"Short Title:—The Legal Practitioners Act, 1846" See the Indian Short Titles Act, 1897 (XIV of 1897). General Acts, Vol. IV. The Act has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), S. 4, to be in force in the Madras and Bombay Presidencies, except as regards the Scheduled Districts. It has been declared, by notification under S. 3 (a) of the Scheduled Districts Act 1874 (XIV of 1874), to be in force in the Scheduled Districts of Sind, See *Gazette of India*, 1880, Pt. I, p. 672. It has been declared under S. 3 (d) of the same Act that Act I of 1846 is not in force in the Scheduled Districts of Ganjam and Vizagapatam see *Fort St. George Gazette*, 1858 Pt. I, p. 667 and *Gazette of India*, 1898 Pt. I, p. 872. It is repealed in places to which the Pleaders, Mukhtars and Revenue Agents Act, 1865 (XX of 1865) is extended by S. 3 of that Act, and in places to which the Legal Practitioners Act, 1879 (XVIII of 1879), applies by the Legal Practitioners Act, 1884 (IX of 1884), S. 9. It has been repealed in so far as it applies to Burma, by the Burma Laws Act, 1898 (XIII of 1898) S. 18 (1) and Sch. B, Bur. Code.

4. [1][* * * *] The office of pleader in the Courts of the East India Company shall be open to all persons of whatever nation or religion: Provided that no person shall be admitted a pleader in any of those Courts unless he have obtained a certificate in such manner as shall be directed by the Sadr Courts that he is of good character and duly qualified for the office, any law or regulation to the contrary notwithstanding:

Office of pleader open to persons duly certificated.

5. Provided, [2][* * * *] that every barrister of any of Her Majesty's Courts of Justice in India shall be entitled as such to plead in any of the Sadr Courts of the East India Company, subject, however, to all the rules in force in the said Sadr Courts applicable to pleaders whether relating to the language in which the Court is to be addressed or to any other matter.

Right of barrister to plead in all Courts.

6. [1][* * * *] [3][* * * *] Section 52, Regulation II, 1827 of the Bombay Code, shall cease to be enforced, excepting for the purpose specified in section 7 of this Act.

Enactment to cease to have force, except for specified purposes.

7. [1][* * * *] Parties employing authorized pleaders in the said Courts shall be at liberty to settle with them by private agreement the remuneration to be paid for their professional services, and [4][*] it shall not be necessary to specify such agreement in the vakalatnama:

Private agreement between parties and pleaders.

Provided that when costs are awarded to a party in any regular suit, original or appeal, decided on the merits, against another party, the amount to be paid on account of fees of pleaders shall be calculated according to the rules contained in [5][the section of the Regulation] specified in section 6 of this Act; and that when costs are awarded in other cases the amount to be paid on account of such fees shall be one-fourth of what it would have been in a regular suit decided on its merits.

Calculation of pleaders' fees out of costs awarded in regular suits.

In other cases.

8. [1][* * * *] Private agreements between parties and their pleaders respecting the remuneration to be paid for professional services shall not be enforced otherwise than by a regular suit.

Enforcement of private agreements.

9. [1][* * *] [6][* * *] Persons taking [7][*] opinion from authorised pleaders shall be at liberty to settle with them by private agreement the remuneration to be paid for such opinions.

Remuneration for opinions.

10. [1][* * * *] Whenever a pleader has rendered himself liable to a fine in the Court of a principal Sadr Amin or Sadir Amin it shall be competent to such Principal Sadr Amin or Sadir Amin to impose such fines: Provided that

Power of Sadr Amin to fine pleader.

LEG REF.

[1] The words "And it is hereby enacted that" repealed by Act XVI of 1874.

[2] The words "nevertheless, and it is hereby enacted" repealed by *ibid.*

[3] The words and figures "Section 25.... Madras Code, and" repealed by Act XII of 1891.

[4] The word 'that' repealed by Act XII of 1876.

[5] Substituted by Act XII of 1891 for "the sections of Regulations".

[6] The words and figures "so much..... and that" repealed by Act XII of 1876.

[7] The word 'such' repealed by *ibid.*

SEC. 4.—Sec. 4 does not extend to barristers and attorneys of the Supreme Courts. *See* sec. 4 of the Pleaders Act, 1853 (XX of 1853).

SEC. 6.—Object of this Act is to bring legal practitioners under the control of the

Appeal.

an appeal from all orders imposing such fines shall be to the Zila or City Judge, whose decision thereon shall be final.

Rules applied.

11. [1][* * * *] The rules applicable to pleaders in the Courts of the Zila and City Judges shall henceforth be applicable, so far as they are capable of application, to pleaders in the Munsif's Courts.

Power of Munsif to fine pleader.

12. [1][* * * * *] Whenever a pleader has conducted himself in such a manner in the Court of a Munsif as would have rendered him liable to a fine if he had so conducted himself in the Court of a Zila or City Judge, it shall be competent to such Munsif to impose such fine: Provided that an appeal from all orders imposing such fine shall lie to the Zila or City Judge, whose decision thereon shall be final.

Appeal.

Act not to affect certain vakils.

13. [1][* * * *] Nothing in this Act contained shall apply to vakils who may be employed in the Courts of the Village Munsifs, or before the Village or District panchayats, or before the Collectors of Zilas, under the provisions of Regulations [2]IV, V, [3]VII and XII, 1816, of the Madras Code.

THE LEGAL PRACTITIONERS ACT (XX OF 1853).[4]

Year.	No.	Short title.	Amendment.
1853	XX	The Legal Practitioners Act, 1853.	Repealed in part, XIV of 1870. Repealed (locally), XX of 1865; IX of 1884, S. 9.

LEG. REF.

1 The words, "And it is hereby enacted that", repealed by Act XVI of 1874.

2 For Reg. IV of 1816, the Madras Village Courts Act I of 1888 should now be read wherever that Act is in force, *see* sec. 2 (3) of that Act.

3 Reg. VII of 1816 repealed by the Madras Civil Courts Act (III of 1873).

4 Short title. "The Legal Practitioners Act, 1853." *See* the Indian Short Titles Act, 1897 (XIV of 1897).

The Act has been declared to be in force in the Madras and Bombay Presidencies, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (XV of 1874), secs. 4 and 5.

It has been declared by notification under sec. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), to be in force in the Scheduled District of Sindh. *See* Gazette of India, 1880, Pt. I, p. 672, and in the Scheduled Districts in Ganjam and Vizagapatam, *see ibid.*, 1898, Pt. I, p. 870.

It has been repealed in places to which the Pleaders, Mukhtars and Revenue Agents Act, 1865 (XX of 1865), is extended, *see* sec. 3; and in places to which the Legal Practitioners Act, 1879 (XVIII of 1879), applies by the Legal Practitioners Act, 1884 (IX of 1884), sec. 9. Act XX of 1865 was repealed by Act XVIII of 1879.

It has been repealed, so far as it applies to Burma, by sec. 18 (1) of the Burma Laws Act, 1898 (XIII of 1898), Bur. Code, Vol. I.

Court, so that they may not be able to oppress people by extortion. *See* 15 C. 638. *See also* 1 B.H.C. (A.C.) 102.

SEC. 10.—A pleader who presses a Court to put a question which the Court considers improper, and insist on a note being made of his request, is not liable to fine under Act I of 1846. No opinion was offered on the point whether such conduct on the part of a pleader amounted to an offence under sec. 228 of the Penal Code. Where the pleader under the above circumstances was fined for an offence under sec. 228 without being called on to make a statement in his defence, *held*, that the procedure was irregular and that, though there was no appeal from the order, the High Court could in revision interfere with the order on account of such irregularity. 7 B. H.C. (A.C.J.) 102.

[*8th December*, 1853.

An Act to amend the Law relating to Pleaders in the Courts of the East India Company.

WHEREAS it is expedient to amend the law relating to Pleaders in the Courts of the East India Company; It is enacted as follows:—

1. [*Repeal of enactments.*] *Rep. by the Repealing Act*, 1870 (*XIV of* 1870).

Pleader not bound to attend Court except at hearing of cause in which he is employed.

2. [1]No pleader shall be bound to attend in any of the Courts of the East India Company, on any day fixed for the transaction of civil business, or to notify to the Court his inability to attend, unless he shall be employed in some cause or business which, according to the practice of the Court, may be heard or transacted therein on that day, anything in any law or regulation to the contrary notwithstanding.

Right of Supreme Court attorneys to plead in all Sadr Courts.

3. Every attorney on the roll of any of Her Majesty's Supreme Courts of Judicature in India shall be entitled as such to plead in any of the Sadr Courts of the East India Company, subject however to all the rules for the time being in force in the said Sadr Courts respectively, applicable to barristers pleading therein, whether relating to the language in which the Court is to be addressed or to any other matter.

Barristers and attorneys of Supreme Courts not required to produce certificate of character, etc., but may plead in all subordinate Courts.

4. That part of section 4. Act No. I of 1846 which provides that no person shall be admitted a pleader in any of the Courts of the East India Company, unless he have obtained a certificate in such manner as shall be directed by the Sadr Courts that he is of good character and duly qualified for the office, shall not extend to barristers or attorneys of any of the said Supreme Courts; but every such barrister and attorney shall be entitled as such to plead in any of the Courts of the East India Company subordinate to the Sadr Courts, subject to all the rules in force in the said subordinate Courts respectively applicable to pleaders therein, so far as such rules relates to the language in which the Court is to be addressed or to any other matter connected with pleading therein.

THE LEGAL PRACTITIONERS ACT (XVIII OF 1879).

Year.	No.	Short title.	Amendment.
1870	XVIII	The Legal Practitioners Act, 1879	Amended, IX of 1884; IX of 1896; I of 1900; 1 of 1908; XV of 1926; XXXVIII of 1926. Repealed in part XVIII of 1919; XI of 1923; XXI of 1926; I of 1938.

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3 Interpretation-clause.

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OF ADVOCATES. VAKILS AND ATTORNEYS.
4. Advocates and Vakils.
5. Attorneys of High Court.

LEG REF.

[1] Sec. 2 of this Act has been repealed in Bombay by the Bombay Pleaders Act, XVII of 1920, Bom. Code, Vol. V.

SECTIONS.

CHAPTER III.

OF PLEADERS AND MUKHTARS.

6. Power to make rules as to qualifications, etc., of pleaders and mukhtars.
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7. Certificates to pleaders and mukhtars.
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10. No person to practise or pleader or mukhtar unless qualified.
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11. Power to declare functions of mukhtars.
12. Suspension and dismissal of pleaders and mukhtars convicted of criminal offence.
13. Suspension and dismissal of pleaders and mukhtars guilty of unprofessional conduct.
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THE LEGAL PRACTITIONERS ACT (XVIII OF 1879).[1]

[29*th October*, 1879.

An Act to consolidate and amend the Law relating to Legal Practitioners

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to Legal Practitioners in the Lower Provinces of Bengal, the North-Western Provinces, the Punjab, Oudh,

LEG. REF.

[1] For the Statement of Objects and Reasons, *see* Gazette of India, 1878, Pt. V, p. 381. For Reports of the Select Committee, see *ibid.*, 1879, Pt. V, pp. 51 and 841; for Civil Rules of Practice made by the High Court of Madras under this Act, the Code of Civil Procedure and certain other Acts, for observance by Subordinate Civil Courts in that Presidency except the Madras Small Cause Courts. *See* Fort St. George Gazette, 1905, Supplement, p. 1. *See* now civil Rules and Circular Orders, 1928 by Madras High Court. This Act has been declared in force in Angul and the Khondmals by the Angul District Regulation, 1894, (I of 1894), sec. 3, Ben. Code, and by notification under sec. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), in the Districts of Hazaribagh, Lohardaga and Manbhum and Pargana Dhalbhum and the Kolhan in the District Singbhum, *see* Gazette of India, 1881, Pt. I, p. 504. The District of Lohardaga, now called the Ranchi District (*Calcutta Gazette*, 1899, Pt. I, p. 44) included at this time the District of Palamu which was separated in 1894. The whole Act, except sec. 36 as substituted by sec. 4 of Act XI of 1896, is re-

the Central Provinces and Assam, and to empower each of the Local Governments of the rest of British India to extend to the territories administered by it such portions of this Act as such Government may think fit; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title commencement.

1. This Act may be called THE LEGAL PRACTITIONERS ACT, 1879, and shall come into force on the first day of January, 1880.

LEG. REF.

peated in the North-Western Frontier Province by the N.W.F. Province Law and Justice Regulation, 1901 (Reg. VII of 1901), sec. 5, Sch. III, P. and N. W. Code

1 Under this power the Act has been extended, subject to certain omissions; and so far only as it relates to judicial Courts, Civil and Criminal to the Madras Presidency, except the Scheduled Districts, from 1st April, 1882, *see* Fort St. George Gazette, 1881, Pt. I, pp. 491 and 707, Secs. 3 and 4 of the Act have been extended to the Regulation Districts of the Bombay Presidency, *see* Bombay Government Gazette, 1885, Pt I, p. 290. Sections [except cls. (*a*), (*b*), (*c*). (*d*) and (*f*) thereof] 34, 36 and 40 have been extended to the whole of the Bombay Presidency, except the Province of Sind (*Bombay Gazette*, 1904, Pt. I, p. 1635) and to the Province of Sind (*Ibid.*, 1905, Pt. I, p. 634).

Ch. I, sec. 40, Sch. II, and so much of Chs. III, V, VI, and VII as relates to pleaders, have been extended to Coorg, *see* Mysore Gazette, 1879, Pt. I, p. 335; *see also* Notification No. 44, dated 11th November, 1891, *Coorg District Gazette*, sec 1899, Pt. I, p. 122, extending secs. 3, 13 and 36 as amended by Act XI of 1896 so far as they relate to pleaders. Sec. 3 and Chs. II, III, V to VIII, and the second schedule were extended to Lower Burma, with effect from 16th April, 1900, *see* Burma Gazette, 1900, Pt. I, p. 320, Bur.R.M. *Burma Gazette*, 1908, Pt. I, p. 18 (extending sec. 20). Secs. 4 and 41 were extended to Ajmer-Merwara by the Chief Commissioner's Notification No. 28 C. C., dated 21st April, 1927. *See* Gazette of India, 1927 Pt. III-A, p. 214.

SEC. 1: CONSTRUCTION OF ACT AND SCOPE.—(*Per* Full Bench).—The Act does not merely consolidate the pre-existing law but also amends it, which implies both addition to and derogation from the pre-existing law. It is a complete Code in itself as regards the subject it deals with. 1930 A.L.J. 402=1930 All. 225 (F.B.). (*Per* Full Bench): Inherent powers of the Supreme Court of Calcutta were not conferred on the Allahabad High Court by the Indian High Courts Act of 1861 and no power to exercise inherent disciplinary jurisdiction over legal practitioners independently of the Legal Practitioners Act and the Indian Bar Councils Act now exists in the Allahabad High Court in respect of their professional or other misconduct. 1930 A.L.J. 402=1930 All. 225 (F. B.). No minor can appoint an attorney and if he does, the attorney has no valid appointment under which he can act. 1934 A.L.J. 387=35 Cr.L.J. 1053=1934 All. 589.

JURISDICTION OF HIGH COURT TO REINSTATE DEBARRED PLEADER—CONSIDERATIONS.—The High Court has jurisdiction, in the exercise of its general power of superintendence over pleaders, to reinstate on the Roll and to re-admit a pleader who had been struck off the Roll for professional misconduct. I.L.R. (1937) Bom. 99=38 Bom.L.R. 1161=1937 Bom. 48. As to the considerations to be had by the High Court in cases of reinstatement after disbarment, *see* I.L.R. (1937) B 99; I.L.R. (1937) All. 411 =1936 A.L.J. 1396=1937 All. 50 (F.B.); 14 Rang. 390=1936 Rang. 368 (S.B.); I.L.R. (1937) Bom. 99=38 Bom.L.R. 1161; 1939 Rang. 142=1939 Rang.L.R. 213 (S.B.); 45 M. L.J. 639; I.L.R. (1940) Mad. 81=1939 M. 906=(1939) 2 M.L.J. 637 (F.B.); I.L.R. (1940) Mad. 84=1939 M. 917=(1939) 2 M. L.J. 630 (F.B.); 1940 Rang. 32.

DUTIES OF LEGAL PRACTITIONERS.—When a solicitor takes up a case and undertakes to conduct it he is bound, whether his client is rich or poor, to proceed with due diligence, and honestly to prosecute or defend the claim, even if he is not put in funds; for it is open when he takes up the case to assure himself whether his client is a person of substance, or if necessary to insist on a sufficient advance at the outset to cover all probable costs. 34 Bom.L.R. 703=138 I.C. 957=1938 Bom. 363. It is an unwritten rule of the bar that where two counsel have been briefed in a case appearing on the daily board, one or other counsel must return his brief in good time if there is a chance of neither being able to attend when the case is called on. 34 Bom L.R. 1425=1923 Bom. 634. A resolution by the Bar Association that no member thereof should appear for the prosecution in any criminal case against any other member is a flagrant and unwarranted interference with the rights of legal practitioners, contrary to the best traditions of the Bar and to all accepted notions of forensic propriety. 59 C. 709=36 C.W.N. 294=1932 Cal 370. It is incumbent on counsel to prepare cases before coming to Court. The time of the Court should not be taken by search for relevant passages during trial in Court; client should also supply counsel with the necessary copies and records. I.L.R. (1939) All. 447=1939 A.L. J. 118=1939 All. 603.

DUTY OF LEGAL PRACTITIONERS—CLIENTS WITH CONFLICTING INTERESTS.—There is no such thing as a general agency between pleader and client. The contract of agency

Local extent

This section and section 2 extend to the whole of British India

The rest of this Act extends, in the first instance, only to the territories respectively administered by the Lieutenant-Governors of the Lower Provinces of Bengal, the North-Western Provinces and the Punjab, and the Chief Commissioners of Oudh, the Central Provinces and Assam. But any other Provincial Government may from time to time, by notification in the Official Gazette, extend all or any of the provisions of the rest of this Act to the whole or any part of the territories under its administration

becomes complete when the Vakalat is executed and ends with the termination of the suit 50 M 249=1927 Mad. 157=51 M L. J 804 *See also* 12 Mys L.J 222=39 Mys H C R 203 A pleader employed by a party to a proceeding before a Court is bound faithfully and exclusively to serve that party throughout the whole proceeding. The pleader in the mofussil is not merely an Advocate He is the confidential legal adviser of his client and does for him those things which in the Presidency towns are often done by solicitors A pleader must not accept a vakalatnama when he knows that he cannot act for his client throughout the proceedings. 14 Bom L R. 700=16 I. C 788=36 Bom 606 *See* 1939 Rang.L.R. 514=1939 Rang 183 (S B).

AUTHORITY TO COMPROMISE.—An advocate has no authority to compromise the suit without a power of attorney from his client 8 R 290=127 I.C. 604=1930 R. 313 A vakalatnama which empowers a pleader to *file* a compromise cannot be held to empower him to *enter* into a compromise and sign it for the party. 125 I.C. 171=1930 O. 112 But see 57 I.A 133=57 C 1311=58 M.L.J. 551 (P.C). Although a vakalat gives power to a pleader to compromise still if the compromise is purported to be entered into not on the basis of such power, the compromise would not be binding on the client. 161 I.C. 919=1936 Cal. 68. The power to compromise a suit is inherent in the position of an advocate The implied authority can however be countermanded by the express directions of the client. Where a legal practitioner was engaged by a pardanashin lady in an application for the appointment of a receiver but it appeared that the client had in fact conferred a general authority on the counsel and was also aware of the negotiations leading to the compromise, *held*, that the advocate could compromise the suit by virtue of his implied authority and that the compromise was binding on the client. 57 I. A. 133=57 C. 1311=58 M.L.J. 551 (P.C.); 17 Lah. 456=1936 Lah. 199. But *see* 29 S. L.R. 437=163 I.C. 240=1936 Sind 59; I.L.R. (1939) Lah. 433=1939 Lah. 439 (Counsel should personally satisfy himself by reference to the lady herself whether she is agreeable to the compromise or confession of judgment).

ADMISSION BY LEGAL PRACTITIONERS.—Admission of counsel on a point of law is not binding on his client 1933. C 513=144 I.C. 701; 144 I.C. 610; 1935 L. 71; I.L.R. (1945) Bom, 390=47 Bom.L.R. 114=1945 Bom. 351; 47 P L.R 384=1945 Lah. 336; 12 Mys.L.J. 190=39 Mys H C.R. 156 Any admission or concession on the part of a pleader on a pure question of law will not estop the party from questioning it in appeal or revision. 35 L.W. 393=1932 M. 409. *See also* 11 Mys L J 71. An admission of counsel on a point of law, cannot be binding upon a Court and a Court need not consider itself precluded from deciding the rights of the parties on a true view of the law I L.R 1940 K.P.C. 208=187 I.C 770=1940 P.C. 90 (P.C.) *See also* 1938 L 368 An admisison by a counsel on a mixed question of fact and law is not final and binding on the client and the question can be reopened on appeal when there is no question of springing a surprise on the other party 7 Luck. 564=137 I.C. 349=1932 O. 172; 151 I.C 376=36 Bom.L.R. 334=1934 B. 186. An admission by counsel, even if it is one purely of fact, does not bind the client, if it is made under a misapprehension. 1937 B. 81=38 Bom.L.R. 1058. *See also* 22 Pat. 220; 1945 Lah. 336 (Admisison by lawyer that parties are governed by custom is not an admission of fact) Although an admission by an advocate on a point of law is not binding upon a party, if on the basis of such an admission a decree has been passed, the decree is binding upon the party unless it is set aside under the procedure prescribed by law 181 I.C. 721=20 P L T. 685=1939 Pat 580.

COUNSEL'S POWER TO MAKE ADMISSION IN OR REFER TO ARBITRATION OR COMPROMISE SUITS.—A counsel's powers to make admissions in or refer to arbitration or compromise suits in which he is instructed are as follows: (1) A counsel has authority to make admissions in Court on behalf of his client on matters of fact relevant to the issues in the case in which he is engaged. Admissions on questions of law would not bind the client. (2) A counsel has authority to confess judgment, withdraw or compromise, or refer to arbitration the suit in which he is instructed if his doing so is for his client's advantage or benefit even though he has no express authority from his client. (3) A counsel cannot without express authority agree to compromise or refer to arbitration matters unconnected with the subject-matter of the suit in which he is instructed. (4) Where in the course of a suit counsel makes an admission as to a collateral matter, or gives up a doubtful claim which is not a subject-matter of the suit, there is a presumption that the counsel acts under instructions if the admission or the giving up of the doubtful claim is for the benefit of the client.

(5) It is a question of fact in each case whether the counsel acts under instructions when he compromises or refers to arbitration matters not involved in the suit and the Court on a consideration of the probabilities and the circumstances of the case can find that the counsel acted on instructions even though there is no direct evidence on the point. (6) A counsel has no power to make an admission in, or compromise or refer to arbitration, a suit, if he is instructed not to do so, without express authority from his client. 1935 A.L. J. 953=1935 All. 626. *See also* 58 B. 447=1934 B. 101; I.L.R. (1940) Kar. 467=1941 S. 28; 1940 A.L.J. 18=1940 A. 143=I.L.R 1940 All. 132; 1939 B. 490; 185 I.C. 669; 40 P.L.R. 664=1938 Lah. 766; 1941 A.M.L. J. 80; 1942 O.W.N. 685=1942 O.A. 543=1943 Oudh 128; I.L.R. (1943) Kar. 438=1944 Sind 51=213 I.C. 364. Where the power of attorney expressly confers the authority to settle the suit by a compromise it is not necessary for an advocate to consult his client before entering into the compromise if he acts in good faith. 15 L. 626=151 I.C. 786 (2) =1934 L. 393. Counsel in India have the same implied authority to compromise an action as have counsel in the English Courts. But if such authority is invoked to support an agreement of compromise the circumstances must be carefully examined. In the first instance the authority is an actual authority implied from the employment as counsel. It may however be withdrawn or limited by the client; in such a case the actual authority is destoryed or restricted; and the other party if in ignorance of the limitation, could only rely upon ostensible authority. But if in fact counsel has had his authority withdrawn or restricted, the Courts will not feel bound to enforce a compromise made by him contrary to the restriction, even though the lack of actual authority is not known to the other party. 62 I.A. 196=14 P. 545=1935 P.C. 119. *See also* 1943 M.W. N. 544=1943 Mad. 672=(1943) 2 M.L J. 168. The authority of a pleader who is authorised by his vakalatnama to compromise the suit in which he is engaged by a party does not extend to matters which are not the subject-matter of the suit. Where the pelader enters into a compromise which involves the sale of his client's property which is not in suit at all, the Court should not pass a decree in terms of the compromise unless the client himself is a party to it. 45 Bom. L.R. 1045=1944 Bom. 46. In an action by a transferee challenging a mortgage as collusive, a compromise to the effect that the mortgagee should buy out the palintiff for an agreed price, cannot be entered into by counsel as it is a *matter collateral to the suit*. 62 I.A. 196=1935 P.C. 119. Where a vakalatnama gives power to a vakil, to enter into a compromise, a compromise entered into by him is binding on his client especially when the compromise is eminently a fair and reasonable one. 1933 A. 955. Where a vakalatnama given by a party to his pleader merely authorises the latter to sign a compromise petition and does not give any specific authority to the pleader to negotiate with the other party and settle the terms of the compromise, any compromise entered into by the pleader without the consent of his client, which results in a decree, must be held to be unauthorized. 41 Bom.L.R. 994=1939 Bom. 490. Where the vakalatnama which was executed by a client contained among other things the following clause "*avasyamanal* (if necessary or expedient) you are to compromise the suit or raise contest." *Held*, that to decide whether it was necessary or expedient to compromise the suit, was within the discretion of the pleader, and not the Court, and that a compromise entered into by him was binding on his client. 146 I.C. 219=38 L.W. 341=1933 M. 734.

AGREEMENT TO ABIDE BY OATH—OFFER OF SPECIAL OATH TO OTHER SIDE—CLIENT—IF BOUND.—A pleader who holds a vakalatnama which distinctly authorizes him to file a petition of compromise with or without the signature of his client, to withdraw the suit by putting in a petition without the party's signature, and to take whatever steps the pleader considers necessary in the suit has clearly authority to agree to the case being decided on the oath taken by the other side in a special manner. It is not open to the party to plead that he is not bound by the act of his pleader, because he has not himself signed the oath agreement or to say that the pleader had no authority. 182 I.C. 791=20 P.L.T 131=1939 Pat. 222. Pleaders should be careful not to make any offer on behalf of their clients to be bound by any special oath except in the presence of the party or on express written authority to that effect. 172 I.C. 421=I.L.R. (1940) Nag. 310 =1938 Nag. 64.

ABANDONMENT OF PLEA.—Counsel for the defendant definitely gave up the plea regarding limitation after the evidence on all the issues had been taken; the question was held to be one of law, that the party was not bound by the statement of his counsel and that as the opposite party was not prejudiced, the plea can be taken in appeal by the party. 1933 L. 404. *See also* 147 I.C 95=1934 P. 25 [Abandonment of claim for damages. *See also* 29 I.A. 76=25 M. 367 (P. C.)]. If counsel deliberately abandons questions which are mixed questions of law, custom and fact, it is not open to the litigant to go behind the admission and re-agitate the same points in the Court of second appeal. 13 L. 185=1932 L. 343. *See also* 1935 L. 71=16 L 328. Where in the trial Court an *issue is not pressed by the counsel and subsequent to that there is an authoritative decision on the point, the party is not bound by the admisison of his counsel* in the trial Court and can raise the point in appeal. 1940 O. W.N. 1249=1941 O. 203. As to power to *compromise or withdraw plea in income-tax proceedings*, see 1940 I.T.R. 482.

AUTHORITY TO ACT—APPEARANCE WITHOUT VAKALATNAMA—PROCEDURE.—When an accused is represented by a pleader without vakalatnama in an appeal, the proper course

is to adjourn the hearing of the appeal until it is produced and thus afford the accused an opportunity of being represented by a pleader. 56 I.C. 61=21 Cr.L.J. 413. A mukhtar though appearing in the trial Court cannot file an appeal unless his power of attorney authorises him to do so. Mere general words in power are not sufficient. (132 I.C. 895, Dist.) 1933 L 504. As to Advocate accepting vakalat and failing to appear at the hearing, *see* 1939 M.L.R. 16 (C.). It is ordinarily the duty of an advocate to be present, or to make suitable arrangements for the conduct of the case, and the Courts are not to be inconvenienced by the postponement of cases until the proper advocate is available. 1939 Rang. 183=1939 Rang.L.R. 514=182 I.C. 77. Vakil's name not entered in the body of vakalat is mere clerical error and would not vitiate the authority. (1946) 1 M.L.J. 274.

AUTHORITY — CONSRUCTION — GENERAL POWERS FOLLOWED BY SPECIFIC INSTANCES OF SPECIAL AUTHORITY.—*Per* F.B. (Mukerji, J., dissenting.)—In the case of an appointment of a vakil by vakalatnama to conduct a case, it is *prima facie* implied that he has full power to conduct the case in the way he considers best and therefore such a document should be construed liberally. If the vakalatnama confers very wide powers in very general terms on the vakil, and authorizes him to conduct the case and to take other proceedings and expressly states that whatever is done by the vakil should be accepted by the litigant and then it goes on to specify certain particularly important powers like those of appointing arbitrators and compromising disputes, etc., unless there is a special clause excluding his authority to act in a particular way in the course of the suit, such an authority should be implied. The mere fact that certain important powers are emphasised in particular does not in any way derogate from the general authority conferred upon him. It follows, therefore, that when general authority to conduct a case is conferred upon a vakil and it is followed by special powers to compromise a case and to refer the dispute to arbitration, the power to abide by the oath of a witness whether under the Oaths Act or by way of an agreement or compromise is necessarily implied. 146 I.C. 84=1933 A.L.J 1127=1933 A. 861 (F.B.).

AUTHORITY—PRESUMPTION OF—ISSUE OF NOTICE.—When a member of the Bar writes a letter purporting to be instructed by a client, there is a presumption, until the contrary is proved, that the letter is written under instructions. 144 I.C. 996=1933 R. 147.

ACTS REQUIRED FOR PROPER CONDUCT OF TRIAL —IMPLIED AUTHORITY OF PLEADER.—A counsel appearing in the case from the very nature of his duties and for the purposes of a proper conduct of the case must be deemed to have implied authority to admit or deny a document, to press or withdraw an issue in the case, to examine a witness or call no witness and do such other acts which are required for the proper management and conduct of the trial. 14 Luck. 723=1939 Oudh 257.

STATUS OF BARRISTER PRACTISING AS AN ADVOCATE IN INDIA.—The right of a Barrister-at-Law to appear in the High Court or in the Courts subordinate to it arises from his enrolment as an Advocate and not otherwise. The peculiar position of a Barrister-at-Law in England disappears here on his enrolment as an Advocate; his rights, duties and disabilities are the same as those of any other non-Barrister Advocate. He can see the client, settle his fees, and act for him, with or without the intervention of a solicitor. A Barrister practising as an Advocate in the High Court can accordingly sue his client for recovery of fees due. (25 A. 509, overruled) 55 All. 570=1933 A.L.J. 451=1933 A. 417 (F.B.). *See also* I.L.R. (1943) Lah. 791=44 Cr.L.J. 181. (Status of pleader in Court). I. L.R. (1943) Lah. 791=44 Cr.L.J. 181. (Rules of conduct of Bench and the Bar.)

ADVOCATES AND PLEADERS—NO DISTINCTION. —Though the methods of appointments of advocates and higher or lower grade pleaders are different and the discipline by which they are controlled arises from different sources, their duties as representing their clients are similar and the principles applying in one class of legal advisers ought to be applied in the case of another. 1939 Rang.L.R. 514= 1939 Rang. 183 (S.B.).

ADVOCATE AND COURT —It is difficult to lay down any hard and fast rule as to what expresisons a lawyer can use with impunity while addressing the Court and what should ordinarily be tolerated by it. Hyper-sensitiveness on the one side or rudeness on the other must be avoided at all costs. An oversubservient Bar would be one of the greatest misfortunes that could happen to the administration of justice. At the same time, a lawyer is under obligation to do nothing that shall detract from the dignity of the Court, of which he is himself a sworn officer and assistant. He should at all times pay deferential respect to the judge, and scrupulously observe the decorum of the Court room. I.L.R. (1943) L. 791=44 P.L.R. 511=A.I.R. 1943 Lah. 14.

ETIQUETTE—MEMBER OF CO-OPERATIVE SOCIETY—APPEARANCE FOR SOCIETY.—Merely becausea legal practitioner is a member of a Co-operative Society he is not prevented by any rule of professional etiquette from accepting instructions from the Society of which he is a member. There can be no impropriety in his doing so provided that his engagement is not directly due to his being a member. But it is improper for a legal practitioner who is a Director to appear for remuneration for the Society in his legal business. 56 M. 970= 1933 M. 682=65 M.L.J. 367.

DUTIES AND OBLIGATIONS IN DRAFTING PLEADINGS—GRAVE AND SERIOUS ALLEGATIONS IN AFFIDAVIT —It is well settled that although a legal practitioner has his duty towards his client, he has other duties and responsibilities as well and that he should not on the instructions of his client make a charge of fraud against another in an affidavit without satisfying himself that there are reasonable grounds

for the allegation. But he has not got to satisfy himself that the statements made by his client were absolutely true. All that is incumbent on him is to satisfy himself that there are reasonable grounds for believing them. 59 L.W. 401=(1946) 2 M.L.J. 79 (F.B.).—*Per* Thom, J.—No counsel is entitled to frame a serious charge against a party to a litigation unless he is in possession of admissible and relevant evidence upon which, if accepted, counsel could reaosnably ask the Court to hold the allegations true. It may well be that the evidence in support of the allegations is untrue and it is certainly not the duty of a counsel in the ordinary course to test the truth of the witnesses whom he intends to put into the witness box but at the conclusion of the evidence which he has led he should be in a position to submit as a reasonable proposition to the Court that the evidence which he has led if accepted establishes the allegations for which he had made himself responsible. If he is not in possession of such evidence to support them he is not entitled to make grave and serious allegations. 1935 All. 425 (F.B.). *Per* Iqbal Ahmad, J.—It is in the interest of the administration of justice that too rigid a test of the conduct of an advocate in the matter of drafting pleadings should not be emphasized and that the test should be such as not to deter a counsel from fearlessly placing before the Court such allegations as their clients instruct them to make, so long as those allegations do not appear manifestly reckless and unfounded. It is no doubt the duty of counsel to use their own judgment, experience and discretion and not to make irrelevant or unduly insulting allegations in the pleadings, but it is equally their duty to embody the case of their clients in the pleadings fearlessly, provided the instructions received from the clients justify the case in the pleadings. While on the one hand a counsel is expected to be careful and not reckless in drafting the pleadings, he cannot, on the other hand assume the role of a Judge and refuse to embody allegations that his clients instruct him to make unless and until he has examined the evidence on the subject. A counsel is in one sense the mouthpiece of his client, but he does not guarantee or pledge himself for his client's veracity. *Per* Allsop, J.—On the one hand counsel must look to the interests of his client and not be deterred by fear or favour from making any allegations which in his interests it is necessary for him to make. On the other hand, he cannot take shelter behind his client and claim to be an entirely irresponsible instrument in his client's hands. There remains in him a duty and an obligation to his fellow citizens and he is certainly not entitled to make scandalous and serious allegations against those fellow citizens unless he has some basis upon which the allegations can be grounded. 155 I.C. 1043=1935 A. 425 (F.B.). *See also* I.L.R. (1945) All. 702 (As to the nature and scope of the privilege and protection attached to statements made in his professional capacity.

PRIVATE PLEADER.—A District Magistrate has no authority to direct other subordinate Magistrates to exercise their judicial discretion of allowing a person to practise as a private pleader in their Courts. Any person aggrieved by the refusal of any Magistrate to allow him to appear as a private pleader in any particular case should move the High Court in revision. 16 L.W. 879=1923 M. 183.

Authority to counsel "to act and appear for the party in the trial Court or any other Court" includes authority to present an appeal. 33 P.L.R. 34. A mukhtar though appearing in the trial Court cannot file an appeal unless his power-of-attorney authorises him to do so. Mere general words in power are not sufficient. (1932 I.C. 895, Dist.) 1933 L. 504.

COSTS—LIABILITY OF LEGAL PRACTITIONER FOR—CIRCUMSTANCES JUSTIFYING ORDER AGAINST PLEADER.—There is no justification for the assumption that sec. 35, C.P. Code, is not intended to cover any case where the act of a legal practitioner comes within the term 'misconduct' within the meaning of the Legal Practitioners and the Bar Councils Acts. A pleader may therefore be liable for costs of the proceedings taken by him in cases where the costs occasioned to his client are the direct result of the initiation and prosecution of the proceedings by him. Where an application for review purports to be made by a pleader personally on his own behalf and not on behalf of his client, the minor or his guardian, on grounds wholly untenable there is no justification for his action and he can be asked to pay the costs personally. 1942 Oudh 279=1942 O.W.N. 68.

AUTHORITY TO APPEAR.—Counsel who has not filed any vakalat from his client has no authority to appear for him. 12 Mys.L.J. 383.

APPEARANCE OF COUNSEL AGAINST INTEREST OF HIS CLIENT—IF PERMISSIBLE.—A counsel should not be allowed to appear against the interests of a person who has briefed him at one or other stage of the case. It is absolutely necessary for taking opinion that the party should lay all his cards before the counsel concerned, and it is only after he has thoroughly gone into the facts of the case that a lawyer can be in a position to advise his client In the circumstances it would be unfair to allow the counsel to appear against the same person later on, and an assurance on the part of that individual would also be of no avail in the matter. 1935 Pesh. 65 (1). It is undesirable for a member of the Bar to plead in a case concerning which he has a personal interest. 39 C.W.N. 274. *See also* (1945 M. 480=(1945) 2 M.L.J. 187. (Permisison for pleader to appear for a different party after previous appearance to one party, when can be granted by Court).

TRANSFER OF BRIEF—PLEADER APPEARING FOR ANOTHER—As to duty of pleader to be in attendance at time of hearing of case, *see* 1940 Rang. 162 (F.B.). Where a pleader appears for another who is unable at the moment to attend Court, he ought to let the Court know that he is so appearing. 33 I.C. 831=20 C.W.N. 283. As to failure of pleader to make careful arrangements for conduct of case, *see* 183 I.C. 580=1939 Rang. 262. A question re-

lating to the rival claims of different sections of the legal practitioners of the High Court cannot be settled by a single Judge or a Division Bench of the Court. 25 C.L.J. 401=41 I.C. 313=21 C.W.N. 654. Proceedings under the Act are *quasi* criminal, and are barred by acquittal in previous criminal proceedings. 88 I.C. 279=26 Cr.L.J. 1111=1925 R. 110. In the absence of misconduct of pleader or other justifying cause the client is not entitled as of right to change his pleader without making satisfactory arrangements to pay the fees of the pleader who had charge of the case till then. 58 L.W. 34=1945 Mad. 190=(1945) 1 M.L.J. 56.

ACCEPTING BRIEF FOR OPPOSITE PARTY AGAINST PREVIOUS CLIENT—DUTIES.—*See* 38 M. 650=25 M.L.J. 567; 8 R. 446=1930 R. 355; 9 Mys.L.J. 166.

CHANGE OF SIDES BY LAWYER.—Change of sides as such by a lawyer is not forbidden by law. Change of sides is forbidden if there are confidential communications by one side which may be made use of when the lawyer represents the opposite party. It is forbidden if the lawyer obtains his own discharge and acts for the opposite party. It is also forbidden if the lawyer accepts a retainer from the opposite party without first offering his services to his original client. A lawyer is, therefore, not guilty of professional misconduct in accepting a brief for the opposite party if he has no confidential communication of his original client in his possession at that time and the matters in which he had been retained had come to an end and the original client had refused to avail himself further of his services. I.L.R. (1946) Lah. 173=1946 Lah. 301 (F.B.) A pleader who acted gratuitously as a friend in drawing up a draft plaint at the request of the plaintiff who filed the plaint himself and to whom no confidential information was imparted, is not guilty of professional misconduct in appearing for the defendant at a later stage. 1946 Lah.. 329 (F.B.). *See also* (1945) 2 M.L.J. 187.

APPEARANCE—POWER OF COURT TO RESTRAIN —PLEADER LIKELY TO BE WITNESS IN CASE—DUTIES OF PLEADER.—That a Judge or Magistrate has authority to restrain a pleader from appearing for either party in a case, when it would be manifestly improper for the pleader to do so, cannot be gainsaid but a very strong case must be made out before an order restraining a pleader from acting in a particular case is passed. The mere fact that the defence asserts that the pleader for the prosecution will be required as a witness for the defence, and that the Magistrate himself thinks that he will be a material witness for the defence, are not sufficient grounds for restraining the pleader from appearing in the case for the prosecution. A pleader who is conducting a case is nevertheless a competent witness therein and there is no harm in his giving evidence in a case in which he is appearing. But it is desirable that a pleader should not appear in a case if he knows or has reason to believe that he will be an important witness in the case. If he accepts the brief not knowing or having reason to believe that he will be such a witness but discovers subsequently that he is a witness on a material question of fact, he should retire from the case. 1939 Rang.L.R. 224=1939 Rang. 342. Accused has a right to choose any advocate he wants. Prosecution cannot fetter that choice by summonning the advocate as a witness. On the other hand the Court is bound to see that the administration of justice is not in any way embarrassed. If an advocate is called as a witness by the other side, it can safely be left to the good sense of the advocate to determine whether he can continue to appear as an advocate, or whether by doing so he will embarrass the Court or the client. If a Court comes to the conclusion that a trial will be embarrassed by the appearance of an advocate who has been called as a witness by the other side, and if, notwithstanding the Court's expression of its opinion, the advocate refuses to withdraw in such a case the Court has inherent jurisdiction to require the advocate to withdraw. But the prosecution or the party calling the opposite party's advocate as a witness must in such a case establish to the satisfaction of the Court that the trial will be materially embarrassed if the advocate continues to appear as advocate for his client. 41 Bom.L.R. 282 =1939 Bom. 150 *See also* 1938 M. 878=48 L.W. 276=(1938) 2 M.L.J. 446.

FEES.—When an Advocate enters into a contract with his client, it is appropriate that in order to avoid any future misunderstanding as to the amount of the fees to be charged for various works, there should be a clear written contract between the parties and the amount charged should be clearly mentioned and agreed to by the client. 1936 A.L.J. 300 =1936 All. 359 (F.B.). *See also* I.L.R. (1944) 1 Cal. 445=1944 Cal. 189 (Solicitor's lien for costs cannot prevail over monies in his hands ear-marked for a specific purpose). Before the relationship of advocate and client arises by concluding a contract of service, is open both to the client and the advocate to bargain for services in such methods as they may deem proper. But after the relationship arises, the advocate should not use his privileged and responsible position to obtain anything more than a fair and just remuneration. 1937 Rang. 299. In India as at English Common Law, a solicitor has a particular lien which does not depend on actual possession of the property, as distinguished from possessory lien. This lien is not liable to be defeated on the ground that the assignee of a decree or the attaching creditor of the solicitor's client had no express notice of the lien. The fact of there being a fund in Court amounts to notice of the existence of a solicitor's lien. (51 B. 855, Foll.) 60 M.L.J. 133=1931 M. 183. *See also* 1940 Cal. 179= I.L.R. (1939) 1 Cal. 212=43 C.W.N. 290 (This lien is not defeated by the insolvency of the party). The lien of an attorney or solicitor is really an equity claimed on his behalf and is subject to all the equities between the attorney's client and any other party or parties interested in the property over which the lien

is claimed. An attorney has no higher rights than his client. A plaintiff's right to set-off costs payable to him by the defendant against the sum found due from him to the defendant on the taking of accounts in the same suit is not affected by the defendant's solicitor's lien. The Courts in India have complete discretion to allow a set-off, whether in the same action or in different actions, and it extends to the setting off of costs against costs and also in a proper case to the setting off of debts or damages against costs and *vice versa*. The discretion has to be exercised judicially, having regard to the facts and circumstances of each case. The circumstances considered by the Court are matters relating to the attorney whose lien is sought to be affected irrespective of his client because as between the parties themselves there can hardly be a ground for resisting a set-off. After a set-off has already been allowed an attorney's lien is not protected. 41 Bom.L.R. 1091=I.L.R. 1939 Bom. 892=1939 Bom. 518. Costs are in theory such indemnity for the actual expenses of litigation as the Court allows. They are an indemnity to the party in whose favour they are allowed and not to the attorney engaged by that party. An attorney's lien for costs is not a charge. But the Court assist the attorney either by making a charging order as under the English practice or by making a payment order, the course generally adopted in India. In a case where the judgment-debtor under a decree in favour of the attorney's client is unquestionably liable to pay, the Court will, without much difficulty, make an order for direct payment to the attorney of his wages by the judgment-debtor, if it is satisfied that the attorney has taken reasonable, though not exhaustive, steps to recover his wages from his client. Where the judgment-debtor has a right of set-off as, for example, when he holds a cross-decree, the attorney cannot intercept the right to set-off between the parties unless there is a fraudulent intention on their part to deprive him of his costs. 48 C.W.N. 727. Where a solicitor is engaged by the next friend of a minor plaintiff, the client is the next friend and it is to the next friend, and not to the minor, that the solicitor looks for his costs. Though the solicitor has a lien enforceabe against the next friend, the lien does not exist against the minor. Where, therefore, there is a change of next friend and a new next friend comes in, the solicitor engaged by the former next friend is bound to hand over to the new next friend the papers and documents, etc., though he may not have received his costs of the suit from the old next friend. He cannot withhold the documents, etc., from the new next friend by pleading his lien. I.L.R. (1938) Bom. 749 =40 Bom.L.R. 694=1938 Bom. 418. *See also* 1942 O.W.N. 68. General and special lien distinguished, *see* 1932 B. 363=34 Bom.L.R. 703. The solicitor's lien never precludes a fair and honest arrangement between the parties unless the solicitor is in a position to prove that there was a fraudulent intention on the part of the plaintiff and defendant to cheat him of the costs payable to him by the party. 1932 B. 352=34 Bom.L.R. 721. Nature of an advocate's lien, *see* 55 M. 455=62 M.L.J. 185. The question whether an attorney's lien should or should not be allowed to intercept a set-off between the parties to the suit is in India a matter of discretion. The lien has no overriding priority.. 34 Bom.L.R. 1429=1932 B. 619. The sum deposited by a party under O. 45, r. 7, C.P. Code, to be available for the payment of the costs of the respondents in case their Lordships of the Privy Council ordered such costs to be paid is not the subject-matter of dispute or the part of the action and, therefore, after the appeal is allowed, a lien cannot be claimed on that amount by a legal practitioner appearing for the appellant before the High Court. *Quaere*—Whether an Advocate is entitled to claim the same lien which an ordinary Solicitor would be entitled to in any land. 1932 A.L.J. 764=1933 A. 3. Pleader's fees are to be allowed to a party on the basis of what is actually paid, or what might reasonably have been paid, whichever is less. 1928 N. 289=111 I.C. 843. A pleader including in his fee ceritficate the fee promised but not actually paid to him, under a misapprehension of law and not dishonestly cannot be said to be guilty of misconduct. 58 A. 307=38 Bom.L.R. 731=40 C.W.N. 933=1936 P.C. 176=71 M.L.J. 631 (P.C.). There may be cases in which the fee due to a vakil may be adjusted, otherwise than by actual payment of money. Such an adjustment, however, should be, something more than a mere agreement to pay. When a promissory note, especially, a negotiable instrument, is given, it may not be dishonest even if no fee was received and it may be too strong an expression to describe such a certificate as a false certificate. It is doubtful if Note (*ii*) to r. 30 of the Legal Practioners' Rules is strictly correct. 30 L.W. 977 =1930 M. 413=57 M.L.J. 780. *Fees of junior counsel*—Two-thirds scale adopted for taxation purposes. *See* 58 C. 505=1931 C. 523. According to the rules, only such sum can be taxed as legal practitioner's fee as has been actually paid and certified by the legal practitioner to whom it has been paid. Where a receiver of an insolvent's estate who happens to be a legal practitioner conducts his own case and does not pay any fees to any legal parctitioner, the Court cannot direct any legal fees to be taxed as costs. 163 I.C. 831=1936 A.L.J. 698=1936 All. 489. Where several pleaders are engaged by a party to a litigation, in the absence of any agreement as to the amount of their fees, each pleader is entitled to his fees up to the full fee assessed at the hearing. It is not the rule that all of them should divide among them a single hearing fee of the amount assessed as pleader's fee in the case. 20 Pat.L.T. 352=18 Pat. 213. Where undue *influence* is not apparent, and a *solicitor has agreed to accept taxed costs in the event of success so as to lighten the burden on his client in the event of failure*, the agreement cannot be looked upon with disfavour, and the Court will respect the terms of such an agreement of employment. Where a solicitor for a res-

pondent to a Privy Council appeal agrees to accept a reduced fee, stipulating that in the event of the client's success in the appeal he should be paid the full taxed costs, that agreement cannot be regarded as invalid or unenforceable either in practice or in law. It is competent to the solicitor to recover the amount covered by his bill of costs from the amount of security deposited by the appellant. The High Court has power to pass a summary order directing payment out of such amount to the solicitor to whom costs are due from the respondent. I.L.R. (1939) Bom. 307=41 Bom.L.R. 410=1939 Bom. 250. Where there is an agreement to pay Counsel a certain sum for his fee, and a certain sum as his *munshi's* remuneration, the Counsel is clearly entitled to sue for his fee and also for the *munshiana*. 40 P.L.R. 12=1938 Lah. 306. *See also* 1944 Cal. 198=213 I.C. 84. (Determination of agreement between pleader and client is by suit and not summary proceedings). (1944) 2 M.L.J. 337= 1945 Mad. 88 (1). Where a party agrees to pay his Advocate a particular fee for a particular case, the Advocate is entitled to sue for the full fee, though owing to the collapse unexpectedly of the opposite side's case the Advocate had not to do that quantity of work originally expected of him. 1942 N.L. J. 225. Under r. 34 of the Rules relating to the Legal Practitioners' fee, the fee for practitioners appearing in execution petitions in small cause or original suits shall be one-fourth of the fee allowable on the amount or value of the relief granted by the decree as calculated under r. 31, irrespective of the number of such petitions. Where a decree grants two reliefs, *viz.*, possession of immovable property, and costs, the fee allowable on a petition for execution of the portion relating to costs will be only one-fourth of the fee permissible on the amount awarded as costs. I.L.R. 1945 M. 88 (1)=57 L.W. 593 =(1944) 2 M.L.J. 337. Attorney—Costs—Bill of costs—Instructions for brief—Looking up the law—Ascertainment of legislative practice in various places—Right to remuneration. *See* 44 Bom.L.R. 682=1942 B. 310 =I.L.R. (1942) B. 829.

SUIT FOR ACCOUNTS.—Even if there is no "general agency" between a counsel and client, nevertheless a suit for accounts can be maintained by the client against his counsel in respect of the moneys entrusted to the latter in the several suits in which he was engaged. (50 M. 249, Foll.). 140 I.C. 564 =33 P.L.R. 1074=1933 L. 60.

TRANSACTIONS BETWEEN ADVOCATE AND CLIENT.—A pleader advanced moneys to his client and obtained a mortgage in favour of his son. In a suit on the mortgage it is incumbent on the plaintiff to prove utmost good faith; and all evidence regarding it should be preserved. Pleaders who deal with their clients must take care not only that the transaction is fair, but also that they are in a position to prove that it was fair. 12 Luck. 435 =1937 O. 87=1936 O.W.N. 1033=164 I.C. 945. Transactions of mortgage between a solicitor and client to secure the repayment of money advanced at the time are not ordinarily subjected by Courts to the same jealous scrutiny as, for instance, a gift from a client to a solicitor, or purchases or sales at under-value between a solicitor and client. If the money was sorely needed and was paid, the mortgagor had its benefit, the rate of interest was reasonable and the terms neither excessive nor onerous there is no reason why the transaction should not stand as a valid mortgage between the parties. 67 I.A. 431=I.L.R. 1940 K.P.C. 419=191 I.C. 94=52 L.W. 777=1940 P.C. 204 (P.C.). R. 13 of the rules of Court framed under the Legal Practitioners Act, prohibits practitioners from purchasing any interest in any decree either from their clients or any other person. Such a purchase and execution of such a decree for a sum known to him to be in excess of that which was actually due, amount to a grave professional misconduct. I.L.R. (1938) Mad. 399=1938 Mad. 276 (F. B.). Where the relationship between a legal practitioner and his client becomes that of debtor and creditor, the pleader being allowed to retain and use the client's money as a loan, failure by the debtor to pay the money on demand does not amount to professional misconduct. Lawyers should not, except in very exceptional cases, accept loans from their clients. Where a lawyer has withdrawn money for a client and has been permitted to retain it, a document evidencing the transaction should in every case be drawn up. It is essential, in cases where the relationship of pleader and client has been changed to one of debtor and creditor, that the clearest evidence of such a change should be obtainable. But once the relationship of pleader and client is changed into one of debtor and creditor, no question of misconduct can arise, because failure by the debtor to pay the money on demand does not amount to professional misconduct. To borrow money from the client who places confidence in the pleader, when the latter is aware that it would be extremely difficult for him to repay it is most reprehensible. No lawyer should ever borrow money from a client unless he is sure that he can repay it when the client demands repayment. 18. Pat. 580=20 P.L.T. 607=1939 Pat. 343 (S.B.). *An attorney of a trustee cannot apply for payment of his costs out of the trust estate* unless he gets an order against the trustee under Ch. XXXVIII, R. 48. He must also show that the estate is indebted to the trustee for the amount claimed by him. Matters of this description cannot be investigated in a chamber application. 49 C.W.N. 263. R. 17 of the Madras Rules only prohibits a practitioner from purchasing from his client or from any other person any interest in a decree passed by the Court in which he practises, but there is no rule prohibiting a practitioner from bidding at an auction held in execution proceedings instituted by him on behalf of his client. The words "or other person" in r. 73 of O. 21, C.P. Code, does not include a legal practitioner who has no duty to perform in connection with the sale. Desi-

2. [*Repeal of enactments.*] *Rep. by the Repealing Act (1 of 1938), S. 2 and Sch.*

Interpretation clause.

3. In this Act, unless there be something repugnant in the subject or context,—

liability of a rule prohibiting a practitioner from bidding either in his own name or in the name of another at a Court sale held in execution of a decree obtained by his client pointed out. I.L.R. (1946) M. 521=1946 M. 245 =(1946) 1 M.L.J. 218 (F.B.).

OBLIGATION OF COUNSEL NOT TO MAKE STATEMENTS BASED ON SURMISES.—When counsel take on themselves the responsibility of making statements of fact to the Court, the Court is entitled to assume that those statements are true in every particular, so that it may implicitly rely upon them. This is a rule which admits of no qualification and it is an honourable obligation of the Bar and of great value in the administration of justice. It is therefore improper on the part of counsel to make statements of fact before the Court which are based on mere surmises or guesses. I.L.R. (1940) Kar. (F.C.) 52=1940 F.C. 25=(1940) 1 M.L.J. (Supp.) 28.

SEC. 3: LEGAL PRACTITIONER.—The right of a Barrister-at-Law to appear in the High Court or in the Courts subordinate to it arises from his enrolment as an Advocate and not otherwise (25 A. 509, overruled.) 55 A. 570=1933 A. 417=1933 A.L.J. 451 (F.B.).

SOLICITOR—PERSONAL LIABILITY FOR COSTS. —Once a solicitor is on record, the opposing party is entitled to look to him, if successful for his costs, if it turns out that the so-called plaintiff is a non-existent person. (Case-law discussed.) 58 B. 1=145 I.C. 641 =1933 B. 317=35 Bom.L.R. 554.

CARE IN CHOOSING CLERKS—CHECK ON THEM. —There is a duty cast upon members of a monopolistic profession, like the legal profession, to exercise care and due diligence in the persons whom they employ, and if they choose to employ a person known by them to be irresponsible without taking adequate steps to keep a close personal check upon his actions, then they are themselves at fault and become liable to be called to account. 1938 Nag. 370.

TOUT.—To declare a person a tout it must be proved that he gets the employment in any legal business from any practitioner for moving for such practitioner. Merely looking after people's cases and writing petitions does not make a person a tout. 62 I.C. 829 =22 Cr.L.J. 589. A person to be a tout must have been paid or proposed to be paid for bringing a client. 6 P. 567=102 I.C. 340= 1927 P. 282. *See also* 28 I.C. 918. A munsif may refuse to recognize a person as pleader's clerk, if he be not a *bona fide* clerk. 10 C.W.N. 49. If the enquiry is entrusted to a Subordinate Court it is the Subordinate Court which must be satisfied that the person is proved to be a tout. Where the Joint Magistrate held on enquiry that the person was not a tout but the District Magistrate without further enquiry and without notice to the party declared him a tout, *held*, that the order was illegal. 1930 A.L.J. 961=1930 A. 611. It is reasonable and legitimate inference of fact that if a man attends Court every day, works after the cases of clients, even pays to pleaders and realizes costs and engages pleaders and also realizes their fees, he is not rendering gratuitous service such as a casual friend or acquaintance may do. 56 C. 800=115 I.C. 602 (2)=1929 C. 196.

ATTORNEY—CHANGE BY LITIGANT—RIGHT OF ATTORNEY IN RESPECT OF COSTS.—A litigant has the right to employ any attorney he likes and to change him for another attorney in the course of the same proceeding if he so wishes, provided that he does not thereby cause delay or injustice to any other party or inconvenience to the Court. If he has not paid costs to the attorney whom he wishes to discharge that would affect his right to obtain papers and documents on which the attorney might claim a lien for his unpaid costs. But it is not open to an attorney to say that his client shall continue to employ him in the suit or proceeding until all the costs due to him are paid. 35 Bom.L.R. 298=1933 B. 182. It is clear that, in the absence of misconduct on the part of the advocate on record, the client is not entitled to the sanction of the Court for a change of the advocate, without making a satisfactory arrangement to pay the advocate who has had charge of the case till then. If the client proposes to abandon him when the case is ready for hearing and to engage another advocate, it is only proper that the advocate on record should be paid his full fee before the change of vakalat is sanctioned. 1945 M. 190=58 L.W. 34=(1945) 1 M. L.J. 56. No order for change of attorney should be made unless provision is made for payment of costs to the attorney subject of course to this that no such provision will be made where the attorney has by his own conduct or misconduct discharged himself. 60 C. 1273=37 C.W.N. 998=1934 C. 58.

ATTORNEY—LIEN—KINDS OF—PASSIVE OR RETAINING LIEN—NATURE OF.—The rights of an attorney in India are the same as the rights of a solicitor in England, except in so far as the latter have been diminished or increased by statute. A solicitor in England is entitled to three kinds of lien to protect his right to recover his costs from his client, namely: (*i*) a passive or retaining lien; (*ii*) a common law lien on property recovered or preserved by his efforts; (*iii*) a statutory lien enforceable by a charging order. Indian statutory law contains no provision for the last mentioned lien but the other two kinds of lien are available in India. The lien on property recovered or preserved by the efforts of the solicitor is a particular lien and not a general lien and it is not available for the general balance of account between the attorney and his client but extends only to

"Judge" means the presiding judicial officer in every Civil and Criminal Court, by whatever title he is designated:

"Subordinate Court" means all Courts subordinate to the High Court, including Courts of small Causes established under Act No. IX of 1870[1] or Act No. XI 1865.[2]

"Revenue office" includes all Courts (other than Civil Courts) trying suits under any Act for the time being in force relating to landholders and their tenants or agents:

"Legal practitioner" means an advocate, vakil or attorney of any High Court, a pleader, mukhtar or revenue agent:

[3]["tout" means a person—

(*a*) who procures, in consideration of any remuneration moving from any legal practitioner, the employment of the legal practitioner in any legal business; or who proposes to any legal practitioner or to any person interested in any legal business to procure, in consideration of any remuneration moving from either of them, the employment of the legal practitioner in such business; or

(*b*) who for the purposes of such procurement frequents the precincts of Civil or Criminal Courts or of revenue offices, or railway tsations, landing stages, lodging places or other places of public resort].

CHAPTER II.

OF ADVOCATES, VAKILS AND ATTORNEYS.

Advocates and vakils.

4. Every person now or hereafter entered as an advocate or vakil on the roll of any High Court under the letters patent constituting such Court or [4][under section 41 of this Act,] [5][or enrolled as a pleader in the Chief Court of the Punjab under sec-

LEG. REF.

1 Now Act XV of 1882.
2 Now Act IX of 1887.
3 Substituted by Act XV of 1926, sec. 2.
4 Substituted by Act IX of 1884, sec. 2.
5 Inserted by Act I of 1908, sec. 2 (*a*).

the costs of recovering or preserving the property in suit. The passive or retaining lien is not affected or curtailed by sec. 171 of the Contract Act. This lien enures in favour of the solicitor in respect of all deeds, papers or other personal chattels which come into his possession in the course of his professional employment. This is a general lien but with reference to moneys recovered by the solicitor for his client, he has no such *general* lien. Whether he obtains possession of the money which is the fruit of his exertions or whether it is still in deposit in Court, in either case, his lien or right to be paid out of those funds is confined to the costs incurred in respect of those funds, subject only to this, that he has the ordinary rights of set off which one creditor has against another. 60 C. 1442=149 I. C. 331=1934 C. 341. As to pleader's fees, *see* 1945 Mad. 88 (1)=(1944) 2 M.L.J. 337 (Decree for possession and costs—Execution as to costs—Scale of pleader's fees); 49 C.W. N. 263 (Attorney of trustee claiming payment of costs out of trust estate—Procedure).

SECS. 3 AND 4.—Where the fee payable is not settled with the client under sec. 3, then under sec. 4 the pleader is entitled only to such fee as would come to on computation, in accordance with the law for the time being in force in regard to the computation, of the costs to be awarded to a party in respect of the fee of his legal practitioner. 1931 P. 137=9 P. 865.

"PRACTICE".—Includes right to appear, plead and act. 4 P. 766=1926 P. 73. Vakils have no right of audience in the Insolvency Court at Presidency-town of Madras. 48 M. 331=1925 M. 385=48 M.L.J. 36 (F.B.). Sec. 4 was not intended to override the special provisions relating to insolvency in the Presidency-town. 48 M. 331. Insolvency Court is not subordinate to High Court. 48 M. 331. Vakil of Allahabad High Court admitted as final grade pleader in Oudh, effect of. 89 I.C. 187=1925 O. 412. When there are several gentlemen retained by a client in the same vakalatnama, each of the vakils is entitled to claim from his client the full fee stipulated for by him and not merely a share in the single fee allowed as against the losing party. 9 P. 865. =1931 P. 137. In Burma an Advocate is not precluded from suing for his fees. 1930 R. 243. A client engaged a pleader and filed a vakalatnama in his favour but it was not signed by the pleader. *Held*, that, whether the vakalatnama has been signed or not, the pleader is entitled to his remuneration for the work done by him on the principle of *quantum meruit*. 1931 P. 137=9 P. 865.

SEC. 4.—Sec. 4 does not apply to Advocates enrolled by any High Court under the Bar Councils Act, in view of sec. 38 of the Legal Practitioners Act as amended by sec. 19 of the Bar Councils Act. Therefore an advocate of the Bombay High Court enrolled as such by that Court who is not ordinarily prac-

tion 8 of this Act], shall be entitled to practise in all the Courts subordinate to the Court on the roll of which he is entered, and in all revenue offices situate within the local limits of the appellate jurisdiction of such Court, subject, nevertheless, to the rules in force relating to the language in which the Court or office is to be addressed by pleaders or revenue agents; and any person so entered who ordinarily practises in the Court on the roll of which he is entered or some Court subordinate thereto shall, notwithstanding anything herein contained, be entitled, as such, to practise in any Court in British India other than a High Court on whose roll he is not entered, or, with the permission of the Court, [1][or in the case of a High Court in respect of which the Indian Bar Councils Act, 1926, is in force, subject to rules made under that Act] in any High Court on whose roll he is not entered, and in any revenue-office:

Provided that no such vakil [2][or pleader] shall be entitled to practise under this section before a Judge of the High Court, Division Court or High Court exercising original jurisdiction in a Presidency-town.

Attorneys of High Court.

5. Every person now or hereafter entered as an attorney on the roll of any High Court shall be entitled to practise in all the Courts subordinate to such High Court and in all revenue-offices situate within the local limits of the appellate jurisdiction of such High Court, and every person so entered who ordinarily practises in the Court on the roll of which he is so entered or some Court subordinate thereto shall, notwithstanding anything herein contained, be entitled as such, to practise in any Court in British India other than a High Court established by Royal Charter on the roll of which he is not entered and in any revenue-office.

The High Court of the province in which an attorney practises under this section may from time to time, make rules declaring what shall be deemed to be the functions, powers and duties of an attorney so practising.

LEG. REF.

[1] Inserted by the Bar Councils Act, XXXVIII of 1926, sec. 19 and Sch.

[2] Inserted by Act I of 1908, sec. 2 (*b*).

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tising in that Court or in any Courts subordinate thereto is entitled to practise in the Subordinate Courts of the Province of Madras. 1945 M. 144=58 L.W. 52=(1945) 1 M.L.J. 106 (F.B.). Sec. 4 does not apply to and cannot operate as a bar to an Advocate of a High Court, enrolled under the Bar Councils Act practising in Courts subordinate to the Patna High Court. Sec. 4 of the Legal Practitioners Act has to be ignored in cases of persons enrolled as Advocates of the Bombay High Court and claiming to be entitled to practise in Courts subordinate to the High Court at Patna by virtue of their enrolment as Advocates by the High Court. 1946 P. 369=25 Pat. 468 (S.). *See also* 12 B.R. 560 (F.B.).

SEC. 5.—An attorney acting for a firm and having the power to conduct a suit has no power to refer a matter to arbitration unless he is authorised specifically for that purpose. 36 C.W.N. 8=1932 C. 343. The retainer of an attorney ordinarily comes to an end when the suit is ended. After the suit is over the attorneys are *ipso facto* discharged so far as the suit is concerned and would need fresh authority from their clients to act for them in execution proceedings. 138 I.C. 320=34 Bom.L.R. 615=1932 B. 337. If a suit has been compromised by the guardian *ad litem* improperly without the leave of the Court, that may be a ground for appropriate proceedings by the minor on attaining majority. But the attorneys who received their instructions from the guardian cannot go behind them and continue to represent the minor. 34 Bom.L.R. 614=138 I.C. 312=1932 B. 401 (1). Per *C. C. Ghosh, J.*—Where an attorney has employed a counsel under the authority given to him by the party in the retainer filed in the Court he is bound to pay the fees paid to the counsel on taxation. It is only when the client has instructed the attorney not to brief a particular counsel that the client would be under no obligation to pay fees paid to that particular counsel. 52 C.L.J. 197=1930 C. 651 (F.B.). *See also* I.L.R. (1939) Kar. 422=1939 Sind 125 (Right to sue for fees). As to *taxation of costs*, see also 1932 A.L.J. 272. As to *practice regarding change of attorney*, see 1932 B. 363=34 Bom. L.R. 703; 35 Bom.L.R. 298=1933 B. 182. It is the duty of a solicitor entrusted with the moneys of his client for investment, before investing the amount upon the mortgage of a farm, to have a proper valuation made. If he chooses to rely mainly on his own general knowledge of farms in his vicinity, he does so at his own risk and if his judgment is shown to have been at fault he is liable for the loss traceable to his breach of duty to his client. 1932 P.C. 194=137 I.C. 531 (P.C.). Mere presence in Court of the client, when he does not make his presence known to the Counsel, does not affect the ostensible authority of the Counsel, who can compromise the suit with-

CHAPTER III.

OF PLEADERS AND MUKHTARS.

Power to make rules as to qualifications, etc., of pleaders and mukhtars.

6. The High Court may, from time to time make rules[1] consistent with this Act as to the following matters (namely) :—

(*a*) the qualifications. admission and certificates of proper persons to be pleaders of the subordinate Courts, and of the revenue-offices situate within the local limits of its appellate jurisdiction, and, in the case of a High Court not established by Royal Charter [2][in respect of which the Indian Bar Councils Act. 1926, is not in force] of such Court;

(*b*) the qualifications, admission and certificates of proper persons to be mukhtars of the subordinate Courts, and, in the case of a High Court not established by Royal Charter, [2][in respect of which the Indian Bar Councils Act. 1926, is not in force] of such Court;

(*c*) the fees to be paid for the examination and admission of such persons; and

(*d*) suspension and dismissal of such pleaders and mukhtars.

Publication of rules.

All such rules shall be published in the Official Gazette, and shall thereupon have the force of law; provided that, in the case of rules made by a High Court not established by Royal Charter, such rules have been previously approved by the Provincial Government.

Certificates to pleaders and mukhtars.

7. On the admission, under section 6, of any person as a pleader or mukhtar, the High Court shall cause a certificate, signed by such officer as the Court, from time to time appoints in this behalf, to be issued to such person, authorizing him to practise up to the end of the current year in the Courts and, in the case of a pleader, also the revenue-offices specified therin.

At the expiration of such period, the holder of the cetrificate, if he desires to continue to practise, shall, subject to any rules consistent with this Act which may, from time to time, be made by the High Court in this behalf, be entitled to have his certificate renewed by the Judge of the District Court within the local limits of whose jurisdiction he then ordinarily practises, or by such officer as the High Court, from time to time, appoints in this behalf.

On every such renewal, the certificte then in possession of such pleader or mukhtar shall be cancelled and retained by such Judge or officer.

Every certificate so renewed shall be signed by such Judge or officer, and shall continue in force up to the end of the current year.

Every Judge or officer so renewing a certificate shall notify such renewal to the High Court:

[3][Provided that, on the admission as a pleader of any person who has been prviously entered as a Vakil or attorney on the roll of a High Court established by Royal Charter, the High Court may, in its discretion, issue to such person a certificate authorizing him to practise permanently in the Courts, and in the offices specified therein, and a certificate so issued shall not require to be renewed under this section.]

8. Every pleader holding a certificate issued under section 7 may apply to

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LEG. REF.

1 For rules made under this section *see* the various Local Rules and orders.

2 Inserted by the Bar Councils Act, XXXVIII of 1926, sec. 19 and Sch. 1.

3 Inserted by Act I of 1908, sec. 3.

out consulting his client. 59 C. 31=35 C. W.N. 674=1932 C. 231.

SEC. 7.—Renewal of certificate cannot arbitrarily be refused. *See* 13 C.W.N. 415=1 I. C. 334. The High Court has not delegated to District Judges the power to suspend legal practitioners pending the receipt of their renewed certificates. Any order in regard to suspension must proceed from the High Court. So an order of the District Judge suspending a practitioner pending the receipt of his renewed certificate is illegal. 54 M. 574=1931 M. 688=60 M.L.J. 558.

SEC. 8.—Appellate jurisdiction, meaning of. *See* 24 A. 348 (F.B.).

Pleaders on enrolment may practise in Courts and revenue-offices.

be enrolled in any Court or revenue-office mentioned therein and situate within the local limits of the appellate jurisdiction of the High Court by which he has been admitted; and, subject to such rules[1] consistent with this Act as the High Court or the Chief Controlling Revenue authority may, from time to time, make in this behalf, the presiding Judge or officer shall enrol him accordingly, and thereupon he may appear, plead and act in such Court or office and in any Court or revenue-office subordinate thereto.

Mukhtars on enrolment may practise in Courts.

9. Every mukhtar holding a certificate issued under section 7 may apply to be enrolled in any Civil or Criminal Court mentioned therein, and situate within the same limits; and, subject to such rules as the High Court may from time to time make in this behalf, the presiding Judge shall enrol him accordingly; and thereupon he may practise as a mukhtar in any such Civil Court and any Court subordinate thereto, and may (subject to the provisions of the Code of Criminal Procedure)[2] appear, plead and act in any such Criminal Court and any Court subordinate thereto.

No person to practise as pleader or mukhtar unless qualified.

10. Except as provided by this Act or any other enactment for the time being in force, no person shall practise as a pleader or mukhtar in any Court not established by Royal Charter unless he holds a certificate issued under section 7 and has been enrolled in such Court or in some Court to which it is subordinate:

Revenue-agents may appear, plead and act in Munsiffs' Courts in suits under Bengal Act VIII of 1869.

Provided that persons who have been admitted as Revenue-agents before the first day of January, 1880, and hold certificates, as such, under this Act in the territories administered by the Lieutenant-Governor of Bengal, may be enrolled in manner provided by section 9 in any Munsif's Court in the said territories, and on being so enrolled may appear, plead and act in such Court in suits under Bengal Act VIII of 1869[3] (*to amend the procedure in suits between Landlord and Tenant*) or under any other Act for the time being in force regulating the procedure in suits between landholders and their tenants and agents.

Power to declare functions of Mukhtars.

11. Notwithstanding anything contained in the Code of Civil Procedure[4] the High Court may, from time to time, make rules declaring what shall be deemed to be the functions, powers and duties of mukhtars practising in the subordinate Courts, and, in the case of a High Court not etsablished by Royal Charter, in such Court.

Suspension and dismissal of pleaders and mukhtars convicted of criminal offence.

12. The High Court may suspend or dismiss any pelader or mukhtar holding a certificate issued under section 7 who is convicted of any criminal offence implying a defect of character which unfits him to be a pleader or a mukhtar, as the case may be.

LEG. REF.

1 For rules made by the High Court at Madras, *see* those quoted in the footnote on previous page, which were also made under sec. 8. For rules by the Chief Court, Punjab, *see* Punj. R. and O.

2 Now Act V of 1898.

3 *See* now Bengal Tenancy Act (VIII of 1885).

4 Now Act V of 1908.

SEC. 12: SCOPE OF SECTION.—The High Court has jurisdiction under this section to take action against a pleader who has been convicted of a criminal offence, though the offence was not one committed in his professional capacity. 59 M. 732=1936 Mad. 318 (F.B.)=70 M.L.J. 498 (F.B.). The use of word "may" in sec. 12 after the words "the High Court" shows that the discretion of the High Court in each particular case is absolute. 33 C.W.N. 829=1929 C. 771. It is not sufficient for the applicability of the section that the pleader has been convicted of a criminal offence. Though the Court cannot in the exercise of its disciplinary jurisdiction question the propriety of the conviction, it has yet to inquire into the nature of the crime in order

to decide whether the offence was such as to imply defect of character rendering him unfit to continue in the profession. 12 Pat.L.T. 773=1931 P. 369 (F.B.). *See also* 1938 Rang. 394=1938 R.L.R. 125. Where a legal practitioner has been convicted of a criminal offence and his case is sent to the Bar Council for enquiry to determine if any disciplinary action was called for, the Bar Council should merely record the conviction and should call on the legal practitioner to show cause why action should not be taken against him. It is not open to it to justify the action of the legal practitioner. 1938 Rang. 394. A legal practitioner was convicted of criminal breach of trust and abetment thereof in respect of certain monies of a client. It was found that he was to a certain extent the victim of his senior. He paid the amount of defalcation after his conviction. The High Court in consideration of the fact that he was a victim of circumstances and had expressed his repentance and assured to lead an honourable life, suspended the practitioner for one year. 33 C. W. N. 829=1929 C. 771. Sec. 12 has no application unless the conviction shows the convict to be unfit to be a pleader. 27 N.L. R. 29=1931 N. 33 (S.B.). The words "criminal offence" used in sec. 12 mean an offence punishable under Penal Code as well as any act or omission made punishable by any law for the time being in force which is indictable and punishable criminally by Courts of justice. 12 Pat.L.T. 773=1931 P. 369 (F. B.). Sec. 12 contains no implication that disciplinary action against a pleader convicted of an offence cannot be based on his conduct when such conduct includes the commission of any offence for which he has been punished. Disciplinary action is not taken by way of punishment, but on consideration whether the person formerly admitted to practice is a proper person to continue to practise or not. No one can be admitted to practise until he makes a solemn declaration, and the inference is that one who has contravened his declaration and is likely to do so in future is not such a person. The fact that the motive of the pleader in taking part in a Civil Disobedience movement was to draw attention to the dissatisfaction with the forest policy of Government is no justification nor is the fact that he was only a participant and not a leader in the movement material in considering the necessity for disciplinary action. 27 N.L.R. 29=1931 N. 33 (S.B.). Conviction of pleader under Defence of India Rules for uttering anti-war slogans is no ground for disciplinary action. 46 C.W. N. 405=75 C.L.J. 428. In order to see when disciplinary action under sec. 12 should be taken against a pleader who has been convicted under r. 38 read with r. 34 (6) (*e*) of the Defence of India Rules, 1939, the Court must not merely accept the fact that he has been convicted but must consider the material upon which he has been convicted. Where the speech for which he has been convicted incites others to break the law which it is the duty of the Courts to administer, and to do acts tending to subvert order, the Court is entitled to take disciplinary action against him. I.L.R. (1941) Lah. 736=44 P.L.R. 471=A. I.R. 1942 Lah. 85 (F.B.). A pleader who was 60 years old and who had been of unblemished character was convicted under sec. 409, I.P. Code for embezzlement of client's money. *Held*, that the pleader was liable to be removed from the rolls notwithstanding his age and previous good character. 1938 Rang. 288. *See also* 1939 M. 906=(1939) 2 M.L.J. 632. But *see* 165 I.C. 601=1936 Lah. 717. A pleader is not entitled to go behind the conviction in order to show that his conviction was not justified either in law or on facts and that he committed no offence. 27 N.L.R. 29=1931 Nag. 33 (S.B.). Conviction of legal practitioner is sufficient without any further enquiry to justify the High Court in taking proceedings under sec. 12. It is not permissible to go behind the conviction and the pleader cannot be allowed to have indirect appeals against the judgment of conviction. 1929 C. 771; 59 M. 732=1936 M. 318=70 M. L.J. 498 (F.B.). Though it is not incompetent for the High Court to deal under Art. 8, Letters Patent, with charges of a criminal nature against a practitioner unless and until these have been investigated by a Criminal Court, it is eminently fitting that in such cases the criminal prosecution should precede any disciplinary decision. 58 I.A. 152=53 A. 183 =1931 P.C. 112=61 M.L.J. 130 (P.C.). The charges of professional misconduct must be clearly proved and should not be inferred from mere ground of suspicion however reasonable or from what may be a mere error of judgment or indiscretion. 1939 R.D. 641 (2)= 1940 A.W.R. (B.R.) 5 (1). Where the allegations against a legal practitioner amount to a criminal charge, the proper procedure is to prosecute him criminally in the first instance before bringing proceedings under the Legal Practitioners Act. Otherwise he is likely to be prejudiced inasmuch as these are summary proceedings in the nature of a summons trial. 178 I.C. 456=I.L.R. (1938) 2 Cal. 138=1938 Cal. 783. *See also* 54 M. 857=1932 M. 131 =61 M.L.J. 148 (F.B.).

CONVICTION OF PLEADER—CONVICTION BY A FOREIGN COURT.—The conviction of a legal practitioner for perjury is a good ground for striking off his name from the roll of practitioners. Where the conviction is by a foreign Court, but the law is the same as in India and there has been a fair trial, the same principles will apply. An order of disbarment is not conclusive for all time; if circumstances change and the Court is convinced that the delinquent has been brought to a higher sense of honour and duty, the order can be cancelled. Disbarment of a member of the English Bar by the Benchers of his inn does not *ipso facto* lead to his being struck off the rolls of an Indian High Court. The matter would have to be decided under the discretion given by the Letters Patent. 45 M.L.J. 639=46 M. 903=1924 M. 265 (F.B.). Legal practitioners are officers of the Court

and it is there clear duty to respect law themselves and to get it respected by others. If a legal practitioner disobeys an order promulgated by a public servant lawfully empowered to promulgate such order, his action amounts to defiance of law, and he is, therefore, liable to be dealt with under the disciplinary jurisdiction of the High Court. 42 P.L.R. (J. and K.) 77=1940 L. 107.

NO DISTINCTION ON PRINCIPLE CAN BE MADE BETWEEN POLITICAL OFFENCES AND OTHER KINDS OF LAW-BREAKING.—Pleader convicted of waging war against the King under Sec. 121, I.P. Code, has defect of character, which unfits, him to continue in practice. 59 M. 732 =1936 M. 318=70 M.L.J. 498 (F.B.). Where a pleader wilfully breaks the law upon one or two isolated occasions it may not be necessary for the Court to take any action under sec. 12 of the Legal Practitioners Act. Where, on the other hand, it is shown that the pleader has wilfully and habitually broken the law, then the Court may quite reasonably come to the conclusion that his acts imply such a defect of character as to render him unfit to practise as a pleader and in such a case the Court may dismiss him from practice. Where the acts of the pleader fall midway between the two extremes, then the Court may take a more lenient view and may think it sufficient to warn the pleader by inflicting upon him a period of suspenison or otherwise, that if he persists in breaking or defying the law, such conduct will inevitably lead the Court to the conclusion that he is totally unfit to practise in the Courts which have been established to enforce the law. 38 C.W.N. 276=1934 C. 242 (2). A pleader was prosecuted three times and convicted twice for semi-political offences. *Held*, that the case fell within the mediate position and warning with suspension was sufficient. 35 Cr.L.J. 592= 148 I.C. 57=1934 C. 242 (2). An order binding over a pleader under sec. 118, Cr.P. Code, may not be a conviction for an offence. But a pleader who is convicted under sec. 17 (2) of the Criminal Law Amendment Act is guilty of nothing short of an open and definant violation of law. Seeing that it is the duty of the members of the legal profession to assist the Courts to maintain and enforce obedience to law, such conduct in a pleader is such a defect of character as would unfit him to be a pleader, and make him liable to action under sec. 12 of the Act. 152 I.C. 943=1934 C. 808. Where a pleader was convicted under the Defence of India Rules for uttering a slogan to the effect that none should assist the British Government in their war efforts as it was the duty of everybody to resist all wars by non-violence. *Held*, that in the circumstances of the case the exercise of disciplinary jurisdiction under sec. 12 was not called for. 46 C. W.N. 405. In order to see whether disciplinary action under sec. 12 of the Legal Practitioners Act should be taken against a pleader who has been convicted under R. 38 read with R. 34 (6) (*e*) of the Defence of India Rules, 1939, the Court must not merely accept the fact that he has been convicted but must consider the material upon which he has been convicted. Where the speech for which he has been convicted incites others to break the law which it is the duty of the Courts to administer, and to do acts tending to subvert order, the Court is entitled to take disciplinary action against him. I.L.R. (1944) Lah. 736=1942 L. 85 (F.B.). *See also* 44 Cr.L.J. 743=1943 Cal. 371 (conviction of pleader under R. 38 (5), Defence of India Rules, does not imply defect of character and does not call for disciplinary action). 44 Cr.L.J. 707=1943 Cal. 370 (conviction under R. 56 of the Defence of India Rules, for taking out a peaceful and orderly procession in contravention of order implies a defect of character which unfits one to be a pleader). *See also* 1943 M. 475=(1943) 1 M. L.J. 396 (S.B.).

ILLUSTRATIONS.—*Per* Mitter, J.—Where a pleader has been convicted of criminal offences for misconduct committed strictly in his professional character, that *prima facie* renders him unfit to be a member of the profession. That however does not mean that wherever a pleader has been so convicted the Court is bound to strike him off the rolls. The use of the word "may" in sec. 12 shows that the discretion of the Court is absolute. 33 C. W.N. 823=1929 C. 771. Contempt of Court by pleader in his capacity as a suitor can be punished professionally. 55 All. 148=1933 A. L.J. 251=1933 A. 224; *see contra* 54 All. 912 =1932 A. 492 (S.B.). Conviction under sec. 288, I.P. Code for improper behaviour and using improper words to a Magistrate was held to render a pleader liable to suspension for 3 months. 162 I.C. 534=1936 Rang. 175. Conviction under Burma Village Act for not removing stack of hay from the pleader's compound, does not involve any defect of character which unfits him to practise. 162 I.C. 534=1936 Rang. 175.

TEMPORARY MISAPPROPRIATION.—1925 C. 239. Conviction under the Salt Act for certain activities in pursuance of Civil Disobedience. 1931 P. 208 (F.B.)=12 P.L.T. 61. A pleader convicted under sec. 3, Police Incitement to Disaffection Act and under sec. 17, Criminal Law (Amendment) Act. 134 I.C. 945 =12 Pat.L.T. 773=1931 P. 369 (F.B.). The mere fact of conviction of any criminal offence implying moral turpitude can be a sufficient basis in law for an order of suspension or dismissal of a pleader or mukhtar only but not of a vakil whose cases of misconduct are not provided for by the Legal Practitioners Act, but by paragraph 8 of the Letters Patent. 8 O.W.N. 167=1931 O. 161 (F.B.).

CONVICTION FOR KEEPING A COMMON GAMBLING HOUSE.—42 M. 111=35 M.L.J. 650= 48 I.C. 341 (S.B.). The conviction of a pleader under the Gambling Act can hardly be looked upon by itself as sufficient reason for disciplinary action. 1929 R. 352 (1). But *see* 42 M. 111=35 M.L.J. 650.

CONVICTION FOR CONDUCTING LOTTERY.—A pleader of good character and about thirty years of age, who was permitted to engage in business embarked upon a scheme with the Courts decided was nothing less than a lottery

Suspension and dismissal of pleaders and mukhtars guilty of unprofessional conduct.

[1][13. The High Court may also, after such inquiry as it thinks fit, suspend or dismiss any pleader or mukhtar holding a certificate as aforesaid—

LEG. REF.

1 Substituted by Act XI of 1896, sec. 2.

and the pleader was convicted for taking part in the lottery. When the question came before the High Court whether he should be debarred from practising as a pleader. *Held*, that the pleader behaved very foolishly in acting as he did, but taking into consideration his young age, his name should not be struck off the register. 164 I.C. 350=37 Cr.L.J. 1118=1936 Rang. 382.

SECS. 12 AND 13.—The High Court can act upon the report submitted to it by the District and Subordinate Courts or *suo motu* take action for either suspension or dismissal of a pleader. 12 Pat.L.T. 773=1931 P. 369 (F. B.).

SECS. 12 TO 14: DISCIPLINARY JURISDICTION—HIGH COURT'S DISCRETION—IF CAN BE FETTERED BY LOCAL GOVERNMENT.—The Local Government have no *locus standi* in any way to fetter the discretion of the High Court to take or not take any action under Cl. 8, Letters Patent, or under the Legal Practitioners Act against any legal practitioner; the matter is one which is entirely within the discretion of the High Court. As the Local Government is not competent to claim that action should be taken against any particular legal practitioner, it has also no right or power either to abandon any proceedings or to condone the conduct of the legal practitioner so far as it comes within the purview of the disciplinary jurisdiction of the High Court so as to bind it in any way. 15 L. 354=1934 L. 251 (S.B.).

SEC. 13: SCOPE OF SECTION.—*See* 44 C. 639. The jurisdiction of the Court is not vindictive. 1924 M. 160=45 M.L.J. 718 (F.B.). Notice is necessary before taking action. 19 M.L.J. 504. Enquiry may be made by a Court subordinate to the High Court. 44 C. 639. The Court cannot act on mere suspicion. 1 P.L.T. 372=57 I.C. 460 (F.B.). Charges of professional misconduct must be clearly established and not be inferred from mere ground for suspicion. 1930 L. 947, following 1930 P.C. 144=58 M.L.J. 635=34 C. W.N. 534 (P.C.). Charge of "unprofessional conduct" against a pleader—Precision in statement and strictness in proof—Necessity. 1930 P.C. 60=58 M.L.J. 483 (P.C.). "When evidence has been given in one case upon the issues raised in that case, nothing can be more dangerous than to take that evidence and apply it to another case in which other issues arise." 1929 M.W.N. 384 (F.B.). The proceedings under sec. 13 are of a *quasi* criminal nature, it is the duty of the applicant who is more or less in the position of complainant to go into the witness-box and substantiate his allegation before producing any other witnesses, and what is more important, to submit himself to cross-examination. 1930 L. 947. Provisions of the C. P. Code, are applicable to proceedings under sec. 13 of this Act. 21 C.W.N. 564; 23 C.W.N. 560. In a case a misappropriation of client's money by the Advocate, when the same has been brought to the notice of the Court, the charge cannot be permitted to be squared up or withdrawn. 1937 Mad. 696=(1937) 2 M. L.J. 160 (F.B.).

DISCIPLINARY ACTION BY HIGH COURT—CONSIDERATIONS.—The point to be considered in all cases of disciplinary action against a member of the Bar is whether his conduct involves unfitness on his part for the exercise of his profession. Moral turpitude which would entitle the Court to take action must be such as is connected with the pleader's profession or consist of any attack upon the system of which the Court forms part or embarrasses in any way the administration of justice by the Courts. A speech of a vakil alleged to injure the feelings of an important sect of the Mohammadans does not fall in any of these categories and is, therefore, not one which would induce the High Court of Jammu and Kashmir to take any action against him. The State imposes suitable penalties for the infringement of its laws and provides proper sanctions for the enforcement of such penalties and there is no reason why the disciplinary jurisdiction vested in the High Court should be employed merely in aid of the Criminal Law. 37 P.L.R. J. & K. 16.

PROFESSIONAL MISCONDUCT.—*Per* Krishnan, J.—The Legal Practitioners Act, 1879, deals with the Pleader only in his professional capacity and not in his private capacity though misconduct other than professional may fall under cl. (*f*). 38 M.L.J. 230=55 I.C. 198 (F. B.) Under sec. 13 the impropriety must be such as would render the continuance of the pleader in practice undesirable or unfit him for being a member of the profession. 38 M.L. J. 230. *See also* 88 I.C. 279=26 Cr.L.J. 1111 =1925 Rang. 110. Failure to make proper arrangements for conduct of case in his absence though it should not be encouraged by Courts is not misconduct deserving punishment under this section. 1939 Rang. 262. Finding of Criminal Court that pleader is not guilty should be accepted in proceedings under Legal Practitioners Act. Mere negligence does not amount to misconduct. I.L. R. 1945 M. 247=1945 M. 55=57 L.W. 567= (1944) 2 M.L.J. 317. The High Court has power to entertain a petition for the reinstatement of an advocate struck off the rolls. When a question of re-instatement arises what the Court has to see is whether the applicant, since he was disbarred, has honestly endeavoured to rehabilitate his character so that if restored to Bar he will be upright and honest and he can be expected to conduct himself as an officer of the Court and co-operate in the administration of law and maintenance of order. 24 Mys.L.J. 83.

(*a*) who takes instructions in any case except from the party on whose behalf he is retained, or some person who is the recognised agent of such party within the meaning of the Code of Civil Procedure, or some servant, relative or friend authorised by the party to give such instructions, or

MISCONDUCT—TEST—RULES FOR GUIDANCE.—The principles to be applied in considering whether certain conduct amounts to misconduct or not are as follows: (1) that the mere holding of certain views and expression of such views in language however emphatic or strong is no ground for taking disciplinary action against a legal practitoiner; (2) that mere conviction for an offence is not sufficient but the Court must look into the nature of the act on which the conviction is based to decide whether the legal practitioner is an unfit person to remain in profession; (3) that a legal practitioner is a part of the machinery provided for the maintenance of order and the enforcement of the law of the land; it is therefore inconsistent with his duties as legal practitioner to incite others either to boycott the Courts or to break the law which it is the duty of the Courts to administer; those who live by the law cannot preach the breaking of the law; (4) that organized breach of the peace, incitement to acts tending to subvert order is a reasonable cause to suspend or remove a legal practitioner; and (5) that acts involving moral turpitude or which imply general infamy make a legal practitioner unfit to remain on the rolls of the Court. 15 Lah. 354=1934 Lah. 251 (S.B.). A legal practitioner is not merely a lawyer but also a moral agent. As such he is a Judge of right or wrong, and an advocate of what is right. Search for truth is to be his ideal. The practice of law is a personal right or privilege limited to selected persons of good character. It is a franchise which may be revoked for misconduct, the test being whether the misconduct is such as shows him to be unfit or unsafe to discharge the duties of his office, or unworthy of confidence; no legal practitioner can disclaim responsibility for his acts. Just as he is entitled to enjoy the privileges of his profession, he has also peculiar obligations and responsibilities attached. 12 Mys.L.J. 292=39 Mys. H.C.R. 380. In an enquiry into charges of professional misconduct, it is the duty of the legal practitioner to be absolutely candid with the Court. He may unwisely maintain a stolid silence and take up the position that the case against him must be completely proved. In such case he runs a grave risk. On the other hand, if he elects to state his defence, it ought not to be a perversion of truth. 12 Mys.L.J. 222=39 Mys.H.C.R. 203. Misconduct is not necessarily the same thing as conduct involving moral turpitude. 15 Lah. 354=1934 Lah. 251 (S.B.). The motive of the informer in starting disciplinary action against an advocate is immaterial. 15 Lah. 354 (S.B.).

MADRAS RULES, R. 17—PURCHASE BY LEGAL PRACTITIONER AT SALE IN EXECUTION OF DECREE OF CLIENT—IF "MISCONDUCT".—R. 17 of the Rules framed by the High Court under the Legal Practitioners' Act only prohibits a practitioner from purchasing from his client or from any other person any interest in a decree passed by the Court in which he practises, but there is no rule prohibiting a practitioner from bidding at an auction held in execution proceedings instituted by him on behalf of his client. The words "or other person" in r. 73 of O. 21, C.P. Code, does not include a legal practitioner who has no duty to perform in connection with the sale. Desirability of a rule prohibiting a practitioner from bidding either in his own name or in the name of another at a Court sale held in execution of a decree obtained by his client pointed out. I.L.R. (1946) Mad. 521=1946 Mad. 245=59 L.W. 161=(1946) 1 M.L.J. 218 (F.B.).

SEC. 13 (*a*): ACCEPTING VAKALATNAMAS.—Duty of a pleader. 33 I.C. 831=20 C.W.N. 283. Advocates accepting vakalat for withdrawal of money or for any such serious responsibility should satisfy themselves as to the *bona fides* of the person who offers it; and this is necessary even if there be no apparent circumstances to justify any suspicion. 16 Pat. 488=18 Pat.L.T. 407=1937 Pat. 433 (S.B.); 16 Pat. 123=17 Pat.L.T. 948=1937 Pat. 137 (S.B.). If a pleader acts *bona fide* in accepting *vakalatnama* but makes a serious mistake, there is no need for the Court to take up the matter again after a long time has elapsed. The rules should be strictly observed by pleaders in accepting *vakalatnama*. 65 I.C. 417=1922 Cal. 178. *See also* 19 Cr.L.J. 227=43 I.C. 819 (C.). Where an *advocate appeared in certain criminal proceedings without filing a vakalatnama*, though required by the rules of the Court, *held*, though the rules requiring the filing of a vakalatnama or mukhtarnama in criminal proceedings is an arbitrary rule having no moral sanction behind it, it is a rule which an officer of the Court must comply with but a disobedience of that rule did not amount to professional misconduct in the particular case. 12 Pat. 843=14 Pat.L.T. 709 =1933 Pat. 571 (S.B.). *See also* 13 Mys.L.J. 24; 12 Mys.L.J. 383. Advocate's name appearing in the decree—He is entitled to assume that a vakalat has been filed—Appearance in execution without vakalat is no professional misconduct. 12 Pat. 843=1933 Pat. 571 (S.B.).

RECEIVING INSTRUCTIONS DIRECTLY FROM CLIENTS OR THEIR DULY AUTHORIZED AGENTS.—Gross negligence tantamount to misconduct is attributable to a *mukhtar* who receives and acts on a mukhtarnama from an unauthorized person without proper inquiry. 37 I.C. 492 =2 Pat.L.J. 36. *See also* 34 I.C. 645=20 C. W.N. 1016 (F.B.). When a member of the Bar writes a letter purporting to be instructed by a client, there is a presumption, until the contrary is proved, that the letter is writ-

(*b*) who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or

ten under instructions. 1933 Rang. 147. Criminal trial—Advocate raising plea that prosecution story was concocted—Same put forward without client's instructions—Propriety. *See* 10 Pat.L.T. 703=9 P. 31=1930 P. 195.

ALTERING A VAKALATNAMA after execution by inserting name of mukhtar actually engaged at the request of party's agent—conduct if improper. 17 I.C. 718=17 C.W.N. 328.

PLEADER NOT RENEWING CERTIFICATE.—It is not the law that a pleader who has not renewed his sanad for the year in which his conduct is called in question is no longer a "legal practitioner". He does come within sec. 13 and can be struck off the rolls for misconduct under sec. 13 even if he has not renewed his certificate. I.L.R. (1944) Mad. 17=56 L.W. 401 (2)=1943 M.W.N. 516=1943 Mad. 616=(1943) 2 M.L.J. 126 (F.B.). *See also* I.L.R. (1944) Mad. 633=1944 Mad. 244 =(1944) 1 M.L.J. 123.

PROFESSIONAL MISCONDUCT of a solicitor or pleader must be judged by the rules and standards of his profession. 23 S.L.R. 245=115 I.C. 318=30 Cr.L.J. 445=1929 Sind 121 (F.B.). A pleader who obtains adjournment of a case on grounds which, to his knowledge, were false is guilty of improper conduct. 54 M. 520=1931 M. 422=60 M.L.J. 393 (F.B.). Taking a personal interest in the litigation (as) financing the same and bargaining for a share of the profits may amount to misconduct on the part of an advocate. 1932 L. 584. *See also* I.L.R. (1943) Mad. 30=1942 M. 601=(1942) 2 M.L.J. 196 (F.B.). A solicitor acting for a client in any transaction, should not have a personal interest in that transaction without making full disclosure of the nature and extent of the interest to the client. 44 L.W. 315=163 I.C. 434=1936 P.C. 224 (P.C.). Where, a solicitor occupying the position of a trustee of an estate, while entering into certain transactions relating to the estate, considers his own interests in preference to and to the detriment of the interest of the beneficiaries of the estate of which he is a trustee, his action is such as would reasonably be regarded as disgraceful and dishonourable by his professional brethren of repute and competency and he is guilty of professional misconduct. 163 I. C. 434=44 L.W. 315=1936 P.C. 224 (P.C.).

SEC. 13 (*b*): GROSSLY IMPROPER CONDUCT —APPEARING ON OPPOSITE SIDES.—A professional gentleman should as far as possible stick to the side who first employed him. 28 I.C. 996=16 Cr.L.J. 420 (All.). *See also* 1930 P.C. 144=58 M.L.J. 635 (P.C.). In order to prevent a counsel appearing for the other party, he must have a definite retainer with a fee paid or he must have such confidential instructions from one of the parties as would make it improper for him to appear for the other party. 1939 R.D. 641 (2)= 1940 A.W.R. (B.R.) 5 (1)=11 O.W.N. 23= 1934 Oudh 58 (S.B.). When he has once been retained and received the confidence of a client he cannot accept a retainer from or enter the service of those whose interests are advserse to his client in same controversy. 37 C.L.J. 48=72 I.C. 22=1923 Cal. 106. A pleader who acts for both the parties in the suit at one stage or other is guilty of professional misconduct. 45 I.C. 684=3 Pat.L.J. 390. Where a pleader accepted a brief against his standing clients at a time when his exclusive retainer by that party was still running, pleader acted not only in violation of the principals which govern the conduct of a legal adviser but also of the ordinary principles of good faith as between man and man and was guilty of grossly improper conduct. 32 Bom. L.R. 556=1930 P.C. 60=58 M.L.J. 483 (P. C.). *See also* 1932 A.L.J. 755=140 I.C. 62 =1932 All. 536. Every practitioner is bound to see before accepting a *vakalatnama* that he has not already been engaged on the other side. To recklessly sign a *vakalatnama* very nearly amounts to misconduct. 14 Cr.L.J. 44 =18 I.C. 268 (A.). Legal practitioners receiving instructions from a prospective client— Subsequent appearance for the opposite party —Whether professional misconduct. 8 R. 446= 128 I.C. 354 (2)=1930 Rang. 355. A legal practitioner had acted for the appellant in a prior suit wherein the appellant asked that an award by an arbitrator in a dispute in respect of a conveyance should be set aside. A plea was therein filed that the respondent persuaded the appellant to execute a conveyance wherein the consideration was falsely stated. The later suit related to the same conveyance and the prayer of the appellant therein was that it should be set aside on the ground of fraud and failure of consideration. *Held*, that though the conduct of the legal practitioner in appearing for the respondent in the later proceeding was not dishonest, the Court could, considering the possibility of mischief to the other party, direct that he should not take any further part in the proceeding. 125 I.C. 262=8 R. 44=1930 Rang. 185. Pleader appointed as commissioner in the case cannot act as vakil for one of the parties. 100 I.C. 309=1927 Cal. 203. The mere fact that a lawyer is cited as a witness by the prosecution would not disqualify him from appearing as counsel for the accused in the case. No doubt it is not in accordance with professional etiquette for a lawyer who has given evidence as a witness for the prosecution to accept or to continue to hold a brief from the accused. But the mere citing of an Advocate as a witness by the Police does not operate as a disqualification. 1938 M. 878=48 L.W. 276 =(1938) 2 M.L.J. 466. Pleader entering record-room without permission of Judge incharge in defiance of standing order of District Judge not proper—Duty of pleader and of Judge-in-charge. 17 Pat. 261=1938 Pat. 385 (S.B.).

APPEARING FOR THE OPPOSITE PARTY WHEN NOT MISCONDUCT.—A pleader acting for one

party in one proceeding is not debarred from appearing against that party in another proceeding unless his services were sought by the party in the latter case and refused by pleader on insufficient grounds. 1928 M. 592. *See also* 13 A.L.J. 475=30 I.C. 145 (F.B.); I.L.R. 1938 M. 399=1938 M.W.N. 220=1938 Mad. 276 (F.B.). It cannot be said that there is anything professionally wrong in acting for an opposite party when the proceedings are different. I.L.R. (1938) Mad. 399=1938 Mad. 276 (F.B.). That a pleader was merely consulted by complainant at one stage, does not preclude him from appearing for the accused in proceedings regarding a totally different incident. 8 L. 671=1928 L. 65. *See also* 128 I.C. 354=1930 Rang. 355. A Hindu pleader allowed his father to purchase the very property in respect of which he was working for his client. The transaction took place with the knowledge and consent of his client. But in spite of this knowledge the client allowed the same pleader to continue to work for him. Further, when the pleader appeared for his father against him in a case arising out of the sale transaction, he did not raise any objection against the conduct of the pleader for more than 18 months. *Held*, that though the pleader did not act up to the standard of propriety which was expected of a member of the legal profession, who must enjoy the complete confidence of the litigant public and the Court and though technically his appearing subsequently against him was improper, yet no disciplinary action was justified. 1938 Pat. 28=1938 P.W.N. 115=172 I.C. 849 (S.B.).

SEPARATE APPEARANCES FOR SAME PARTY IN DIFFERENT CAPACITIES—PROPRIETY.—A solicitor appearing for a client who is interested in two different capacities can state the case of his client in respect of each capacity, but he cannot appear separately for the same person; nor is the since party entitled to appear by separate counsel or separate solicitors in different capacities. 37 Bom.L.R. 49=1935 B. 119.

PLEADER ACTING AS ARBITRATOR.—Where a pleader who had been engaged by the plaintiff withdrew on behalf of defendant money, which he knew was payable to the plaintiff, and took a conspicuous part as arbitrator in a matter in which he was seriously and personally concerned, he was guilty of professional misconduct. 41 I.C. 328=2 P.L.J. 259. Pleader getting himself appointed arbitrator holding out promise to a party is guilty of serious misconduct. 162 I.C. 576=1936 Pesh. 113.

PLEADER BECOMING PROMOTING DIRECTOR OF COMPANY ON MONTHLY REMUNERATION.—A pleader practising in the mofussil is governed by the rules framed by the High Court under the Legal Practitioners Act and the directions given by the High Court from time to time. Where a pleader became a promoting director of a Company with a fixed monthly remuneration without the permission of the High Court, but the Company never in fact carried on business and the pleader never received any remuneration from it.

Held, that the pleader offended against r. 13 of the rules framed by the High Court under the Legal Practitioners Act and the circular order of the High Court of 1916, but the offence being of a technical nature did not call for action. An Advocate should not act as a promoter of a trading Company but he can act as the legal adviser of a Company of which he is a director subject to his remuneration being fixed beforehand. I.L.R. 1944 M. 161=1943 M.W.N. 587=56 L.W. 491=A.I.R. 1943 Mad. 665=(1943) 2 M.L.J. 273 (F.B.).

PLEADER LIKELY TO BE WITNESS IN A CASE.—As to whether such vakil can accept brief, *see* 5 P. 777=8 P.L.T. 510=1927 P. 61; 117 I.C. 66=1930 L. 361 (2)=48 L.W. 276=(1938) 2 M.L.J. 446=1938 M. 408. Though it is undesirable that a lawyer should appear in a case in which he knows or has reason to believe that he would be an important witness there is no harm in his giving evidence in a case in which he is appearing. 12 Pat. 359=1933 Pat. 306. Pleader appearing for party—Propriety of giving evidence as witness. *See* 1942 M. 691=44 Cr.L.J. 114=(1942) 2 M.L.J. 479 (F.B.).

PLEADER COLLECTING EVIDENCE FOR CLIENT.—A pleader helping his clients by collecting evidence for them to be used on their behalf does not exceed his duties as their counsel. 134 I.C. 515=1931 L. 246.

ABANDONMENT OF CASE.—A pleader acts improperly in abandoning his client's case while in the midst of the client's examination-in-chief. After once taking up his client's case he ought to have seen that it was terminated. 14 Cr.L.J. 379=20 I.C. 139 (C.). *See also* 35 C.L.J. 403=26 C.W.N. 580=1923 C. 212.

ABANDONMENT OF ISSUE.—A vakil's general power in the conduct of a suit includes the abandonment of an issue, which in his discretion he thinks it inadvisable to press. 16 L. 328=1935 L. 71.

ACCOUNTS.—Duty of pleader to keep proper accounts. *See* (1943) 1 M.L.J. 487 (S. B.). There can be no professional misconduct when an advocate puts forward a *bona fide* claim to a lien on the papers of his client in respect of the outstanding fees. As an advocate fulfils the role of a solicitor also it may be argued that he is entitled to the advantages of a solicitor. Where the mother of a minor employs an advocate to act for her in her own suit as well as in a suit by her as next friend of her minor son, there is no obligation on the part of the advocate under r. 27, note 1, of the rules under the Legal Practitioners Act to keep separate accounts. What the rule requires is that he should keep accounts. 56 L.W. 344=44 Cr.L.J. 735=1943 Mad. 493=(1943) 1 M.L.J. 487=I.L.R. (1944) Mad. 71 (S.B.). If money is paid to an attorney by his client not on account of costs but for a special purpose, it is trust money. It is first his duty to enter the account properly in his own books, to put it into a ledger account or a pro-

per account, and distinguish it from other moneys. If he has a general client's account in the bank, he must put it into that. If he has not, he is to open one and put it into that. He has no right to use the money. The fact that he can pay it back, or may be able to pay it back within a reasonable time, or immediately, makes no difference. I.L.R. (1943) 1 Cal. 81.

WILFUL NEGLECT TO APPEAR NOT EXCUSED BY NON-PAYMENT OF FEES.—It is not proper for Counsel either in the High Court or in the Courts below to merely state to the Court that he has no instructions. He should clearly specify what is the reason for his falling to proceed with the case. It may be that he has not received his fees; it may be that his instructions have been withdrawn or it may be some other reason. But whatever the reason is, he should clearly state it to the Court. 1936 A.L.J. 902=1936 All. 670. As to negligence *see* (1944) 2 M.L.J. 317 (F. B.). A pleader is guilty of misconduct if after receipt of full fees he wilfully neglects to appear and conduct the case. 37 M. 238=23 M.L.J. 447. *Per* Sankaran Nair, J.—In the absence of such an agreement or at least notice to the party in time, a vakil, must appear and conduct the case though the fee or a portion thereof remains unpaid. 37 M. 238=23 M.L.J. 447. *See also* 10 P.L. T. 723=1929 P. 337 (F.B.). When the client is, for some reason or other, putting off the settlement and payment of fee a legal practitioner would be well advised if he served a registered notice upon him in good time intimating to him that if the client did not settle and pay his fee he would repudiate all his responsibility as a pleader. 1930 L. 947, *Per* Curiam.—When a pleader accepts a *vakalatnama* in the ordinary form, he must attend Court on every occasion to protect the interests of the client concerned. Any limitations on his obligation by special agreement must be proved and the onus lies on the pleader. Non-payment is no justification for refusal to attend. 49 C. 732=26 C.W. N. 589=71 I.C. 81=1922 C. 515 (F.B.). Where a pleader signs a *vakalatnama* on the distinct understanding that a sum paid to him is really in the nature of a part-payment, and that the client will settle the proper fee afterwards and if the client fails to do so, it follows that mere acceptance of *vakalatnama* cannot cast upon the pleader the duty of defending the case. 129 I.C. 301=1930 L. 947. Taking fees as a pleader in a case where he is in fact a party is grossly improper conduct. 1925 O. 130 (2).

FAILURE TO MAKE CAREFUL ARRANGEMENTS IN A CASE shows a laxity in conduct which deserves no encouragement. 183 I.C. 580= 1930 Rang. 262.

SUPPLEMENTAL FEES.—To agree with a client for a present over and above his fees in the case of success, is disgraceful for an advocate. The failure of a barrister in exacting money as supplemental fee does not absolve him from his original obligation to his client and the Court. 16 I.C. 780=14 Bom.L.R. 691 (F.B.). In the absence of a special contract to the contrary the fees accepted by an Advocate must be taken to be for the whole case. A writing to evidence the terms of engagement between the advocate and the client is always desirable. 16 Cr.L.J. 707=30 I.C. 995.

GIVING IMPROPER ADVICE TO CLIENT.—Pleader advising payment of moneys from minor's estate to the sureties as consideration, *held*, there was no cause for proceeding against the pleader under sec. 13 (*b*) or (*f*). 38 M.L.J. 58=54 I.C. 163. A vakil of the High Court was suspended from practice for two years by the High Court under cl. 10 of the Letters Patent (Madras) for professional misconduct arising from the following acts he did, *viz.*, (1) giving improper advice and getting a nominal sale for a low value; (2) pleading a false defence; (3) giving false evidence and suborning perjury. 39 I.C. 289=40 M. 69. It is well settled that although a legal practitioner has his duty towards his client, he has other duties and responsibilities as well and that he should not on the instructions of his client make a charge of fraud against another in an affidavit without satisfying himself that there are reasonable grounds for the allegation. But he has not got to satisfy himself that the statements made by his client were absolutely true. All that is incumbent on him is to satisfy himself that there are reasonable grounds for believing them. 59 L.W. 401= 1946 M. 538=(1940) 2 M.L.J. 79 (F.B.).

PUTTING IRRELEVANT QUESTIONS IN CROSS-EXAMINATION.—Protracted examinations of witnesses with questions which are quite irrelevant to the suit, and only tend to swell the size of the record, must be deprecated. It is an abuse which enormously increases the cost of litigation without any corresponding benefit to the parties and it is clearly within the powers of the High Court to direct an inquiry with a view to disciplinary action in flagrant cases which come under their notice at the hearing of appeals. 54 All. 912=1932 A.L.J. 198=1932 P.C. 69= 62 M.L.J. 457 (P.C.). As to *defamatory suggestion* against witnesses, *see* 29 N.L.R. 24= 1933 N. 47.

ERROR OF LAW.—Error of law is no professional misconduct. 20 C.W.N. 278=23 C. L.J. 237=43 C. 685.

MISAPPROPRIATION BY VAKIL of the client's money amounts to professional misconduct. 42 I.C. 135. *See also* 145 I.C. 278=34 Cr. L.J. 954=1933 L. 575 (S.B.); 15 I.C. 785 (2) =13 Cr.L.J. 513=5 S.L.R. 222. Thus if money is paid for payment of stamp fees it is not open to the legal practitioner to appropriate the same or any part of it towards fees due to him 1930 M.W.N. 216. It is the duty of every advocate who receives money on behalf of his client to conduct litigation with to keep an account of how that money has been applied. 1930 M.W.N. 216. *See also* I.L.R. (1941) Mad. 286=1941 Mad. 63 =(1940) 2 M.L.J. 1031 (F.B.). Vakil dishonestly appropriating client's monies—Re-

(*c*) who tenders, gives or consents to the retention, out of any fee paid or payable to him for his services, of any gratification for procuring or having procured the employment in any legal business of himself or any other pleader or mukhtar, or

(*d*) who, directly or indirectly, procures or attempts to procure the employment of himself as such pleader or mukhtar through, or by the intervention of, any person to whom any remuneration for obtaining such employment has been given by him, or agreed or promised to be so given, or

(*e*) who accepts any employment in any legal business through a person who has been proclaimed as a tout under section 36, or

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pentance and plea of indebtedness—Standard of professional conduct. 88 I.C. 360=1925 M. 797 (F.B.). A legal practitioner received money from the Court on behalf of his client and retained it in his own hands without any authority from the client so to retain it. Subsequently he chose to treat it as a loan and gave security which he felt himself at liberty to withdraw at his own will and pleasure. *Held*, that this was a grave offence which amounted to professional misconduct. 32 L.W. 435=129 I.C. 233=1930 M. 527 (F. B.). *See also* 1933 L. 575=145 I.C. 278 (S. B.); 142 I.C. 593=1933 S. 45. Where a pleader to whom money is given by his client for payment to an arbitrator appropriates that money towards his fees, his conduct is grossly improper, and calls for disciplinary action. 1939 Lah. 248=175 I.C. 29. *See also* I.L.R. (1941) Lah. 731=1941 Lah. 384 (F. B.). While misappropriation by a legal practitioner of monies belonging to his client is a very grave act of professional misconduct which would not make it possible to allow him to continue practising in the profession, the Court is not precluded from re-instating the practitioner when adequate punishment has been imposed and he has shown that he has rehabilitated himself in such a manner that he is fitted to be admitted into the profession again. I.L.R. 1940 Mad. 81=1939 Mad. 906=(1939) 2 M.L.J. 632 (F.B.); I.L. R. (1940) Mad. 84=1939 M. 917=(1939) 2 M.L.J. 630 (F.B.).

A pleader purchasing property in Court auction in execution of his client's decree is guilty of professional misconduct, equally so if he purchases the property for other persons. 13 Cr.L.J. 794=17 I.C. 539 (A.). *See also* I.L.R. (1938) Mad. 399=1938 Mad. 276 (F. B.). Purchasing from their clients or others any interests in any decree passed by the Court in which the pleaders practise is misconduct. I.L.R. 1938 Mad. 399=1938 M. W.N. 220=1938 M. 276 (F.B.). *See also* 52 L.W. 777=1940 P.C. 204=67 I.A. 431=43 Bom.L.R. 465=73 Cal.L.J. 121 (P.C.); I.L. R. (1940) K.P.C. 419.

TAKING MORTGAGE IN LIEU OF FEES at exorbitant terms may amount to professional misconduct. 12 P. 843=14 Pat.L.T. 709=1933 P. 571 (S.B.).

SECS. 13 AND 14: ADVANCE OF MONEY TO FINANCE LITIGATION IN WHICH HE IS ENGAGED.—A pleader in India, like an Advocate, combines the functions of the solicitor and the Barrister in England. As he fulfils both roles he is subject to the disabilities of both. It would be manifestly improper for him to advance money to a client for the purpose of a litigation in which he is engaged. The safe rule to lay down is that a pleader or an advocate should not lend money to his client at any time for the purpose of an action in which he is engaged. 1942 M.W.N. 483=55 L.W. 481 =1942 Mad. 553=(1942) 2 M.L.J. 196 (F. B.).

MUKHTAR STANDING BAIL FOR ACCUSED IN CRIMINAL CASE AND TAKING INDEMNITY FROM PERSON NOT ACCEPTED AS SURETY.—There is nothing against a legal practitioner becoming a surety for an accused in a criminal case. But where a *mukhtar* enters into a contract of indemnity with, and receives money from, a third person, who has been rejected as a surety, becoming a surety, such an agreement constitutes public mischief, being opposed to public policy, and the *mukhtar* is guilty of unprofessional and highly improper conduct; and when the *mukhtar* further attempts to conceal the agreement from the knowledge of the Court, it has to be viewed as a serious aggravation rendering him liable to suspension. 14 Pat. 442=155 I.C. 430=16 P.L.T. 223=1935 P. 195 (F.B.).

NEGLIGENCE OF PLEADER.—Mere negligence does not found a petition for professional misconduct against a pleader. There must be moral delinquency in addition to negligence before a charge of unprofessional conduct can be brought home. Nor is there anything unprofessional in a pleader employing an unregistered clerk. The law allows a pleader to have two registered clerks but does not insist that any clerk should be registered. (1938) 2 M.L.J. 661=1938 M. 965 (F.B.). *Mere negligence is not sufficient in itself to found a charge of profesisonal misconduct*—Where a legal practitioner failed to certify the realisation of certain decree amounts, and it was found that it was due either to stupidity or to negligence or to both but that there was no element of moral delinquency, it was held that it did not amount to professional misconduct. I.L.R. (1940) All. 386=1940 A. L.J. 306=1940 All. 289 (S.B.). *See also* (1944) 2 M.L.J. 317 (Finding of criminal Court is binding). Negligent management of his office and permitting the clerks to cheat the clients and mislead them as to the progress of the case is misconduct for which he might be suspended from practice. 35 M. 543=39 I.A. 191=23 M.L.J. 114 (P.C.). [On appeal from 22 M.L.J. 276=14 I.C. 956.] *See also* 114 I.C. 137=30 Cr.L.J. 256=1928

(*f*) for any other reasonable cause.

C. 817 (2); 62 C. 158=1938 C. 484 (S.B.). Counsel failing to appear in murder case but engaging another counsel on smaller fee is guilty of grave impropriety in the discharge of his duty. 108 I.C. 257=29 Cr.L.J. 362 =1928 L. 448. Pleader engaged in two cases throwing away interests of unimportant client in favour of important client is guilty of professional misconduct. 10 Pat.L.T. 664 =116 I.C. 764=1929 Pat. 153 (F.B.). A vakil, who put before the Sessions Judge a statement which purported to be a petition from his clients and drafted on their instructions but which was in fact entirely his own invention and contained statements made recklessly without reasonable grounds is guilty of misconduct. 18 A.L.J. 419=56 I.C. 501=42 All. 45. An advocate in the exercise of his profession is bound to exercise reasonable skill and prudence but he is not expected to be infallible and unless the Court is satisfied that the act complained of was such that could not reasonably have been done by an advocate exercising reasonable skill and care, a suit for negligence is not maintainable against the advocate. 9 R. 575=1932 R. 1. A *bona fide* mistake on the part of the pleader may be condoned, but gross negligence on his part cannot justifiably be condoned so as to extend time under sec. 5 of the Limitation Act. The remedy of the client is only against the defaulting legal adviser. 1931 Rang. 80. Withdrawal of money on behalf of a guardian and payment to his relation is negligence and not grossly improper conduct. 1925 Cal. 146. Where it is shown that the judgment-debtor obtained copies of documents and gave them to his pleader and the latter did not produce the same at the proper time the Court may refuse to admit the same in appeal. The remedy of the party, if any, is to file a suit for damages against the pleader 32 P.L.R. 813=1932 L. 93. A pleader filed an application for withdrawal of money in Court deposit, and it was found that the money was already withdrawn, but the pleader had checked the account books of his client to ascertain the amount withdrawn from the Court. *Held*, that though the pleader should have been more careful it did not amount to misconduct or gross negligence. 1936 Cal. 658.

FAILURE TO KEEP ACCOUNTS.—Even if a legal practitioner has not much work, he is bound to keep accounts for whatever work he may have, and failure to keep accounts amounts to profesisonal misconduct. (1940) 2 M.L.J. 1031=1941 Mad. 63=I.L.R. (1941) Mad. 286 (F.B.).

SEC. 13 (*f*): MISCONDUCT OTHERWISE THAN PROFESSIONAL.—The phrase "for any reasonable cause" in the residuary cl. (*f*) of sec. 13 is not to be understood in an *ejusdem generis* sense but it covers cases other than those of professional misconduct in the ordinary sense, that which unfits a pleader for the practice of his profession, for instance conviction for a crime involving dishonesty or moral turpitude or gross and habitual contempt of Court. 38 M.L.J. 230=11 L.W. 122 =55 I.C. 198 (F.B.). *See also* 59 C. 709=36 C.W.N. 294=1932 C. 370. The jurisdiction under sec. 13, sub-sec. (*f*), is not confined to acts done in a professional capacity. Taking part in an organised resistance to law and assisting a movement involving grave danger to the public peace by a pleader may not have been done in a professional capacity but they are such as to render it necessary to enquire into the expediency of allowing him to conclude to practise. [40 C. 845 (P.C.), Foll.] Also where a pleader holds the view that it is desirable to disobey the law he is likely to advise his clients to break the law and it is undesirable in the public interests to allow one who sets a bad example to occupy the privileged position of a pleader. 27 N.L.R. 29=1931 Nag. 33 (S.B.). *See also* 11 Pat. 365=1931 Pat. 369 (F.B.). The mukhtar who advises his clients who had been acquitted in a criminal case to present some gratificaton to the Magistrate is guilty of misconduct. Mukhtar suspended for one year. 13 Pat.L.T. 574 =1932 Pat. 356 (S.B.). Where a pleader was convicted under Penal Code for intimidating and assaulting a woman in a most reprehensible manner, the conviction was not by itself sufficient to show defect of character which unfits him to be a pleader within the meaning of sec. 12. Though the words "any other reasonable cause" in sec. 13 seems to be wide enough to include the case, still the conduct was not such as to justify suspending him from practice. 1929 R. 352 (1). Sec. 13 (*f*) is not confined to the misconduct of a pleader as such but also covers his misconduct as a party to a suit. 8 P.R. 1915=28 I.C. 722. Entering deliberately into a false defence, with intent to defraud others, is a ground of action under secs. 13 and 14. 9 I.C. 362=12 Cr.L.J. 67 (C.). Pleader as suitor committing contempt of Court—Disciplinary action may be taken. 55 A. 148=1933 A.L.J. 251=1933 All. 224. But *see also* 1933 All. 492 (S.B.). Imputing dishonesty against officer of Court would amount to professional misconduct. 143 I.C. 359=56 C.L.J. 595=1933 Cal. 344. Also imputation of partiality and unfairness to judicial officer. 142 I.C. 828=1933 Rang. 34.

GENERAL RULE FOR ACCEPTING OR REJECTING CASES.—A lawyer must as a general rule take up a case for any member of the public if (1) a fair and proper fee is tendered to him; (2) adequate instructions are given; and (3) the case is of a class which the lawyer is accustomed to do. He can legitimately decline to take up the case, if he has an out-station engagement, or is engaged in some social function, is incapacitated by ill-health or any reason which a sensible man would recognize adequate. But to refuse to take up a case simply and solely on the ground that the advocate will not appear against a brother practitioner, or put forward untrue excuses is, in each case, professional misconduct and should be dealt with as such. 51 All. 893=1929 All. 367. *See also* 27 A.L.J. 1047=117 I.C. 104 =1930 All. 309 (1); 27 A.L.J. 616=30 Cr.L.J. 522=1930 A. 262.

Filing a false suit is misconduct. The words "any other reasonable cause" in sec. 13, cl. (*f*) are not to be considered *ejusdem generis* with causes enumerated in cls. (*a*) to (*e*). They include personal misconduct distinguished from a professional one. 12 I.C. 838=4 Bur.L.T. 275; 39 M. 1045=32 I.C. 326.

FALSE STATEMENTS.—*See* 121 I.C. 297=1929 Lah. 803; (1940) 1 M.L.J. (Supp.) 28 =1940 F.C. 25. Where a pleader retained in his service a suspected tout without dismissing him even after notice from the Bar Council and thereafter gave a false statement that he had dispensed with the services of that tout and stuck to that statement deliberately in a subsequent enquiry, he was guilty of professional misconduct under sec. 13 (*f*). 27 I.C. 156 (F.B.). It is a very serious matter for a legal practitioner knowingly to make a false statement in a pleading drafted by him. Where a pleader appearing for a plaintiff in a suit on a promissory note of which he was an endorsee for collection, inserted a false statement in the plaint that the instrument had been indorsed to his client for good consideration, while he knew well that no such consideration had passed. *Held*, that the offence was of such a nature that he should be suspended from practice for three months. I.L.R. (1944) Mad. 550=A.I.R. 1944 Mad. 268=(1944) 1 M.L.J. 233 (F.B.). It is the duty of the Court not only to protect the members of the public against disreputable members of the profession but it is also its duty to protect the profession itself against the loss of reputation brought upon it by the conduct of such members. It is not part of the etiquette of the members of the profession to tell lies in Court or to give perjured evidence on behalf of their clients. Where a mukhtar informed the Court that accused could not appear in Court as he was unwell that day, whereas in fact the accused had come to Court that day and had been talking to the mukhtar, *held*, that the conduct of the mukhtar was highly unworthy of a member of his profession and that he should be removed from the rolls. 15 P.L.T. 63=1934 P. 142 (S.B.). *See also* 16 P.L.T. 231=1935 P. 249 (S.B.). Members of the legal profession are expected to maintain not only a high standard of professional morality and ethics but they are also expected as men of education and culture and as members of an honourable profession to act in an honest, straightforward and upright manner. The conduct of a pleader who makes palpably false statements to wriggle out of an inconvenient situation cannot but be regarded as reprehensible and he is guilty of improper conduct involving moral turpitude. 1944 O.W.N. 122=A.I.R. 1944 Oudh 236. Duty to be scrupulously honest in giving evidence—Giving evasive and shuffling answers—Misconduct. 11 P.L.T. 665=1930 P. 493 (F.B.). A legal practitioner who makes one statement before the police in the course of an investigation of an offence and a diametrically opposite statement in the witness-box in the trial is guilty of the grossest misconduct. 121 I.C. 297=1929 L. 803 (2). An Advocate having regard to his education and training and in particular the profession in which he is engaged is expected to exercise a greater degree of caution and rectitude than ordinary persons in making statements on oath in a Court of Law. Where therefore an Advocate was convicted of perjury and disciplinary proceedings were started against him, the High Court marked their sense of disapprobation of the Advocate's conduct by ordering him to be suspended from practice for six months. 8 O. W.N. 267=1931 O. 161. A pleader in defending himself against charges of professional misconduct made certain statements. He was dealt with for making them under the disciplinary jurisdiction. It was contended in his defence that the statements made by him in defence must be regarded as having been made by an accused and were therefore protected, *held*, that the pleader was writing to the Court as a pleader and was responsible as such for the statements made by him. 14 Bom.L.R. 700=16 I.C. 788=36 B. 606. Where a pleader in order to recover fees due to him from his client for work done, made certain statements which, if true, would expose him to criminal prosecution. *Held*, that the conduct of the pleader though improper was not such as to call for action being taken under this Act. 14 I.C. 208=15 C.L.J. 224. The fact that a man is going to be injured professionally if he does not speak the truth is no valid excuse for telling a lie; but it is an attitude which is not uncommon and which is not of the most serious character. It is very different from the case of a professional man telling a lie fraudulently in the sense of wishing to assist his client, in deceiving the Court or even wishing to assist his client in a claim that he is making against another. In this case, the conduct of the pleader was disapproved but no action taken. 17 L.W. 558= 73 I.C. 329=1923 M. 485. *Mukhtar* having no practice as such but acting as professional identifier—Unprofessional conduct —False identification—Liability to be struck off the roll. 16 Pat. 121=17 Pat.L. T. 951=1937 Pat. 138 (S.B.).

GIVING FALSE INFORMATION TO CLIENT.—A pleader who gives his client false information that a certain order has been passed by a Court when no such order has been passed at all, is guilty of "fraudulent and grossly improper conduct in the discharge of his professional duty" within the meaning of sec. 13 (*b*) of the Act. 39 C.W.N. 283 =1938 C. 547. Where a charge against a pleader is that he was engaged by a certain client to file a criminal revision petition but he did not do so, and that in reply to a post-card sent to him by the client, his clerk falsely informed him, under the pleader's instructions, that the said revision had been filed, but there is no material on record beyond the bare word of the pleader's clerk that the false information in the post-card was given under the instruc-

tions of the pleader, the pleader cannot be held guilty of improper conduct. 163 I.C. 975=1936 Lah. 1013.

TAKING SIGNATURE OF CLIENT ON BLANK SHEETS OF PAPER FOR PREPARATION OF PLAINT. —It is most objectionable for legal practitioners to take their clients' signatures on blank sheets of paper. A practitioner who permits this to be done and induces his client to sign blank sheets of paper in order that they can be used for the preparation of a plaint, which would then be regarded as having been duly signed and verified by the client is guilty of unprofessional conduct. In order, however, to substantiate the charge of misconduct there must be evidence in support of it; suspicion is not sufficient, even if it is strong. 58 L.W. 56 =I.L.R. (1945) Mad. 317=1945 Mad. 133=(1945) 1 M.L.J. 174 (F.B.).

FALSE IDENTIFICATION.—A legal practitioner is guilty of professional misconduct if he identifies a person not known to him. 1 Lah. 410=21 Cr.L.J. 635=57 I.C. 818 (F.B.). *See also* 1941 P.W.N. 417=22 Pat. L.T. 679=1941 Pat. 179 (S.B.). It is not enough for a legal practitioner who comes forward as an identifier to rely merely upon the fact that he has been told by his clerk that he identifies the person. That does not entitle the mukhtar to pose as an identifier. The identification must be a genuine identification. Cases of *careless identification* by legal practitioners must be dealt with with great severity as they involve not only an offence on the part of the legal practitioner against the duties of his profession but also an offence against the state and public funds. 10 Pat.L.T. 641=1929 P. 339 (F. B.). *See also* 1930 P. 495 (1).

FALSE ATTESTATION.—*See* 13 I.C. 397=14 C.L.J. 606.

PLEADER EXPRESSING HIMSELF CARELESSLY IN DEPOSITION AS WITNESS.—Where a pleader expressed himself carelessly in his deposition before the Judge, it cannot be said that he was guilty of unprofessional conduct, though he was guilty of some degree of carelessness in expressing himself. 24 Pat.L.T. 81=1943 P.W.N. 50=1943 Pat. 62 (S.B.).

FILING FALSE FEES CERTIFICATE.—It is a very serious matter for a pleader or an advocate to file a false fees certificate with regard to fees which he has not received and the Court will take strong disciplinary action in any such case coming to its notice. 1941 Mad. 905=(1941) 2 M.L.J. 663 (S.B.). *See also* I.L.R. (1944) Mad. 550=1944 Mad. 268=(1944) 1 M.L.J. 233.

GRANT OF CERTIFICATE UNDER R. 8 OF JUDICIAL COMMITTEE RULES ON IMPROPER GROUNDS. —A legal practitioner who grants a certificate under r. 8, Judicial Committee Rules, 1925, in connection with the application by a condemned prisoner for leave to appeal to the Privy Council in *forma pauperis* that the case is a fit one to be heard before the Privy Council without any foundation and in utter disregard of the principles governing appeals to the Privy Council in criminal matters and merely for the purpose of obtaining a temporary respite for his client is guilty of quite a serious dereliction of duty and of an abuse of the process of the Court especially when the legal practitioner was not in any way concerned with the case before he was asked to give the certificate. 213 I.C. 201=A.I.R. 1944 Lah. 159 (S.B.). The giving of certificates under r. 8, Judicial Committee Rules, 1925, by a counsel in support of petitions by condemned prisoners for special leave to appeal in *forma pauperis* in circumstances which do not warrant the granting of such certificates, shows an utter disregard of the solemn and serious responsibilities of counsel who is called upon to certify and the counsel so certifying is guilty of the charge of gross professional misconduct. I.L.R. 1943 Lah. 409=A.I.R. 1943 Lah. 210 (F.B.). *R*, an advocate, was proceeded against by disciplinary action for having given improper certificates in a petition for special leave, to appeal to the Privy Council in *forma pauperis*. It was found that the Registrar's letter was not circulated by the Secretary of the Bar. *Held*, that in these circumstances *R* should not be suspended. Direction to pay costs of Advocate-General was sufficient. 221 I.C. 98 =A.I.R. 1945 Pesh. 33.

PERJURY.—*Perjury by members of the legal profession*, apart from the question that it is a criminal offence, is a very serious matter from the point of view of the profession. Apart from the fact that it harms the profession, it sets a very bad example to the general public and is a great block in the administration of justice. Therefore, if and when cases of perjury by members of the legal profession are discovered the member concerned deserves the most severe punishment which the High Court can give in the exercise of its disciplinary jurisdiction on the legal profession. Where the perjury was committed by a young inexperienced pleader which showed that it was not intended to deceive the Court or to practise any fraud upon it. *Held*, that suspension from practice for six months was sufficient. 1935 Pat. 249=16 P.L.T. 231 (S.B.).

CRIMINAL CONVICTION (*see* Notes under sec. 12, *supra*).—Where the person committing the offence does not bring the fact to the notice of the High Court at the time of his admission, as a pleader, when required to give all necessary information at the time of his enrolment, he commits another serious offence of deceiving the authorities and the High Court is entitled to take him to task for it. Persons applying for being admitted to be pleaders should fully and frankly disclose all the circumstances of their past career with the knowledge that the High Court would take into consideration every matter which ought properly to be dealt with by it. 175 I.C. 124=1938 Rang. 159. Even if a person is convicted of a criminal offence it is necessary for the Court, before taking disciplinary action, to know whether his conduct necessitates such action. Where the judgment in the crimi-

nal case does not disclose what exactly the conduct of the practitioner was, the Court may give the accused the benefit of the doubt. 15 N.L.R. 90. When criminal proceedings are taken against a pleader or an advocate and finally concluded, they must be taken to have been rightly decided, and the question to be determined in a subsequent enquiry as to whether the advocate or pleader ought to have disciplinary action taken against him is whether upon a perusal of the facts and circumstances disclosed in the evidence in the criminal proceedings his offence has been one implying a defect of character which unfits him to be a pleader or advocate. Such a defect of character normally involves moral turpitude. 1938 Rang.L.R. 125 (S.B.); 1938 R. 394. In a case where an advocate was convicted of the offence of defamation, the High Court, while holding that no disciplinary action was called for on their part observed that responsible citizens, when afforded the opportunity of making charges against persons (whether known to them or not) of which they had not ascertained the truth, should be careful not to aggravate the defamatory nature of the matter by lending their support to an important acceptance of it without careful investigation into its nature. 1938 Rang.L.R. 125 (S.B.); 1938 R. 394. A person who is convicted of an offence of receiving stolen goods is not fit to be a pleader. 175 I.C. 126=1938 Rang. 1160. An offence of the character of one under sec. 377, I.P. Code, committed by a pleader or advocate cannot be ordinarily condoned. Where, however, the offence was committed very early in life, it ought not to debar the person committing it, who is making an honest attempt to reform, from ever seeking respectable society or from being a member of an honourable profession. 175 I.C. 124=1938 Rang. 159. A pleader convicted of criminal breach of trust may come under this section. 1940 Rang. 242. A pleader who was suspended for six months after a conviction for breach of Salt Act did not apply for restoration of certificate but was again convicted under sec. 17, Criminal Law Amendment Act. He made no appearance to a notice under sec. 14. *Held*, that his name should be removed from the rolls. 140 I.C. 295 (1)=1932 Pat. 300 (S.B.).

ALTERING DOCUMENT AFTER EXECUTION.—Where with a view to avoid paying a penalty as required by the stamp law a solicitor altered a deed materially after its execution, he was struck off the rolls. 31 M.L.J. 107 (P.C.). Fabrication of documents by mukhtar. 13 Pat.L.T. 552=1932 Pat. 289 (S.B.). Altering survey number in petition is misconduct. 87 I.C. 843=1926 C. 223.

TAMPERING WITH COURT'S RECORDS.—To tamper with the Court's records is a serious matter and a pleader would be acting without due care and caution and without sense of responsibility in allowing it to be done by his clerk. 36 I.C. 874=20 C.W.N. 1069. Conduct of the pleader in tampering with Court records cannot be easily excused. Such misconduct deserves suspension from practice, though the pleader concerned happens to be young and inexperienced. 17 Pat.L.T. 266=1936 Pat. 418 (S.B.). The removal from the Court by a mukhtar of a complaint amounts to gross misconduct. 43 I.C. 93. A pleader by virtue of his position is an officer of the Court and it is his duty to protect all minor officials of the Court from any temptation; consequently a pleader should not induce a peshkar of the Court to take a document which has been filed in the Court to the pleader's house for the inspection of his clients. 10 Pat.L.T 715=1929 Pat. 338 (S.B.).

TAMPERING WITH EVIDENCE.—Advocates and pleaders retained in a case ought to be extremely careful in approaching and questioning persons who to their knowledge have been approached or cited by the other side for the purpose of giving evidence so as to give no room for any suspicion that they are attempting to tamper with the evidence or with the witnesses. 1929 M. W.N. 384 (F.B.). *See also* 46 I.C. 819; 171 I.C. 503=1937 Rang. 345. Where a pleader bribes certain witnesses who are likely to be summoned by the opposite side in connexion with an election petition, into swearing affidavits to the effect that they do not know anything about the matter and also tries, during hearing of the petition, to tamper with other witnesses by offering their bribes his conduct is such as disentitles him to remain on the roll of pleaders. 1938 Rang. 294. Visiting handwriting expert and talking about criminal case under investigation on behalf of person involved in case —Propriety—Liability to suspension. 17 Pat.L.T. 348=1936 Pat. 423 (S.B.).

RETENTION OF CLIENT'S MONEYS.—*See* 1933 Sind. 65. *See also* 1933 Lah. 575; 1933 Sind 45; 39 Mys.H.C.R. 553.

BRIBERY.—The High Court dismissed a mukhtar for having received a sum of money from one of the persons against whom a case was pending for the purpose of bribing the police acting as a go between. 39 I.C. 305=21 C.W.N. 516. For a legal practitioner to suggest that an official or any one should be bribed amounts to grave professional misconduct. The fact that bribes of this nature have been given by others is no excuse. *See* 47 L.W. 156=1938 M. 264=(1938) 1 M.L.J. 410 (F.B.). The fact that proceedings in respect of such offence are instituted against a pleader as the result of a grudge makes no difference to the gravity of the offence and cannot be pleaded in excuse. 1938 Mad. 264=(1938) 1 M.L.J. 410 (F.B.); 17 Pat.L.T. 263=1936 Pat. 337 (S.B.). *Bribery or attempted bribery by advocate* is the grossest professional misconduct and an advocate found guilty of an offence like bribery or attempted bribery cannot in any circumstances suffer so slight a penalty as suspension for four years. It is an offence which can necessarily only be purged after strenuous efforts and after a long period during which he has tried his best to reinstate himself in society. No doubt

the door is not inevitably and permanently shut to persons who are debarred: they may after the lapse of a suitable period of time, provided their conduct has been uniformly satisfactory, ultimately reach reinstatement. But reinstatement is not a matter of course and it is not something which can be hoped for within a brief period of time. 1939 Rang.L.R. 213=1939 Rang. 142 (S.B.).

FORGERY.—If a pleader is found guilty of endeavouring to appear on behalf of a person by whom he had never been instructed and seeks to justify his conduct by the production of a forged document, it would not be a matter for suspension for a month or a year: he would be totally unfitted to exercise the responsible duties of a pleader and would have to be struck off the rolls of pleaders forthwith. 183 I.C. 756=1939 Rang 312.

TAKING PART IN POLITICS.—The jurisdiction of the High Court to take action against legal practitioners is not confined to acts in professional capacity but may extend to other activities, *e.g.*, organized resistance to payment of tax which entails grave danger to the public peace. 49 C. 845=49 I.A. 319 =1922 P.C. 351=44 M.L.J. 32. As to criticism of administration, *see* 38 M.L.J. 230 =55 I.C. 198=1930 M.W.N. 105 (F.B.). As to conviction for sedition, *see* 15 Lah. 354= 35 Cr.L.J. 1010=1934 Lah. 251 (F.B.). *See also* 1943 Cal. 371; 1943 Cal. 370. It is the duty of a legal practitioner to assist the Court. If he appears in Court and makes a demonstration which has the effect of interfering with the work of the Court and the administration of justice, he does something which a member of the legal profession certainly ought not to do and is guilty of grossly improper conduct. Such conduct amounts to "reasonable cause" for which the Court has power to take action against him. I.L.R. (1943) Mad. 459=56 L.W. 14 =1943 Mad. 130=(1943) 1 M.L.J. 8 (S.B.). A pleader wrote to the District Magistrate enclosing a pamphlet which called upon that official to "quit India here and now". In the coverng letter also the pleader requested the Magistrate "to quit India here and now". He also sent a letter to the special officer appointed to carry out the duties of a superseded District Board enclosing a copy of the pamphlet and requesting the special officer to resign his post immediately. On these the pleader was prosecuted and convicted under r. 34 (6) (*c*) of the Defence of India Rules (1939). The pamphlets were sent at a time when many parts of India were in a very agitated state and there was threat of an invasion of India by Japan. *Held*, that the pleader did something which he should not have done as a member of the legal profession and his action constituted misconduct and misconduct of such a nature that the High Court was justified in taking disciplinary action under sec. 13 (*f*). 56 L. W. 220=A.I.R. 1943 Mad. 475=(1943) 1 M. L.J. 396 (S.B.).

CIVIL DISOBEDIENCE.—Where certain practising barristers and pleaders joined the movement called the Satyagraha Sabha and signed a pledge whereby they undertook to refuse civilly to obey such laws as a committee to be hereafter appointed may think fit. *Held*, that the barristers and pleaders had, by signing the pledge, rendered themselves amenable to the disciplinary jurisdiction of the High Court, but that under the circumstances a warning was enough. 22 Bom.L.R. 13=54 I.C. 679=44 B. 418. *See also* 60 C. 1453=1933 C. 731=145 I.C. 316 (Expression 'defect of character' in sec. 12 includes acts other than those of moral turpitude). 27 N.L.R. 29=1931 N. 33. Certain pleaders had collectively agreed upon abstention from Court to assist the boycott movement. *Held*, that the pleaders were guilty of unprofessional conduct within the meaning of sec. 13 (*b*) and (*f*). Order for suspension for three months passed. (49 C. 732, Ref. 10). 132 I.C. 900=35 C.W.N. 223 =1931 C. 706. Practising pleaders wishing to remain on the rolls must remember that those who live by the law should keep the law and not encourage others in its berach by publicly extolling and glorifying persons sentenced and by showing hearty sympathy towards seditious and disloyal movement. 25 S.L.R. 131=1931 S. 33. A pleader who gives formal and public expression of his approval of the breach of the laws of the land is not a proper person to hold office of the pleader. *Ibid.*

SPEECH INCITING BREAKING OF LAWS AND DEFYING OF DISPERSAL ORDERS.—The speech inciting the audience to break those laws which the All-India Congress Committee might declare should be broken and the speech in which the speaker exhorts the audience to resist orders for dispersal attract the disciplinary jurisdiction of the High Court. 15 L. 354=1934 L. 251 (S.B.).

TAKING PART IN UNLAWFUL ASSOCIATION. —It is not necessary for the exercise of this jurisdiction that the act of the Vakil should have subjected him to anything like general infamy or imputation of bad character. 12 Pat.L.T. 725=1923 P. 185 (2).

INTIMIDATING A WITNESS.—To prevent any one from giving evidence is professional misconduct. 19 Cr.L.J. 803=46 I.C. 819 (F.B.). *See also* 1929 M.W.N. 384. As to display of temper by counsel *see* 12 Mys.L. J. 202=39 Mys.H.C.R. 380.

TUTORING WITNESS UNDER CROSS-EXAMINATION.—It is very improper for a legal practitioner to tutor a witness inside or outside court, and when the tutoring takes place in court and in spite of warnings, the professional misconduct is all the greater. 55 L. W. 799 (1)=A.I.R. 1942 Mad. 701=(1942) 2 M.L.J. 621 (S.B.)=I.L.R. (1943) Mad. 81.

COUNSEL ISSUING ELECTION MANIFESTO.— It is a well-recognised rule of etiquette in the legal profession that no attempt should be made to advertise oneself directly or indirectly. The issuing of circular letters or election manifestoes by a lawyer with his

name, profession and address printed thereon, appealing to the members of his profession practising in the lower Court, who are of course in a position to recommend clients to counsel practising in the High Court, is obviously an indirect way of advertisement. It does not however amount to any professional misconduct, but only to a breach of professional etiquette. 1934 A. 1067=153 I.C. 667 (S.B.).

ATTEMPT TO BRING INFLUENCE ON JUDGE.—A pleader attempting to bring influence on a Judge, before whom he is arguing an appeal through a relative of the Judge, is guilty of gross misconduct. His act is highly reprehensible and it is in the interest of the legal profession that serious notice should be taken of such acts and severe punishment is called for in such a case. 164 I.C. 384=1936 Lah. 732. Where however the pleader concerned is inexperienced, and expresses his repentence at once and makes no denial of what he had done, and the offence is not viewed by the public with that disfavour that it should, he need not be censured but warned and ordered to pay the costs of the proceedings. 1936 Lah. 732.

RECKLESS ALLEGATIONS IN TRANSFER APPLICATION.—No doubt an advocate cannot pledge himself for the truth of his client's allegations, but should take some steps to verify the truth of the allegations he is instructed to make. An advocate is to assist the Court in the administration of justice and is not a mere mouthpiece of his client. If an advocate makes reckless and false allegations against a Magistrate in the application for transfer on the instructions of his client without taking any steps to verify the truth of those allegations, he is unfit to enjoy the privileges conferred upon him by law and must be visited with punishment. I.L.R. (1944) Kar. 135=A.I.R. 1944 Sind 155.

LETTERS ADDRESSED BY PLEADER TO GOVERNOR RELATING TO ORDERS PASSED BY A DISTRICT MUNSIF AND MAKING FALSE ACCUSATIONS.—A first grade pleader practising at Markapur wrote a letter as "the leader of the Bar at Markapur" to the Governor of Madras in which he accused the local District Munsiff of being a sympathiser with the *satyagraha* movement and that on a particular day he granted an application of an advocate for adjournment of a case made on the ground that he desired to go to another town to see a friend offering *satyagraha*. It was found on inquiry that the statements were false and that the action of the pleader in making the communication was the result of animosity towards the District Munsiff. *Held*, as the letter related to orders passed by the District Munsiff and the accusations were made by the pleader as the "leader of the local Bar" it was idle for him to suggest that his misconduct should be regarded as being entirely dissociated from his status as a legal practitioner. In the circumstances, there was "reasonable cause" for taking disciplinary action against him. 55 L.W. 502=1942 Mad. 360=(1942) 2 M.L.J. 234 (F.B.).

CONTEMPT OF COURT BY LEGAL PRACTITIONER.—No power to punish for contempt of an inferior Court now exists independently of the I P. Code, and the contempt of Courts' Act and no disciplinary power over legal practitioners or power to punish for contempt outside the provisions of I.P. Code is vested in the subordinate Courts. 125 I.C. 477=54 A. 619=1930 A. 225 (F.B.). A mukhtar addressed certain letters to a magistrate in connection with a copy for which he had applied, and the contents of the letters were grossly insulting; the mukhtar could be proceeded against under sec. 13 (*f*). 52 I. C. 798; 38 I. C. 980=44 C. 639 =20 C. W. N. 1284. As to procedure in case of contempt by legal practitioner, *see* 27 C.W.N. 88=71 I.C. 673=1922 C. 550. A legal practitioner who writes a letter to a judicial officer abusing him in a particular manner is guilty of grossly improper conduct. 44 I.C. 123=161 P.L.R. 1917. Letter by a pleader which contains vulgar abuse of a Magistrate and a demand for an apology apparently followed by the threat of further proceedings is highly improper. 25 Bom.L.R. 264=73 I.C. 353=1923 B. 234. Imputing racial antipathy to a Judge and charging him with having allowed such feelings to influence him in passing unfavourable orders. A belated apology in the High Court was held to be insufficient. 67 I.C. 504; 23 Cr.L.J. 408 (L.). A pleader addressing a letter to a Commissioner appointed to investigate a case to report in his client's favour is guilty of professional misconduct. 18 P. R. 1915=28 I.C. 722. Where a pleader addressed to the Commissioner of the District a most disrespectful letter and circulated it freely among his subordinates, he was guilty of misconduct though the matter was one of a private nature between the pleader and that officer. 28 I.C. 722. *See also* 147 I.C. 330=35 Cr.L.J. 433=1934 A. 317; 12 Mys.L.J. 292=39 Mys.H.C.R. 380; 61 C. 522 =152 I.C. 58=1934 C. 723. A letter published by a pleader alleging that a certain Judge is indolent and takes credit for cases not tried but compromised, even if written in good faith and even if it does not constitute the offence of libel, amounts to misbehaviour. 44 I.C. 338=11 S.L.R. 81 (F.B.). *See also* 35 C.L.J. 403=26 C.W.N. 580=1923 C. 212; =1933 R. 34. An advocate deliberately making false allegations involving imputations upon the fairness and impartiality of judicial officers in proceedings connected with an execution case to which he was himself a party cannot be punished under the disciplinary side under Bar Councils Act. 1932 A.L. J. 773=1932 A. 492 (S.B.). *See also* 1934 P. 598 (S.B.). Instructions from a client are no excuse whatever for a pleader exceeding his duty towards the Courts. A conditional apology is valueless. 25 Bom.L.R. 264 =73 I.C. 353=1923 B. 234. *See also* 33 P. L.R. 785. Although it is perfectly true in one sense that a legal adviser must accept statements of fact from his client, yet in applications for transfer, statements imput-

ing prejudice or unfairness or corruption to the Magistrate should not be made unless the statements of the client as letsed by the adviser are found sustainable. 8 P. 575=10 Pat.L.T. 711=1929 P. 151 (F.B.). A statement made by a counsel before the Judges of a Full Bench to the effect that his instructions are that his client does not wish the matter to be argued before the Bench as constituted, amounts to a contempt of Court. 33 P.L.R. 872. As to making reckless allegations in pleadings, *see* 152 I.C. 313=15 P.L.T. 560=114 P. 10=1934 P. 598. Pleader as suitor committing contempt of Court is liable for disciplinary action. *See* 55 A. 148= 1933 A.L.J. 251=1933 A. 224; 1932 A. 492 (S.B.).

CONDUCT OF CASE—INTIMIDATION BY JUDGE —DUTY OF COUNSEL TO PROTEST.—It is the duty of the members of the Bar if their clients are prematurely threatened from the Bench, not to adopt an attitude which may appear pusillanimous but to protest then and there that they resent such observations, and if necessary, after consultation with their attorney instructing them to apply for a transfer of the case to the list of another Judge. 62 C. 223=60 C.L.J. 179=39 C.W.N. 61= 1935 C. 231.

TRYING TO KNOW THE EFFECT OF A JUDGMENT BEFORE ITS DELIVERY AMOUNTS TO PROFESSIONAL MISCONDUCT.—*See* 75 I.C. 728=5 Pat.L.T. 350=1924 Pat. 131.

ACTS NOT AMOUNTING TO MISCONDUCT.— Where a pleader allowed another person to sign in the name of his client an application filed in Court, as his client had a swollen hand and could not himself sign it, he committed a breach of his professional duty, but in the circumstances it was not necessary that the Court should take disciplinary action against him. 14 Rang. 152=1936 Rang. 177. Pleader employing unregistered clerk, against R. 978 (2) (*iii*) of the Calcutta High Court is not guilty of misconduct under sec. 13 (*f*) so long as this clerk is not employed in doing the work of the registered clerk and is not allowed to have access to the Court staff. 41 C.W.N. 929=170 I.C. 251=1937 C. 408. Where a solicitor acting for a plaintiff who had been refused a warrant for the detention of the defendant by a Court started a criminal process on the same subject-matter and obtained his warrant from a different Court, almost as a matter of course, his conduct does not necessarily involve any punishable contempt of the Civil Court. The law does not restrict a litigant to a single form of remedy and he may pursue all the legal remedies appropriate to his grievance. 14 Bom.L.R. 471=23 M.L.J. 184=15 I.C. 72 (P.C.). Where a solicitor substituted the name of two witnesses in a summons on the ground that the persons originally summed were totally ignorant of the facts of the case. *Held*, no misconduct. 15 I.C. 72 (P.C.). Adjournment asked for in good faith to apply for transfer—Subsequent finding that sufficient grounds for transfer did not exist—Pleader responsible for the transfer application is not necessarily guilty of misconduct. 1928 A. 396 (S.B.)=(1924 A. 253, Dist.). Where a pleader who is one of the trustees of an institution fails to give information to the police when he finds that a co-trustee of his has misappropriated the trust money but rather prefers to deal with his co-trustee mercifully and makes himself morally responsible for the defalcation and undertakes responsibility for the defalcation which had arisen, he cannot be held to be guilty of any kind of misconduct justifying disciplinary action, even though he may have been negligent in his duties as trustee. 175 I.C. 156 =1938 Rang. 158.

Demand of Exorbitant Fees cannot by itself amount to professional misconduct. 58 M.L.J. 635=34 C.W.N. 534=1930 P.C. 144 (P.C.). *See also* 1937 Rang. 299. Where a legal practitioner deliberately ignores the language of the fee certificate prescribed by the High Courts by r. 1, Ch. 21, and adopts a fee certificate form of his own which materially and subtsantially differs from the form prescribed by the High Court and which entirely nullifies the object of the High Court in prescribing the form of the certificate, he is guilty of serious professional misconduct. 1934 A.L.J. 333=1934 A. 109 (2) (S.B.). Where an advocate retains the judgment of the trial Court with the intention of getting himself engaged in appeal without any valid excuse for retaining the judgment, the advocate is guilty of professional misconduct. 12 P. 843=14 P. L.T. 709=1933 P. 571 (S.B.). The filing of a memorandum of appeal on the last day of limitation without sufficient Court-fee knowing full well that it is understamped and hoping that the Court would be persuaded to accept the deficiency later is certainly not in consonance with the high traditions of the profession to which the advocate belongs. An advocate who is approached by a client to so file an appeal should refuse to file it unless the full amount of the Court-fee was first paid. The High Court will not tolerate practice of this nature. *Per* Mockett, J.— It is undesirable for practitioners to lend themselves to the practice of deliberately filing appeals understamped. I.L.R. 1939 Mad. 1=1938 M.W.N. 1169=48 L.W. 702= 1939 M. 1=(1939) 1 M.L.J. 564 (F.B.).

PRIVILEGE—EXTENT OF.—*See* 34 Bom.L. R. 910=1932 B. 490; 34 Bom.L.R. 443= 1932 B. 199. A civil suit for damages for defamatory statement made on oath or otherwise by counsel, party or witness in a judicial proceeding is governed not by sec. 499 of the Penal Code but by the principles of justice, equity and good conscience, which are identical with the corresponding rules of English Common Law. The protection under the law extends to all statements made by a party, pleader or witness in the suit, no matter whom it may relate to, whether it is the opposite party or his witness, so long as it is not irrelevant to the matter in hand. (40 A. 341; 48 C. 388, Ref.). 141 I.C. 362=1933 N. 47.

14. If any such pleader or mukhtar practising in any subordinate Court or in any revenue-office is charged in such Court or office with taking instructions except as aforesaid, or with any such misconduct as aforesaid, the presiding officer shall send him a copy or the charge and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

Procedure when charge of unprofessional conduct is brought in subordinate Court or revenue-office.

PLEADING PRIVILEGE FOR PROFESSIONAL COMMUNICATION.—A pleader cannot be charged for misconduct for refusing to disclose to the Court a professional communication made to him by his client. 14 Cr.L.J. 438 =20 I.C. 598. *See also* sec. 126, Evidence Act.

BOYCOTT OF COURTS.—49 C. 732=35 C.L. J 356=26 C.W.N. 589=1922 C. 515 (F.B.); 26 C.W.N. 580=69 I.C. 209=1923 C. 212; 35 C.W.N. 344=1931 C. 616.

BURDEN OF PROOF.—In proceedings against a legal practitioner the burden of proving the charges against the practitioner is on the complainant. The complainant's evidence in such cases needs corroboration. 54 M. 857= 61 M.L.J. 148=1932 M. 131 (F.B.).

DEFIANCE OF LAWS—VAKIL TAKING LAW INTO HIS HANDS.—72 I.C. 875=1923 P. 185 (F.B.). Persistence in conduct and advising non-payment of taxes or boycott of Courts and breaking law and order would justify proceedings under this section. 45 M.L.J. 684=75 I.C. (977)=1924 M. 129. *See also* 42 P.L.R. (J. & K.) 77.

LAWYER BLINDLY FOLLOWING CLIENT'S INSTRUCTIONS.—When their clients ask them to write in a pleading or petition accusations of dishonesty, criminality, etc., against anybody, or instruct them to ask questions of that nature the lawyers are not to blindly follow the instructions. They must satisfy themselves that apart from the relevancy of those accusations or questions, there are materials on which those accusations can be made or questions asked, and that the accusations and suggestions are not recklessly made. If they do not do so, they are guilty of professional misconduct. 1934 P. 398= 13 P. 550 (S.B.). *See also* 1935 A.L.J. 29 =1935 A. 117. If however the pleader acts in good faith and with due care and caution, he will be protected. *See* 152 I.C. 313= 15 P.L.T. 160=1934 P. 598 (S.B.). The pleader was addicted to drinking. In defending an accused, he came to Court in so drunken a condition that he was unable to conduct the case on behalf of his client. On another occasion, he came to Court "hopelessly drunk" and not properly dressed and insulted the Court; again on another occasion, he assaulted the bench clerk. *Held*, that he was not fit to be entrusted with the responsible duties of the legal profession and that his name should be struck off the list of the pleaders. 12 Rang. 180=150 I.C. 236=1934 Rang. 156. Practice and Procedure where a Court has reason to believe that a practitioner is guilty of professional misconduct; it cannot allow proceedings to be dropped as the result of an agreement between the practitioner and the complainant. I.L.R. (1940) Mad. 433=51 L.W. 197=1940 Mad. 370= (1940) 1 M.L.J. 259 (F.B.).

SEC. 14. SCOPE OF SECTION—NATURE OF PROCEEDING UNDER THE SECTION.—The procedure under the Act is neither criminal nor civil but purely designed for the purpose of discipline. Such disciplinary proceedings under S. 14 are not proceedings of a Court of civil jurisdiction and S. 141, C.P. Code, cannot apply to them. 1 P.L.J. 576=37 I. C. 484. *Woodroffe, J.*—Proceedings under this section are *quasi* criminal proceedings and the pelader may be examined on oath. 49 C. 732=26 C.W.N. 589=1922 C. 515 (F. B.). *Mookerjee, J.*—The proceedings are neither civil nor criminal in their nature. They are special proceedings resulting from the inherent power of the Court over its officers and are regulated by S. 14. 1922 Cal. 515=49 Cal. 732. *See also* 2 R. 491= 1925 R. 11. Pleader whether can be put on oath during inquiry against him. False statements during enquiry—Effect—Procedure. 23 S.L.R. 245. 115 I.C. 318=1929 S. 121 (F. B.). In a case in which a legal practitioner is charged with professional misconduct the enquiry should proceed on formulated charges. 34 C.W.N. 534=1930 P.C. 144=58 M. L.J. 635 (P.C.). Applicability of S. 107 of the Government of India Act, 1915, to proceedings under S. 14 of the Legal Practitioners Act discussed. 1 P.L.J. 576=37 I.C. 484. It is only where, in the course of proceedings before it, a Subordinate Court has reason to suppose that a pleader has been guilty of misconduct, that the Subordinate Court can inquire as to the misconduct without reference to the High Court. He cannot do so if the alleged misconduct has taken place before proceedings have been started in the Court. 171 I.C. 503=1937 Rang. 345.

PLEADER GUILTY OF CRIMINAL OFFENCE.—Proceedings under the Act being summary proceedings a pleader should not be proceeded thereunder for what are in reality grave criminal charges. 1 P.L.T. 571=58 I.C. 150=5 P.L.J. 601. *See also* 47 C. 1115= 57 I.C. 931=24 C.W.N. 755; 31 C.W.N. 584=54 C. 721=1927 C. 536; 115 I.C. 318 =1929 S. 121=23 S.L.R. 245.

STANDARD OF PROOF.—The standard of proof of guilt under Legal Practitioners Act is not different from other legal proceedings and should be such as to leave no reasonable doubt in the mind of the Court that the

Such copy and notice shall be served upon the pleader or mukhtar at least fifteen days before the day so appointed.

On such day, or on any subsequent day to which the enquiry may be adjourned, the presiding officer shall receive and record all evidence properly produced in support of the charge, or by the pleader or mukhtar, and shall proceed to adjudicate on the charge.

If such officer finds the charge established and considers that the pleader or mukhtar should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and shall report the same to the High Court; and the High Court may acquit, suspend or dismiss the pleader or mukhtar.

Suspension pending investigation.

Any District Judge, or with his sanction any Judge subordinate to him, [1][any Judge of a Court of Small Causes of a presidency-town], any District Magistrate, or with his sanction any Magistrate subordinate to him, and any Revenue Authority not inferior to a collector, or with the collector's sanction any Revenue Officer subordinate to him, may, pending the investigation and the orders of the High Court, suspend from practice any pleader or mukhtar charged before him or it under this section.

Every report made to the High Court under this section shall—

(*a*) when made by any Civil Judge subordinate to the District Judge, be made through such Judge;

(*b*) when made by a Magistrate suobrdinate to the Magistrate of the District,[2] be made through the Magistrate of the District[2] and the Sessions Judge;

(*c*) when made by the Magistrate of the District,[2] be made through the Sessions Judge;

(*d*) when made by any Revenue-Officer subordinate to the Chief Controlling Revenue-Authority, be made through such Revenue-Authorities as the Chief Controlling Revenue-Authority may, from time to time, direct.

Every such report shall be accompanieid by the opinion of such Judge, Magistrate or Revenue-Authority through whom or which it is made.

LEG. REF.

1 Inserted by Act IX of 1884, S. 4.

2 To be read as "District Magistrate." *See* the Code of Criminal Procedure, 1898 (Act V of 1898), S. 3 (2).

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offence has been committed. 1 P.L.T. 372 =57 I.C. 460 (F.B.); 18 P. 580. Necessity for strict proof—Mere suspicion not sufficient. *See* 18 Pat. 580=20 Pat.L.T. 607=1939 Pat. 343 (S.B.). Where the point for enquiry was whether a pleader signed and filed a satisfaction of a mortgage execution case without instruction, and the Court found that the charge was not established beyond reasonable doubt, no action could be taken against the pleader under the Legal Practitioners Act. 152 I.C. 43=59 C.L.J. 419=1934 C. 794. Charges of professional misconduct must be clearly proved and should not be inferred from mere ground for suspicion, however reasonable, or what may be mere error of judgment or discretion. 58 M. L.J. 635=34 C.W.N. 534=1930 P.C. 144 (P.C.), followed in 1930 L. 947. Where the allegation against a legal practitioner amounts to a charge of criminal prosecution the correct procedure to be followed is to launch a criminal prosecution and not to proceed under the Legal Practitioners Act. 38 C.W.N. 87=1934 Cal. 272; I.L.R. (1938) 2 Cal. 138=1938 C. 783. A pleader intentionally concealing his conviction in his application for admission is liable to be dismissed. 25 I C. 339=11 Bur.L.T. 304. Under the Legal Practitioners Act, the High Court will not go into the merits of the conviction but will ordinarily accept the findings of Criminal Court as final. 17 I.C. 811=5 Bur.L.T. 191. It is not, however necessary for the High Court to exercise its jurisdiction that any offence should have been committed, nor is it necessary that what the pleaders have done should have subjected them to anything like general infamy or imputation of character. 22 Bom. L.R. 13=54 I.C. 679=44 B. 418. *See also* 72 I.C. 875 (F.B.).

RE-INSTATEMENT.—The High Court has power to reinstate a legal practitioner who had been dismissed for misconduct of any description. Before doing so it should be clearly convinced by actual facts that the delinquent has reformed his character. 1 P. 684=71 I.C. 122=1922 P. 604; 14 C.L.J. 113=11 I.C. 997=16 C. W. N. 337; considerations justifying re-instatement. I.L. R. (1937) Bom. 99=38 Bom.L.R. 1161= 1937 Bom. 48; I.L.R. (1937) All. 411=1936 A.L.J. 1396=1937 All. 50 (F.B.). *See*

also 1939 Rang.L.R. 213=1939 Rang. 142 (S.B.); 46 M. 903; 45 M.L.J. 639=1924 Mad. 265 (F.B.); I.L.R. (1940) Mad. 81=1939 M 906=(1939) 2 M L.J. 692 (S.B.); I.L.R. (1940) Mad. 84=1939 M. 917=(1939) 2 M.L.J. 630. Where persons are struck-off the rolls, the door is not irrecoverably shut behind them, but after years of industry straightforwardness of life, and conduct which shows repentance and determination to amend, they may ultimately find their way back to the honourable profession which they once disgraced. That leniency of outlook results from the consideration that it is impossible to shut out from a man of education, who has once borne a good character, the hope that he may rise again. But it does not mean that persons who have been properly removed from the rolls should come again and again with repeated applications within months, or even within a few short years, after the event. *See also* 1939 Rang.L.R. 213=1939 Rang. 142; 41 Cr.L.J. 272=1940 Rang. 32. Before the Court could re-admit an Advocate who has been struck off the rolls for misappropriation of monies belonging to his client, the Court must be fully satisfied that the Advocate has fully regained his character and is fitted for re-admisison into the ranks of an honourable profession. The Court would require solid facts and cogent reasons. Mere opinion is not sufficient. An Advocate can only be re-admitted if he can show that he has become worthy to act as an Advocate. His re-admission does not depend on the fact that he has been suspended or struck of the rolls for several years. In deciding such matters the Court has a duty to the public, and where the Advocate has been guilty of misappropriation it must be shown that there is no likelihood of such an offence being committed again. I.L.R. (1940) Mad. 81=1939 M. 906=(1939) 2 M.L.J. 632 (S.B.); I.L.R. (1940) Mad. 84=1939 Mad. 917=(1939) 2 M.L.J. 630 (F.B.). There is inherent power in the High Court to restore a pleader whose name has been struck off the rolls, although there is no express provision for a review of an order made under the Legal Practitioners' Act. 1935 All. 321 (F.B.). *See also* notes under S. 41, *infra*.

INQUIRY INTO MASCONDUCT OF PLEADER—JURISDICTION, PRACTICE AND PROCEDURE.—Where the charge brought against a legal practitioner amounts to an allegation of the commission of a serious crime, the proper procedure to follow is to launch a prosecution for that crime, and if a conviction is obtained to institute proceedings under the Legal Practitioners Act. 1943 P.W.N. 53=44 P.L.T. 79=A.I.R. 1943 Pat. 52 (S.B.). Under S. 14 the enquiry should be conducted only by the presiding officer of the Court who tried the case in which the alleged misconduct occurred. But under S. 13 of the Act, the High Court has power to transfer the enquiry to another Court. 1944 N L.J. 244=A.I.R. 1944 Nag. 273 (2). If a pleader or mukhtar practising in a Court commits an offence of professional misconduct in connection with any instructions which he has received from his client generally or in connection wtih any particular case, then it is within the jurisdiction of any Court before whom such pleader or mukhtar is practising, if brought to its notice, that the practitioner has committed any unprofesisonal conduct, to take action against him, and those proceedings would be entirely within jurisdiction. The presiding officer of the Court in which the pleader or mukhtar practises has ample jurisdiction to initiate proceedings, though the particular matter in reference to which he commits the act complained of might not be before that Court. 18 Pat.L.T. 961=1938 Pat. 17=17 Pat. 96 (S.B.). Where a Subordinate Court after drawing up a charge against a pleader and holding an inquiry is of opinion that no report should be sent to the High Court and that the proceedings should be dropped, the District Judge has no jurisdiction to forward those proceedings to the High Court recommending suspension. He has no jurisdiction to forward the proceedings which were never initiated by him or to act on the evidence which was never recorded by him. A reference to the High Court by the District Judge in such a case is *ultra vires*. 17 Pat. 261=1938 Pat. 385 (S.B.). If the District Judge disagrees with the findings of the Subordinate Court, he is at liberty to draw up fresh proceedings and after giving notice to the pleader record himself all the evidence in support of the charge or to refute the charge, and then after adjudicating thereon he can report to the High Court if in his view the conduct of the pleader deserves a punishment to be meted out by the High Court. It is also open to the High Court to draw up fresh proceedings and then to dispose of the matter after giving notice to the pleader and after hearing his defence, if any. 17 P. 261. If a Court thinks there has been any breach of profesisonal etiquette, or any matter calling for the exercise of disciplinary powers, in the conduct of the pleader or advocate in the case, it should decide on the merits of the case and reserve such question for further consideration after the disposal of the suit. 40 A. 147=44 I.C. 28 =16 A.L.J. 64. If in the course of a proceeding a subordinate Court has reason to think that a pleader has committed misconduct in the course of his professional duty, the presiding officer of that Court can under S. 14 institute porceedings against him and inquire into the alleged misconduct. In such a case even though no charge is made by a person concerned, the framing of the charge need not be directed by the High Court. 55 L.W. 845=A.I.R. 1942 Mad. 691=(1942)

2 M.L.J. 479 (F.B.). Inquiry should ordinarily be made by the presiding officer of the Court where the misconduct is alleged to be committed. 1928 A. 396 (S.B.). *See also* I L R. (1940) Mad. 433=(1940) 1 M.L.J. 259 (F.B.).

PROCEDURE OF S. 14 MUST BE STRICTLY FOLLOWED.—The proceedings must be separate and distinct and cannot be made part of criminal proceedings. The report of the High Court must be accompanid by the opinion of the officer making the report. 9 I.C. 247=15 C.W.N. 764. S. 14 includes a charge under Cl. (*f*) of S. 13 (as amended by Act XI of 1896), and Subordinate Courts have jurisdiction to take proceedings 152 P.R. 1919=54 I.C. 982. *See also* 1939 Pat 343=18 Pat. 580=20 Pat.L. T. 607. Where the District Judge finds that the charge of professional misconduct has not been established the case should not go to the High Court. 190 I.C. 320=1940 Rang. 190. Failure to formulate precise charges not fatal to proceedings in absence of prejudice. A charge of profesisonal misconduct of a pleader can be enquired into only by the presiding officer of the Court in which the pleader practises. 32 M.L J. 402=41 I.C. 305. The enquiry under S. 14, cannot be delegated to another officer 1 Pat.L J. 576=37 I C. 484. Under S 14 the proceedings could be instituted only by the Magistrate in whose Court the alleged misconduct or offence took place. 1 Pat L T. 379=57 I.C. 277. Inquiry by superior Court is invalid. The enquiry contemplated by S. 14 must be made by the presiding officer of the Court in which the misconduct was alleged and not by the presiding officer of a superior Court. 4 Pat. L.T. 97=71 I C 703=1923 P. 185 (1) (S. B.). *See also* 32 M.L.J. 402=41 I.C. 305. The High Court, when the matter was referred to it, refused to take action upon that account. 4 Pat. L.T. 97=71 I.C. 703. An Additional District Magistrate should follow the procedure laid down in S. 14 (*c*) with reference to a report by a District Magistrate and forward the report through the Sessions Judge. 27 C.W.N. 88=1922 C. 550. The District Magistrate acted improperly in relying upon his own recollections of facts when they differed from those of other witnesses and it was undesirable for him to sit as a Judge to determine the matters in respect of which he might have been called upon to report or examined as a witness. I Pat.L.T. 379 =57 I.C. 277. S. 14 is material even when any pleader is acting in his professional capacity on behalf of his client in a proceeding in a Revenue office. If he is guilty of professional misconduct he would bring himself within the disciplinary jurisdiction. 56 C.L.J. 595=1933 C. 344.

JURISDICTION.—District Judge to institute the proceedings under S. 14. *See* 49 C. 850=35 C.L.J. 520=67 I.C. 985=1922 C. 484 The expression "such Court" in the first clause of S. 14 cannot be construed to mean the Court in which the misconduct is alleged to have been committed. The section only means that any Court in which a pleader practises is competent to inquire into a charge of misconduct if the charge is brought in that Court. 72 I.C. 521=24 Cr.L.J. 409 (R.). Infliction of punishment on the legal practitioner is within the exclusive jurisdiction of the High Court. (15 C.W.N. 764, Dist.). 59 C. 709=36 C.W.N. 294=1932 C. 370. A District Judge, on being informed by a person who is admittedly at enmity with a legal practitioner that the legal practitioner is using his private motor as a public conveyance for passengers has no jurisdiction to hold any inquiry himself into the mater under S. 14 without having referred the matter previously to the High Court. The proper course is to report the matter to the High Court in order that it may take such steps as it deems fit under S. 13 or otherwise. 162 I.C. 485= 1936 Rang. 189. S. 13 contemplates the High Court directing an inquiry before action is taken. Unless the tribunal is constituted, beforehand. the inquiry cannot be lawful. Approval of a tribunal *ex post facto* is repugnant to the spirit of the Act and the wording of S. 13. If the tribunal conducting the inquiry has not been validly constituted, acquiescence in the proceedings would not turn it into a lawful tribunal. A *District Judge who is directed to hold an inquiry under S. 12 must hold it himself and has no power to delegate it to an Additional District Judge* without reference to the High Court and without obtaining the sanction of the High Court beforehand. Nor has the District Judge authority under S.3-A of the Madras Civil Courts Act to transfer his duty to the Additional District Judge. I L.R. (1940) Mad. 433=1940 Mad. 370=(1940) 1 M.L.J. 259 (F.B.).

IRREGULAR REFERENCE—EFFECT.—For a proper reference to the High Court the formalities required by S. 14 ought to be fulfilled and in the absence of those formalities being strictly complied with, the reference is no valid reference. 1929 A.L.J. 1042=118 I. C. 712=1929 A. 655 (F.B.). The High Court would exercise its disciplinary jurisdiction even though the reference under S. 14 with regard to the alleged misconduct of a pleader is not made by the trial Court in whose Court the occurrence has taken place but by the appellate Court which has no power to refer it. It would be necessary however that the High Court should make an enquiry. What the nature of that enquiry ought to be is clearly a matter for the discretion of the Court. 1922 P. 608 (2)=1 P. 689=4 Pat.L.T. 235=71 I.C. 209. Subordinate Courts can institute proceedings against a legal practitioner in respect of an

15. The High Court, in any case in which a pleader or mukhtar has been acquitted under section 14 otherwise than by an order of the High Court, may call for the record and pass such order thereon as it thinks fit.

Power to call for record in case of acquittal under section 14.

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act coming under Cl (*f*) to S. 13. Where proceedings are commenced under Cl. (*b*) to S. 13, but it is found that the act comes under Cl. (*f*) to S. 13, the High Court may avail itself even if the subordinate Court in such cases would have no jurisdiction to make the inquiry it did. 39 I.C. 305=21 C.W. N. 516. The fact that the pleader concerned had become a vakil of the new High Court at Lahore since the action was taken under S. 14 by a lower Court could not affect the jurisdiction of that Court. 152 P L.R. 1919=54 I.C 982

POWER OF SUSPENSION.—Investigation in para. 5 of S. 14 means investigation in the High Court. It is only after a report to the High Court under para. That power is given to suspend under para. 5. 13 C.L.J. 45=9 I.C. 225=15 C W N 269 The District Judge cannot suspend any pleader from practice until he has recorded his finding that he ought to be suspended or dismissed. Suspension pending investigation is not proper. 1937 M W.N. 460=1937 Mad. 672. *See also* 163 I C. 586=1936 Rang. 249

CRIMINAL PROCEEDINGS PENDING—RENEWAL OF PLEADERS' CERTIFICATE.—Where a prosecution is ordered against a legal practitioner instead of proceeding according to S. 14, the Judge ought not to wait until the result of the criminal proceedings are known before renewing the pleader's certificate, 38 A. 182=14 A.L.J. 82=33 I.C. 632. The fact that criminal proceedings in connection with an offence under S. 193, I. P. Code, are pending against a mukhtar is not a sufficient reason within the meaning of R. 452 of the Rules of the Court of 4th April, 1898, for refusing to renew his certificate, unless the Ditsrict Judge also takes action under S. 14. 1901 A.W.N. 60. *See also* I.L R. (1944) Mad. 17=(1943) 2 M.L.J. 126 (Pleader not renewing certificate also. 1944 Mad. 244=(1944) 1 M L J. 123). A report to High Court under S. 14 recommending the dismissal of a mukhtar having no licence to practise in a Revenue Office for gross misconduct, does not lie where the misconduct was committed in the capacity, not of a mukhtar, but as a private individual and came to light in a proceeding wherein he was not a party but only a witness. 23 I. C. 746=19 C.L.J. 110. A proceeding under this Act which is not properly initiated is not a judicial proceeding in the course of which a prosecution may be directed by the Court under S. 476, Cr.P. Code. 15 C. W.N. 269=13 C.L.J. 457=9 I.C. 225 Proceedings against several pleaders are to be separate and distinct. 15 C.W.N. 764 =9 I.C. 247. An inquiry into the professional misconduct of a pleader being of a *quasi* judicial nature the Court must have strict proof of the pleader's misbehaviour. 11 Bom.L.R. 1150=4 I C. 266. The section does not limit the consideration of a charge to the Court in which the misconduct is alleged to have been committed. 188 P. L R. 1901. R. 37 of the Chapter XXI of the General Ruels Civil (1911) applies even to a pleader of the High Court when he is practising in the Subordinate Courts. 17 I C 539=13 Cr.L.J. 794. Competency of District Judge to enquire into a charge, of misconduct—Chief Court's power of revision 4 I C. 1022 (2)=11 Cr.L.J. 148 (2). Misconduct of mukhtar as witness—Notice to Commisisoner on Land Revenue appeal—Mukhtar not entitled to practise in revenue office—Jurisdiction of Commissioner to refer misconduct to High Court. 19 C.L.J. 110=22 I.C. 746. A Court subordinate to the High Court is competent to try offences falling under Cls. (*c*) and (*f*) of S. 13. 3 A.L.J. 811=29 A. 61.

MISCONDUCT—APPEARANCE FOR OPPOSITE SIDE.—Proper professional conduct is not a mere matter of compliance with technical rules. It is one of which every one who aspires to be called a gentleman should have an instinctive apprehenison. The conduct of a pleader who had already taken instructions from a defendant and received his confidence in the matter of the genuineness of a Small Cause Court suit but who notwithstanding that confidence accepts the instructions of the other side in a title suit referring to same subject-matter, deserves the severest ensure. 15 P.L.T. 305=150 I.C. 16=1934 P. 352 (S.B.). *See also* 1938 Pat. 28 (S B.); 1928 Mad. 592; 13 A.L.J. 475; (F.B.); 8 R. 446=1930 Rang. 355; 11 C.W. N. 671; 1938 Mad. 276; 1928 Lah. 65=8 L. 23=1934 Oudh 58; 1938 Pat. 28=1938 P.W. N. 115 (F.B.).

SEC. 15.—As to applicability of section *see* 46 L W. 599=1937 Mad. 672. Where a subordinate Court dismisses a petition against a pleader charging him with profesisonal misconduct, it has no power to award costs. But when the matter is taken up by the High Court under S. 15 of the Legal Practitioners Act, the High Court can, if it deems just—as for instance where the complaint is found to be vexatious—itself pass an order for payment of costs. *See now* Mad. Legal Practitioners' (Amendment) Act III of 1943, S. 2. I.L.R. (1943) Mad. 385=56 L W. 57=A.I.R. 1943 Mad. 250=(1943) 1 M L.J. 121 (S.B.).

Powers to make rules for mukhtars on appellate side of High Court.

16. Notwithstanding anything contained in any letters patent or in the Code of Civil Procedure, section 37, clause (*a*), any High Court established by Royal Charter may, from time to time, make rules consistent with this Act as to the following matters (namely) :—

(*a*) the qualifications and admission of proper persons to be mukhtars practising on the appellate side of such Court;

(*b*) the fees to be paid for the examination and admission of such persons;

(*c*) the security which they may be required to give for their honesty and good conduct;

(*d*) the suspension and dismissal of such mukhtars; and

(*e*) declaring what shall be deemed to be their functions, powers and duties;

and may prescribe and impose fines for the infringement of such rules, not exceeding in any case five hundred rupees; and such fines when imposed, may be recovered as if they had been imposed in the exercise of the High Court's ordinary original criminal jurisdiction.

CHAPTER IV.

OF REVENUE-AGENTS.

Power to make rules as to qualifications, etc., of revenue agents.

17. The Chief Controlling Revenue-authority may, from time to time, make rules[1] consistent with this Act as to the following matters (namely) :—

(*a*) the qualifications, admission and certificates of proper persons to be Revenue-agents;

(*b*) the fees to be paid for the examination and admission of such persons;

(*c*) the suspension and dismissal of such revenue-agents; and

(*d*) declaring what shall be deemed to be their functions, powers and duties.

Publication of rules.

All such rules shall be published in the Official Gazette, and shall thereupon have the force of law.

Certificates to revenue-agents.

18. On the admission of any person as a revenue-agent under section 17, the Chief Controlling Revenue-authority shall cause a certificate, signed by such officer as such Authority from time to time appoint in this behalf, to be issued to such person, authorizing him to practise up to the end of the current year in such revenue-offices as may be specified therein.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall be entitled to have his certificate renewed by the Secretary of the Chief Controlling Revenue-authority, or by any other officer authorized by such Authority in that behalf.

On every such renewal, the certificate then in the possession of such revenue-agent shall be cancelled and retained by such Secretary or other officer.

Every certificate so renewed shall be signed by such Secretary or other officer and shall continue in force so the end of the current year.

Every officer so renewing a certificate shall notify the renewal to the Chief Controlling Revenue-authority.

Enrolment of revenue agent.

19. Every revenue-agent holding a certificate issued under section 18 may apply to be enrolled in any revenue-office mentioned therein and situate within the limits of the territory under the Chief Controlling Revenue-authority; and subject to such rules as the Chief Controlling Revenue-authority may, from time to time, make in this behalf, the officer presiding in such office shall enrol him

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LEG. REF.

[1] For rules under this section, *see* the different Local Rules and Orders.

accordingly, and thereupon he may practise as a revenue-agent in such office and in any revenue-office subordinate thereto.

No person to act as agent in revenue-offices unless qualified.

20. Except as provided by this Act or any other enactment for the time being in force, no person, other than a pleader duly qualified under the provisions hereinbefore contained, shall practise as a revenue-agent in any revenue office, unless he holds a certificate issued under section 18 and has been enrolled in such office or some other office to which it is subordinate:

Provided that any person duly authorized in this behalf may, with the sanction of the Chief Controlling Revenue-authority, or of an officer empowered by the Provincial Government in this behalf, transact all or any business in which his principal may be concerned in any revenue-office.

The sanction mentioned in this section may be general or special, and may at any time be revoked or suspended by the Authority or officer granting the same.

Dismissal of revenue-agent convicted of criminal offence

21. The Chief Controlling Revenue-authority may suspend or dismiss any revenue-agent holding a certificate issued under this Act who is convicted of any criminal offence implying a defect of character which unfits him to be a revenue-agent.

Suspension and dismissal of revenue agents guilty of unprofessional conduct

22. [1][The Chief Controlling Revenue-authority may also, after such inquiry as it thinks fit, suspend or dismiss any revenue-agent holding a certificate as aforesaid—

(*a*) who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or

(*b*) who tenders, gives or consents to the retention, out of any fee paid or payable to him, for his services, of any gratification for procuring or having procured the employment in any legal business of himself or any other revenue-agent, or

(*c*) who, directly or indirectly, procures or attempts to procure the employment of himself, as such revenue-agent through, or by the intervention of, any person to whom any remuneration for obtaining such employment has been given by him, or agreed or promised to be so given, or

(*d*) who accepts any employment in any legal business through a person who has been proclaimed as a tout under section 36, or

(*e*) for any other reasonable cause.]

Procedure when revenue-agent is so charged in subordinate office

23. If any revenue-agent holding a certificate issued under this Act is charged with any such conduct in any office subordinate to the Chief Controlling Revenue-authority, or in the Court of any Munsif, the officer at the head of such office, or such Munsif, as the case may be, shall send him a copy of the charge, and also a notice that, on a day to be therein appointed, such a charge will be taken into consideration.

Such copy and notice shall be served upon the person charged at least fifteen days before the day so appointed. On such day or on any other day to which the enquiry may be adjourned, the officer or Munsif shall receive all evidence properly produced in support of the charge, or by the person charged, and shall proceed to adjudicate on the charge.

If the officer or Munsif finds the charge established, and considers that the person charged should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and report the same to the Chief Controlling Revenue-authority; and such Authority shall proceed to acquit, suspend or dismiss him.

LEG. REF.

[1] Substituted by Act XI of 1896, S. 3.

Any Revenue-officer not inferior to a Collector, and, with the Collector's sanction, any Revenue-officer subordinate to him, or any Munsif in his district, may, pending the investigation and the orders of the Chief Controlling Revenue-authority, suspend from practice any revenue-agent charged before him under this section.

Where any officer acting under this section is subordinate to the Commissioner of a Division, he shall transmit the report through such Commissioner, who shall forward with the same an expression of his own opinion on the case.

Power to Chief Controlling Revenue authority to call for record.

24. The Chief Controlling Revenue-authority, in any case in which a revenue-agent has been acquitted under section 23 otherwise than by an order of the Chief Controlling Revenue-authority, may call for the record and pass such order thereon as seems fit.

CHAPTER V.

OF CERTIFICATES.

Fee for certificates

25. Every certificate, wheher original or renewed, issued under this Act shall be written upon stamped paper of the value prescribed therefor in the second schedule hereto annexed, [1][and such description as the Provincial Government may, from time to time, prescribe.][2]

Provided that a certificate issued on or after the first day of July in any year may be written on stamped paper of half the value so prescribed:

[3][Provided also that no stamped paper shall be required in the case of a certificate, whether original or renewed, authorizing, under section 7, a vakil or attorney on the roll of a High Court established by Royal Charter to practise as a pleader.]

Dismissed practitioners to surrender certificates.

26. When any pleader, mukhtar or revenue-agent is suspended or dismissed under this Act, he shall forthwith deliver up his certificate to the Court or officer at the head of the office before or in which he was practising at the time he was so suspended or dismissed, or to any Court or officer to which the High Court or Chief Controlling Revenue-authority (as the case may be) orders him to deliver the same.

CHAPTER VI.

OF THE REMUNERATION OF PLEADERS, MUKHTARS AND REVENUE-AGENTS.

High Court and Chief Controlling Revenue-authority to fix fees on civil and revenue proceedings.

27. The High Court shall, from time to time, fix and regulate the fees payable by any party in respect of the fees of his adversary's advocate, pleader, vakil, mukhtar or attorney upon all proceedings (*a*) on the appellate side of such Court (*b*) in the case of a High Court not established by Royal Charter, on its original side, and (*c*) in subordinate Courts [4][and in respect of the fees of his adversary's revenue-agent appearing, pleading or acting under section 10].

The Chief Controlling Revenue-authority shall, from time to time, fix and regulate[5] the fees payable upon all proceedings in the revenue-offices by any party in respect of the fees of his adversary's advocate, pleader, vakil, attorney, mukhtar or revenue-agent.

LEG. REF.

1 Inserted by Act IX of 1884, S. 5.

2 For instances of rules prescribing the stamp paper to be used for certificates, *see* different Local Rules and Orders.

3 Inserted by Act I of 1908, S. 4.

4 Inserted by Act IX of 1884, sec. 6.

5 For rules as to fees in revenue proceedings, *see* the different Local Rules and Orders.

SEC 27.—This Act does not impose any limitation upon the fees which are recoverable by practitioners from their own clients as regulated by agreement between them. 29 I.C. 763; 17 C.W.N. 45=15 C.L.J. 660;

Tables of the fees so fixed shall be published in the Official Gazette.

Exception as to agents mentioned in section 20.

Nothing in this section applies to the agents mentioned in the proviso to section 20.

28 to 31. [*Agreements with clients. Power to modify or cancel agreements. Agreements to exclude further claims, Reservation of responsibility for negligence.*] *Rep. by the Legal Practitioners (Fees) Act (XXI of 1926).*

CHAPTER VII.

PENALTIES.

On persons illegally practising as pleaders, mukhtars or revenue-agents.

32. Any person who practises in any Court or revenue-office in contravention of the provisions of section 10 or section 20 shall be liable, by order of such Court or the officer at the head of such office, to a fine not exceeding ten times the amount of the stamp required by this Act for a certificate authorizing him so to practise in such Court or office, and, in default of payment, to imprisonment in the civil jail for a term which may extend to six months.

He shall also be incapable of maintaining any suit for, or enforcing any lien with respect to, any fee or reward for, or with respect to, anything done or and disbursement made by him as pleader, mukhtar or revenue-agent, whilst he has been contravening the provisions of either of such sections.

On suspended or dismissed pleader, etc., failing to deliver certificate.

33. Any pleader, mukhtar or revenue-agent failing to deliver up his certificate as required by section 26 shall be liable, by order of the Court, authority or officer to which or to whom, or according to whose orders, the delivery should be made, to a fine not exceeding two hundred rupees, and in default of payment to imprisonment in the civil jail for a term which may extend to three months.

=13 I.C. 43. Where several pleaders are employed the fees allowable under the rules framed by the High Court under this section should be equally divided amongst all of them. 7 C.W.N. 300. Engagement of more than one vakil—Right to fees. *See* 38 I.C. 210. *See also* 4 M.L.J. 181; 13 M. L.J. 358=26 M. 654 (F.B.). Where a pleader who has been engaged in the suit is re-engaged by the assignee decree-holder, no pleader's fee can be allowed in execution afresh—C.P. Rules. 144 I.C. 379=1933 N. 360.

SEC. 28: ORAL AGREEMENT INVALID.—A suit by a pleader for fees based upon an alleged oral agreement cannot succeed because it is not a valid agreement as it is a special agreement and any special agreement is to be in writing under the provisions of sec. 28. 26 C.W.N. 709=67 I.C. 874=1922 C. 567. *See also* 20 I.C. 47 (1) =20 C.L.J. 424.

FAILURE TO FILE AGREEMENT.—Even an illegal agreement if not actually filed under sec. 28 cannot be acted on and if the pleader acted *bona fide* and in good faith no action ought to be taken on it. 12 Cr.L.J. 12=9 I.C. 130=8 A.L.J. 151.

Repeal of sec. 28, Legal Practitioners Act, is not retrospective. The repeal of the section does not affect rights created before it came into force. 1927 P. 178=6 P. 614= 101 I.C. 559. As to a recent ruling under the repealed section, *see* 26 A.L.J. 758= 1928 A. 274. *See also* 1930 P. 61; 30 L.W. 876=57 M.L.J. 756; 1930 M. 132; 113 I.C. 93=1928 A. 274=50 A. 517; 123 I.C. 408.

SEC. 32.—The term "practising" in sec. 32 does not connote the doing of acts habitually or often, but signifies the performance of an act by a person as a professional man which as a private individual, he could not do. 26 A. 380=1904 A.W.N. 57 (1). Where a pleader does not apply for renewal of his sanad within the time prescribed, he fails to comply with R. 11 of the rules under the Legal Practitioners Act. He has therefore no right to appear in a case until his sanad is actually renewed, though if he applies within time complying with R. 6, he would as a matter of practice be permitted to appear in cases pending renewal of his sanad. If a pleader who has not complied with R. 11, appears in a case before removal of his sanad he renders himself liable to punishment under sec. 32. I.L. R. (1944) Mad. 633=57 L.W. 87 (1)=A.I. R. 1944 Mad. 244=(1944) 1 M.L.J. 123.

34. Any pleader, mukhtar or revenue-agent who, under the provisions of this Act, has been suspended or dismissed, and who, during such suspension or after such dismissal, practises as a pleader, mukhtar or revenue-agent in any Court or revenue-office, shall be liable, by order of such Court or the officer at the head of such office to a fine not exceeding five hundred rupees, and in default of payment to imprisonment in the civil jail for a term which may extend to six months.

On suspended or dismissed practitioner practising during suspension or after dismissal.

35. Every order under sections 32, 33 or 34 shall be subject to revision by the High Court where the order has been passed by a subordinate Court, and by the Chief Controlling Revenue-authority where the order has been passed by an officer subordinate to such Authority.

Revision of fines.

[1][36. (1) Every High Court, District Judge, Sessions Judge, District Magistrate and Presidency Magistrate, every Revenue-officer, not being below the rank of a Collector of a District, and the Chief Judge of every Presidency Small Cause Court (each as regards their or his own Court, and the Courts, if any, subordinate thereto), may frame and publish lists of persons proved to their or his satisfaction, [2][or to the satisfaction of any subordinate Courts as provided in sub-section (2-A)] by evidence of general repute or otherwise, habitually to act as touts, and may, from time to time, alter and amend such lists.

Power to frame and publish lists of touts.

LEG. REF.

1 Substituted by Act XI of 1896, sec. 4.

2 Inserted by Act XV of 1926, sec. 3.

See also I.L.R. (1944) Mad. 17=(1943) 2 M.L.J. 126.

MUKHTAR PRACTISING WITHOUT A CERTIFICATE.—*See* 1897 A.W.N. 8; 1901 A.W.N. 60.

SEC. 36: SCOPE OF SECTION.—*See* 31 A. 59 =6 A.L.J. 22. Sec. 36 creates a special jurisdiction but does not define the details of the mode in which that jurisdiction is to be exercised. The course to be adopted should be such as would do substantial justice to the parties brought before the Court. An enquiry under sec. 36 cannot be conducted in the manner prescribed in Cr.P. Code, regarding enquiries altogether of a different nature. 44 M.L.J. 437=69 I.C. 433=1923 M. 188 (2). As to the effect of a resolution of a Bar Association that a person is a tout, *see* 26 A.L.J. 790=1928 A. 334. To determine the regularity or otherwise of a Bar Association declaring certain persons to be touts any rules framed by the Association are relevant. 1928 All. 334.

JURISDICTION AND PROCEDURE.—Proceedings to declare a man a tout are not judicial ones but are only of a departmental nature. 166 I.C. 643=38 Cr.L.J. 316= 1937 Sind 4. Under sec. 36 of the Act it is not necessary that there should be a petition at all; it does not contemplate the case of a party making definite allegations against an alleged tout. 44 M.L.J. 437=69 I.C. 433=1923 M. 188 (2). The proceedings under sec. 36 are of a *quasi* criminal nature and it is doubtful whether consent of the persons claimed against can validate any irregularity in the procedure. 32 Cr.L.J. 672=1931 L. 57=12 L. 385=131 I. C. 238. *See also* 62 I. C. 829=22 Cr.L.J. 589. The exhibition of the copy of the list referred to in sec. 36, Cl. (3) of the Act is necessary to constitute a man a proclaimed tout. The principle applicable in cases under sec. 110 of the Cr.P. Code apply to cases under sec. 36. 40 A. 153=44 I.C. 125. An order under sec. 36 declaring a person to be a tout is not valid if made by a District Magistrate on evidence recorded by a Subordinate Magistrate. 60 I.C. 321=24 C.W.N. 1074. An inquiry under sec. 36 must be made by the District Magistrate himself and cannot be delegated to any subordinate officer. 13 Cr.L.J. 510=15 I.C. 654 (C.). *See also* 84 I.C. 462=1925 L. 225 (2); 1931 Nag. 187. The insertion of names of persons in the list of touts should be made after conducting a proper enquiry under sec. 36. 132 I.C. 41=1930 A. 796. Before directing inclusion of a person's name in the list of touts it is necessary under sec. 36 to give the person an opportunity of showing cause against the inclusion. The duties cannot be delegated by any of the officers mentioned therein to their subordinates. 1919 Pat. 273=22 Cr.L.J. 66=59 I. C. 322 (S.B.). Notice to show cause why a person should not be declared a tout must be given to him and evidence should be taken in his presence to show that he is a tout. 5

Pat.L.W. 229=42 I.C. 996 (F.B.). The District Judge is bound to examine witnesses named by the person sought to be declared as a tout. The District Judge ought not to import his own personal knowledge in a case unless he informs the person of the nature and source of the information and allows himself to be cross-examined thereupon. 120 P.L.R. 1909. Where the District Judge sends to the Senior Subordinate Judge the names of persons suspected to be touts for the purpose of enquiry and report, the District Judge should on receipt of such report pass final orders as to the inclusion of the persons in the list of tourts. 32 Punj.L.R. 9.

PROOF.—Proof by general repute or otherwise is necessary before a person can be declared a tout under the section. 11 P. L.R. 1912=15 I.C. 307; 44 I.C. 125=40 All. 153; 3 I.C. 982. If a resolution is based on general repute the Court may attach less weight to it, but it cannot be said that such a resolution is invalid or legally inadmissible in evidence and cannot be taken into consideration by the Court. 1931 A. 711. If a number of respectable pleader's in a particular district are found to be of opinion that a person is a tout, the fact is sufficient to justify the District Judge in holding that the person charged is by general repute a tout. 3 I.C. 982. In a proceeding under sec. 36 certain legal practitioners who had been produced as defence witnesses by some of the persons proceeded against gave evidence in favour of those who had cited them and at the same time deposed that the rest were known to them by reputation or otherwise as touts. *Held*, that such evidence could not be relied on as evidence against those persons on whose behalf the witnesses had not been cited. 12 Lah. 385=1931 L. 57. Where it appeared to the High Court, on evidence, that certain persons habitually acted as touts, they were asked to show cause why an order should not be made under sec. 36 and, on their failing to give evidence that they were living by honest and legitimate means, they were included in the list of touts and a copy thereof ordered to be hung up in every Court. 1896 A.W.N. 107. The decision of a Court determining that a person is a tout must be based on substantial legal evidence. 13 Cr.L.J. 510=15 I.C. 654 (C.). The person aganist whom the evidence is directed must have an opportunity of cross-examining the witnesses. 15 I.C. 654 (C.). *See also* 3 I.C. 982.

ILLEGAL GRATIFICATION FOR FURNISHING CASES.—A letter written by a High Court Vakil to another practising in the mofussil asking the latter to send up cases to him and agreeing to share the fees, renders him culpable under sec. 36 and the High Court has jurisdiction to take up the case and suspend the pleader, as his conduct amounts to a "reasonable cause" within sec. 8 of the Letters Patent of March 17, 1866. 17 A. 498=22 I.A. 193 (P.C.).

DIVISIONAL JUDGE IN THE PUNJAB.—Power of, to declare a person as tout. 108 P.L.R. 1904.

CHIEF COURT'S POWER OF INTERFERENCE (PUNJAB).—*See* 3 P.R. 1900 (Cr.) *cried* 22 P.R. 1904 (Cr.) 7; 3 I.C. 982.

POWER OF JUDICIAL COMMISSIONER'S COURT TO INTERFERE IN REVISION.—In cases under sec. 36, the Judicial Commissioner's Court has power to interfere in revision in the exercise of its general power of superintendence and control over Subordinate Courts. 28 N.L.R. 4=137 I.C. 66=1932 N. 50. *See also* 1941 Lah. 1=I.L.R. (1941) Lah. 133; (1938) 2 M.L.J. 100=1938 M. 634.

REVISIONAL JURISDICTION OF HIGH COURT—CONFLICT OF AUTHORITIES.—Proceedings under sec. 36 are not governed by the Civil or the Criminal Procedure Codes and cannot be revised under the civil or criminal jurisdiction. But the High Courts have held that they have jurisdiction to interfere under sec. 15 of the High Courts Act. 18 P.R. (Cr.) 1914=25 I. C. 513; 45 A. 676=1924 A. 69. *See also* 1941 Lah. 1=I.L.R. (1941) Lah. 133; I. L.R. 1938 M. 988=(1938) 2 M.L.J. 100. The only provision under which the High Court would interfere with the order of a Subordinate Court under sec. 36 of the Legal Practitioners Act is 15 of the High Courts Act. The High Court ought not to interfere with the order of the Sessions Judge under sec. 36 of the Legal Practitioners Act on the ground that the finding of the latter was against the weight of evidence. 21 A. 181. The jurisdiction to revise is of an exceptional character and cannot be invoked except in furtherance of justice. If the Judge in passing the order had no clear conception of the law on the subject or, if he had failed to apply the law to the facts of the case and based his finding on mere suspicion or conjecture, the High Court would interfere with the order. I.L.R. 1938 Mad. 988 =1938 M. 634=(1938) 2 M.L.J. 100. Sec. 36 confers a special jurisdiction on Subordinate Courts; and an order passed by a District Judge under sec. 36 declaring a person a tout is an order which the High Court has power to revise under sec. 115, C. P. Code, being a case decided by a Court subordinate to the High Court. Sec. 439 of the Cr. P. Code does not apply to such a case. Nor can it be revised under the Government of India Act, 1935. I.L.R. 1938 M. 988=(1938) 2 M.L.J. 100. *See also* 1932 Nag. 50. The High Court cannot in its revisional jurisdiction interfere under sec. 115, C.P. Code, with an order under sec. 36. 56 I.C. 433=13 S.L.R. 212. An order under sec. 36 does amount to a judgment contemplated by sec. 224 (2), Government of India Act and is not open to revision under sec. 115, C.P. Code, any more

[1][*Explanation.*—The passing of a resolution, declaring any person to be or not to be a tout, by a majority of the members present at a meeting, specially convened for the purpose, of an association of persons entitled to practise as legal practitioners in any Court or revenue-office, shall be evidence of the general repute of such person for the purposes of this sub-section.]

LEG. REF.

[1] Explanation to sub-sec. (1) was inserted by Act XV of 1926, sec. 3 (*b*).

than under the Cr.P. Code. Sec. 224 (2), Government of India Act, 1935, bars the interference by the High Court on the administrative side and hence the High Court has no power to question a decision under sec. 36, I.L.R. (1941) Lah. 133=192 I.C. 363=1941 Lah. 1. (Case law discussed.) The intention of the Legislature was not to allow anything of the nature of an appeal against the decision of a competent Court under sec. 36. 45 A. 676=21 A.L.J. 671=1924 A. 69. The High Court has power to revise orders passed under sec. 36 of the Legal Practitioners Act by reason of the power of superintendence vested in the Court by sec. 107 of the Government of India Act, but this power is of a very exceptional nature and cannot be invoked except in furtherance of justice. 129 I.C. 487=1930 L. 889. *See also* 56 B. 577=34 Bom.L.R. 1281=1932 B. 596. *See also* 3 I. C. 982; 3 I.C. 977; 1937 Sind 4=30 S.L.R. 346.

SEC. 36 (1), EXPL.—Under sec. 36 (1) Explanation, the resolution is valuable evidence even though the facts on which the resolution is based are not disclosed. 28 N.L. R. 159=139 I.C. 900=1932 N. 141. A resolution or report of a Sub-Committee of only seven members out of an Association of about 22 members declaring certain persons to be touts is not a resolution by a majority of the members, and hence it cannot be used as evidence of general repute under the Explanation, 6 P. 567=1927 P. 282. *Held*, that revision lies to High Court from an order of the District Magistrate including the name of a person in the list of touts under sec. 36 of the Legal Practitioners Act. 1930 A.L.J. 961=1930 A. 641. The law does not require that all the members should be present at the meeting but requires that a meeting of the association should be convened for the purpose of considering whether a certain person is a tout; and if by a majority of the members present at such a meeting a resolution is passed, it is sufficient. 56 C. 800=115 I.C. 602 (2)=1929 C. 196. *See also* 28 N.L.R. 159=1932 N. 141. Nor does it matter that some of the members who voted had lost their voting capacity for non-payment of subscriptions, according to the rules of the Association. 165 I.C. 963=1936 Lah. 382. Nor does the fact that opportunity was not given to the persons to be declared touts to appear before the association to show cause why the resolution should not be passed. 1936 L. 382. To determine the regularity or otherwise of a Bar Association declaring certain persons to be touts any rules framed by the Association are irrelevant. *See* 118 I.C. 524=1928 A. 334=26 A.L.J. 790. In order to enable a Court to admit in evidence the resolution of the Bar Association declaring certain persons to be touts, it is necessary to establish that it was a meeting specially convened for the purpose of passing the resolution in question. Where it is not proved that all the members of the Association who were able to attend had been notified nor is it shown that those who were not notified were otherwise not capable of attending the meeting, the special meeting convened to declare certain persons touts cannot be said to have been properly convened and consequently the resolution passed threat is not a valid resolution, as contemplated by the Explanation to sec. 36 (1). 12 L. 385=1931 L. 57. For a meeting being specially convened within sec. 36, it is not necessary to state in the notice of the meeting, the particular nature of the charges made against the tout. 44 Cr.L.J. 582=A. I.R. 1943 Pesh. 54. After the amendment of the Act in 1926, while it is open to proceed under sec. 36 in the old way and call evidence, it can also avoid the calling of witnesses once a resolution is presented to it which satisfies the requirements of Act XV of 1926. 130 I.C. 629=1931 A. 315. The expression "majority of members present" in the Explanation to sec. 36 of the Legal Practitioners Act is not the same thing as majority of members voting. Where the only evidence on which a person was declared a tout was a resolution of the Bar Association and it appeared that at the meeting of the Association 64 were present but only 26 voted in favour of the resolution, 14 votes being against it and the rest being neutral, *held*, that there was no legal evidence on which the person could be declared a tout. 1930 A.L.J. 977=1930 A. 752=52 A. 939. On this Explanation, *see also* 26 A.L.J. 790= 1928 A. 334. The words 'any person', mean any named or specified person. So, the *name* of the person to be declared or not to be a tout should be before the meeting. 166 I.C. 643=1937 Sind 4. It is not proper for the District Judge to award costs of his inquiry against the Bar Association when he had invited it to assist him in the inquiry. 165 I. C. 963=1936 Lah. 382.

SEC. 36 (2).—Under sec. 36 (2) the District Judge has the power to differ from or accept the report of Subordinate Court; where District Judge refuses to accept the

(2) No person's name shall be included in any such list until he shall have had an opportunity of showing cause against such inclusion.

[1][(2-A) Any authority empowered under sub-section (1) to frame and publish a list of touts may send to any Court subordinate to such authority the names of any persons alleged or suspected to be touts, and order that Court to hold an inquiry in regard to such persons; and the subordinate Court shall thereupon hold an inquiry into the conduct of such persons and, after giving each such person an opportunity of showing cause as provided in sub-section (2), shall report to the authority which has ordered the inquiry the name of each such person who has been proved to the satisfaction of the subordinate Court to be a tout; and that authority may include the name of any such person in the lists of touts framed and published by that authority:

Provided that such authority shall hear any such person who, before his name has been so included, appears before it and desires to be heard.]

(3) A copy of every such list shall be kept hung up in every Court to which the same relates.

(4) The Court or Judge may, by general or special order, exclude from the precincts of the Court any person whose name is included in any such list.

(5) Every person whose name is included in any such list shall be deemed to be proclaimed as a tout within the meaning of section 13, clause (*e*), and section 22, clause (*d*).]

[1][(6) Any person who acts as a tout whilst his name is included in any such list shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both.]

CHAPTER VIII.

MISCELLANEOUS.

37. To facilitate the ascertainment of the qualifications mentioned in sec.

LEG. REF.

1 Sub-sec. (2-A) and (6) were inserted by Act XV of 1926,6 sec. 3.

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report, the High Court will not interfere in revision unless the order is manifestly wrong. 134 I.C. 98=1931 L. 98 (2). That the order under sec. 36 (2) was passed by the District Magistrate without giving the applicant an opportunity of appearing before him and being heard is sufficient gorund for revision. (45 A. 676, Foll.) 27 N.L.R. 398=1931 N. 187.

SEC. 36 (2-A).—Order declaring person to be tout when he is not proved to be so, is illegal. 31 P.L.R. 212=1930 L. 405. The Senior Subordinate Judge was asked by the District Judge to hold an enquiry with regard to certain persons named in the list framed by a Bar Association. The name of the petitioner was included in the list and the matter was so reported. *Held*, that under sec. 36 (2-A) it was the duty of the petitioner who knew that he was included in the list to enter appearance before the District Judge and apply to be heard and it was not the duty of the District Judge to issue notice to him. 132 I.C. 846=1931 L. 543 (2). Proceedings under sec. 36 (2-A) are of a quasi-criminal nature. An order declaring a person to be a tout is one which very seriously affects his character and living. It is therefore incumbent upon the District Judge to satisfy himself that the conditions laid down by the Explanation to sub-sec. (1) for the admissibility of a resolution are duly fulfilled and satisfied. 34 Bom.L.R. 1281=1932 B. 596=56 Bom. 577.

SEC. 36 (2-A) PROVISO.—The District Magistrate delegating an inquiry to a subordinate cannot act on the report submitted by the latter recommending that a person should be declared a tout, if the person appears and desires to be heard. The District Magistrate cannot delegate the matter of hearing a person against whom a report has been made. 27 N.L.R. 398=1931 N. 187.

SEC. 36: REVISION—INTERFERENCE.—It is not for the Judicial Commissioner to interfere with the finding of the District Judge that a particular person acts as a tout unless it is shown that there has been some irregularity which amounts to a denial of justice. 44 Cr.L.J. 582=A.I.R. 1943 Pesh. 54.

SEC. 37.—For Regulations made under this section by the Government of Burma, see *Burma Gazette*, 1911, Part 1, p. 13. For Regulations in other Provinces, *see* Local Rules and Orders.

Provincial Government to appoint Examiners.

tions 6 and 17 respectively, the Provincial Government shall, from time to time, appoint persons to be examiners for the purposes aforesaid, and may, from time to time, make regulations for conducting such examinations.

Exemption of High Court practitioners from certain parts of Act.

38. Except as provided by sections 4, 5, [1][7], 16, [1][25], 27, 32 and 36 nothing in this Act applies to advocates, vakils and attorneys admitted and enrolled by any High Court under the letters patent by which such Court is constituted, or to mukhtars practising in such Court or to advocates enrolled [2][under section 41 of this Act]; [3][and, except as provided by section 36, nothing in this Act applies to persons enrolled as advocates of any High Court, under the Indian Bar Councils Act, 1926].

Suspension or dismissal of person holding mukhtar and revenue-agent's certificates.

39. When any person who holds a certificate as a mukhtar under section 7 and a certificate as a revenue-agent under section 18 is suspended or dismissed in one of such capacities, he shall be deemed to be suspended or dismissed, as the case may be, also in the other.

Pleaders, etc., not to be suspended or dismissed without being heard.

40. Notwithstanding anything hereinbefore contained, no pleader, mukhtar or revenue-agent shall be suspended or dismissed under this Act unless he has been allowed an opportunity of defending himself before the Authority suspending or dismissing him.

Power for certain High Courts to enrol advocates.

[4]41. (1) A High Court not established by Royal Charter [5][in respect of which the Indian Bar Councils Act, 1926, is not in force] may, four time to time, with the previous sanction of the Provincial Government, make rules as to the qualifications and admission of proper persons to be advocates of the Court, and, subject to such rules, may enrol such and so many advocates as it thinks fit.

(2) Every advocate so enrolled shall be entitled to appear for the suitors of the Court, and to plead or to act, or to plead and act, for those suitors according as the Court may by its rules determine, and subject to those rules.

LEG. REF.

1 Inserted by Act I of 1908, sec. 5.

2 Substituted by Act IX of 1884, sec. 7.

3 The last clause was added by Schedule to Act XXXVIII of 1926 (Indian Bar Councils Act).

4 Substituted by Act X of 1884, sec. 8, for the original section.

5 The words within brackets after 'Royal Charter' were inserted by Act XXXVIII of 1926.

SEC. 40: SCOPE OF THE SECTION.—The provisions of sec. 40 apply to interim orders of suspension passed under sec. 14, para. 5; before an interim order of suspension is passed under sec. 14 (5) he must be asked to show cause under sec. 40 and a report must be sent to the High Court under sec. 14 (4). 15 C.W.N. 269=9 I.C. 225. *See also* 163 I.C. 586=1936 Rang. 249.

SEC. 41: SUSPENSION OF PRACTICE ON ENTERING GOVERNMENT SERVICE—APPLICATION FOR RENEWAL OF SANAD.—Where a practitioner is suspended from practice owing to his accepting a Government service, and he applies for renewal of the permission after his discharge from such service, he should make a full and true disclosure of the facts which led to his removal from service. 62 I.C. 831 (C.)=22 Cr.L.J. 591. In the enquiry under Legal Practitioners Act of an advocate, the conviction of the advocate by a competent Magistrate must be accepted as proper, and cannot be reopened. 44 A. 352 =65 I.C. 500=1922 A. 140 (F.B.). The power to rescind order under sec. 41 possessed by the Court of the Judicial Commissioner of Oudh vests in the Chief Court. But as the order passed by the Bench of the Judicial Commissioner's Court was confirmed by the Local Government, it should not be rescinded without its confirmation. 148 I.C. 299=1934 O. 140 (S.B.). Where a legal practitioner has been sufficiently punished by having remained debarred from practice for about fifteen years and he has tendered an unconditional apology the order under sec. 41 should be rescinded. 148 I.C. 299= 1934 O. 140 (S.B.). There is inherent power in the High Court to restore a pleader whose name has been struck off the rolls although there is no express provision for a review

(3) The High Court may dismiss any advocate so enrolled or suspend him from practice.

(4) Provided that an advocate shall not be dismissed or suspended under this section unless he has been allowed an opportunity of defending himself before the High Court which enrolled him, and [1][except in the case of the Chief Court of Oudh] unless the order of the High Court dismissing or suspending him has been confirmed by the Provincial Government.

42. *Repealed by the Repealing Act,* 1938 (*I of* 1938), *Section* 2 *and Schedule.*

FIRST SCHEDULE.

ENACTMENTS REPEALED.

[*Repealed by Act I of* 1938.]

SECOND SCHEDULE.

VALUE OF STAMPS FOR CERTIFICATES.

(*See* section 25.)

I

For a certificate authorising the holder to practise as a pleader—

(*a*) in the High Court and any Subordinate Court—rupees fifty;

(*b*) in any Court of Small Causes in Presidency-town—rupees twenty-five;

(*c*) in all other Subordinate Court—rupees twenty-five;

(*d*) in the Courts of Subordinate Judges, Munsifs, Assistant Commissioners, Extra Assistant Commissioners and Tahsildars, in Courts of Small Causes outside the Presidency-towns and in all Criminal Courts subordinate to the High Court—rupees fifteen;

(*e*) in the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned—rupees five.

II

For a certificate authorising the holder to practise as a mukhtar—

(*f*) in the High Court and any Subordinate Court—rupees twenty-five;

(*g*) in any Court of Small Causes in a Presidency-town—rupees fifteen;

(*h*) in all other Subordinate Courts—rupees fifteen;

(*i*) in the Courts of Subordinate Judges, Munsifs, Assistant Commissioners, Extra Assistant Commissioners and Tahsildars, in Courts of Small Causes outside the Presidency-towns and in all Criminal Courts subordinate to the High Court—rupees ten;

(*j*) in the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned—rupees five.

III

For a certificate authorising the holder to practise as a revenue agent—

(*k*) in the office of the Chief Controlling Revenue-authority and in any revenue-office subordinate to such authority—rupees fifteen;

(*l*) in the office of a Commissioner and in any revenue-office subordinate to a Commissioner—rupees ten;

(*m*) in the office of a Collector and in any revenue-office subordinate to a Collector —rupees five.

THE LEGAL PRACTITIONERS (MADRAS AMENDMENT) ACT (III OF 1943).

[23*rd February,* 1943.

An Act further to amend the Legal Practitioners Act, 1879, *in its application to the Province of Madras.*

WHEREAS it is expedient further to amend the Legal Practitioners Act, 1879, in its application to the Province of Madras, for the purposes hereinafter appearing;

AND WHEREAS, the Governor of Madras has, by a Proclamation under section 93 of the Government of India Act, 1935, assumed to himself all powers vested by or under the said Act in the Provincial Legislature;

LEG. REF.

[1] Inserted by sec. 2 and Sch. of Act XXXII of 1925.

Legal Practitioners Act. 156 I.C. 243=1935 A. 321 (F. B.).

NOW, THEREFORE, in exercise of the powers so assumed to himself, the Governor is pleased to enact as follows:—

Short title.

1. This Act may be called THE LEGAL PRACTITIONERS (MADRAS AMENDMENT) ACT, 1943.

Insertion of new section 15-A in Act XVIII of 1879.

2. After section 15 of the Legal Practitioners Act, 1879 (hereinafter referred to as the said Act), the following section shall be inserted, namely:—

High Court's power to pass orders as to costs.

"15-A. When passing an order under section 13, section 14 or section 15, the High Court may pass such order as it thinks fit as regards the payment of the costs of the inquiry under section 13, or of the inquiry under section 14 and the hearing in the High Court, as the case may be."

Amendment of section 36, Act XVIII of 1879.

3. In section 36 of the said Act—

(*a*) in sub-section (1), after the words "Sessions Judge," the words "Subordinate Judge, District Munsif," shall be inserted, after the words "District Magistrate", the words "Sub-Divisional Magistrate" shall be inserted, and after the words "Collector of a district," the words "the Madras City Civil Court" shall be inserted;

(*b*) in sub-section (2-A), for the words "may send to any Court", the words, brackets, figure and letter "may, of its own motion or on a report from the Committee referred to in sub-section (2-B), send to any Court" shall be substituted;

(*c*) after sub-section (2-A), the following sub-section shall be inserted, namely:—

"(2-B) (i) There shall be constituted at the Presidency-town of Madras a Committee consisting of seven legal practitioners in active practice appointed by the Chief Judge of the Court of Small Causes, Madras, after consulting the Principal Judge of the Madras City Civil Court, the Chief Presidency Magistrate and the representatives of the Advocates' Association and the Bar Association, Madras.

(ii) There shall be constituted at the headquarters of each District Judge and at the headquarters of each taluk comprised within the jurisdiction of a District Judge not being his own headquarters, a Committee consisting of not less than three and not more than five legal practitioners in active practice, appointed by the District Judge after consulting the salaried gazetted Judicial Officers, Civil and Criminal, at such headquarters or having jurisdiction over the taluk in which such headquarters are situated or any part of such taluk.

(iii) Every member of a Committee constituted under clause (*i*) or clause (*ii*) shall hold office for a renewable term of three years but may resign his office earlier or may be removed therefrom by the Chief Judge of the Court of Small Causes, Madras, or the District Judge, as the case may be, for sufficient cause recorded in writing. The Chief Judge or District Judge shall, subject to the provisions of clause (*i*) or clause (*ii*), as the case may be, have power to fill any vacancy in the Committee arising by resignation, death or removal.

(iv) The Committee constituted at the Presidency-town of Madras may be consulted in connexion with any action proposed to be taken under sub-section (1) or (2-A) by any Court which, or any Judge, Magistrate or Officer whose Court or Office, is situated at the Presidency-town of Madras.

(v) The Committee constituted at the headquarters of any District Judge may be consulted in connexion with any action proposed to be taken under sub-section (1) or (2-A) by any Court which, or any Judge, Magistrate or Officer whose Court or Office, is situated at such headquarters and also by any Court, Judge, Magistrate or Officer having jurisdiction over the taluk in which such headquarters are situated or any part of such taluk.

(vi) The Committee constituted at the headquarters of any taluk may be consulted in connexion with any action proposed to be taken under sub-section (1) or (2-A) by any Court, Judge, Magistrate or Officer having jurisdiction over the taluk or any part thereof.

(vii) Any Committee may report the name of any person alleged or suspected to be a tout to any Court, Judge, Magistrate or Officer entitled to consult it under clause (*vv*) or clause (*v*) or clause (*vi*), as the case may be, for such action as such Court, Judge, Magistrate or Officer may deem fit to take under this section.

(viii) Every Committee shall function solely in an advisory capacity and its opinion or report shall not be binding in any way on any Court, Judge, Magistrate or Officer", and

(*d*) after sub-section (6), the following sub-section shall be added, namely:—

"(7) (*a*) If the offence referred to in sub-section (6) is alleged to have been committed by any person, the authority by which his name was included in the list of touts shall also be competent, notwithstanding anything contained in the Code of Criminal Procedure, 1898, to take cognizance of and try such offence and sentence such person if found guilty.

(*b*) Any person sentenced under clause (*a*) by any authority other than the High Court may, notwithstanding anything contained in the Code of Criminal Procedure, 1898, appeal—

(i) in case he is sentenced by a District Munsif or Sub-divisional Magistrate to the authority to which appeals ordinarily lie from decrees, sentences or orders passed by such District Munsif or Sub-divisional Magistrate; and

(ii) in other cases to the High Court.

(*c*) The provisions of Chapter XXXI of the Code aforesaid shall, so far as they are applicable, apply to appeals under clause (*b*) and the appellate authority may alter or reverse the finding or reduce or reverse the sentence appealed against."

THE LEGAL PRACTITIONERS (WOMEN) ACT (XXIII OF 1923).

[*2nd April*, 1923.

An Act for the removal of doubts regarding the right of women to be enrolled and to practise as legal practitioners.

WHEREAS it is expedient to remove certain doubts which have arisen as to the right of women to be enrolled and to practise as legal practitioners;

It is hereby enacted as follows:—

Short title and extent.

1. (1) This Act may be called THE LEGAL PRACTITIONERS (WOMEN) ACT, 1923.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

Definition.

2. In this Act, "Legal practitioner" means a legal practitioner as defined in section 3 of the Legal Practitioners Act, 1879.

Women not to be disqualified by reason only of sex.

3. Notwithstanding anything contained in any enactment in force in British India or in the Letters Patent of any High Court or in any rule or order made under or in pursuance of any such enactment or Letters Patent, no woman shall, by reason only of her sex, be disqualified from being admitted or enrolled as a legal practitioner or from practising as such; and any such rule or order which is repugnant to the provisions of this Act shall, to the extent of such repugnancy, be void.

THE LEGAL PRACTITIONERS (FEES) ACT (XXI OF 1926).[1]

Year.	No.	Short title.	Amendment.
1926	XXI	The Legal Practitioners (Fees) Act (XXI of 1926).	Repealed in part : XII of 192 .

[25*th March*, 1926.

An Act to define in certain cases the rights of legal practitioners to sue for their fees and their liabilities to be sued in respect of negligence in the discharge of their professional duties.

WHEREAS it is expedient to define in certain cases the rights of legal practitioners to sue for their fees and their liabilities to be sued in respect of negligence in the discharge of their professional duties; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Act may be called THE LEGAL PRACTITIONERS (FEES) ACT, 1926.

(2) It extends to the whole of British India.

(3) It shall come into force on such date[2] as the Central Government may, by notification in the Official Gazette, appoint.

Interpretation.

2. For the purposes of this Act unless there is anything repugnant in the subject or context,—

(*a*) "legal practitioner" means a legal practitioner as defined in section 3 of the Legal Practitioners Act, 1879; and

(*b*) a legal practitioner shall not be deemed to "act" if he only pleads, or to agree to "act" if he agrees only to plead.

Agreement for engagement of legal practitioner.

3. Any legal practitioner who acts or agrees to act for any person may by private agreement settle with such person the terms of his engagement and the fee to be paid for his professional services.

Right of legal practitioner to sue for fees.

4. Any such legal practitioner shall be entitled to institute and maintain legal proceedings for the recovery of any fee due to him under the agreement, or, if no such fee has been settled, a fee computed in accordance with the law

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LEG. REF.

[1] For Statement of Objects and Reasons, see *Gazette of India*, 1926, Part V, p. 19.

[2] This Act was brought into force on 1st June, 1926. See *Gazette of India*, 1926, Part I, p. 514.

SECS. 3 AND 4.—A legal practitioner can not only by private agreement settle with a client the terms and fee but also sue for his fee due under that agreement and the former cannot be said to stand in any confidential relation towards the latter in view of the plain language of secs. 3 and 4. Such a private agreement can be impugned like any other contract and in case the agreement is avoided then the fee would have to be computed according to the rules for the time being in force as provided in sec. 4. 132 I C. 719=1931 R. 104. Where the fee payable is not settled with the client under sec. 3 then under sec. 4 the pleader is entitled only to such fee as would come to on computation, in accordance with the law for the time being in force in regard to the computation of the costs to be awarded to a party in respect of the fee of his legal practitioner. 1931 P. 137=131 I.C. 542; 9 P. 865. Where a client engaged a pleader and filed a vakalatnama in his favour but it was not signed by the pleader, the pleader is entitled to his remuneration for the work done by him on the principle of *quantum meruit*. 1931 P. 137=131 I.C. 542. When there are several gentlemen retained by a client in the same vakalatnama, each of the vakils is entitled to claim from his client the full fee stipulated for by him and not merely a share in the single fee allowed as against the losing party. (38 I.C. 210, Foll.; 7 C.W.N. 300, Not foll.) 1931 P. 137=131 I.C. 542; 18 Pat. 213=20 Pat.L.T. 352.

SEC. 4.—The right of a Barrister-at Law to appear in the High Court and in the Courts

for the time being in force in regard to the computation of the costs to be awarded to a party in respect of the fee of his legal practitioner.

5. No legal practitioner who has acted or agreed to act, shall, by reason only of being a legal practitioner, be exempt from liability to be sued in respect of any loss or injury due to any negligence in the conduct of his professional duties.

Liability of legal practitioner to be sued.

Repeals.

6. [*Repealed by the Repealing Act, XII of* 1927.]

THE LEGAL REPRESENTATIVES' SUITS ACT (XII OF 1855).[1]

Short title given by Act XIV of 1897.

Year.	No.	Short title.	Amendment.
1855	XII	The Legal Representatives' Suits Act 1855.	Repealed in part, IX of 1871.

Declared in force—Throughout British India except as regards the Scheduled Districts Act XV of 1874, S. 3; in the Sonthal Parganas, Reg. 3 of 1872, S. 3, as amended by Reg. 3 of 1899 S. 3; in the Angul District Reg. 3 of 1913, S. 3; in Upper Burma (except the Shan States) Act XIII of 1898, S. 4.

[27*th March*, 1855.

An Act to enable Executors, Administrators or Representatives to sue and be sued for certain wrongs.

WHEREAS it is expedient to enable executors, administrators or representatives in certain cases to sue and be sued in respect of certain wrongs which, according to the present law, do not survive to or against such executors, administrators or representatives; It is enacted as follows:—

Preamble.

1. An action may be maintained by the executors, administrators or

LEG. REF.

[1] Short title. "The Legal Representatives' Suits Act, 1855." *See* the Indian Short Titles Act (XIV of 1897).

subordinate to it arises from his enrolment as an Advocate not otherwise. The peculiar position of a Barrister-at-Law in England disappears here on his enrolment as an Advocate his rights, duties and disabilities are the same as those of any other non-Barrister Advocate. He can sue the client, settle his fees, and act for him, with or without the intervention of a solicitor. A Barrister practising as an Advocate in the High Court can accordingly sue his client for recovery of fees due. (25 A. 509, over.) 55 A. 570=1933 A.L.J. 541=1933 A. 417 (F.B.). There is no provision in the C.P. Legal Practitioners' Fees Rules for the case in which a pleader who has been engaged in the suit itself is re-engaged by the assignee decree-holder and no pleader's fee can be allowed in execution afresh. 144 I.C. 379=1933 N. 360. Where no fee had been settled by agreement, the legal practitioner would be entitled to his legal fees and not merely to a reasonable remuneration. 167 I.C. 505 (1)=1927 N. 32=I.L.R. (1937) N. 412. Where a party agrees to pay his Advocate a particular fee for a particular case, the Advocate is entitled to sue for the full fee, though owing to the collapse unexpectedly of the opposite side's case, the Advocate had not to do the quantity of work originally expected of him. 1942 N. L.J. 225.

SEC. 1: LEGAL REPRESENTATIVES SUITS ACT.—Act does not apply during the pendency of a suit for damages for malicious prosecution by the manager of a joint Hindu family when he dies, since the Act relates to the maintainability of the suit, and not to its continuation, and since the surviving members are not the manager's representatives. 31 I.C. 4. S. 89 of the Probate and Administration Act is designed to protect suits for wrongs done to the property of a deceased person, but do not extend that protection to compensation for personal in-

Executors may sue and be sued in certain cases for wrongs committed in lifetime of deceased.

representatives of any person deceased for any wrong committed in the lifetime of such person which has occasioned pecuniary loss to his estate, for which wrong an action might have been maintained by such person, so as such wrong shall have been committed within one year before his death [1][ ]; and the damages, when recovered, shall be part of the personal estate of such person;

and further, an action may be maintained against the executors or administrators or heirs or representatives of any person deceased for any wrong committed by him in his lifetime for which he would have been subject to an action, so as such wrong shall have been committed within one year before such person's death [2][* * *]; and the damages to be recovered in such action shall, if recovered against an executor or administrator bound to administer according to the English law, be payable in like order of administration as the simple contract debts of such person.

Death of either party not to abate suit.

2. No action commenced under the provisions of this Act shall abate by reason of the death of either party, but the same may be continued by or against the executors, administrators or representatives of the party deceased;

Proviso.

Provided that, in any case in which any such action shall be continued against the executors, administrators or representatives of a deceased party, such executors, administrators, or representatives may set up a want of assets as a defence to the action, either wholly or in part, in the same manner as if the action had been originally commenced against them.

THE LEGISLATIVE ASSEMBLY (DEPUTY PRESIDENT'S SALARY) ACT (II OF 1921).

[27*th March*, 1921.

An Act to determine the salary of the Deputy President of the Legislative Assembly.

Preamble.

WHEREAS it is provided by sub-section (5) of section 63-C of the Government of India Act that the Deputy President of the Legislative Assembly shall receive such salary as may be determined by Act of the Indian Legislature; It is hereby enacted as follows:—

Short title.

1. This Act may be called THE LEGISLATIVE ASSEMBLY (DEPUTY PRESIDENT'S SALARY) ACT, 1921.

Salary of Deputy President.

2. There shall be paid to the Deputy President of the Legislative Assembly in respect of any period during which he is engaged on work connected with the business of the said Assembly, a salary calculated at the rate of one thousand rupees per mensem.

Decision in case of doubt.

3. If any question arises whether during any period the Deputy President was engaged on work connected with the business of the Legislative Assembly, the question shall be referred for decision to the President of the said Assembly, and his decision shall be final.

[3][4. On the establishment of the Federation of India this Act shall cease to have effect.] (Inserted by A.O., 1937).

LEG. REF.

[1] Repealed by Act IX of 1871, Sch. I.
[2] Repealed by Act IX of 1871, S. 2.
[3] Inserted by A.O., 1937.

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jury the right to which dies with the death of the person injured. The right to sue for legal expenses or other losses caused to a person due to a malicious prosecution instituted against him is a personal right and it does not survive to the legal representative of such person. 48 A. 630=1926 A. 670 Applicability of Act to cases not covered by Private and Administration Act of 1881—Doctrine of *actio personalis moritur cum persona* not applicable in India. 1927 C. 277=53 C. 987. *See also* 31 Cal. 406=8

THE LEGISLATIVE MEMBERS EXEMPTION ACT (XXII OF 1925).

[*The whole of this Act was repealed by I of 1938.*]

THE LEPERS ACT (III OF 1898).[1]

Year.	No.	Short Title.	Amendments.
1898	III	The Lepers Act, 1898.	Rep. in part, Act I of 1903. Amended : Act XIII of 1903 ; Act XXII of 1920.

[*4th February*, 1898.

An Act to provide for the segregation and medical treatment of pauper lepers and the control of lepers following certain callings.

WHEREAS it is expedient to provide for the segregation and medical treatment of pauper lepers and the control of lepers following certain callings; It is hereby enacted as follows:—

Title, extent and commencement.

1. (1) This Act may be called THE LEPERS ACT, 1898.

(2) It extends to the whole of British India, inclusive of * * *[2] British Baluchistan, the Sonthal Parganas and the Pargana of Spiti; but

(3) It shall not come into force in any part thereof until the Provincial Government, as hereinafter provided, has declared it applicable thereto.

(4) The Provincial Government may, by notification[3] in the Official Gazette, apply this Act or any part thereof to the whole or any portion of the territories for the time being under its administration[4] * * *.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,

(1) "leper" means any person suffering from any variety of leprosy [5]* * * *;

(2) "pauper leper" means a leper—

(*a*) who publicly solicits alms or exposes or exhibits any sores, wounds, bodily ailment or deformity with the object of exciting charity or of obtaining alms, or

(*b*) who is at large without any ostensible means of subsistence;

(3) "leper asylum" means a leper asylum appointed under section 3;

(4) "Board" means a Board constituted under section 5; and

(5) "District Magistrate" includes a Chief Presidency Magistrate.

[6][3. The Provincial Government may, by notification[7] in the Official

LEG. REF.

1 For statement of Objects and Reasons, *see* Gazette of India, 1896, Pt. V, p. 231; for Report of the Select Committee, *see ibid.*, 1898, Pt. V, p. 7; and for Proceedings in Council, *see ibid.*, 1896, Pt. VI, p. 227; *ibid.*, 1897, Pt. VI, p. 248 and *ibid.*, 1898, Pt. VI, pp. 10 and 18.

The Act has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), *see* sec. 4 (1) and First Schedule.

The Act have been declared in force in Arakan Hill District, by Regulation I of 1916, S. 2, *see* Burma Code, Vol. I; in the Pargana of Manpur with modifications under sec. 2 of the Manpur Laws Regulation, 1926 (II of 1926).

2 The words "Upper Burma" were repealed by the Burma Laws Act, 1898 (XIII of 1898), *see* the Fifth Schedule.

3 For notifications under this sub-section, *see* the different Local Rules and Orders.

4 Omitted by S. 2 of the Lepers (Amendment) Act, 1920 (XXII of 1920).

5 Omitted by sec. 3, *ibid.*

6 This section was substituted by sec. 4 of the Lepers (Amendment) Act, 1920 (XXII of 1920).

7 For notification under this section, *see* the different Local Rules and Orders.

C.W.N. 329; 28 Mad. 497; 13 Bom. 677; 1 W.R. 251.

It has been declared in force in the Sonthal Parganas, *see* Regulation III of 1872, sec. 3, as amended by Regulation III of 1896, sec. 3. This Act has not yet been brought into force in the Madras Presidency.

Appointment of leper asylums by Provincial Government.

Gazette, appoint any place to be a leper asylum if it is satisfied that adequate arrangements have been made or will be made for the accommodation and medical treatment of lepers therein, and may, by a like notification, specify the local areas from which lepers may be sent to such asylum.]

Appointment of Inspectors of lepers and Superintendents of Asylums.

4. Subject to any rules which may be made under section 16, the Provincial Government may appoint any Medical Officer of the Government or other qualified medical man to be an Inspector[1] of Lepers and any person to be a Superintendent[1] of a Leper Asylum, with such establishment as may, in its opinion, be necessary, and every Inspector or Superintendent so appointed shall be deemed to be a public servant.

Constitution of Board.

5. The Provincial Government shall constitute for every leper asylum appointed under section 3 a Board[2] consisting of not less than three members, one of whom at least shall be a Medical Officer of the Government.

Arrest of pauper lepers.

6. (1) Within any local area which has been specified under section 3 any police-officer [3][or any other person specially empowered by the Provincial Government by order in writing in this behalf] may arrest without a warrant any person who appears to him to be a pauper leper.

(2) Such police-officer [3][or other person] shall forthwith take or send the person so arrested to the nearest convenient police-station.

Person arrested how to be dealt with.

7. Every person brought to a police-station under the last foregoing section shall, without unnecessary delay, be taken before an Inspector of Lepers, who,—

(*a*) if he finds that such person is not a leper within the meaning of section 2, shall give him a certificate in Form A set forth in the schedule, whereupon such person shall be forthwith released from arrest;

(*b*) if he finds that such person is a leper within the meaning of section 2, shall give to the police-officer, in whose custody the leper is, a certificate in Form B set forth in the schedule, whereupon the leper shall, without unnecessary delay, be taken before a Magistrate having jurisdiction under this Act.

Procedure with regard to pauper lepers.

8. (1) If it appears to any Presidency Magistrate or Magistrate of the first class or to any other Magistrate authorised in this behalf by the Provincial Government, upon the certificate in Form B set forth in the schedule, that any person is a leper, and if it further appears to the Magistrate that the person is a pauper leper, he may, after recording the evidence on the above-mentioned points, and his order thereon, send the pauper leper in charge of a police-officer, together with an order in Form C set forth in the schedule, to a leper asylum, where such leper shall be detained until discharge by order of the Board or the District Magistrate:

Provided that, if the person denies the allegation of leprosy, the Magistrate shall call and examine the Inspector of Lepers, and shall take such further evidence as may be necessary to support or to rebut the allegation that the person is a leper, and may for this purpose adjourn the enquiry from time to time, remanding the person for observation or for other reason to such place as may be convenient, or admitting him to bail:

LEG. REF.

[1] For appointments of such Inspectors and Superintendents, *see* the different Local Rules and Orders.

[2] For notifications constituting such Board, *see* the different Local Rules and Orders.

[3] These words were inserted by sec. 5 of the Lepers (Amendment) Act, 1920 (XXII of 1920).

Provided also that if any friend or relative of any person found to be a pauper leper shall undertake in writing to the satisfaction of the Magistrate that such pauper leper shall be properly taken care of and shall be prevented from publicly begging in any area specified under section 3, the Magistrate, instead of sending the leper to an asylum, may make the leper over to the care of such friend or relative, requiring him, if he thinks fit, to enter into a bond with one or more sureties, to which the provisions of section 514 of the Code of Criminal Procedure[1] shall be applicable.

(2) If the Magistrate finds that such person is not a leper, or that, if a leper, he is not a pauper leper, he shall forthwith discharge him.

Power to prohibit lepers from following certain trades and doing certain acts

9. (1) The Provincial Government may, by notification[2] in the Official Gazette, order that no leper shall, within any area specified under section 3,—

(*a*) personally prepare for sale or sell any article of food or drink or any drugs or clothing intended for human use; or

(*b*) bathe, wash clothes or take water from any public well or tank debarred by any municipal or local by-law from use by lepers; or

(*c*) drive, conduct or ride in any public carriage plying for hire other than a railway carriage; or

(*d*) exercise any trade or calling which may by such notification be prohibited to lepers.

(2) Any such notification may comprise all or any of the above prohibitions.

(3) Whoever disobeys any order made pursuant to the powers conferred by this section shall be punishable with fine which may extend to twenty rupees:

Provided that, when any person is accused of an offence under this section, the Magistrate before whom he is accused shall cause him to be examined by an Inspector of Lepers, and shall not proceed with the case unless such Inspector furnishes a certificate, in Form B set forth in the schedule, in respect of such person.

Conviction after previous conviction.

10. (1) Whenever any leper who has been convicted of an offence punishable under the last foregoing section is again convicted of any offence punishable under that section, the Magistrate may, in addition to, or in lieu of, any punishment to which such leper may be liable, require him to enter into a bond, with one or more sureties, binding him to depart forthwith from the local area specified under section 3 in which he is, and not to enter that or any other local area so specified until an Inspector of Lepers shall have given him a certificate in Form A set forth in the schedule.

(2) If any such leper fails to furnish any security required under subsection (1), the Magistrate may send him in charge of a police officer, with an order in Form D set forth in the schedule, to a leper asylum, where such leper shall be detained until discharged by order of the Board or the District Magistrate.

(3) The powers conferred by this section shall only be exercised by a Presidency Magistrate or Magistrate of the first class.

Penalty on person employing lepers in prohibited trade.

11. Any person who, within any area specified under section 3, knowingly employs a leper in any trade or calling prohibited by order under section 9 shall be punishable with fine which may extend to fifty rupees:

LEG. REF.

[1] *See* now Act V of 1898.

[2] For notifications issued in exercise of the powers conferred by this section, *see* the different Local Rules and Orders.

Provided that the alleged leper shall be produced before the Magistrate and the Magistrate shall cause him to be examined by an Inspector of lepers, and shall not proceed with the case unless such Inspector furnishes a certificate in Form B set forth in the schedule in respect of such alleged leper.

Re-arrest of escaped lepers.

12. Whoever, having been sent to a leper asylum under an order of a Magistrate in Form C or Form D set forth in the schedule, escapes from, or leaves, the asylum without the permission in writing of the Superintendent thereof, may be arrested [1][without a warrant by any police-officer or by any other person especially empowered by the Provincial Government by order in writing in this behalf,] and upon arrest shall be forthwith taken back to the leper asylum.

Inspection by Board.

13. Two or more members of the Board, one of whom shall be the Medical Officer shall, once at least in every three months, together inspect the leper asylum for which they are constituted, and see and examine (*a*) every leper therein admitted since the last inspection, together with the order for his admission, and (*b*), as far as circumstances will permit, every other leper therein, and shall enter in a book to be kept for the purpose any remarks which they may deem proper in regard to the management and condition of the asylum and the lepers therein.

Order of discharge by Board.

14. Any two members of the Board, one of whom shall be the Medical Officer, may at any time, by an order in writing in Form E set forth in the schedule and signed by them, direct the discharge from the leper asylum of any leper detained therein under the provisions of this Act.

Appeals.

15. Any person, other than a pauper leper, in respect of whom an Inspector of Lepers has issued a certificate, in Form B set forth in the schedule, declaring him to be a leper, or has refused to issue a certificate in Form A set forth in the schedule, may appeal against the issue or refusal of any such certificate to such officer[2] as may be appointed by the Provincial Government in this behalf, and the decision of such officer shall be final.

Power of the Provincial Government to make rules.

16. The Provincial Government may, by notification in the Official Gazette, make rules[3] generally for carrying out the purposes of this Act, and in particular—

(*a*) for the guidance of all or any of the officers discharging any duty under this Act; and

(*b*) for the management of, and the maintenance of discipline in, a leper asylum.

Power to local authorities to expend funds and appropriate property to asylums.

17. Notwithstanding anything in any enactment with respect to the purposes to which the funds or other property of a local authority may be applied, any local authority may—

(*a*) establish or maintain, or establish and maintain, or contribute towards the cost of the establishment or maintenance or the establishment and maintenance of a leper asylum either within or without the local limits of such local authority;

(*b*) with the previous sanction of the Provincial Government and subject to such conditions as that Government may prescribe, appropriate any immovable property vested in, or under the control of, such body, as a site for, or for use as, a leper asylum.

LEG. REF.

[1] These words were substituted by sec. 6 of the Lepers (Amendment) Act, 1920 (XXII of 1920).

[2] The Principal of the Medical College, Calcutta, is the officer appointed for Bengal, *see* Ben. R. and O.; and the Commissioner of Thirhut for the asylum at Muzaffarpur, *see* Calcutta Gazette, 1909, Pt. I, p. 959.

[3] For rules made in exercise of the powers conferred by this section, *see* the different Local Rules and Orders.

Protection to persons acting *bona fide* under Act.

18. No suit, prosecution or other legal proceeding shall lie against any officer or person in respect of anything in good faith[1] done or intended to be done under, or in pursuance of, the provisions of this Act.

Lepers from Indian States.

[2][19. The [3][Provincial Government] may, by notification[4] in the Official Gazette, direct that any leper or class of lepers, with respect to whom an order for segregation and medical treatment has been made by a Magistrate having jurisdiction within [5][any Indian State] may be sent to any leper asylum [6][in the Province] specified in such order; and thereupon the provisions of this Act and of any rules made thereunder shall, with such modifications not affecting the substance as may be reasonable and necessary to adapt them to the subject-matter, apply to any leper sent to a leper asylum in pursuance of such notification as though he had been sent by the order of a Magistrate having jurisdiction under this Act.

SCHEDULE.

A.—CERTIFICATE.

(*Section 7.*)

I, the undersigned (*here enter name and official designation*), hereby certify that I on the day of at personally examined (*here enter name of person examined*), and that the said is not a leper as defined by the Lepers Act, 1898.

Given under my hand this day of 189 .

(*Signature.*)
Inspector of Lepers.

B.—CERTIFICATE.

(*Section 7.*)

I, the undersigned (*here enter name and official designation*), hereby certify that I on the day of at personally examined (*here enter name of person examined*), and that the said is not a leper as defined by the Lepers Act, 1898, and that I have formed this opinion on the following grounds, namely:—

(*Here state the grounds.*)

Given under my hand this day of 189 .

(*Signature.*)
Inspector of Lepers.

C.—WARRANT OF DETENTION.

(*Section 8.*)

To

THE SUPERINTENDENT OF THE LEPER ASYLUM AT

WHEREAS it has been made to appear to me that (*name and description*) is a pauper leper as defined in the Lepers Act, 1898.

This is to authorise you, the said Superintendent, to receive the said him into your custody together with this order and ——— safely to keep in the said asylum until he / her ——— shall be discharged by order of the Board or the District Magistrate. she

Given under my hand and the seal of the Court this day of 189 .

(*Signature.*)
Magistrate.

LEG. REF.

1 As to definition of good faith, *see* sec. 3 (20) of the General Clauses Act, 1897 (X of 1897).

2 Added by the Lepers (Amendment) Act, 1903 (XIII of 1903) sec. 2. The original sec. 19 was repealed by the Repealing and Amending Act, 1903 (I of 1903).

3 Substituted for 'Governor-General in Council' by A.O., 1937.

4 For a notification under this section, *see* Gazette of India, 1919, Pt. I, p. 1931, and Gen. R. and O., Vol. III, p. 204.

5 Substituted for 'the territories of any Native Prince, etc.' by A.O., 1937.

6 Inserted by *Ibid.*

D.—WARRANT OF DETENTION.
(*Section* 10.)

To

THE SUPERINTENDENT OF THE LEPER ASYLUM AT

WHEREAS (*name and description*) has this day been convicted by me of an offence punishable under section 9 of the Lepers Act, 1898, and whereas it has been proved before me that the said (*name and description*) was previously convicted of an offence punishable under the same section:

This is to authorise you, the said Superintendent, to receive the said him into your custody together with this order and ——— safely to keep in the said asylum until her he ——— shall be discharged by order of the Board or the District Magistrate. she

Given under my hand and the seal of the Court this day of 189 .

(*Signature.*)
Magistrate.

E.—ORDER OF DISCHARGE BY BOARD.[1]
(*Section* 14.)

To

THE SUPERINTENDENT OF THE LEPER ASYLUM AT

WHEREAS (*name and description*) was committed to your custody under an order dated the day of he 189 and there have appeared to us sufficient grounds for the opinion that ——— can be released without hazard or inconvenience she to the community:

This is to authorise and require you forthwith to discharge the said (*name*) from your custody.

Given under our hands this day of 189 .

(*Signature.*)
Members of the Asylum Board.

LETTERS PATENT (ALLAHABAD.)

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LEG. REF.

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Establishing a High Court in the North Western Provinces of the Bengal Presidency, dated 17th March, 1866.

Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith. To all to whom these presents shall come, greeting: Whereas by an Act of Parliament passed in the twenty-fourth and twenty-fifth years of Our reign, entitled "An Act for establishing High Courts of Judicature in India", it was amongst other things enacted that it shall be lawful for Her Majesty, by Letters Patent under the Great seal of the United Kingdom, to erect and establish a High Court of Judicature at Fort William in Bengal, for the Bengal division of the Presidency of Fort William, aforesaid, and that such High Court should consist of a Chief Justice and as many Judges not exceeding fifteen, as Her Majesty might, from time to time, think fit to appoint who shall be selected from among persons qualified as in the said Act is declared: Provided always that the persons who at the time of the establishment of such High Court were Judges of the Supreme Court of Judicature and permanent Judges of the Court of Sudder Dewany Adawlut or Sudder Adawlut of the same presidency, should be and become Judges of such High Courts without further appointment for that purpose, and the Chief Justice of such Supreme Court should become the Chief Justice of such High Court, and that, upon the establishment of such High Court as aforesaid, the Supreme Court and the Court of Sudder Dewany Adawlut and Sudder Nizamut Adawlut at Calcutta, in the said Presidency, should be abolished:

Recital of Acts 24 and 25, Vict., c. 104.

And that the High Court of Judicature so to be established should have and exercise all such civil, criminal, admiralty and vice-admiralty, testamentary, intestate and matrimonial jurisdiction, original and appellate, and all such powers and authority for and in relation to the administration of justice in the said Presidency as Her Majesty might, by such Letters Patent, as aforesaid, grant and direct, subject, however, to such directions and limitations as to the exercise of original, civil and criminal jurisdiction beyond the limits of the Presidency town as might be prescribed thereby; and save as by such Letters Patent might be otherwise directed, and subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor-General of India in Council, the High Court so to be established should have and exercise all jurisdiction, and every power and authority whatsoever in any manner vested in any of the Courts in the same Presidency abolished under the said Act at the time of the abolition of such last-mentioned Courts:

And whereas it is further declared by the said recited Act that it shall be lawful for Us by Letters Patent, to erect, and establish a High Court of Judicature in and for any portion of the territories, within Her Majesty's dominions in India, not included within the limits of the local jurisdicton of another High Court, to consist of a Chief Justice and such number of other

Judges, with such qualifications as were by the same Act required in persons to be appointed to the High Courts, established at the said Presidencies, as We from time to time might think fit and appoint; and that, subject to the directions of the Letters Patent, all the provisions of the said recited Act, relative to High Courts and to the Chief Justice and other Judges of such Courts, and to the Governor-General or Governor of the Presidency, in which such High Courts were established, shall, as far as circumstances may permit, be applicable to any new High Court which may be established in the said territories, and to the Chief Justice and other Judges thereof, and to the persons administering the Government of the said territories:

And whereas We did, upon full consideration of the premises, think fit to erect and establish, and by Our Letters Patent under the Great seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster, the fourteenth day of May, in the twenty-fifth year of Our reign, in the year of our Lord one thousand eight hundred and sixty-two did accordingly, for Us, Our heirs and successors, erect and establish at Fort William in Bengal, for the Bengal Division of the Presidency of Fort William in Bengal, aforesaid, a High Court of judicature which should be called the High Court of Judicature at Fort William in Bengal, and did thereby constitute the said Court to be a Court of Record.

Establishment of High Court for the North-Western Provinces.

1. Now know Ye that we, upon full consideration of the premises, and of Our special grace, certain knowledge, and mere motion, have thought fit to erect and establish, and by these presents, We do accordingly, for Us, Our heirs and successors, erect and establish, for the North-Western Provinces of the Presidency of Fort William aforesaid, a High Court of Judicature, which shall be called the High Court of Judicature, for the North-Western Provinces, and We do hereby constitute the said Court to be a Court of Record.

Constitution and first Judges of the High Court.

2. And We do hereby appoint and ordain that the said High Court of Judicature for the North-Western Provinces shall, until further or other provision shall be made by Us, or Our Heirs and Successors in that behalf, in accordance with the said recited Act, consist of a Chief Justice and five Judges, the first Chief Justice being Walter Morgan, Esquire, and the five Judges being Alexander Ross, Esquire; William Edwards, Esquire; William Roberts, Esquire; Francis Boyle Pearson, Esquire; and Charles Arthur Turner, Esquire, being respectively qualified, as in the said Act is declared.

Declaration to be made by Judges.

3. And We do hereby ordain that the Chief Justice and every Judge of the said High Court of Judicature, for the North-Western Provinces, previously to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before such authority or person, as the Governor-General in Council may commission to receive it:—

"A, *A.B.*, appointed Chief Justice (*or* a Judge) of the High Court of

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CL. 1.—The provisions of the Code relating to cross-objections do not apply to appeals under the Letters Patent. 1922 A. 55 (1) (21 A. 297, Foll.) The C.P. Code and the Rules made under it apply to an appeal from a Judge of the High Court. 39 C.W.N. 155=1935 C. 35. No Court-fee is leviable upon a petition of appeal under the Letters Patent (Allahabad) from the judgment of a single Judge. 44 All. 13=63 I.C. 318=19 A.L.J. 677.

CL. 2.—As regards the power of Crown to appoint a sixth puisne Judge, *see* 36 A. 168=12 A.L.J. 231. Omission to fill up a vacancy among Judges. 9 A. 625 (F.B.). As to the mode of exercising matrimonial jurisdiction conferred on the High Court, *see* 56 A. 428=1934 A.L.J. 1129=1934 A. 273.

Judicature, for the North-Western Provinces, do solemnly declare that I will faithfully perform the duties of my office to the best of my ability, knowledge and judgment."

Seal.

4. And We do hereby grant, ordain and appoint that the asid High Court shall have and use, as occasion may require, a seal bearing a device and impression of Our Royal Arms, with an exergue or label surrounding the same, with this inscription: "The Seal of the High Court for the North-Western Provinces." And We do further grant, ordain and appoint that the said Seal shall be delivered to and kept in the custody of the Chief Justice, and in case of vacancy of the office of Chief Justice, or during any absence of the Chief Justice, the same shall be delivered over and kept in the custody of the person appointed to act as Chief Justice under the provisions of section 7 of the said recited Act; and We do further grant, ordain and appoint that, whensoever it shall happen that the office of Chief Justice or of the Judge to whom the custody of the said Seal be committed shall be vacant, the said High Court shall be and is hereby authorized and empowered to demand, seize and take the said Seal from any person or persons whomsoever, by what ways and means soever the same may have come to his, her, or their possession.

Writs, etc., to issue in name of the Crown and under Seal.

5. And We do hereby further grant, ordain and appoint that all writs, summons, precepts, rules, orders and other mandatory process to be used, issued or awarded by the said High Court of Judicature for the North-Western Provinces, shall run and be in the name and style of Us, or of Our heirs and successors, and shall be sealed with the Seal of the said High Court.

Appointment of officers.

6. And We do hereby authorize and empower the Chief Justice of the said High Court of Judicature for the North-Western Provinces, from time to time, as occasion may require, and subject to any rules and restrictions which may be prescribed by the Governor-General in Council, to appoint so many and such clerks and other ministerial officers as shall be found necessary for the administration of justice, and the due execution of all the powers and authorities granted and committed to the said High Court by these Our Letters Patent. [* * *] And it is Our further will and pleasure, and We do hereby, for Us, Our Heirs and Successors, give, grant, direct and appoint that all and every officers and clerks to be appointed as aforesaid shall have and receive respectively such reasonable salaries as the Chief Justice shall, from time to time, appoint for each office and place respectively, and as the Lieutenant-Governor of the North-Western Provinces, subject to the control of the Governor-General in Council, shall approve of: Provided always, and it is Our will and pleasure, that all and every the officers and clerks to be appointed as aforesaid shall be resident within the limits of the jurisdiction of the said Court so long as they hold their respective offices; but this proviso shall not interfere with or prejudice the right of any officer or clerk to avail himself of leave of absence under any rules prescribed by the Governor-General in Council, and to absent himself, from the said limits during the term of such leave in accordance with the said rules.

Admission of Advocates, Vakeels and Attorneys.

Powers of High Court in admitting Advocates, Vakeels and Attorneys.

7. And We do hereby authorize and empower the said High Court of Judicature for the North-Western Provinces to approve, admit and enrol such and so many Advocates, Vakeels and Attorneys as to the said High Court shall seem meet; and such Advocates, Vakeels, and Attorneys shall be and are hereby authorized to appear for the suitors of the

said High Court, and to plead or to act, or to plead and act, for the said suitors, according as the said High Court may by its rules and directions determine, and subject to such rules and directions.

In making rules, for the qualifications, etc. of **Advocates**, Vakeels and Attorneys.

8. And We do hereby ordain that the said High Court of Judicature for the North-Western Provinces shall have power to make rules for the qualification and admission of proper persons to be Advocates, Vakeels and Attorneys-at-law of the said High Court, and shall be empowered to remove or to suspend from practice, on reasonable cause, the said Advocates, Vakeels or Attorneys-at-law; and no person whatsoever but such Advocates, Vakeels or Attorneys shall be allowed to act or to plead for, or on behalf of, any suitor in the said High Court, except that any suitor shall be allowed to appear, plead or act on his own behalf or on behalf of a co-suitor.

Civil Jurisdiction of the High Court.

Extraordinary original civil jurisdiction.

9. And We do further ordain that the said High Court of Judicature, for the North-Western Provinces, shall have power to remove, and to try and determine, as a Court of extraordinary original jurisdiction, any suit being or falling within the jurisdiction of any Court, subject to its superintendence, when the said High Court shall think proper to do so, either on the agreement of the parties to that effect, or for purposes of justice, the reasons for so doing being recorded on the proceedings of the said High Court.

Appeal from the Court of original jurisdiction to the High Court in its appellate jurisdiction.

10. [1][And We do further ordain that an appeal shall lie to the said High Court of Judicature at Allahabad from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power

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LEG. REF.

[1] Substituted by amended Letters Patent, 9th December, 1927.

CL. 8: REASONABLE CAUSE FOR REMOVAL OR SUSPENSION OF ADVOCATE.—(Article by advocate amounting to *libel on Judges* regarding their capacity and in reference to their conduct as judges). *See* 29 A. 25=34 I.A. 41 (P.C.). *See also* 22 A. 193=17 A. 498; 18 A. 174; 26 I.A. 242=22 All. 49 (P.C.). *Intimidating a witness* from giving evidence. 40 I.C. 819. *Making reckless allegations* in petition without client's instructions. 42 A. 450=18 A.L.J. 419. The mere fact of *conviction of any riminal offence* implying moral turpitude can be sufficient basis in law for an order of suspension or dismissal of a pleader or a mukhtar only, but not of a vakil whose cases of misconduct are not provided for by the Legal Practitioners Act but by paragraph 8 of Letters Patent. According to that paragraph, the High Court has a discretion to remove from practice on reasonable cause any vakil of the High Court and the order is conclusive. 131 I.C. 67=8 O.W.N. 267=1931 O. 161. Where a practitioner is charged with an offence of a criminal nature, in such a case it is eminently fitting that *criminal prosecution should precede disciplinary* action. Trial by Judges who framed charges undesirable. 1931 P.C. 112=53 All. 183=35 C.W.N. 640=58 I.A. 152=61 M.L.J. 130 (P.C.). [*See also* notes under S. 13 of the Legal Practitioners Act.]

CL. 10: EFFECT OF AMENDMENT OF CLS. 10 AND 27.—The Letters Patent of the Allahabad High Court has been amended by further Letters Patent, dated 9th December, 1927, in two material respects. Cl. 10 of the Letters Patent of the Court provided for an appeal to the High Court against the decision of a single Judge of the Court, but under the change now made such appeal will lie only when the Judge against whose decision it is intended to prefer an appeal certifies that the case is a fit one for appeal. Cl. 27 of the Letters Patent provided for the opinion of the senior Judge prevailing in certain cases when two Judges constituting a Division Bench differed in opinion. This clause has been amended so as to do away with the opinion of the senior Judge prevailing in any case. (32 C.W.N. Journal, p. xlvi). This *amendment* of Letters

of superintendence under the provisions of section 107 of the Government of India, Act or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any division Court, pursuant to section 108 of the Government of India Act, and that, notwithstanding anything hereinbefore provided, an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any division Court, pursuant to section 108 of the Government of India Act, made in the exercise of appepllate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court where the Judge who passed the judgment declares that the case is a fit one for apppeal; but that the right of appeal from other judgments of Judges of said High Court or of such Division Court shall be to Us, Our Heirs, or Successors in Our or Their Privy Council, as hereinafter provided.]

Patent is *not retrospective* in its operation in respect of right of appeal. 32 C.W.N. 1130=1928 C. 640 (F.B.)=48 C.L.J. 150; *See also* 55 M.L.J. (Short Notes) 37. Second appeal disposed of prior to date on which amendment took effect—Appeal preferred subsequent to that date—New provision applicable. 52 B. 753=30 Bom.L.R. 942=1928 B. 571. Under this Cl. 10 an appeal lies from an order of a single Judge passed in an appeal from an order. I.L. R (1937) All. 386=1936 A.L.J. 1926=1937 A. 165. The word "judgment" covers not merely final orders but also preliminary or interlocutory orders. 20 A.L.J. 801=45 A. 66=1923 All. 44. As to the test to determine whether an adjudication is or is not a judgment, *see* 45 A. 66. A final decision which effectually disposes of the appeal before the High Court amounts to a judgment whether it amounts to a decree or not. If it does not amount to a decre, it would amount to an order. The word "judgment" in cl. 10 should not be read in a restricted sense and an appeal lies against an order of remand pased by a single Judge under O. 41, R. 23. 1933 A.L.J. 127=1933 A. 262 (F.B.)=55 A. 326. As a general working rule there has grown up in the Allahabad High Court a practice regarding those matters which are mentioned in O. 41, R. 1, C. P. Code, as being generally appealable from a single Judge to a Bench. 20 A.L. J. 801=45 A. 66=1923 All. 44. Memoorandum of cross-objection is not maintainable in a Letters Patent appeal. 3 A. 198. As to the nature of Letters Patent appeal, *see* 148 I.C. 1175=1934 A. 551. *See also* 1922 A. 55; 21 A. 207; 188 I.C. 33 (F.B.) (Order of single Judge on Original Side deciding claim under C.P.C., O. 21, R. 58). No application other than the one made immediately after the delivery of the judgment could be entertained and hence no question of the sufficiency or insufficiency of the cause which prevented counsel from making such an application, or even of the existence or non-existence of a cause, can arise. 202 I.C. 162=1942 A.L.J. 326=1942 All. 260 (2).

CASES NOT APPEALABLE.—The order of a single Judge dismissing an application under S. 5, Limitation Act, and refusing to extend time is not a judgment within the meaning of Cl. 10, Letters Patent, and accordingly no appeal lies from that order. 19357 A.L. J. 681=1935 A. 620 (2). Order of single Judge on appeal from order of remand—Letters Patent appeal not maintainable. 1923 A. 396; also from the order of a single Judge of the High Court dismissing an apl peal from an order of the executig Court on an application under O. 21, R. 90 to set aside an execution sale. 39 A. 191= 39 I.C. 460=15 A.L.J. 46; order refusing stay of execution of decree. I. L. R. (1940) A. 121=1940 A.L.J. 16=1940 All. 242; order refusing to set aside abatement of second appeal by single Judge 1939 A. 185=I.L.R. (1939) A. 19=1938 A.L.J. 1107. *See also* I.L.R. 1938 B. 704 =40 Bom.L.R. 658=1938 Bom 408; also against an order of a single Judge of the High Court rejecting an application for review of judgment made by another Judge previously. 45 All. 535=84 I.C. 586 =1923 A. 356; also against order on application for review of judgment. 21 A.L.J. 341=45 A. 535=1923 A. 356; Order of **Insolvency Judge not falling under sec. 4 of** the Pro. Ins. Act. 1942 A.L.J. 325=1942 All. 219 (F.B.). Order of sanction for prosecution under S. 195, Cr. P. Code, is not a judgment within cl. 10; it is not appealable. 39 A. 147=36 I.C. 585=14 A.L.J. 1230. No appeal lies under cl. 10, Letters Patent, against an order dismissing an application under sec. 491, Cr. P. Code. 1934 A.L.J. 684=1934 A. 606; nor from an order of single Judge in first appeal pending before him declaring that a certain person is the legal representative of a deceased party. I.L.R. 1937 All. 381= 1936 A.L.J. 1381=1937 A. 192.

REVIEW.—No application for a review of judgment is allowable where the decree was given in an appeal under cl. 10 of the Letters Patent. 48 I.C. 476=16 A.L.J. 904. Per *Banerji and Bennett, JJ.* There is a clear distinction between procedure and jurisdiction. A Bench hearing a Letters Patent appeal derives its jurisdiction to

Appeal from Courts in the Provinces.

11. And We do further ordain that the said High Coust of Judicatuse for the North-Western Provinces, shall be a Court of Appeal from the Civil Courts of the North-Western Provinces, and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said High Court by virtue of ny laws or regulations now in force.

Jurisdiction as to infants and lunatics.

12. And We do further ordain that the said High Court of Judicature for the North-Western Provinces shall have the like power and authority with respect to the persons and estates of infants, idiots and lunatics within the North-Western Provinces, as that which is exercised in the Bengal Division of the Presidency of Fort William, by the High Court of Judicature at Fort William in Bengal, but subject to the provisions of any laws or regulations now in force.

In the exercise of extraordinary original civil jurisdiction.

13. And We do further ordain that, with respect to the law or equity and rule of good conscience to be applied to each case coming before the said High Court of Judicature for the North-Western Provinces, in the exercise of its extaordinary original civil jurisdiction such law or equity and rule of good conscience shall (until otherwise provided) be the law or equity and rule of good conscience which have been applied to such case by any local Court having jurisdiction therein.

By High Court in the exercise of appellate jurisdiction.

14. And We do further ordain that, with respect to the law or equity and rule of good conscience to be applied by the said High Court of Judicature for the North-Western Provinces to each case coming before it in the exercise of its appellate jurisdiction, such law or equity and rule of good conscience shall be the law or equity and rule of good conscience

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hear the appeal from the Letters Patent and not from the Code, because the Letters Patent provides that such an appeal should lie to a Bench and the Code makes no such provision and as S. 114 is not intended to provide for the review of judgments passed in the exercise of jurisdiction derived from other laws. 53 A. 535—1931 A. 241 (F.B.).

CL. 11.—No appeal lies against an order of remand by the District Judge in an appeal. *See* 48 A. 684=1926 Alll. 669; 23 A. L.J. 965=48 A. 104=1926 All. 113. The term "rival courts" does not cover a tribunal created under a particular statute for a particular purpose, *e.g.*, a Court created under the U.P. Municipalities Act. 23 A.L.J. 385=47 A. 513=1925 A. 380 (F. B.).

CL. 12.—The jurisdiction of the Court of Chancery exists in the Allahabad High Court by reason of cl. 12 of Letters Patent, but the High Court will not exercise that jurisdiction in a case where an application was made by the father as member of a joint Hindu family to be apopinted guardian of the property belonging to his minor sons. 50 All. 709=1928 All. 709=26 A. L.J. 595. *See also* 112 I.C. 873. In a case where the father and the mother are living apart, and where each of them claims to have the custody of the child, the main question for the consideration of Court is, what would be more conducive to the child's welfare, *i.e.*, whether the child would be better looked after by the mother or by the father The Court has also to take into consideration the personal law to which the parties are subject. 150 I.C. 149=1934 A.L.J. 399=1934 A. 722 (2). On an application under cl. 12 of the Letters Patent praying that the applicant may be be appointed guardian of the person of a minor, the High Court has jurisdiction to grant the relief prayed for, even though the more appropriate remedy would be to make application to the District Judge under S. 9 of the Guardians and Wards Act for the guardianship of the child. There is no general rule that the High Court should in all cases take action under cl. 12, as there may be cases in which complicated questions of fact have to be ascertained, and such cases might be more suitably dealt with in the Court of the District Judge where witnesses could be examined and cross-examined. 1934 A.L.J. 399=1934 A. 722 (2).

which the Court in which the proceedings in such case were originally instituted ought to have applied to such case.

Criminal Jurisdiction.

Ordinary original criminal jurisdiction of the High Court.

15. And We do further ordain that the said High Court of Judicature, for the North-Western Provinces, shall have ordinary original criminal jurisdiction in respect of all such persons within the said Provinces as the High Court of Judicature at Fort William in Bengal shall have criminal jurisdiction over at the date of the publication of these presents; and the criminal jurisdiction of the said last mentioned High Court over such persons shall cease at such date: Provided, nevertheless, that criminal proceedings which shall at such date have been commenced in the said last mentioned High Court shall continue as if these presents had not been issued.

Jurisdiction as to persons

16. And We do further ordain that the said High Court of Judicature, for the North-Western rPovinces, in the exercise of its ordinary original criminal jurisdiction, shall be empowered to try all pesrons brought before it in due course of law.

Extra ordinary original criminal jurisdiction.

17. And We do further ordain that the said High Court of Judicature, for the North-Western Provinces, shall have extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court now subject to the superintendence of the Sudder Nizamut Adawlut, and shall have authority to try at its discretion any such persons brought before it on charges preferred by any Magistrate or other officer specially empowered by the Government in that behalf.

No appeal from High Court exercising original jurisdiction.

Court may reserve points of law.

18. And We do further ordain that there shall be no appeal to the said High Court, from any sentence or order passed or made in any criminal trial before the Courts of original criminal jurisdiction, which may be constituted by one or more Judges of the High Court. But it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court.

High Court to review cases on points of law reserved by one or more Judges of the said High Court.

19. And We do further ordain that, on such point or points of law being so reserved as aforesaid, the said High Court shall have full power and authority to review the case, or such part of it as may be necessary, and finally determine such point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as to the said High Court shall seem right.

Appeals from Criminal Courts in the Provinces

20. And We do further ordain that the said High Court of Judicature, for the North-Western Provinces, shall be a Court of Appeal from the Criminal Courts of the said Provinces and from all other Courts from which there is now an appeal to the Court of Sudder Nizamut Adawlut for the said Provinces, and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said Court of Sudder Adawlut by virtue of any law now in force.

CL. 15.—*See* 12 A.W.N. 236. Jurisdiction of High Court—Hindu joint family—Application for appointment of guardian of property maintainable. 112 I.C. 873=26 A. L.J. 595=1928 All. 709=50 All. 709.

21. And We do further ordain that the said High Court shall be a Court of reference and revision from the Criminal Courts subject to its appellate jurisdiction, and shall have power to hear and determinen all such cases referred to it by the Sessions Judges or by any other officers now authorized to refer cases to the Court of Sudder Nizamut Adawlut of the North-Western Provinces, and to revise all such cases tried by any Officer or Court possessing criminal jurisdiction, as are now subject to reference or to revision by the said Court of Sudder Nizamut Adawlut.

Hearing of referred cases, and revision of criminal trials.

22. And We do further ordain that the said High Court shall have power to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also to direct the preliminary investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it, though such case belongs in ordinary course to the jurisdiction of some other Officer or Court.

High Court may direct the transfer of a case from one Court to another.

Act under which punishments to be inflicted.

23. And We do further ordain that all persons brought for trial before the said High Court of Judicature for the North-Western Provinces, either in the exercise of its original jurisdiction, or in the exercise of its jurisdiction as a Court of appeal, reference or revision, charged with any offence for which provision is made by Act No. XLV of 1860, called the "Indian Penal Code," or by any Act amending or excluding the said Act which may have been papssed prior to the publication of these prpesents, shall be liable to punishment under the said Act or Acts, and not otherwise.

Indian Penal Code.

24. And Wo do furher ordain that whenever it shall appear to the Lieutenant-Governor of the North-Western Provinres, subject to the control of the Governor-General in Council, convenient that the jurisdiction and power by these Our Letters Patent, or by the recited Act, vested in the said High Court, should be exercised in any place within the jurisdiction of any Court, now subject to the superintendence of any Sudder Dewany Adawlut or the Sudder Nizamut Adamlut of the North-Western Provinces, other than the usual places of sitting of the said High Court, or at several such places by way of circuit, the proceedings in cases before the said High Court, at such place or places, shall be regulated by any law relating thereto which has been or may be made by competent legislative authority for India.

Judges may be authorized to sit in any places by way of circuit or special commission.

Testamentary and Intestate Jurisdiction.

25. And We do further ordain that the said High Court of Judicature, for the North-Western Provinces, shall have the like power and authority as that which is now lawfully exercised within the said Provinces, by the said High Court of Judicature at Fort William in Bengal, in relation to the granting of probates of last wills and testaments, and letters of administration of the goods, chattels, credits and all other effects whatsoever of persons dying intestate; and that the jurisdiction of the said last mentioned High Court in relation thereto shall cease from the date of the publication of these presents: Provided always that any proceedings already commenced in relation to any of the matters aforesaid in the said last mentioned High Court shall continue as if these presents had not been issued: Provided also that nothing in these Letters Patent contain-

Testamentary and intestate jurisdiction.

CL. 22.—A village panchayat Court is a Court for purposes of cl. 22 and the High Court has got the power to transfer proceedings pending in one such Court to another. 21 A.L.J. 925=46 A. 167=1924 A. 265.

ed shall interfere with the provisions of any law which has been made by competent legislative authority for India, by which power is given to any other Court to grant such probates and letters of administration.

Matrimonial jurisdiction.

Matrimonial jurisdiction.

26. And We do further ordain that the said High Court of Judicature for the North-Western Provinces shall have jurisdiction, within the said Provinces in matters matrimonial between Our subjects professing the Christian religion: Provided always that nothing therein contained shall be held to interfere with the exercise of any jurisdiction in matters matrimonial by any Court not established by Royal Charter within the said Provinces lawfully possessed thereof.

Powers of single Judges and Division Courts.

Single Judges and Division Courts.

27. And We do hereby declare that any function which is hereby directed to be performed by the said High Court of Judicature for the North-Western Provinces, in the exercise of its original or appellate jurisdiction, may be performed by any Judge or by any Division Court thereof, appointed or constituted for such purpose [1][in pursuance of section 108 of the Government of India Act, 1915]; and if such Diviision Court is composed of two or more Judges, and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges, if there shall be a majority; but if the Judges should be equally divided, [1][they shall state the point upon which they differ and the case shall then be heard upon that point by one or more of the other Judges and the point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.]

Civil Procedure.

Regulation of proceedings.

28. And We do further ordain that it shall be lawful for the said High Court of Judicature for the North-Western Provinces from time to time to make rules and orders for the purpose of adopting, as far as possible, the provisions of the Code of Civil Proredure, being an Act passed by the Governor-General in Council and being Act No. VIII of 1859, and the provisions of any law which has been or may be made, amending or altering the same, by competent legislative authority for India, to all proceedings in its testamentary, intestate and matrimonial jurisdictions, respectively.

Criminal Procedure.

Regulation of proceedings.

29. And We do further ordain that the proceedings in all criminal cases which shall be brought before the said High Court, in the exercise of its ordinary original criminal jurisdiction, shall be regulated by the procedure and prac-

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LEG. REF.

[1] Substituted by the amending Letters Patent, dated 11th March, 1919, and 9th December, 1927. As to the effect of amendment of this clause, *see* notes under cl. 10, *supra*.

CL. 27.—*See* 2 N.W.P. 117; 26 A. 10; 11 A. 176. Letters Patent appeal—Difference of opinion between two Judges—Procedure. 137 I.C. 58=1932 A. 195. When a Bench differ in opinion on certain points of law, under S. 98, C.P. Code, they may state those points and the hearing by the other Judges is confined to the specific points stated and cannot cover the whole case again. S. 98 is confined to points of law only but the newly added sub-S. (3) makes it subject to the provisions of the Letters Patent, Cl. 27 of which states that the points of difference may be referred to the other Bench. This clause is wider than S. 98 of the C. P. Code, because, it covers points of facts as well points of law. But in both cases, only the points of difference should be stated and not the whole case. 1933 A.L.J. 1127=1933 A. 861 (F.B.). *See also* I.L.R. (1938) All. 972=1938 A. L.J. 1027=1938 All. 641 (F.B.).

tice which was in use in the High Court of Judicature for Fort William in Bengal, immediately before the publication of these presents, subject to any law which has been or may be made in relation thereto by competent legislative authority for India; and that the proceedings in all other criminal cases shall be regulated by the Code of Criminal Procedure, prescribed by an Act passed by the Governor-General in Council, and being Act No. XXV of 1861, or by such further or other laws in relation to criminal procedure as may have been or may be made by such authority as aforesaid.

Appeals to Privy Council.

Power to appeal.

30. And We do further ordain that any person or persons may appeal to Us, Our Heirs and Successors, in Our or Their Privy Council, in any matter not being of criminal jurisdiction, from any final judgment, decree or order of the said High Court of Judicature for the North-Western Provinces, made on appeal, and from any final judgment, decree or order made in the exercise of original jurisdiction by the Judges of the said High Court, or of any Division Court from which an appeal shall lie to the said High Court, under the provisions contained in the 10th clause of these presents: Provided, in either case, that the sum or matter at issue is of the amount or value of not less than 10,000 rupees, or that such

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CL. 30.—In an application by a pleader for leave to appeal to the Privy Council from an order suspending him from practice for contempt of Court committed personally, *held*, that the Allahabad High Court can grant leave either under S. 109 (*c*), C.P. Code or S. 30, Letters Patent. 1933 A.L. J. 273=1933 A. 225=55 A. 246.

"FINAL ORDER"—Meaning of—Refusal of temporary injunction not final order. 1941 A.L.J. 508=1941 All. 367=I.L.R. (1941) All. 666.

PROCEEDING UNDER BAR COUNCILS ACT FOR MISCONDUCT OF ADVOCATE—LEAVE TO APPEAL TO PRIVY COUNCIL.—When special power has been conferred upon the High Court under S. 10, Bar Councils Act, to get an inquiry made into the alleged misconduct of an advocate and on receipt of the finding to fix a date for the hearing of the case and to hear the parties concerned and then pass such final orders in the case as it thinks fit and make an order as to the payment of the costs of the inquiry and of the hearing in the High Court, and if necessary, later on to review its order, the High Court in such proceedings is acting judicially and not merely in an administrative capacity. The entire proceeding is a hearing before the High Court and orders for the payment of costs of such proceedings can be passed. No doubt, in essence, the action taken is a disciplinary action but the proceeding in itself is in the nature of a judicial proceeding and the inquiry is a public inquiry in which the parties concerned are entitled as of right to be heard. It cannot therefore be said that in such a judicial proceeding, the High Court is not excercising any 'jurisdiction' within the meaning of cl. 30, Letters Patent. Such a jurisdiction is not an appellate jurisdiction, nor is it a criminal jurisdcton. As it is the High Court only which passes final orders in the case on the receipt of the finding, it must be held to be exercising original jurisdiction and not any appellate jurisdiction. The order passed in such a proceeding is therefore an order passed in the exercise of original jurisdiction of the High Court, conferred upon it by the Indian Bar Councils Act, modifying to some extent the power conferred upon it by the Letters Patent. The High Court has therefore jurisdiction to grant leave to appeal to His Majesty in Council provided it is satisfied that it is a fit and proper case. In the case of an advocate the High Court found that not only was the filing of the fee certificate contrary to the rules framed by the High Court but that he acted in bad faith in filing it. The point raised was that there was some contradiction in the two sub-sections of the Rule at the time when the advocate had got his form of certificate printed, which contradictions had been lately removed by amendment, that there was latitude allowed to him inasmuch as it was provided that the certificate shall be 'so far as is possible' in the form prescribed and that in filing a certificate he had made it clear in it that he had not received the amount in cash but had accepted a promisory note in lieu of the fee. *Held*, that this was a case which should be certified as a fit one for appeal to the Privy Council under S. 109 (*c*), C. P. Code, or at any rate under Cl. 30, Letters Patent. 56 All. 702=1934 A.L.J. 722=1934 A. 898. As to principles governing grant of leave to apeal to Privy Council, *see* 1941 All. 9.

judgment, decree or order shall involve, directly or indirectly, some claim, demand or question to or respecting property amounting to, or of the value of, not less than 10,000 rupees; or from any other final judgment, decree or order made either on appeal or otherwise as aforesaid, when the said High Court shall declare that the case is a fit one for appeal to Us, Our Heirs or Successors, in Our or Their Privy Council: subject always to such rules and orders as are now in force, or may, from time to time, be made, respecting appeals to Ourselves in Council from the Courts of the said Provinces, except so far as the said existing rules and orders, respectively, are hereby varied: and subject also to such further rules and orders, as We may with the advice of Our Privy Council, hereafter make in that behalf.

Appeal from interlocutory judgment.

31. And We do further ordain that it shall be lawful for the said High Court of Judicature for the North-Western Provinces at its discretion on the motion, or if the said High Court be not sitting, then for any Judge of the said High Court, upon the petition of any party who considers himself aggrieved by any preliminary or interlocutory judgment, decree, order or sentence of the High Court, in any such proceedings as aforesaid, not being of criminal jurisdiction, to grant permission to such party to appeal against the same to Us, Our heirs and Successors in Our or Their Privy Council, subject to the same rules, regulations and limitations, as are herein expressed respecting appeals from final judgments, decrees, orders and sentences.

Appeal in criminal cases, etc.

32. And We do further ordain that, from any judgment, order or sentence of the said High Court of Judicature for the North-Western Provinces, made in the exercise of original criminal jurisdiction, or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court in manner hereinbefore provided, by any Court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgment, order or sentence to appeal to Us, Our heirs or Successors in Council: Provided the said High Court shall declare that the case is a fit one for such appeal and under such conditions as the said High Court may establish or require, subject always to such rules and orders as We may, with the advice of Our Privy Council, hereinafter make in that behalf.

Rule as to transmission of copies of evidence and other documents.

33. And We do further ordain that, in all cases of appeal made from any judgment, order, sentence or decree of the said High Court of Judicature for the North-Western Provinces, to Us, Our heirs or Successors, in Our or Their Privy Council, such High Court shall certify and transmit to Us, Our heirs and Successors, in Our or Their Privy Council, a true and correct copy of all evidence, proceedings, judgments, decrees and orders had or made in such cases appealed, so far as the same have relation to the matters of appeal, such copies to be certified under the seal of the said High Court, and that the said High Court shall also certify and transmit to Us, Our heirs and Successors, in Our or Their Privy Council, a copy of the reasons given by the Judges of such Court, or by any such Judges, for or against the judgment or determination appealed against.

And We do further ordain that the said High Court, shall, in all cases of appeal to Us, Our heirs or Successors, conform to and execute or cause to be executed, such judgments and orders as We, Our heirs or Sucressors, in Our or Their Privy Council, shall think fit to make in the premises in such manner as any original judgment, decree or decretal orders or other order or rule of the said High Court, should or might have been executed.

Calls for Records, etc., by the Government.

34. And it is Our further will and pleasure that the said High Court of Judicature for the North-Western Provinces shall comply with such requisition as may be made by the Government for records, returns and statements in such form and manner as such Government may deem proper.

High Court to comply with requisition from Government for records, etc.

Powers of Indian Legislature preserved.

35. And We do further ordain and declare that all the provisions of these Our Letters Patent are subject to the legislative powers of the Governor-General in Legislative Council, and also of the Governor-General in Council under section 71 of the Government of India Act, 1915, and also of the Governor-General in cases of emergency under section 72 of that Act and may be in all respects amended and altered thereby.

Powers of Indian Legislature preserved.

In witness whereof We have caused these Our Letters to be made Patent. Witness Ourself at Westminster, the seventeenth day of March in the twenty-ninth year of Our reign.

By warrant under the Queen's Sign Manual.

(Sd.) C. ROMILLY.

LETTERS PATENT (MADRAS, BOMBAY AND CALCUTTA).

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[*N. B*—As the Letters Patent for Madras, Bombay and Calcutta are all in very similar terms the Letters Patent, Modears, is given as the main one, and the differences in the wording of the other two Lettrrs Patents indicated within square brackets.]

For the High Court of Judicature for the Presidency of Madras.

Bearing date the Twentf-eighth day of December, in the Twenty-ninth year of the Reign of Victoria in the year of Our Lord, One thousand eight hundred and sixty-five.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith. To all to whom these Presents shall come, Greeting: Whereas by an Act of Parliament passed in the twenty-fourth and twenty-fifth years of Our Reign, entitled "An Act for establishing High Courts of Judicature in India." It was, amongst other things, enacted that it should be lawful for Her Majesty, by Letters Patent undr the Great Seal of the United Kingdom, to erect and establish a High Court of Judicature at Madras, for the Presidenry of Madras aforesaid [at Fort William in Bengal, for the Bengal Division of the Presidenry of Fort William aforesaid] [at Bombay for the Presidency of Bombay aforesaid] and that such High Court should consist of a Chief Justice and as many Judges, not exceeding Fifteen, as Her Majesty might, from time to time, think fit to appoint, who should be selected from among persons qualified as in the said Act is declared: Provided always that the persons who at the time of the establishment of such High Court were Judges of the Supreme Court of Judicature, and permanent Judges of the Court of Sudder Dewany Adawlut or Sudder Adawlt of the same Presidency, should be and become Judges of such High Court, without further appointment for that purpose, and the Chief Justice of such Supreme Court should become the Chief Justice of such High Court, and that upon the establishment of such High Court as aforesaid, the Supreme Court and the Court of Sudder Dewany Adawlut and Faujdarry Adawlut at Madras [Calcutta] [Bombay] in the said Presidency, should be abolished:

Recital of Acts 24 & 25 Vict., c. 104.

And that the High Court of Judicature so to be established should have and exercise all such civil, criminal, admiralty and vice-admiralty, testamentary, intestate and matrimonial jurisdiction, original and appellate, and all such powers and authority for, and in relation to the administration of justice in the said Presidency as Her Majesty might, by such Letters Patent as aforesaid, grant and direct, subject, however, to such directions and limitation as to the exercise of original, civil and criminal jurisdiction beyond the limits of the Presidency-town, as might be prescribed thereby; and, save as by such Letters Patent, might be otherwise directed, and subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor-General of India in Council, the High Court so to be established should have and exercise all jurisdiction, and every power and authority whatsoever, in any manner

vested in any of the Courts in the same Presidency abolished under the said Act at the time of the abolition of such last mentioned Courts:

And whereas We did upon full consideration of the premises, think fit to erect and establish, and by Our Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland bearing date at Westminster, the twenty-sixth day of June in the Twenty-fifth Year of Our Reign, in the year of our Lord, One thousand eight hundred and sixty-two, did accordingly, for Us, Our heirs and Successors, erect and establish at Madras, for the Presidency of Madras aforesaid, a High Court of Judicature, which should be called the High Court of Judicature at Madras [at Fort William in Bengal for the Bengal Division of the Presidency of Fort William aforesaid, a High Court of Judicature which should be called the High Court of Judicature at Fort William in Bengal] [at Bombay, for the Presidency of Bombay aforesaid, a High Court of Judicature which should be called the High Court of Judicature at Bombay] and did thereby constitute the said Court to be a Court of Record; and whereas We did thereby appoint and ordain, that the said High Court of Judicature at Madras [Fort William in Bengal] [Bombay] should, until further or other provision should be made by Us, or Our heirs and Successors in that behalf, in accordance with the recited Act, consist of a Chief Justice and five Judges, and did thereby constitute and appoint certain persons, being respectively qualified as in the said Act is declared, to be Judges of the said High Court.

And whereas by the said recited Act it is declared lawful for Her Majesty, at any time within three years after the establishment of the said High Court, by Her Letters Patent, to revoke all of such parts or provisions as Her Majesty might think fit of the Letters Patent by which such Court was established, and to grant and make such other powers and provisions as Her Majesty might think fit, and as might have been granted or made by such first Letters Patent:

And whereas by the Act of the twenty-eighth year of Our Reign, chapter fifteen, entitled "An Act to extend the term for granting fresh Letters Patent for the High Courts in India, and to make further provision respecting the territorial jurisdiction of the said Courts," the time for issuing fresh Letters Patent has been extended to the first of January, One thousand eight hundred and sixty-six:

And whereas, in order to make further provision respecting the constitution of the said High Court, and the administration of justice thereby, it is expedient that the said Letters Patent, dated the twenty-sixth of June, One thousand eight hundred and sixty-two, should be revoked, and that some of the powers and provisions thereby granted and made should be granted and made with amendments and additional powers and provisions by fresh Letters Patent.

Revocation of Letters Patent of 1862.

1. Now know ye that We, upon full consideration of the premises and of Our special grace, certain knowledge, and mere motion have thought fit to revoke, and do by these presents (from and after the date of the publication thereof, as hereinafter provided, and subject to the provisions thereof) revoke Our

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CL. 1.—Bombay cases—Scope and applicability of the Letters Patent, and nature of powers conferred thereby, *see* 32 B. 106 =10 Bom.L.R. 21; 21 Bom.L.R. 274; 13 Bom.L.R. 558.

MADRAS CASES.—Amended Letters Patent does not take effect retrospectively. The institution of a suit carries with it the implication that appeals then in force are preserved to it through the rest of its course unless the legislature has either abolished the Court to which an appeal then lay or has expressly or by necessary intendment given the act a retrospective effect. Where the plaint was presented on the 30th July, 1919, the second appeal was presented on the 15th July, 1924, and the same was decided on the 9th February, 1928, and a Letters Patent appeal was subsequently filed, but meanwhile, on the 31st January, 1928, the amended Let-

said Letters Patent of the Twenty-sixth of June, One thousand eight hundred and sixty-two, except so far as the Letters Patent of the forty-first year of His Majesty King George the Third, dated the twenty-sixth of December, One thousand eight hundred, establishing a Supreme Court of Judicature at Madras [Fort William in Bengal] [Bombay] were revoked or determined thereby.

High Court at Madras to be continued.

2 And We do by these presents, grant, direct and ordain that, notwithstanding the revocation of the said Letters Patent of the Twenty-sixth of June, One thousand eight hundred and sixty-two, the High Court of Judicature called the High Court of Judicature at Madras, shall be and continue, as from the time of the original erection and establishment thereof, the High Court of Judicature at Madras [Fort William in Bengal] [Bombay] for the Presidency of Madras aforesaid [Bengal Division of Fort William aforesaid] [Bombay aforesaid]; and that the said Court shall be and continue a Court of Record, and that all proceedings commenced in the said High Court prior to the date of the publication of these Letters Patent shall be continued and depend in the said High Court as if they had commenced in the said High Court after the date of such publication, and that all rules and orders in force in the said High Court immediately before the date of the publication of these Letters Patent shall continue in force except so far as the same are altered hereby, until the same are altered by competent authority.

Judges of the said High Court to be continued.

3. And We do hereby appoint and ordain that the person and persons who shall immediately before the date of the publication of these Letters Patent be the Chief Justice or Judges or Acting Chief Justice or Judges, if any, of the said High Court of Judicature at Madras [Fort William in Bengal] [Bombay] shall continue to be the Chief Justice and Judges, or Acting Chief Justice or Judges of the said High Court, until further or other provision shall be made by Us or Our heirs and Successors, in that behalf, in accordance with the said recited Act for establishing High Courts of Judicature in India.

Clerks, etc., of the said High Court to be continued.

4. And We do hereby appoint and ordain that every clerk and ministerial officer of the said High Court of Judicature at Madra [Fort William in Bengal] [Bombay] appointed by virtue of the said Letters Patent of the Twenty-sixth June, One thousand eight hundred and sixty-two, shall continue to hold and enjoy his office and employment, with the salary thereunto annexed until he be removed from such office and employment; and he shall be subject to the like power of removal, regulations and provisions as if he were appointed by virtue of the Letters Patent.

Declaration to be made by Judges.

5. And We do hereby ordain that the Chief Jestice and every Judge who shall be from time to time appointed to the said High Court of Judicature at Madras [For William in Bengal] [Bombay] previously to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before such authority or person as the Governor in Council may commission to receive it:—

"I, *A.B.*, appointed Chief Justice or (a Judge) of the High Court of Judicature at Madras, do solemnly declare that I will faithfully perform the duties of my office to the best of my ability, knowledge and judgment."

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ters Patent came into effect in the Madras Presidency. *Held*, that the appeal was maintainable and that the amended Letters Patent did not take effect retrospectively. 52 M. 3661=1929 M. 381=56 M.L.J. 369 (F.B.). C. P. Code does not control the provisions of the Letters Patent. *See* 65 M. 915=1933 M. 570=65 M.L.J. 222 (F.B.).

Seal.

6. And We do hereby grant, ordain and appoint that the said High Court of Judicature at Madras [Fort William in Bengal] [Bombay] shall have and use, as occasion may require, a seal bearing a device and impression of our Royal Arms, with an exergue or label surrounding the same, with this inscription, "The Seal of the High Court at Madras" [Fort William in Bengal] [Bombay]. And We do further grant, ordain and appoint that the said seal shall be delivered to and kept in the custody of the Chief Justice and in case of the vacancy of the office of Chief Justice, or during any absence of the Chief Justice, the same shall be delivered over and kept in the custody of the person appointed to act as Chief Justice under the provisions of section 7 of the said recited Act: and We do further grant, ordain and appoint that, whensoever it shall happen that the office of Chief Justice or of the Judge to whom the custody of the said seal be committed shall be vacant, the said High Court shall be and is hereby authorised and empowered to demand, seize and take the said seal from any person or persons whomsoever, by what ways and means soever the same may have come to his, her or their possession.

Writs, etc., to issue in name of the Crown, and under seal.

7. And We do hereby further grant, ordain and appoint that all writs, summons, precepts, rules, orders and other mandatory process to be used, issued or awarded by the said High Court of Judicature at Madras [Fort William in Bengal] [Bombay] shall run and be in the name and style of Us, or of Our heirs and Successors, and shall be sealed with the seal of the said High Court.

Appointment of officers.

8. And We do hereby authorise and empower the Chief Justice of the said High Court of Judicature at Madras [Fort William in Bengal] [Bombay] from time to time, as occasion may require, and subject to any rules and restrictions which may be prescribed by the Provincial Government to appoint so many and such clerks and other ministerial officers as shall be found necessary for the administration of justice, and the due execution of all the powers and authorities granted and committed to the said High Court by these Our Letters Patent.

[1][* * *] And it is Our further will and pleasure, and We do hereby for Us, Our heirs and Successors, give, grant, direct and appoint that all and every the officers and clerks to be appointed as aforesaid shall have and receive respectively such reasonable salaries as the Chief Justice shall, from time to time, appoint for each office and place respectively, and as the Central Government shall approve of: Provided always, and it is Our will and pleasure that all and every the officers and clerks to be appointed as aforesaid shall be resident within the limits of the jurisdiction of the said Court, so long as they shall hold their respective offices: but this proviso shall not interfere with or prejudice the right of any other officer or clerk to avail himself of leave of absence under any rules prescribed by the Central Government in and to absent himself, from the said limits during the term of such leave, in accordance with the said rules.

Admission of Advocates, Vakeels and Attorneys.

Powers of High Court in admitting Advocates, Vakeels and Attorneys.

9. And We do hereby authorize and empower the said High Court of Judicature at Madras [Fort William in Bengal] [Bombay] to approve, admit and enrol such and so many Advocates, Vakeels and Attorneys, as to the said High Court shall seem meet, and such Advocates,

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[1] Rep. by amending Letters Patent, dated 11th March, 1919.

CL. 8—MADRAS CASES.—Cl. 8 does not widen the jurisdiction given to the Court in civil and criminal matters by Cls. 21, 22 and 23. 36 M. 72=23 M.L.J. 393.

CLS. 9 AND 10—MADRAS CASES.—*See* r. 128 of the Madras Insolvency Rules 1910, cited in the Original Side Rules, published by the Madras Law Journal Office,

Vakeels and Attorneys shall be and are hereby authorized to appear for the suitors of the said High Court, and to plead or to act, or to plead and act for the said suitors, according as the said High Court may by its rules and directions determine, and subject to such rules and directions.

In making rules for the qualifications, etc., of Advocates, Vakeels and Attorneys.

10. And We do hereby ordain that the said High Court of Judicature at Madras [Fort William in Bengal] [Bombay] shall have power to make rules for the qualification and admission of proper persons to be Advocates, Vakeels and Attorneys-at-Law of the said High Court and shall be empowered to remove or to suspend from practice on reasonable cause the said Advocates, Vakeels or Attorneys-at-Law and no person whatsoever but such Advocates, Vakeels or Attorneys shall be allowed to act or to plead for or on behalf of any suitor in the said High Court, except that any suitor shall be allowed to appear, plead or act on his own behalf, or on behalf of a co-suitor.

1927 Ed., p. 259. Vakils have a right of audience on the Original Side of the Madras High Court, but attorneys have no such right. [1 M. 24 (F.B.), Foll.] 37 I.C. 669=31 M. L.J. 698. *See also* 1937 M. 1937=(1937) 2 M.L.J. 552 (F.B.). Right of audience of agent of party holding power of attorney with power to conduct proceedings in Court. R. 533 of the Original Side Rules of the Madras High Court of 1902 is not *ultra vires* of the Letters Patent. 31 M.L.J. 698.

CL. 10.—[*See* Notes under secs. 13 and 14, Legal Practitioners Act.]

MADRAS CASES: "REASONABLE CAUSE".—Where a vakil, though acquitted of personal fraud, permitted his clerks, guilty to his own knowledge, of practising fraud and gross deception upon his client, to continue in correspondence with him, there is "reasonable cause" to suspend the Vakil from practice under cl. 10. 35 M. 543=39 I.A. 191=23 M.L.J. 114 (P.C.). Cheating a client first and then falsely asserting title against him. 40 M. 69. Making unfounded allegations against Judge. 21 M.L.J. 76. Vakil's professional misconduct—Perjury — Asserting absolute title in himself—Getting a conveyance benami. 39 I.C. 289=40 M. 69. Suggestion that he is in a position to influence a judge in his favour. 23 I.C. 789=26 M. L.J. 429. Disciplinary proceedings under cl. 10 are not appealable under cl. 39; as to whether the High Court has power to give leave to appeal to the Privy Council from an order passed in the exercise of such jurisdiction. *See* 39 M. 128=29 M.L.J. 16; 43 M.L.J. 382=1922 M. 440 (F.B.). A Bench of three Judges can hear and dispose of an enquiry against a legal practitioner under cl. 10 as provided by the Rules of the High Court. 54 M. 857=1932 M. 131=61 M.L.J. 148 (F.B.). *See also* Notes under secs. 12-14, Legal Practitioners Act, 1879 and sec. 10, Bar Councils Act.

CL. 10—BOMBAY CASES.—It must not be supposed that a Court of justice has not the power to remove an Attorney if he is unfit to be entrusted with a professional status and character. If an Attorney be found guilty of moral delinquency in his private character, there is no doubt that he may be struck off the Roll. Contempt of Court when committed by an Attorney in a private capacity can be of such a nature as to show professional unfitness. There can be no grosser contempt on the part of an Attorney than to allege that a Judge has acted with prejudice, bias and malice in the course of his judicial duties, that he decided a case not according to his own convictions but to please somebody else and that he abused his powers as a Judge and acted dishonesty and in bad faith. The fact that such allegations are contained in a notice sent by the Attorney under sec. 80, C. P. Code, to a Judge in respect of certain remarks made by the Judge in a judgment in a case in which the Attorney was a witness is no ground for holding that no offence is committed. No one by merely filing or threatening to file a suit and calling his communication a notice under sec. 80, C. P. Code, can insult and vilify a Judge in that manner. The fact that the scandalous allegations are contained in a notice under sec. 80, C. P. Code, cannot therefore prevent them from being contempt of Court, and the Attorney who makes such allegations renders himself liable to be dealt with under the disciplinary powers of the High Court under cl. 10. 195 I.C. 359=43 Bom.L.R. 250=1941 Bom. 228 =I.L.R. (1941) Bom. 548. Cl. 10 of the Letters Patent which empowers the High Court to remove or suspend from practice advocates, vakils, or attorneys on "reasonable cause", gives a wide discretion to the Court in regard to the exercise of this disciplinary authority. "Reasonable cause" in the clause means the same as professional or other misconduct under sec. 10 of the Bar Councils Act. "Misconduct" is a sufficiently wide expression, it is not necessary that it should involve moral turpitude. Any conduct which in any way renders a man unfit for the exercise of his profession or is likely to hamper or embarrass the administration of justice by the High Court or any of the Courts subordinate thereto may be considered to be misconduct calling for disciplinary action. What the Court has to con-

Civil jurisdiction of the High Court.

Local Limits of the ordinary original jurisdiction of of the High Court.

11. And We do hereby ordain that the said High Court of Judicature at Madras [Fort William in Bengal] [Bombay] shall have and exercise ordinary original civil jurisdiction within such local limits as may from time to time be declared and prescribed by any law made by the Provincial Government[1] and until some local limits shall be declared and prescribed, within the limits of the local jurisdiction of the said High Court of Madras [Bombay] at the date of the publication of these presents, and the ordinary original civil jurisdiction of the said High Court shall not extend beyond the limits for the time being declared and prescribed as the local limits of such jurdiction.

12. And We do further ordain that the said High Court of Judicature at

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1 [*N.B.*—The provisions of the Calcutta Letters Patent differ slightly and are as follows:—". . . . . prescribed by any law made by competent legislative authority for India and until some local limits shall be so declared and prescribed, within the limits declared and prescribed by the proclamation fixing the limits of Calcutta, issued by the Governor-General in Council, on the 10th day of September, in the year of Our Lord One thousand, seven hundred and ninety-four, and the ordinary original civil jurisdiction. . . . . ".—By Act No. XV of 1919 the limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal have been declared and prescribed.]

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sider is the conduct of the Advocate or Attorney as it affects his position as an Advocate or Attorney and his relations to the Court. 195 I.C. 359=43 Bom.L.R. 250=1941 Bom. 228. Disciplinary jurisdiction over pleaders who passed resolution congratulating an accused in a pending criminal trial—Criticism of pending proceedings in Court constitutes contempt. 24 Bom.L.R. 1049=47 B. 117=1922 B. 361. Advocates and Pleaders—Passive resistance—Signing of pledge to civilly disabey law—Unprofessional conduct. 44 B. 418=54 I.C. 679=22 Bom.L.R. 13. *See also* 26 Bom.L.R. 887=1925 B. 1 (F.B.). (Attorneys). Attorney's fraud on client making advances to him of money to be invested on mortgage is guilty of professional misconduct and can be removed from office. 29 Bom.L.R. 1066=1927 B. 537. Insolvency of pleader as a ground for his suspension. *See* 30 Bom.L.R. 1011=52 B. 559=1938 B. 385.

CL. 10: CALCUTTA CASES.—Under cl. 10 of the Letters Patent, no persons have rights of audience in the Original Civil Jurisdiction of the High Court except advocates and attorneys and suitors in person. Where the suitor is a company, it cannot appear in person, not having as a legal entity any visible person. The company must appear either by counsel or solicitor, and the liquidator as such has no right of audience. 41 C.W.N. 424=I.L.R. (1937) 2 Cal. 173. There is no special procedure for disciplinary action of the Court in the case of an attorney. The English procedure cannot be adopted in its entirety. 19 I.C. 993=41 C. 113. A case of suspicion is not enough to justify disciplinary action. 41 C. 113. Any cause which in the opinion of the Court affords reasonable ground for taking action will suffice, even though it may not be purely professional misconduct. *See* 34 729=C.L.J. 55 (Advocate arranging with client direct). 4 C.L.J. 259 (F.B.). (Advocate stipulating with client to share in the result of the litigation). *See also* 8 C.L.J. 165 (F.B.) Advising client to win over a witness by bribing him). 34 I.A. 55=17 M.L.J. 67=34 C. 129 (P.C.). A solicitor who detaches a client from another solicitor during the period of his retainer is guilty of professional misconduct. 52 C. 795=1925 C. 1084. Pleader accepting from client vakalatnama and papers but not filing appeal—When amounts to misconduct. *See* 114 I.C. 490=1928 C. 820.

CLS. 11 AND 12—MADRAS CASES.—The High Court in exercise of its original jurisdiction is merely a local Court. 17 I.C. 342=23 M.L.J. 726.

CL. 11—BOMBAY CASES.—Power of single Judge sitting on the Original Side of the High Court, to stay suit pending in a mofussil Court subordinate to the High Court. *See* 39 B. 606=30 I.C. 560=17 Bom.L.R. 655 (F.B.).

CALCUTTA CASES.—Where a Court has no jurisdiction, it cannot be vested with jurisdiction either by waiver or by consent. I.L.R. (1942) 1 Cal. 149=1942 Cal. 496.

CLS. 11 AND 12—BOMBAY CASES: DECREE PASSED BY HIGH COURT—EXECUTION OUTSIDE LIMITS OF ORIGINAL CIVIL JURISDICTEON—POWERS OF HIGH COURT.—Rr. 386 and 387 of the Bombay High Court Rules (Original Side) are not *ultra vires* and the High Court of Bombay has the power to pass an order for execution of a decree passed by it anywhere within the *presidency* of Bombay. The Supreme Court of Bombay had such a power and there is nothing in the Letters Patent that deprives the High Court, which has succeeded to the powers of the Supreme Court under cl. 11 of the Letters Patent, of that power. (26 M. 120 and 28 Bom. L.R. 380 Expl.) 58 Bom. 729=36 Bom.L.R. 454=1934 Bom. 225 (F.B.).

CL. 12—MADRAS CASES: MEANING OF TERMS.—*"Dwelling within limits"*, meaning

Original jurisdiction as to suits.

Madras, [Fort William in Bengal] [Bombay] in the exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try and determine suits of every description if, in the case of suits for land or other immovable property, such land or property shall be situated or in all other cases if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court, or if the defendant at the time of the commencement of the suit shall dwell or carry on business, or personally work for gain within such limits; except that the said High Court shall not have such original jurisdiction in cases falling with the jurisdiction of the Small Cause Court at Madras [Bombay,] [Calcutta,] in which the debt or damage, or value of the property sued for, does not exceed one hundred rupees.

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of. 34 M. 257=38 I.A. 129=21 M.L.J. 669 (P.C.). *"Carrying on business"* includes carrying on business through an agent by foreigners living outside the jurisdiction of the Court as well as carrying on business through an agent by British subjects. A foreigner is included in the word "defendant". 45 M.L.J. 471=1924 M. 158. "Resides" and *"Carries on business"*, meaning of. *See* 50 M. 449=1927 M. 689=53 M.L.J. 355=1941 M. 270=52 L.W. 625=(1940) 2 M.L.J. 688. Insurance company with head office at Calcutta and Branch office at Madras—Madras Branch cannot be said to carry on business at Madras).

SCOPE OF CLAUSE.—Cl. 12 does not control cl. 18. 40 M. 810=36 I.C. 524; 1928 M. 732 (F.B.)=55 M.L.J. 171=51 M. 540.

JURISDICTION—RESIDENCE.—Cl. 12 of the amended Letters Patent does not confer jurisdiction upon the High Court in cases where one or more of the several defendants reside within jurisdiction. 1922 M.W.N. 841 =1923 M. 272. Submission of accounts at Madras—Defendant residing out of Madras—Court has jurisdiction. 29 I.C. 462=1915 M. W.N. 519.

LEAVE TO SUE.—Lands situate partly within and partly without—Leave to sue, discretionary. 32 I.C. 423=3 L.W. 107. As to necessity for fresh leave to sue after amendment of plaint, *see* 41 Bom.L.R. 536 =1939 Bom. 345.

SUIT FOR LAND.—A suit by a purchaser of lands situate outside Madras for specific performance of a contract to sell made at Madras by parties resident therein is not a "suit for land" within the meaning of Cl. 12 of Letters Patent. 52 M. 809=1929 M. 721=57 M.L.J. 190 (F.B.). The suit is one for land under Cl. 12 where, on the allegations in the plaint, title to land has to be determined either expressly or by implication so as to preclude it from being raised in any subsequent suit. 24 I.C. 895=26 M.L.J. 567. A suit for the recovery of damages for trees cut and carried away from the plaintiff's casuarina plantation is a suit for land. (*Ibid.*) *See also* 33 I.C. 906=30 M.L.J. 120. A suit to avoid an incumbrance on land is a suit for land. 17 I. C. 342=23 M.L.J. 726 (27 M. 157; 33 M. 131, F.). Administration suit is not a suit for land. 1928 M. 760. Suit for accounts of the management of a trust, and for the administration of a trust, whether a suit for land. 90 I.C. 188=1925 M. 1084=49 M.L.J. 311. *See also* I.L.R. (1940) Mad. 195=50 L. W. 597=1940 Mad. 49=(1940) 1 M.L.J. 676 (Suit for damages for breach of contract). Fraud alleged as cause of action. *See* 1922 M.W.N. 841=1923 M. 272.

CL. 12: BOMBAY CASES: GENERAL SUIT FOR LAND OR IMMOVABLE PROPERTY.—The High Court of Bombay has given a restricted meaning to the expression in 14 B. 353; 22 B. 701. But later decisions seem to put a liberal construction as was done by Calcutta and Madras High Courts. *See* 29 B. 249; 37 B. 494. Where the material part of the cause of action arises outside jurisdiction, leave to sue cannot properly be granted. 100 I.C. 946=29 Bom.L.R. 131. High Court has no jurisdiction to pass a decree on the basis of an equitable mortgage when no part of the property over which the decree is intended to operate is situate within the jurisdiction of the Court. 31 N.L.R. (Supp.) 57= 1936 N. 1 (F.B.) [1935 N. 250 F.] As to the meaning of the words "cause of action", *see* 33 Bom.L.R. 1364. The High Court, on the original side, has no jurisdiction to administer immovable properties out of British India, and will not therefore entertain a suit for administration of immovable properties which are situate beyond British India. (Coyajee, J.) Abdullabhoy Esoofally Chas v. Akbarally Samsuddin. I.L.R. (1943) Bom. 393=45 Bom.L.R. 1102=1944 Bom. 93. Promissory note payable on demand—Cause of action. *See* 44 Bom.L.R. 495=I.L.R. 1942 B. 620=1942 B. 251. The following are a few instances of where the suits have been held to be suits for land: redemption, foreclosure or sale. 26 Bom.L.R. 535;=27 Bom.L.R. 570 =1925 B. 333. Specific performance of contract to sell land. 7 Bom.L.R. 319. Where the suit is for cancellation of a sale but the object is to get an adjudication as to title to land as between the parties, the suit is one for land within the meaning of cl. 12. 35 Bom. L.R. 630=57 B. 456=1933 B. 398. Suit by unpaid vendor for charge on property sold. 48 B. 625=26 Bom.L.R. 541=1924 B. 412. Suit for maintenance and making it a charge. 25 Bom.L.R. 1172. Suit for recovery of title-deeds. 37 B. 494. Administrtion suit is not

a suit for land. 46 B. 772=32 Bom.L.R. 1326 =1922 B. 443. Administration suit—Land outside Court's jurisdiction—Power to adjudicate on claim. 48 B. 331=26 Bom.L.R. 163=1924 B. 313. Mortage suit for sale is not a suit for land. *See* 104 I.C. 115=29 Bom.L.R. 659=1927 B. 663. Following 29 Bom.L.R. 498 (F.B.). So also suit by mortgagee for declaration that he has priority rights under his mortgage as against a charge-holder. 60 B. 778=38 Bom.L.R. 535= 164 I.C. 581=1936 B. 313.

"COURSE OF BUSINESS"—MEANING OF.—I. L.R. (1937) Bom. 811=1937 Bom. 387=39 Bom.L.R. 648; 43 Bom.L.R. 916=1942 Bom. 15.

In a case in which the cause of action has arisen in part only within the local limits of the orginal jurisdiction of the High Court, it is a condition precedent to the maintenance of the suit that the leave of the Court should have been first obtained. It is not a condition for the parties to waive. 56 B. 324=34 Bom.L.R. 236=1932 B. 291 (31 Bom.L.R. 1002=20 Bom.L.R. 468, over. 35 C. 394, Diss.) [But *see* 18 I.C. 398=17 C.W.N. 512; 56 Cal. 979=1930 C. 258.]

ILLUSTRATIVE CASES.—The Bombay High Court has no jurisdiction to entertain suits on hundies which were not made payable in Bombay. 40 B. 473=32 I.C. 918. But *see* 41 Bom. L.R. 536=1939 Bom. 345; 40 Bom.L.R. 252= 1938 Bom. 278 (Place of payment). Any step which a plaintiff has to prove in order to establish his title to sue on a negotiable instrument is a meterial fact, and if any such event has taken place within the jurisdiction of the High Court, with leave granted under Cl. 12 of the Letters Patent, the High Court has jurisdiction to try the suit. The 1st defendant drew in Bombay five bills of exchange on the 2nd defendant who was residing at Calicut in the Madras Province in favour of the plaintiffs. These were endorsed over by the plaintiffs to a Bank in Calicut for collection, and when presented to the 2nd defendant were accepted by him. But on the due date he dishonoured them by non-payment. The plaintiffs having filed a suit in the Bombay High Court after obtaining leave under Cl. 12 of the Letters Patent, the 2nd defendant pleaded that the High Court of Bombay had no jurisdiction because he had accepted the Bills at Calicut and no part of the cause of action arose in Bombay as against him. The 1st defendant did not appear at all. *Held*, that the fact that the bills were drawn on defendant No. 2 was a material fact to be proved by the plaintiffs, to establish their claim, and as that fact took place in Bombay, the Bombay High Court had jurisdiction to try the suit with leave under cl. 12 of the Letters Patent. 1942 Bom. 15=43 Bom.L.R. 916= I.L.R. (1942) B. 101. It should appear clearly on the face of the order that leave is given under cl. 12. 45 B. 24=59 I.C. 28 =22 Bom.L.R. 863=1921 B. 195. As to interference in appeal with the discretion of lower Court in granting leave to sue, *see* 100 I.C. 946=29 Bom.L.R. 131=1927 B. 660. The absence of leave of Court goes to the root of the jurisdiction of the Court. 37 B. 503=20 I.C. 530=15 Bom.L.R. 672. "Suits of every other description" in cl. 12 include third party proceedings and leave of the High Court must be obtained to proceed therein. 59 I.C. 12=21 Bom.L.R. 808 (810); 45 B. 24=1921 B. 198=22 Bom. L. R. 863. An originating summons is a "suit" within the meaning of cl. 12 of the Letters Patent and when the cause of action arises partly outside the High Court's jurisdiction, leave of the Court is necessary. 1935 C. 511=62 C. 120. By virtue of Cl. 12, the High Court has jurisdiction to entertain a suit under sec. 42 of the Specific Relief Act for a declaration of dissolution of marriage between parties who were married as Hindus but one of whom subsequently became a convert to Islam where the parties are domiciled in India. 49 C.W.N. 439.

Jurisdiction—Partition suit—Part of property situate outside British India—Leave of Court whether necessary. 23 Bom.L.R. 1049. =46 B. 249=1921 B. 328. In a suit for accounts in Bombay by a principal against his agent who was carrying on business at Calcutta, *held*, that no material part of the cause of action arose in Bombay and that leave granted under Cl. 12 was not conclusive when the jurisdiction was in issue. 23 Bom. L. R. 1364. Contract made at Bombay with constituent in Central Provinces—Goods delivered, advances made and accounts to be rendered in Bombay—Leave, not necessary. 34 Bom.L.R. 1410. The High Court has no jurisdiction to entertain a suit for partition of lands outside British India, even though part of the estate was within the local limits of the ordinary original civil jurisdiction. 23 Bom.L.R. 1049. Leave to sue, cause of action outside— Jurisdiction—Suit against dead man—Subsequent addition of legal representative— Fresh leave necessary. 85 I.C. 464=1924 B. 109. Leave to sue obtained under cl. 12 does not enure as against the legal representative of the orginal defendant. 31 Bom.L.R. 1002 =1929 B. 468. *See also* 25 Bom.L.R. 7=1924 B. 109. The plaintiffs were doing business at Bombay as Pakka Adatias and claimed a certain sum of money as the balance due on accounts from the merchants who resided in Gaziabad (in Meerut) and who had employed them. The palintiffs had addressed a letter to the defendants intimating the terms on which they were prepared to do business and on that basis, the defendants had been forwarding merchandise to the plaintiffs at Bombay to be sold on commission. *Held*, that the cause of action arose wholly and not merely in part at Bombay. 56 B. 324=34 Bom.L.R. 326=1932 B. 291.

MEANING OF TERMS.—"Carrying on business"—Meaning of—Ordinary jurisdiction of High Court. 24 C.W.N. 582=57 I.C. 211. A foreign company must be deemed to carry on its business at its agent's office in British India. I.L.R. 1937 All. 234=167 I.C. 896 =1937 A.L.J. 98=1937 A.W.R. 52=1937 A. 208. Railway carriage business is a business within the meaning of Cl. 12. As Govern-

ment carry on the business of railway carriage under the name of the Eastern Bengal Railway amongst other places, at the head office in Calcutta, a suit can be brought in Calcutta against the Secretary of State in respect of a claim against the railway. I L. R. (1941) 2 Cal. 160. Term "cause of action" explained. 58 C. 539=134 I.C. 65=1931 C. 659. The presentation of a petition to wind up a company on the basis of a claim under a decree passed against it by another Court, is part of the cause of action in a suit to obtain a declaration that that decree is a nullity. I.L.R. (1942) 1 Cal. 562=1943 Cal. 172. The Secretary of State for India in Council does not dwell or carry on business, or personally work for gain within the local jurisdiction of the High Court at Calcutta. 21 C. 1=40 C. 308, on appeal from 16 C.W.N. 747=15 I.C. 955. The Government of a country is not a business within the meaning of cl. 12 of the Letters Patent. 4 Fed.L. J. (H.C.) 400. *See also* I.L.R. (1941) 2 Cal. 160. Where a person having headquarters elsewhere has also a house at Calcutta for temporary residence, which he was using from time to time as he pleased for a week or more at a time, he may be said to *'dwell'* at Calcutta. 164 I.C. 907=40 C.W.N. 65.

THE CONSTRUCTION OF CL. 22, upon which all the High Courts are agreed is that, as regards suits for land, the High Court can take cognizance if the land is situate wholly within the local limits or where the land is situate in part only within such limits if leave has been first obtained; and that as regards suits other than those for land, the High Court has jurisdiction, if the cause of action has arisen in part only within the limits, if the leave of the Court shall have been first obtained or if the defendant dwells or carries on business or personally works for gain within these limits. 56 C. 940=1929 C. 358. Although the legislature had power in 1908 to override the Letters Patent, the Legislature has not by introducing sec. 21, C. P. Code, overriden the provisions of cl. 12. 56 C. 940=1929 C. 358. Neither the practice of the English Courts nor the practice of the Indian Courts in proceedings under the Divorce Act can apply to proceedings under cl. 12 of the Letters Patent which are governed by the procedure laid down in the Code of Civil Procedure. 57 C. 1089=34 C. W.N. 319=1930 C. 558. Where the parties to a marriage are not domiciled in India and the husband is a non-resident foreigner, the High Court has no jurisdiction to entertain a suit brought by the wife under cl. 12 of the Letters Patent for a declaration under sec 42 of the Specific Relief Act that her Christian marriage with the defendant has been dissolved as a result of her converison to Islam and the refusal of the defandant to embrace Islam when presented to him. *Per* Derbyshire, C.J.—Even the submission of the defendant to the jurisdiction of the Court will not avail the palintiff. 46 C.W.N. 465=I.L.R. (1942) 2 Cal. 165=1942 Cal. 325. An application to revoke a leave once granted under cl. 12 is maintainable. The party is not obliged to wait until the trial and to take the point by way of defence in his written statement. The application to revoke should, however be based on something better than a mere criticisim of the clarity of the pleadings. In granting leave or revoking it the Judge should go by the cause of action alleged. Where in the case of contracts part of the cause of action arises within the jurisdiction of the Court, the defendant cannot ask for revocation unless he shows that cl. 12 has no application at all. 58 C. 539=1931 C. 659. *Per* Rankin, C.J.—It cannot be said that the Judge in granting leave should not consider matters of evidence outside the plaint. (*Ibid.*) Application to revoke leave—Case involving important and difficult questions—Proper procedure. *See* 35 C.W.N. 930. *See also* 1941 Cal. 236. Plaint not in order—Procedure. *See* 58 C. 539=1931 C. 659.

APPLICATION FOR GRANT OR REVOCATION OF LEAVE—PRINCIPLES APPLICABLE.—From the judicial authorities, the following propositions may be enunciated:—(*a*) that an application lies for revoking leave granted under cl. 12 of the Letters Patent, (*b*) that such an application should be made at an early stage of the suit and delay and acquiescence may be a bar to such an application, (*c*) that if that application depends on difficult questions of law or fact the Court should not revoke leave on a summary application but should decide the question at the trial; (*d*) that if the defendant shows clearly that no part of the cause of action arose within jurisdiction, leave should be revoked as a matter of course; (*e*) that if only a part of the cause of action arose within jurisdiction, then it is a question of discretion for the Court to give or refuse leave or where leave has already been granted to revoke or maintain the leave; (*f*) that assignment is a very important part of the cause of action in a suit by the assignee; (*g*) that in giving or refusing leave or maintaining or revoking leave the Court will ordinarily take into consideration the balance of convenience and may, if the balance is definitely in favour of the defendant, apply the doctrine of *forum conveniens;* (*h*) that the Court may refuse leave or revoke leave on the ground of balance of convenience although there be no evidence of bad faith or abuse of process on the part of the plaintiff; (*i*) that if the cause of action is founded on an assignment within jurisdiction of a negotiable instrument, the Court will, in recognition of the principle of negotiability, insist on a far greater degree of balance of convenience in favour of the defendant and will more readily give or maintain leave than in other cases of assignment; (*j*) that if the Court is satisfied that the suit has been filed *mala fide* for the purpose of harassing or oppressing the defendant or might result in injustice, the Court should in all cases readily refuse leave or if leave has already been granted revoke the leave as a matter of course. 49 C.W.N. 357.

SUIT FOR LAND.—The test whether a suit is a suit for land or other immovable property is not a formal test, but regard is to

be had to substance of the suit. 31 I.C. 581 =42 C. 942. The term *'suit for land or other immovable property'* is not limited to suits in which the plaintiff seeks to recover possession of land or other immovable property. It means suit in which, having regard to the issue raised in the pleadings, the decree or order will affect directly the proprietary or possessory title to land or other immovable property. 104 I.C. 721=54 C. 655=1927 C. 768 *See also* 1937 Cal. 593=I.L.R. (1937) 2 Cal. 644. The expression "suit for land" in cl. 12 covers only a suit for recovery of land. A suit for specific performance simpliciter of an agreement made in Calcutta for sale of land outside Calcutta is not a "suit for land", whether it is brought by the vendor or by the purchaser, and the Calcutta High Court has jurisdiction to entertain the suit. If, however, a suit is not one for specific performance simpliciter but also a suit for possession, the suit is a "suit for land", and the Court has, therefore, no jurisdiction to entertain such a suit. 49 C.W.N. 80. A suit for specific performance of an agreement to mortgage lands outside the jurisdiction is a suit for land. 48 C. 882=1922 C. 528. *See also* I.L.R. (1937) 2 Cal. 644; 27 C.W.N. 65= 1922 C. 443=49 C. 670. Where the plaintiff sued to have it established that, on the death of the tenant for life, the title to the immovable property no longer remained in the Official Trustee in trust for the sons as they attained the age of 21 years but reverted to the estate of the settlor and that the property accordingly had become available to satisfy the claims of their creditors: *Held*, that the suit was one for land though the plaintiff did not claim a proprietary title in himself. 58 C. 768=1931 C. 651. Claim for damages for erecting masonry buttresses is a claim for land. 17 I.C. 500=39 C. 739; 42 C. 742. A suit to recover damages for breaking through plaintiff's mine or land and carrying away coal is a suit for land. 39 C. 739. A suit for damages in respect of injury to land is a suit for land, and so if the land is outside the original jurisdiction of High Court, the High Court cannot try it. 38 I.C. 571=44 C. 10. Where the plaintiff claimed that he was entitled to the whole of the residuary estate of the testator to the exclusion of certain other persons and for a declaration that the purported dedication of the properties made *debutter* under the will was void: *Held*, that the proceeding was a suit for land. 56 C. 979=1930 C. 258. Debutter property partly in Calcutta and party in mofussil—Jurisdiction. *See* 60 C. 54=1933 C. 295. *See also* I.L.R. (1938) 1 Cal. 531=42 C.W.N. 422 (Suit for construction of will and administration) I.L.R. (1938) 1 Cal. 354=1938 Cal. 271 (Suit for possession of movables situate outside jurisdiction). A suit by trustees under a commosition deed regarding certain properties within the original jurisdiction of the Calcutta High Court does not cease to be a suit for land, merely because the properties have been entirely swept away by prior encumbrances 56 C. 940=1929 C. 358. Where in a suit on a mortgage, the mortgaged premises were outside the jurisdiction of the Court leave could not be granted under cl. 12. 49 C.L.J. 235= 1929 C. 373. A suit for land part of which only was situate within the ordinary original civil jurisdiction of the High Court and the other part was situate in the mofussil was brought on the Original Side without leave being obtained under cl. 12. *Held*, that as regards all properties outside the original jurisdiction of the High Court the suit was without jurisdiction and that effect must be given to the objection about jurisdiction though taken in the appellate Court for the first time. 56 C. 940=1929 C. 358. *See also* 41 C.W.N. 854; 41 C.W.N. 1135; 43 C.W.N. 365; 44 C.W.N. 214. Where a deed of composition for creditors was executed in Calcutta and it comprised certain properties outside and a suit was filed on the Original Side to enforce the deed without sanction under cl. 12, but the objection to jurisdiction was taken only in appeal, *held*, (1) that the plaintiff should have obtained leave to sue; (2) that the objection to jurisdiction could be raised in appeal; (3) that sec. 21, C.P. Code, did not abrogate the mandatory provisions of cl. 12; (4) that the suit could be proceeded with only as regards properties within the jurisdiction of the High Court on its Original side and that the mere fact that they were transferred subsequent to the institution of the suit did not affect the maintainability of the suit. 56 C. 940=1929 C. 358. Under cl. 12 of the Letters Patent in the case of a suit for land of which a part is within its jurisdiction, the High Court acquires jurisdiction over the entire suit provided that its leave is first obtained. When once it acquires jurisdiction to determine the suit, the decree that it passes is in no way different from a decree passed by the mofussil Court. Thus, an order for sale passed in a mortgage suit in respect of properties partly situate outside the original jurisdiction does operate as *lis pendens*. 58 C. 598=1931 C. 763. Sec. 92 of the C.P. Code, must be taken as overriding cl. 12 of the Letters Patent. A suit under sec. 92 of C.P. Code, cannot be instituted in the High Court when the subject-matter of the trust is situated outside the local limits of its jurisdiction, even though the defendants may dwell or carry on business within. 59 C. 357=1932 C. 444. Leave to suit - Suit for damages for wrongful conversion of house in the Punjab—One of the joint tort-feasors residing in Calcutta—Suit for recovering sale proceeds and for account—Maintainability. *See* 116 I.C. 727=1928 C. 887. Suit for damages for *malicious prosecution*—Forum: *See* 60 C. 918=38 C.W.N. 120=1933 C. 706. Specific performance of contract to sell land. 19 C. 358; 49 C. 670=1922 C. 443. Suit for declaration that lease is subsisting. 36 C. 59. High Court—Original Side—Limited territorial jurisdiction—Fictitious entry in mortgage—Not effective to give jurisdiction —Decree of High Court—Nullity. 41 C. 972 =41 I.A. 110=23 I.C. 637=1914 P.C. 67=27 M.L.J. 80 P.C. Where the value of the Cal-

cutta property mortgaged is almost infinitesimal and the intention of the parties was not to make that property an effective part of the security given in the mortgage, and it was included merely to confer jurisdiction on the High Court and not for any other purpose, *held*, that leave to institute the suit on the mortgage should not be granted under cl. 12, as the High Court had no jurisdiction to entertain the suit. 41 C.W.N. 854. But when the High Court grants leave under the clause, it holds that the property included in the mortgage was validly included in it and was intended to be so included and charged. And when a decree has been passed in such suit, it is not open to a party afterwards in a subsequent suit based on such decree to contend that the property was not really intended to be included in the mortgage and that the decree was therefore without jurisdiction. 41 C.W.N. 396=1937 C. 83.

LEAVE TO SUE.—Under cl. 12, the Court's leave should previously be obtained before it has jurisdiction to receive a suit for which leave is required. The grant of leave is a condition precedent to the Court having jurisdiction to receive such a suit, and it relates solely to the cause of action set forth in the plaint at that time. It is not available to confer jurisdiction in respect of a different cause of action newly introduced into the plaint by a subsequent amendment nor can fresh leave be given in respect thereof in the same suit. The Court can try the new cause of action only in another suit filed after obtaining leave. I.L.R. (1942) 2 Cal. 101. In a case in which the cause of action has arisen in part only within the local limits of the original jurisdiction of the High Court, it is a condition precedent to the maintenance of the suit that the leave of the Court should have been first obtained. It is not a condition for the parties to waive. 56 B. 324=34 Bom.L.R. 236=1932 B. 291 (31 Bom.L.R. 1002=29 Bom.L.R. 468, overr. 35 C. 394, Dis.). [But *see* 18 I.C. 898=17 C.W.N. 512; 56 Cal. 979 =1930 C. 258.] Where persons living outside jurisdiction are made parties to a suit but leave to sue is applied for and the High Court has granted it, the suit is valid as against them. 1937 C. 172=171 I.C. 632. *See also* (1940) 1 Cal. 497=44 C.W.N. 460 =1941 C. 236. The Calcutta High Court cannot grant leave to enforce a cause of action regarding properties partly within and partly without the ordinary original civil jurisdiction, and so a decree affecting properties outside those limits is void. 47 C. 770=56 I.C. 532=24 C.W.N. 633. A contract was signed by the manager of the defendant business in Calcutta; the defendant himself was a resident of Singapore. The defendant can be sued in the firm's name for damages for breach of contract in the Original Side of the High Court. 10 I.C. 895. Suit for damages for wrongful conversion of house in the Punjab—One of the joint tort-feasors residing in Calcutta—Leave to sue can be granted by Calcutta High Court. 32 C.W.N. 208=1928 C. 887. *See also* 1941 Cal. 291 (Suit for money lent in Calcutta to non-resident foreigner. Calcutta High Court has jurisdiction). The High Court has the power under the ordinary Original Civil Jurisdiction conferred on it by cl. 12 to pass an order for judicial separation between Jews. 57 C. 1089=34 C.W.N. 319=1930 C. 358. The jurisdiction of the High Court as it stood in 1908 when the Code was republished depended upon sec. 9, High Courts Act of 1861. It was to have such power and authority as Her Majesty may by Letters Patent grant and direct. 56 C. 940 =1929 C. 358. In a *suit by an assignee of a debt, the assignment is a part of the cause of action* and upon that leave is invariably granted. It is impossible in practice to decide before the hearing of the suit whether an assignment is or is not *bona fide*. The Court would not be justified on a mere suspicion that the assignor might not have acted in the ordinary way of business in depriving the plaintiff of the right to bring a suit in the place where the assignment was made. 37 C.W.N. 1139=1934 C. 175. But where the sum at stake is not a large one and *prima facie* there is no issue likely to be raised which the tribunal at the place where the note was originally executed and where the defendant resides is not competent to try satisfactorily, and where the assignment of the promissory note was executed on the last day before the expiry of the period of limitation and collusively for the purpose mainly of giving the High Court jurisdiction which it would not otherwise possess, the case is one in which leave under cl. 12 ought not to be granted. 63 C. 435=40 C.W.N. 161=1936 C. 349. In such a case the High Court has power to recall the leave granted at the time of the filing of the plaint, the grant of leave at that stage being only *ex parte*. 63 Cal. 435. It is not usually right to grant leave under cl. 12 of the Letters Patent in a case where the part of the cause of action on which the jurisdiction depends is a matter with which the defendants have had nothing to do; and generally speaking, when people take an assignment of a promissory note, they should be prepared to enforce their claim either in the Court within whose jurisdiction the makers reside, or in a jurisdiction where a part of the cause of action with which the makers are directly concerned has arisen. In the case of a note executed by a mercantile firm, different considerations will prevail, for parties engaged in mercantile transactions must be held to contemplate the possibility of the note passing from hand to hand by negotiation and eventually getting into the hands of a party who may elect to sue in a Court which does not suit the convenience of the maker. 63 Cal. 526=40 C.W.N. 164= 1936 Cal. 219. But *see* 63 C. 908=40 C.W.N. 717; 40 C.W.N. 1349.

WAIVER OF OBJECTION TO JURISDICTION.—A defendant cannot be held to have waived his objection to jurisdiction, when the plaint alleged the cause of action to have arisen

13. And We do further ordain that the said High Court of Judicature at Madras, [Fort William in Bengal] [Bombay,] shall have power to remove, and to try and determine, as a Court of extraordinary original jurisdiction, any suit being or falling within the jurisdiction of any Court, whether within or without the Presidency of Madras, [Bengal Division of the Presidency of Fort William] [Bombay], subject to its superintendence, when the said High Court shall think proper to do so, either on the agreement of the parties to that effect, or for purposes of justice, the reasons for so doing being recorded on the proceedings of the said High Court.

Extraordinary original Civil jurisdiction.

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wholly within the original civil jurisdiction, if it afterwards turns out that a portion was beyond jurisdiction, and no leave was obtained. 38 I.C. 571=44 C. 10. Where a court has no jurisdiction, it cannot be cured by waiver or consent. I.L.R. (1942) 1 Cal. 149=1942 Cal. 496. An objection as to want of such leave might be waived and would be considered to have been waived if the defendant had taken any steps in furtherance of the suit to his trial. 18 I.C. 898=17 C.W.N. 512. But *see* 56 B. 324=137 I.C. 381=1932 B. 291; 56 C. 979=1930 C. 258 *contra*. The failure to obtain leave in a suit where leave is necessary under the Letters Patent goes to the root of the jurisdiction and the want of jurisdiction in the Court to entertain the suit cannot be overcome or waived by the consent or submission of the parties. 56 C. 979. *See also* I.L.R. (1942) 1 Cal. 149=1942 Cal. 596. Leave granted subsequent to presentation of plaint relates back to date of institution. 43 C.W.N. 1015.

CLS. 12 AND 44: JURISDICTION OF HIGH COURT—SUIT FOR RENT.—Sec. 144 of the B.T. Act as amended by Bengal Act IV of 1928, has not taken away the jurisdiction of the original side of the Calcutta High Court to entertain suits for rent, where the defendant resides within the local limits of the orginal side of that Court. Sec. 144 of the B.T. Act as it originally stood created an additional forum for suits for rent. By Bengal Act IV of 1928, however, a bar was imposed by enacting that no other Civil Court would have jurisdiction. The said Amending Act, being an Act of a Provincial Legislature, cannot affect the jurisdiction of the original side of the Calcutta High Court conferred by Cl. 12 of the Letters Patent. Cl. 44 of the Letters Patent gives powers only to the Indian Legislature the power to affect or modify the Letters Patent. The fact that the Amending Act was passed with the previous sanction of the Governor-General given under sec. 80-A of the Constitution Act of 1915 would not make it an Act of the Indian Legislature. 49 C.W.N. 552=1945 Cal. 425.

CLS. 13 AND 15: MADRAS CASES.—Cl. 13 of the Letters Patent merely contemplates the removal of a case filed in a mofussil Court to the High Court for trial and determination. But it does not mean that under the clause the High Court can withdraw a suit from a subordinate Court, which is closed for the summer recess, and having quashed an objectionable *interim* order send the suit back to the original Court for trial. Sec. 24, C.P. Code, however gives power to the High Court to transfer a suit to itself and afterwards retransfer it for trial to the Court in which it was originally filed. But, sec. 24, requires notice to the parties and an opportunity of being heard being given. I.L.R. (1945) Mad. 289=218 I.C. 267=1945 M.W.N. 1=58 L.W. 7=1945 Mad. 69=(1945) 1 M.L.J. 14 (F.B.). An order for transfer of a suit to the High Court under Cl. 13 is a "judgment" and appealable. 45 M.L.J. 153=1924 M. 90=47 M. 136. [35 M. 1=21 M.L.J. 1 (F.B.). Foll.] Application for transfer of suit from the Presidency Small Cause Court to the High Court is governed by Cl. 13, and must be made to the judge sitting on the original side of the High Court. 13 I.C. 860=22 M.L.J. 187. Case transferred to High Court from Judicial Commissioner, Coorg, is appealable under Cl. 15. 1922 M.W.N. 830=1921 M. 687. The powers of the High Court in a case transferred from the District Court are confined to those exercisable by a district Court but for the transfer. 38 M. 807=41 I.A. 314=1914 P.C. 41=27 M.L.J. 30 (P.C.). Where a suit is transferred from the City Civil Court to the High Court under Cl. 13 and tried by the High Court as a Court of Extraordinary Original Jurisdiction, the Court-fees payable are those in force in the High Court as a Court of Ordinary Original Jurisdiction (and not those payable under the Court-Fees Act) as the case is expressly governed by sec. 14 of the Madras City Civil Courts Act (VII of 1892). 60 M.L.J. 435=1931 M. 457.

CLS. 13 AND 14: BOMBAY CASES.—*See* 27 B. 575; 34 B. 564.

CLS. 13 AND 15: CALCUTTA CASES.—An order of a single Judge transferring a suit from the Small Cause Court to the High Court for trial is not a judgment and no appeal lies from the order. 60 I.C. 963=47 C. 1104. The question whether there should be a transfer 'for purposes of justice' within the meaning of Cl. 13 has to be determined by reference to the circumstances of each case, and the balance of convenience is certainly a matter for consideration. 54 C. 607=1927 C. 791. Word 'suit' as comprising probate proceedings—Transfer of pending proceeding in a Subordinate Court to the High Court—Order if appealable. *See* 54 I.C. 126=1927 C. 281.

Joinder of several causes of action.

14. And We do further ordain that where plaintiff has several causes of action against defendant, such causes of action not being for land or other immovable property, and the said High Court shall have original jurisdiction in respect of one of such causes of action, it shall be lawful for the said High Court to call on the defendant to show cause why the several causes of action should not be joined together in one suit, and to make such order for trial of the same as to the said High Court shall seem fit.

Appeal from the Courts of original jurisdiction to the High Court in its appellate jurisdiction.

15. [1][And We do further ordain that an appeal shall lie to the said High Court of Judicature at Madras [Fort William in Bengal] [Bombay], from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of section 107 of the Government of India Act, or in the exercise of criminal

LEG. REF.

[1] Substituted by Amending Letters Patent, dated 11—3—19 and of 9th December, 1927.

CL. 14.—The plaintiff filed a suit in Bombay against the ex-Maharaja of Indore for damages for false imprisonment and injury, for wrongful use and occupation, and for wrongful conversion and misappropriation of certain property. The defendant contended that the Court had no jurisdiction to entertain a suit for false imprisonment and personal injury. The Court granted leave under Cl. 12 and the question arose whether the cause of action could be considered under Cl. 14. *Held*, (1) that in order to give jurisdiction it was not necessary that the defendant should admit that at least one cause of action arose within the original jurisdiction; (2) that the words "such causes of action not being for land or other immovable property" in Cl. 14 means "excluding any cause of action which is for land or other immovable property"; (3) that the cause of action for false imprisonment though not one for land or other immovable property could be joined to the other two causes of action which arose within the jurisdiction; (4) that under the circumstances of the case it could not be said that the Court had no jurisdiction at all on the ground that the defendant was a non-resident foreigner. 53 B. 251=31 Bom.L.R. 7=1929 B. 100. "Governor-General"—If includes Governor acting under sec. 93, Government of India Act (1935). *See* 47 Bom.L.R. 294=1945 F. L.J. 149=1945 B. 352.

CL. 15: EFFECT OF AMENDMENT OF CLAUSES 15 AND 49.—The Letters Patent of the High Court had been amended by further Letters Patent, dated 9th December, 1927, in two material respects. Sec. 15 provided for an appeal to the High Court against the decision of a single Judge but under the change now made such appeal will lie only when the Judge against whose decision it is intended to prefer an appeal certifies that the case is a fit one for appeal. Sec. 36 provided for the opinion of the Senior Judge prevailing in certain cases when two Judges constituting a Division Bench differed in opinion. The section has been amended so as to do away with the opinion of the Senior Judge prevailing in any case. 32 C.W.N Journal, p. 46. The amendment of this clause does not take effect retrospectively so as to take away a right of third appeal which the suitor had under the Letters Patent on the date of the institution of his suit. 32 C.W.N. 1130=1928 C. 640 (F. B.)=48 C.L.J. 150; 55 M.L.J. (Short notes) 37 citing S.R. No. 12176 of 1928. Otherwise in matters of procedure. 52 B. 753=30 Bom.L.R. 942=1928 B. 371. No hard and fast rule can be laid down as regards the grounds on which leave to appeal should be granted by a Judge under Cl. 15 of the amended letters patent against his decision passed in second appeal. The mere fact that there was a question of fact involved in the second appeal or that the second appeal was allowed and the decision of the lower appellate Court reversed or modified, or that the valuation of the second appeal was not insignificant, is not by itself, conclusive for the grant of such leave to appeal. Where the decision in second appeal was based on the construction of a deed of adoption which contained certain peculiar provisions: *Held*, that leave should be refused. Principles applicable to granting of leave to appeal elaborately discussed. 53 M. 405=1931 M. 202=58 M.L.J. 388. *See also* 56 M.L.J. 369.

MADRAS CASES: SCOPE OF CL. 15.—Cl. 15 is not controlled by sec. 105, C.P. Code, and it is open to a person, though he does not appeal against the order of remand to attack it in his appeal against the final decree. 30 L.W. 787=1929 M. 349.

An order by a single Judge of the High Court in an appeal from a decision or order of a Judge of the City Civil Court in a matter falling under the Arbitration Act is not open to appeal under Cl. 15 of the Letters Patent (Madras), in view of sec. 39 (2) of the Arbi-

jurisdiction) of one Judge of the said High Court or one Judge of any Division Court pursuant to section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to section 108 of the Government of India Act, made[1] in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, where the Judge who passed the judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgments, of Judges of the said High Court or of such Division Court shall be to Us, Our Heirs or Successors in Our or Their Privy Council, as hereinafter provided.

LEG. REF.

1 MADRAS AMENDMENT—APPEAL TO THE HIGH COURT FROM JUDGES IN THE COURT.—In the fifteenth clause of the Madras Letters Patent between the words 'pursuant to sec. 108 of the Government of India Act, made' and the words 'in the exercise of appellate jurisdiction' the words 'on or after the first day of February, One thousand nine hundred and twenty-nine' shall be inserted. [*N.B.*—This Amendment is to come into force on 1st February, 1929.] [Amended by Letters Patent, dated 12th December, 1928.]

tration Act. Though Cl. 15 of the Letters Patent, if it stood alone, would allow an appeal, in view of Cl. 44 of the Letters Patent sec. 39 of the Arbitration Act must prevail over Cl. 15 of the Letters Patent and hence no appeal lies I.L.R. (1945) Mad. 564=1945 M.W.N. 164 (2)=58 L.W. 10 (1)=1945 Mad. 184=(1945) 1 M.L.J. 54. An order of a single Judge committing a party to prison for contempt of Court for alienating property in breach of an undertaking not to alienate the same, given by him in order to avoid an order for security for costs being made against him in a civil appeal, is clearly a "judgment," and is not an order in a criminal proceeding within the meaning of Cl. 15, but in a civil matter. Such an order is therefore open to appeal under Cl. 15. 56 L.W. 316=1943 M.W.N. 462=1943 Mad. 541=(1943) 1 M.L.J. 400.

MEANING OF WORDS "TRIAL".—The word "trial" includes an appeal under Cl. 15. 22 M.L.J. 44=12 I.C. 653.

CONSTRUCTION OF CL. 15.—Where it is doubtful whether the decision appealed from was in revision or second appeal but the party aggrieved had a right of second appeal, it must be construed as an appeal and a Letters Patent appeal would lie in an appropriate case. 1930 M. 489. In granting a certificate for leave to appeal under Cl. 15, it is not open to the Judge granting leave to limit the points fit for appeal; it is for the Court hearing the Letters Patent appeal to say what questions it will allow to be raised. I. L.R. (1941) Mad. 775=1941 Mad. 481=(1941) 1 M.L.J. 800 (F.B.). An order refusing to grant review of a judgment, in a second appeal, is an order made in the exercise of such second appellate jurisdiction. Hence a Letters Patent appeal from such an order is incompetent without the necessary leave under Cl. 15. I.L.R. (1938) Mad. 633=1938 Mad. 399=(1938) **1 M.L.J. 402.**

"JUDGMENT".—Meaning of, *see* 52 M.L.J. 161=50 M. 380=1927 M. 498; 35 M. 1=21 M.L.J. 1 (F.B.); 47 M. 316=1924 M. 597=46 M.L.J. 138. The term "judgment" includes an order awarding costs even if they are discretionary and such order can be appealed against. 22 I.C. 551.

WHAT ARE JUDGMENTS.—[*See also* cases under "cases where appeal lies".] An order as to costs passed by a Judge, sitting on original side on a review of taxation by the taxing officer. 42 M. 352=36 M.L.J. 351 (F.B.). Order for transfer of a suit. 47 M. 136=1924 M. 90=**45 M.L.J. 153.** Order under Prov. Sm. C.C. Act, sec. 25. 39 M. 235=29 I.C. 846=29 M.L.J. 12. An order of a single Judge on an application for an *ad interim* injunction is a judgment if obtained. 21 L.W. 310=1925 M. 586. An order awarding a plaintiff maintenance pending the trial of her suit is a judgment and is appealable. 1925 M. 443=48 M.L.J. 395. *Ex parte* order granting or refusing to grant leave to sue, if and when judgment. *See* 50 M. 770=53 M.L.J. 329=1927 M. 846.

WHAT ARE NOT JUDGMENTS.—[*See also* under title "cases where no appeal lies."] An order refusing leave to amend is not a judgment. 3 L.W. 107=32 I.C. 423. Order adding a party is not a "judgment" and therefore is not appealable. 1930 M. 987=60 M. L.J. 237. So also an order of a single judge refusing an application to set aside his previous order excusing the delay in applying for leave to appeal *in forma pauperis.* 59 M. 656=43 L.W. 310=1936 M. 387=70 M.L.J. 306. *See also* 45 Bom.L.R. 602=1943 Bom. 318=I.L.R. 1943 Bom. 547. The decision of the High Court in an appeal under sec. 54 of the Land Acquisition Act is not a judgment. *See also* 1944 M. 181=(1943) 2 M.L.J. 668. 41 M. 943=35 M.L.J. 110. Order referring a partnership suit to Commissioner is not a judgment. 1924 M. 406. Order of Judge under R. 206. Original Side Rules, not judgment. 45 M.L.J. 611=1924 M. 386. Order refusing to alter sale proclamation or postponement of sale is not a judgment. 46 M.L.J. 71=1924 M. 234. Order referring back report to official referee. 51 M. 235=1928 M. 470=54 M.L.J. 136. Order dismissing application to enlarge time under Arbitration Act. 51 M. 103=1928 M. 69=54 M.L.J. 49 (F.B.). Order

refusing transfer. 51 M. 330=1928 M. 209 =54 M.L.J. 710. Order in criminal case is not a judgment—Sanction application. 45 M. 928=43 M.L.J. 375=1922 M. 495. *See also* 1944 M. 181=(1943) 2 M.L.J. 668. Order refusing to allow inspection of accounts disclosed in the affidavit of documents. 1927 M. 409=52 M.L.J. 192. Order of Judge of High Court calling for a finding. 25 L.W. 95= 1927 M. 317. Order directing stay of proceeding pending appeal made conditional on giving security within a certain time. 1928 M. 154=53 M.L.J. 494. But *see also* 1927 M. 592=52 M.L.J. 670. Order allowing evidence in lower appellate Court. 105 I.C. 720=1927 M. 1021.

CASES WHERE APPEAL LIES.—[*See also* under "What are judgments".] An appeal lies against the order of a single judge of the High Court refusing to stay the execution of a decree. 47 M. 316=1942 M. 597= 46 M.L.J. 138. An order for a judge on the original side of the High Court giving leave to the plaintiff to sue *in forma pauperis* is a judgment and is appealable. 1925 M. 167= 47 M.L.J. 932. At the hearing of such an application even if the Government admits the pauperism of the plaintiff, the defendant should be given opportunities to prove he was not a pauper. 20 L.W. 845=1925 M. 167=47 M.L.J. 932. An appeal lies against an order on the original side setting aside the abatement of a suit. 31 I.C. 38=2 L.W. 948. (35 M. 1, Foll.) Appeal will lie against an order by a single Judge of the High Court rejecting a petition for revision of a small cause judgment. 27 M.L.J. 480=26 I.C. 57. *See also* 30 M. 311. Also from order of a single Judge of the High Court rejecting petition for revision of a small cause judgment. 27 M.L.J. 480=26 I.C. 57. *See also* 30 M. 311. Also from order of a single Judge of the High Court on a claim petition. 39 M. 1196= 28 I.C. 367. Where the Official Assignee applies to the Insolvency Judge for an order directing delivery of the insolvent's property and for committing to prison for contempt the wife and son of the insolvent who remain in the house and obstruct delivery, aiding the insolvent, but the Judge refuses the application, holding that he has no power to do so, such order of refusal is a "judgment" within the meaning of Cl.15; the Official Assignee being an aggrieved party under sec. 8 of the Presidency Towns Insolvency Act, has a right of appeal. 1938 Mad. 927=(1938) 2 M.L.J. 609. Written statement—Amendment of, at plaintiff's instance—Order refusing. 1926 M. 64=49 M.L.J. 632. Order granting review and amending decree is a judgment and appealable. 1927 M.W.N. 411=1929 M. 261. *See also* 56 M. 915=1933 M. 570=65 M.L.J. 222 (F.B.).

CASES WHERE NO APPEAL LIES. [*See also* under "What are not judgments."] Interlocutory orders passed in Civil Revision Petition. 51 M. 165=1928 M. 169 (2)=54 M.L.J. 323. An order for compensation under sec. 250 of the Cr.P. Code is an order in a criminal trial and the judgment of the single Judge of the High Court in revision from that order is not open to appeal. 43 I.C. 624. No appeal lies from an order of a single Judge of the High Court staying the further trial of a suit. 30 I.C. 942=18 M.L.T. 312. Also against an order passed by a single Judge of the High Court in the exercise of its criminal revisional jurisdiction. 29 I.C. 96=2 L. W. 363. Also from order of a single Judge of the High Court passed in revision in proceedings under sec. 388, Cr.P. Code. 39 M. 472=28 M.L.J. 483=28 I.C. 662. Also against order of a single Judge on a revision against the order of Magistrate acting under sec. 118 of Cr. P. Code. 39 M. 539=28 I.C. 527=28 M.L.J. 307. Proceedings taken for binding over persons to keep the peace under Ch. VIII of Cr. P. Code, are criminal trials within Cl. 15. 39 M. 539. As to order refusing to grant review of Judgment in Second appeal. I.L.R. (1938) Mad. 633=1938 Mad. 399=(1938) 1 M.L.J. 402. No appeal lies at the instance of the judgment-debtor, under Cl. 15 against an order staying further proceedings on terms in an appeal preferred against the preliminary decree in a mortage suit. 1929 M. 197=56 M.L.J. 197. No appeal lies under Cl. 15 against the refusal of a single Judge of High Court to grant leave to appeal from the judgment passed by him in a second appeal. 30 L.W. 386=1930 M. 75 =52 M. 952=57 M.L.J. 398. Where during the pendency of an appeal the appellant died and an application having been made by one of the respondents claiming as legal representatives of the deceased, the Court brought him on record as appellant after going into the genuineness of a will under which he claimed, *held*, that the order was not a judgment within the meaning of cl. 15 and was not appealable. 56 M. 689=1933 M. 417=64 M.L.J. 493. *See also* 50 L.W. 202=1929 Mad. 800=(1939) 2 M.L.J. 414 (Order refusing to grant leave to appeal from an order under sec. 75 (3) of Provincial Insolvency Act). Whether an appeal lies under the clause against an order of the High Court under sec. 195, Cr.P. Code, is doubtful. 39 M. 768=38 I.C. 994.

PRACTICE AND PROCEDURE.—Before the amendment of 1927 in appeals governed by sec. 96, C.P. Code, when two Judges of the High Court were divided in opinion, the judgment of the Judge who confirmed the decree of the lower Court prevailed. 21 L.W. 721 =1925 M. 1032. But now a different procedure is prescribed. (*See also* Cl. 36.) In an appeal against orders in execution, if appellant dies, his legal representative can continue the same. 1928 M.W.N. 385=1926 M. 779=55 M.L.J. 497=51 M. 858.

REVIEW.—The High Court is competent to entertain an application to review a judgment passed in a Letters Patent appeal. Sec. 114, C P. Code, applies to judgments under the High Court's Letters Patent. 40 M. 651=32 M.L.J. 144.

STAY OF EXECUTION.—The fact that a part of a decree is declaratory is no bar to a stay of execution thereof being granted pending an appeal therefrom. 47 M. 316=1924 M. 597=46 M.L.J. 138. Where a second appeal

was filed and an application was made for stay of execution of the decree of the lower Court and it was dismissed, *held*, that the order of dismissal was not appealable except with certificate as provided for under the amended Letters Patent. 30 L.W. 976=57 M.L.J. 783.

BOMBAY CASES.—Under cl. 15 of the Letters Patent as now amended, leave will be necessary as regards all decisions in second appeals by a single High Court Judge on and after 1st February, 1929. 31 Bom.L.R. 473 =1929 B. 241. *See also* 32 Bom.L.R. 185= 54 B. 331=1930 B 224; 30 Bom.L.R. 942 =52 B. 753=1928 B. 371.

"JUDGMENT".—'Judgment' in cl. 15 means a decision affecting the merits of the question between the parties by determining some right or liability. It may be final or preliminary or interlocutory, the difference between them being that a final judgment determines the whole cause or suit and a preliminary one only a part of it. 45 B. 428=59 I.C. 533=22 Bom.L.R. 1169=1921 B. 320; 53 I.C. 395=21 Bom.L.R. 955=44 B. 272. The term 'judgment' means in civil cases a decree and not a judgment in the ordinary sense. 1925 P.C. 155=27 Bom.L.R. 872 =49 ML.J. 25 (P.C.). *See also* I.L.R. (1940) Bom. 361=42 Bom.L.R. 377=1940 Bom. 196; 42 Bom.L.R 428=1940 Bom. 216=I.L.R. (1940) Bom. 426 (Order of single Judge confirming order of remand by appellate Court is appealable).

WHAT ARE JUDGMENTS.—Order giving liberty of withdrawing suit made after recording evidence and hearing argument. 45 B. 377=58 I.C. 1004=22 Bom.L.R. 1012= 1921 B. 267. An order of a single Judge of the High Court refusing to excuse the delay in presentation of the appeal. 42 B. 260=44 I.C. 913=20 Bom.L.R. 172. Also an order refusing to excuse the delay in presenting an application for leave to appeal to His Majesty in Council. 26 Bom.L.R. 395=48 B. 442= 1924 B. 399. Refusal to revoke arbitration. 34 B. 1. An order by a single Judge of the High Court issuing a writ of *certiorari* and setting aside an order made by an Assistant Judge in an election inquiry under sec. 15 of the Bom. Mun. Boroughs Act is a "judgment" within the meaning of cl. 15 and is appealable. Such an order is not made in the exercise of revisional jurisdiction but under the original jurisdiction of the High Court which is exercisable not merely over subordinate Courts but over other tribunals also. 46 Bom.L.R. 675=A.I.R. 1945 Bom. 7=I.L.R. (1944) Bom. 683.

WHAT ARE NOT JUDGMENTS.—A finding on a preliminary issue in a suit that it is maintainable. 27 Bom.L.R. 1496=1926 B. 136. A finding on a preliminary issue which does not involve the practical determination of the suit still amounts to a judgment and is appealable; owing to the peculiar framing of the suit in which the issue is raised, it does imply final determination. 32 Bom.L.R. 285=1930 B. 262. An order refusing directions in third party proceeding under rr. 130 and 131 of the High Court Rules is not a "judgment". 45 B. 428=59 I.C. 533=22 Bom.L.R. 1169 =1921 B. 320. Also order on original side setting aside abatement of suit. I.L.R. (1933) Bom. 704=40 Bom.L.R. 658=1938 Bom. 408. Order on original side of High Court in Chambers by a single Judge granting leave to sue *in forma pauperis* is not judgment. I.L.R. (1943) Bom. 547=45 Bom.L.R. 602=(1943) Bom. 318. Order allowing transfer of summary suit to short causes not a judgment. No appeal lies. 27 Bom.L.R. 99=86 I.C. 100= 1925 B. 159. An order by a single Judge on the original side of the High Court allowing amendment of the plaint in a suit by a sole partner of a firm in the firm name, permitting the substitution of the name of the partner for that of the firm, is merely an order regulating procedure and not one affecting the rights of the defendant, and is hence not appealable. 38 Bom.L.R. 529. Nor an order of the Court refusing to commit a party for breach of an undertaking given to the Court. 38 Bom.L.R. 571=164 I.C. 335=1936 B. 314. An order refusing to restrain the defendant by an injunction from prosecuting his suit in a foreign Court is not a "judgment". 53 I.C. 395=21 Bom.L.R. 955. An order granting to a plaintiff in an ejectment suit leave to amend the plaint by inserting further breaches of conditions in the lease after suit as a ground of ejectment is not a "judgment" within the meaning of cl. 15 of the Letters Patent, because it is not an order which affects the merits of the case; nor does it determine any right or liability. Hence such an order is not appealable. 48 B.L.R. 252=1946 B. 361. It is doubtful whether an order refusing to grant sanction to prosecute under sec. 195, Cr.P. Code, is a judgment. 24 Bom.L.R. 817=47 B. 270=1922 B. 455.

APPEAL.—An appeal does not lie against an order of a Judge refusing to grant leave to appeal under cl. 15. 32 Bom.L.R. 185= 1930 B. 224; or order excusing delay in filing appeal. I.L.R. (1940) Bom. 361=42 Bom.L.R. 377=1940 Bom. 196. An order of the Judge sitting in chambers refusing leave to sue *in forma pauperis* is appealable as a judgment. 1931 B. 166=32 Bom.L.R. 1647. *See also* 212 I.C. 637=I.L.R. 1943 B. 547= 1943 B. 318. An order extending the time for making an award is appealable. 32 Bom. L.R. 1650=55 B. 452=1931 B. 125. The right of appeal from the decision of one Judge in second appeal to the High Court and the right of appeal from the decision of more Judges than one to the Privy Council are governed *mutatis mutandis* by the same principles. In each case, the case must be certified to be a fit one for appeal. Though considerations of private or public importance as precedents and like matters must exist in a greater measure when a decision is requested from the Privy Council, than when a decision is invited from a Bench of the High Court, yet where there is no point in dispute which the Court could in the exercise of judicial discretion certify as being of great public or private importance and no

important precedent governing numerous other cases, no leave can be granted form the decision of a second appellate Court. 34 Bom.L.R. 395=1932 B. 218. Where, at the time the second appeal was dismissed, no application for a certificate was made and subsequently at the time when the application was made the Judge who disposed of the appeal ceased to hold the office of Judge of the High Court, *held*, that a certificate cannot be granted by another Judge of the High Court and that an appeal under cl. 15 of the Letters Patent was not competent without a certificate. 54 B. 381=32 Bom.L.R. 624 =1930 B. 366. An *order granting leave to defend* on condition that the defendant should deposit in Court a sum of money by a date mentioned therein is a "judgment" within the meaning of cl. 15 from which an appeal lies. 56 B. 268=34 Bom.L.R. 252= 1932 B. 163. But an *order fixing the date of sale or extending the time for sale of* certain partnership property is in the nature of an order regulating the procedure under the order for sale and not a "judgment" within cl. 15 and is not appealable. 56 B. 237=34 Bom.L.R. 12=1932 B. 134. An *order under sec.* 10, *C. P. Code*, refusing to stay a suit is not a "judgment" within the meaning of cl. 15 and is not aapealable. 35 Bom.L.R. 15= 1933 Bom. 85=57 B. 364. But *see* 61 C. 670 =1935 C. 1, *contra*. An *order dismissing a petition under sec.* 39, *Lunacy Act*, to adjudge a person to be a lunatic is not a judgment, and is not appealable. 35 Bom.L.R. 38 =1933 B. 112=57 B. 371. Contempt arising out of comments upon a pending trial by persons some of whom are parties to the suit and some of whom are not is contempt of a criminal nature and the order passed in such proceedings is not appealable. 35 Bom.L. R. 9=1933 B. 108=57 B. 286. An order refusing the issue of a commission to examine witnesses is not a "judgment" within cl. 15 of the Letters Patent and no appeal lies from such an order. [35 M. 1 (F.B.); 1920 C. 894; 3 R. 293; 3 Rang. 605, Foll.; 2 I.C. 157, Expl.] 36 Bom.L.R. 272=1934 B. 168.

PRACTICE.—In an appeal the whole case is open and not merely the points on which the Judges differed. 48 B. 691=87 I.C. 199= 1925 B. 118.

CALCUTTA CASES.—Amendment of Letters Patent not retrospective. Cl. 15 of the amended Letters Patent does not take away a right of third appeal which the suitor had under the old Letters Patent on the date of the institution of his suit. 48 C.L.J. 150= 32 C.W.N. 1130=1928 C. 640 (F.B.). Otherwise in matters of mere procedure. *See* 52 B. 753=1928 B. 371. As to the effect of the amendment of 1927, *see* notes under cl. 15, *Bombay Cases*. A Judge hearing an application praying for leave to file an appeal under sec. 15, has no jurisdiction to entertain an application for the extension of the period of limitation under sec. 5 of the Limitation Act for filing the appeal. That would be a matter for the Division Bench that may be constituted by the Chief Justice for the purpose of hearing Letters Patent Appeals and if there is no such Bench, it will be for the Chief Justice to constitute a Division Bench to deal with the application for extension of time. 46 C.W.N. 131=I.L.R. (1942) 1 Cal. 403=1942 Cal. 606.

JUDGMENT.—The term 'judgment' means "decree or order". 47 I.C. 67=28 C.L.J. 205. Order of dismissal of an appeal without investigation of the merits, may be a judgment. (*Ibid.*) 'Judgment' means the sentence of law pronounced by the Court. 22 C.L.J. 452=20 C.W.N. 210. 'Judgment' signifies what is now termed 'decree' or 'order'. 31 I.C. 965=22 C.L.J. 525; 40 C.W. N. 1264=I.L.R (1937) 1 Cal. 149. As to whether an adjudication is a judgment, the test is what is its effect on the suit or proceeding in which it is made. 21 C.W.N. 921 =29 C.L.J. 225. By sec. 26 (2) of the Land Acquisition Act, introduced by the Amending Act of 1921, "judgment" includes a decision of the High Court in a L.A. appeal from an award of the L.A. Judge. The decision in such an appeal is appealable under cl. 15, 40 C.W.N. 1143=1936 C. 688. *See also* 45 C. W.N. 181 (Decision of Judge on election petition). An application for relief under the Bengal Money-Lenders Act is an original application, and an appeal lies under cl. 15 of the Letters Patent from a judgment of a Judge on the original side of the High Court dismissing such application. 46 C.W.N. 605 =1943 Cal. 169.

WHAT ARE JUDGMENTS.—**Order of attachment** before judgment. 50 C. 215=1923 C. 639. Also order setting aside abatement. 49 C. 62=1922 C. 335. Also order refusing to stay proceedings. 47 C. 611=24 C.W.N. 612. An order rejecting an application for judgment on admissions is a judgment and is appealable. 54 I.C. 836=23 C.W.N. 1017. An order refusing to set aside an award. 46 I.C. 687=45 C. 502. A decision of a single Judge of the High Court reversing in appeal an order of a District Judge and remanding the case for rehearing. 27 C.L.J. 418=22 C.W.N. 627. A decision that a suit being open to the objection of multifariousness cannot be entertained as framed. 45 C. 111=21 C.W.N. 794. A remand order nullifying the benefit of the decree is a judgment. 21 C.W.N. 921=41 I. C. 250. An order of a single Judge on the Original Side of the Calcutta High Court dismissing a suit for want of prosecution is a judgment and is appealable. 1924 C. 1025= 28 C.W.N. 916=51 C. 905. As to an order refusing an application for the appointment of a receiver based on a provision in the indenture of hypothecation, that on a breach of any one of the covenants contained therein, the plaintiff's assignor would be entitled to have a receiver appointed, the order has determined a right which is one of the matters in the controversy itself, and so is a judgment within the meaning of cl. 15. 39 C.W.N. 155=1935 C. 35. An order of a single judge of the High Court under sec. 9 of the Insurance Act directing the refund of the deposits under sec. 7 of that Act, is a

'judgment' within the meaning of cl. 15 of the Letters Patent and is appealable. So also an order under sec. 61 (1) and (2) of the Insurance Act reducing the amount of the insurance contracts. 46 C.W.N. 441= I.L.R. (1942) 2 Cal. 85=1942 Cal. 578.

WHAT ARE NOT JUDGMENTS.—Order restoring suit is not a judgment. 49 C. 616= 1922 C. 407. Order admitting appeal filed out of time. 32 C.W.N. 935=56 C. 135= 1929 C. 214. Suit on behalf of a lunatic— Application to take the plaint off the file— Dismissal of the application is not a judgment. 26 C.W.N. 242=1922 C. 172. Order refusing leave to file written statement is not a judgment and is not appealable. 49 I.C. 120=45 C. 818. Ordinarily an order of a Judge on the Original Side allowing or refusing an amendment is not a judgment. 45 C. 305=47 I.C. 129=22 C.W.N. 611. Order refusing to issue commission to examine witnesses is not a judgment. 55 I.C. 766=31 C.L.J. 162. The judgment given upon a case stated by the Commissioner of Income-tax under sec. 66 (2) of the Income-tax Act. 52 C. 546=29 C.W.N. 398=1925 C. 598. The opinion pronounced or delivered by a Judge on the Original Side of the High Court on a special request referred to him by the Registrar under r. 50, Ch. XXVI of the High Court Original Side Rules: 40 C.W.N. 1264 =I.L.R. (1937) 1 Cal. 149. An order setting aside an *ex parte* decree and the attachment in consequence thereof is not a "judgment". 30 C.W.N. 104=1926 C. 327. Transferring a suit under cl. 13 of the L.P. 47 C. 1104, *See* however 45 M.L.J. 152. An order of a Judge of the High Court in an appeal filed under the Tea Control Act refusing to strike out the Tea Licensing Committee as respondents, is not a "judgment" within the meaning of cl. 15. No appeal, therefore, lies from his order to a Division Bench of the High Court. 45 C.W.N. 454.

CASES WHERE APPEAL LIES.—Rulings under this clause before the amendment of 1927. [*See also* cases under "*what are judgments*".] An order refusing to stay a suit under sec. 10, C.P. Code, is a judgment within cl. 15 of the Letters Patent and is appealable. 61 C. 670=38 C.W.N. 818=1935 C. 1. But *see* 57 B. 364, *contra*. An order of a Judge of the High Court remanding a case to the Small Cause Judge who refused to grant sanction under sec. 195, Cr.P. Code, to make a further investigation and pass orders thereon, is a "judgment". 44 C. 804=25 C.L.J. 193. *See also* 23 I.C. 977=41 C. 323 (Order of High Court interfering with judgment of Presy. S.C. Court). An order of Judge of the High Court in its original jurisdiction rejecting an application under C.P. Code, O. 9, r. 9, for restoring a suit dismissed for default. 43 C. 857=20 C.W.N. 594. Where the Judges of Division Bench, hearing an appeal in a probate case have disagreed and a decree has been drawn up in accordance with sec. 98, C.P. Code, an appeal lies under cl. 15: 31 I.C. 319=22 C.L.J. 298. Order refusing permission to creditor to prove debt in a company's winding up proceeding is appealable. 31 C.W.N. 894=103 I.C. 659=1927 C. 689. *See also* 64 I.C. 689=34 C.L.J. 489. So also order directing change of attorney. 60 C. 1273=37 C.W.N. 998=1934 C. 58. Order granting revocation of patent. 43 C.W.N. 697.

CASE WHERE NO APPEAL LIES.—[*N.B.—See also* cases under "*What are not judgments*".] Cl. 15 (amended)—Second appeal disposed of under sec. 98 (2), C.P. Code, prior to amendment—Application for certificate to one of the two Judges dismissing appeal—Maintainability—Letters Patent Appeal—Right if preserved. *See* 56 C. 507=114 I.C. 493= 1928 C. 819. Provision whether takes effect retrospectively—Suit filed prior to amendment—Second appeal disposed of, after amendment—Right of third appeal—Necessity for certificate. *See* 1928 C. 640=56 C. 512=113 I.C. 49. Whether an order refusing leave to appeal be a judgment or not, it cannot be appealed against. Under the Amended Letters Patent leave granted by the Judge hearing the second appeal is the sole and necessary condition for such an appeal. 58 C. 342=1931 C. 571. The right of appeal to the High Court depends upon cl. 13 and whether or not the decision of the learned Judge appealed from is a judgment depends upon whether or not so far as he is concerned he finally decided the rights of the parties as regards the question on which the appeal is based. 57 C. 736=1930 C. 623. Second appeal disposed of under sec. 98 (2), C.P. Code—Application for certificate under cl. 15—Refusal—Appeal—Court-fee payable. 56 C. 482=1929 C. 575. Order admitting appeal filed out of time—Appealability. 56 C. 135=114 I.C. 88=1929 C. 214. An application for review of a judgment of a Division Bench of the High Court being rejected by a Judge, the other having ceased to be a Judge, no appeal lies. 25 C.L.J. 360=41 I.C. 183 =21 C.W.N. 652. There is no appeal against an order discharging a rule under sec. 115 of C.P. Code. 33 I.C. 247 (2)=22 C.L.J. 22; 30 I.C. 906=22 C.L.J. 113; 30 I.C. 862 (1) =22 C.L.J. 40. An order on the original side dismissing an application under O. 21, r. 58, is not appealable under cl. 15, because of the prohibition contained in Order 21, r. 6. 37 C. W.N. 641=60 C. 914=1933 C. 715. An order under O. 37, C.P. Code, against a defendant to furnish security before he can defend the suit, is not appealable if it is that of a single Judge of High Court, Original Side. 42 C. 735=31 I.C. 238=22 C.L.J. 41. No appeal lies from an application for writ of *habeas corpus*. 54 C. 727=102 I.C. 647=1927 C. 496. An appeal lies under cl. 16 from a dissentient judgment that has prevailed in an appeal under the same clause. 18 I.C. 253=17 C.L.J. 206. But it can be only with respect to the portion of the matter about which there is disagreement among the Judges. 40 C.W.N. 1143=1936 C. 688. Division Bench of High Court hearing appeal—Difference of opinion—Dismissal of appeal under sec. 98, C.P. Code, Letters Patent appeal. 28 C.W. N. 637=51 C. 669=1924 C. 855. Where the

16. And We do further ordain that the said High Court of Judicature at Madras, [Fort William in Bengal] [Bombay], shall be a Court of Appeal from the Civil Courts of the Presidency of Madras, [Bengal Division of the Presidency of Fort William] [Bombay], and from all other Courts, subject to its superintendence, and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said High Court by virtue of any laws or regulations now in force.

Appeal from Courts in the provinces.

17. And We do further ordain that the said High Court of Judicature at Madras, [Fort William in Bengal] [Bombay], shall have the like power and authority with respect of the persons and estates of infants, idiots and lunatics within the Presidency of Madras [Bengal Division of the Presidency of Fort

Jurisdiction as to infants and lunatics.

Judge on the original side directed that the Registrar might be at liberty to sell the mortgaged properties without reserve: *Held*, that the order was not appealable. 60 C. 506=1933 C. 504. Opinion pronounced by Judge on Original Side (H.C.) on a special request referred to him by Registrar, under r. 50, Ch. 26, H.C. Original Side Rules. I.L.R. (1937) 1 Cal. 149=40 C.W.N. 1264. An order directing enquiry by the Official Referee as to the respective rights of the parties for rateable distribution does not finally decide their rights. An appeal thereon is incompetent. 57 C. 736=1930 C. 623. Where a receiver was appointed in a partition suit on the footing of intestacy, *held*, that an order refusing to discharge the receiver is appealable, under the Letters Patent. 52 C.L.J. 66=1930 C. 803. Where in an appeal under cl. 15, the respondent relied on facts and circumstances which appeared in the judgment of the lower appellate Court and which must have been referred to before the single Judge of the High Court who heard the second appeal, but it appeared that such facts and circumstances were not referred to in the judgment under appeal. *Held*, that the respondents were entitled to rely on the facts contained in the judgment of the lower appellate Court. 34 C.W.N. 97=1930 C. 321. As to extension of time for filing appeal under cl. 15, *see* I.L.R. (1942) 1 Cal. 403=46 C.W.N. 131=1942 Cal. 606.

CL. 16: CALCUTTA CASES.—An appellate Officer appointed by the Local Government under sec. 40 of the Bengal Agricultural Debtors Act is not a Civil Court within the meaning of sec. 16 of the Letters Patent. The Civil Courts contemplated by that clause do not cover Courts which are cerated by a special statute for a special purpose. 68 C.L.J. 407=42 C.W.N. 507=1938 Cal. 448 (1).

CLS. 16 AND 26: MADRAS CASES.—Under its superintending powers, the main function of the High Court is to see that the inferior tribunal does not usurp a jurisdiction which it does not possess or refuses to exercise a jurisdiction which it has and ought to exercise or acts illegally in the exercise of its jurisdiction. But it is no part of that function to substitute its own opinion for that of the Court superintended in matters assigned by the legislature to the cognizance of the latter. That can be done only when a right of appeal is given to it. Revisional jurisdiction over Board of Revenue regarding orders under sec. 173, Madras Estates Land Act, negatived. 55 M. 883=1932 M. 612=63 M.L.J. 450 (F.B.). High Court can entertain revision petition against a decree passed by a District Munsiff in an Agency tract. 59 M. 356=1936 M. 187=70 M.L.J. 204 (F.B.). Cl. 16 of the Letters Patent does not override the provisions of the Madras Civil Courts Act. The latter Act in effect prohibits an appeal being filed in the High Court, where it properly lies to the District Court. It is not therefore open to a Judge of the High Court to pass an order directing an appeal which properly lies to the District Court to be received in the High Court on the ground that at that time the District Court is closed for the summer vacation, and then transmit it to the District Court after the re-opening of that Court, and meanwhile to pass interim orders in the appeal. Necessity for amendment of sec. 13, Civil Courts Act pointed out. 1945 M.W.N. 418=58 L.W. 329=1945 Mad. 423=(1945) 2 M.L.J. 131=I.L.R. 1946 M. 261. *See* Mad. Act XXII of 1945 enabling such appeals to be filed in the High Court. I.L.R. 1946 M. 261.

CL. 17: MADRAS CASES.—The High Court has jurisdiction to appoint a guardian for minors resident within the Presidency, though beyond the Presidency town, on the application of the father of the minors who is resident in Madras. Sec. 3 of the Guardian and Wards Act saves the power of the Chartered High Courts. 1937 M. 51=44 L.W. 904=71 M.L.J. 873. The jurisdiction can be exercised over infants in the mofussil in the Presidency provided they are subjects of His Majesty. The High Court under cl. 17 has jurisdiction to appoint a guardian of an infant residing in the mofussil, who is not a European British subject. 71 M.L.J. 873. Cl. 17 of the Letters Patent confers on the High Court the same power as Cl. 32 of the Charter of Supreme Court of 1800 conferred on that Court. There is no restriction in these clauses in regard to the Court's jurisdiction as to place or persons. 71 M.L.J. 873. Whatever the powers of the Supreme Court prior to 1858, the moment the Crown assumed direct control in 1858, every native of British India became *ipso facto* a British subject. 71 M.L.J. 873.

William] [Bombay], as that which was vested in the said High Court immediately before the publication of these presents.

Provision with respect to the Insolvent Court.

18. And We do further ordain that the Court for relief of Insolvent Debtors at Madras, [Calcutta], [Bombay], shall be held before one of the Judges of the said High Court of Judicature at Madras [Fort William in Bengal] [Bombay], and the said High Court, and any such Judge thereof, shall have and exercise, within the Presidency of Madras, [Bengal Division of the Presidency of Fort William] [Bombay], such powers and authorities with respect to original and appellate jurisdiction and otherwise as are constituted by the laws relating to insolvent debtors in India.

Law to be administered by the High Court.

19. And We do further ordain that, with respect to the law or equity to be

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CL. 17: CALCUTTA CASES.—The jurisdiction over infants which has been conferred on the High Court by Cl. 17 of the Letters Patent and which has been expressly preserved by sec. 3 of the Guardians and Wards Act, is operative on the person and estate of all infants within the Bengal Division of the Presidency. In exercising this jurisdiction, the High Court should follow the principles adopted by the Court of Chancery in England. This does not, however, mean it should ignore the principles embodied in the last mentioned Act. Where the Act is silent or the provisions thereof are contrary to or inconsistent with the principles of the Court of Chancery, the High Court will act in appropriate cases on the principles on which the Court of Chancery in England would act in similar circumstances. The Court of Chancery in England has been exercising paternal jurisdiction derived from the prerogative of the crown as *parens patriae*. A father who entrusts the custody and education of his boy to a third person but defrays the expenses therefor, does not disqualify himself from asserting his natural rights as the father. He is not unfit to be guardian of the person of the boy either within the meaning of sec. 19 of the Guardians and Wards Act or according to the principles on which the Court of Chancery in England would interfere with the rights of the father. But where the parents of a female child voluntarily make over that child to a third person, not as a temporary measure, but with a view to make a permanent arrangement for her future life and that person has been properly meeting all the expenses of the child for a number of years and is willing to continue to do so, and this long continued acquiescence has given rise to associations and expectations in the mind of the child that she would be continued to be brought up in the way she has been brought up so far, the parents by their conduct render themselves unfit to be a guardian of the person of the female child. I.L.R. (1943) 2 Cal. 554=A.I.R. 1944 Cal. 433. The High Court can, in the exercise of its inherent jurisdiction under Cl. 17 (and apart from the Guardians and Wards Act, 1890), appoint a guardian of an infant coparcener in an undivided Mitakshara family. 59 I.C. 570=138 I.C. 739=1932 C. 502. There is no restriction in the powers granted to either the Supreme Court or the High Court which limits the exercise of guardian jurisdiction to the Presidency town or to European British subjects. The High Court has power to appoint a guardian, even when the minor resides outside and has no property within the limits of the Ordinary Original Civil Jurisdiction of the High Court. 57 C. 533=1930 C. 598. But *see* 58 C. 919=1932 C. 91.

BOMBAY CASES.—The High Court has power and can make an order appointing a guardian in respect of undivided co-parcenary property of a minor Hindu co-parcener, in respect of a minor situate within the limits of the ordinary original jurisdiction of the High Court, that is, the town and island of Bombay. This jurisdiction extends to minors wherever in the Presidency they may be found, provided they are subjects of the British Crown. The jurisdiction of the High Court to sanction a contract for the benefit of a minor extends to a minor Hindu coparcener resident within the Bombay Presidency, who is a British subject. Where the manager of a joint Hindu family asks for sanction of a sale of joint family property including the interests of the minor coparcener, as being for the benefit of the minor, the Court ought not to make an order *ex parte*. The minor concerned should be made a respondent to the application, and he should be represented by a guardian *ad litem*, who should normally be an officer of the Court, and he should satisfy himself as to the interest of the minor, by requiring evidence as to the alleged necessity for the sale or as to the price being a good one, and as to how the proceeds of the sale are to be dealt with. If he requires funds to enable him to look into the matter properly, the party seeking the order must provide such funds. 43 Bom.L.R. 926=1941 Bom. 397=I.L.R. (1942) Bom. 238 (S.B.).

CL. 18: MADRAS.—The High Court has no power to entertain a petition for the adjudication of a debtor, who is outside the limits of the Presidency-town, as an insolvent, even though the mofussil Court having jurisdiction in the matter is at the time closed for summary recess. (52 M. 52=55 M.L.J. 690, Foll.). 57 M. 453=1934 M. 314=66 M.L.J. 428.

By the High Court in the exercise of ordinary original civil jurisdiction.

applied to each case coming before the said High Court of Judicature at Madras, [Fort William in Bengal] [Bombay], in the exercise of its ordinary original civil jurisdiction, such law or equity shall be the law or equity which would have been applied by the said High Court to such case if these Letters Patent had not issued.

In the exercise of extraordinary original civil jurisdiction.

20. And We do further ordain that, with respect to the law or equity and rule of good conscience to be applied to each case coming before the said High Court of Judicature at Madras, [Fort William in Bengal] [Bombay], in the exercise of its extraordinary original civil jurisdiction, such law or equity and rule of good conscience shall be the law or equity and rule of good conscience which would have been applied to such case by any local Court having jurisdiction therein.

By the High Court in the exercise of appellate jurisdiction.

21. And We do further ordain that, with respect to the law or equity and rule of good conscience to be applied by the said High Court of Judicature at Madras, [Fort William in Bengal] [Bombay], to each case coming before it in the exercise of its appellate jurisdiction, such law or equity and rule of good conscience shall be the law or equity and rule of good conscience which the Court in which the proceedings in such case were originally instituted ought to have applied to such case.

Criminal Jurisdiction.

Ordinary original jurisdiction of the High Court.

22. And We do further ordain that the said High Court of Judicature at Madras [Bombay] shall have ordinary original criminal jurisdiction, within the local limits of its ordinary original civil jurisdiction, and also in respect of all such persons, beyond such limits over whom the said High Court of Judicature at Madras [Bombay] shall have criminal jurisdiction at the date of the publication of these presents.

[The corresponding provision of the Calcutta Letters Patent is as follows:—

"And We do further ordain that the said High Court of Judicature at Fort William in Bengal shall have ordinary original criminal jurisdiction within the local limits of its ordinary original civil jurisdiction and also in respect of all such persons both within the limits of the Bengal Division of the Presidency of Fort William, and beyond such limits and not within the limits of the criminal jurisdiction of any other High Court or Court established by competent legislative authority for India as the said High Court of Judicature at Fort William in Bengal shall have criminal jurisdiction over at the date of the publication of these presents".]

Jurisdiction as to person.

23. And We do further ordain that the said High Court of Judicature at Madras, [Fort William in Bengal] [Bombay], in the exercise of its ordinary original criminal jurisdiction, shall be empowered to try all persons brought before it in due course of law.

CL. 21: MADRAS CASES.—The High Court as appellate or revisional authority, has no jurisdiction to issue an injunction apart from and except in accordance with the provisions of O. 39. (35 L.W. 168. Diss. from.) 1933 M. 590=37 L.W. 110=64 M.L.J. 112=56 M. 563.

CALCUTTA CASES: APPLICABILITY OF ENGLISH COMMON LAW—EXTENT OF.—Although the English common law is enforced on the original side of Chartered High Courts, on the appellate side and in the mofussil Courts, the English common law is not and has not even been followed. 61 C. 841=38 C.W.N. 682=1934 C. 682.

CL. 22: CALCUTTA CASES.—Sec. 106 of the Government of India Act leaves the definition of the High Court's original criminal jurisdiction to be made by the Letters Patent and the High Court derives a particular original criminal jurisdiction from Cl. 22, Letters Patent. It is within the power of the Indian Legislature to alter and amend the Letters Patent and consequently within the Ordinance making power of the Governor-General under the Government of India Act. 37 C.W.N. 481=1933 C. 364=60 C. 814.

Extraordinary original criminal jurisdiction.

24. And We do further ordain that the said High Court of Judicature at Madras, [Fort William in Bengal] [Bombay], shall have extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court now subject to the superintendence of the said High Court, and shall have authority to try at its discretion any such persons brought before it on charges preferred by the Advocate-General, or by any Magistrate or other officer specially empowered by the Government in that behalf.

No appeal from High Court exercising original jurisdiction — Court may reserve points of law.

25. And We do further ordain that there shall be no appeal to the said High Court of Judicature at Madras [Fort William in Bengal] [Bombay], from any sentence or order passed or made in any criminal trial before the Courts of original criminal jurisdiction which may be constituted by one or more Judges of the said High Court. But it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court.

High Court to review on certificate of the Advocate-General.

26. And We do further ordain that, on such point or points of law being so reserved as aforesaid, or on its being certified by the said Advocate-General that, in his judgment, there is an error in the decision of a point or points of law decided by the Court of original criminal jurisdiction, or that a point or points of law which has or have been decided by the said Court should be further considered, the said High Court shall have full power and authority to review the case, or such part of it as may be necessary, and finally determine such point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as to the said High Court shall seem right.

CLS. 24 AND 29: CALCUTTA CASES.—Under this section, the High Court has no power to take proceedings against persons, one of whom is not in India at all and the others are either Indian subjects or else residing within the original jurisdiction. 1932 C. 123=35 C.W.N. 1088. *See also* 1931 C. 646=1932 C. 394=35 C.W.N. 782; 35 C.W.N. 1086. Where certain British Indian subjects resident within the original jurisdiction were accused of offences committed outside British India, the complaint cannot be entertained by the High Court on its appellate side, Cls. 24 and 29 not being applicable to such a case. 1932 C. 229 =35 C.W.N. 1082. Where the Advocate-General appears on behalf of the accused and does not commence proceedings under cl. 24, it cannot be said that he ceases to be Advocate-General and an application by counsel for private party to be clothed with the powers of the Advocate-General cannot be maintained. 35 C.W.N. 1082=1932 C. 229.

CLS. 25 AND 26: MADRAS CASES: REVIEW. —The judgment of a special Criminal Bench of the High Court constituted under sec. 6 (*b*) of the Criminal Law Amendment Act, 1908, is open to review on a certificate granted by the Advocate-General under cl. 26. 35 M. 397=14 I.C. 896=13 Cr.L.J. 352=1912 M.W.N. 549=12 M.L.T. 1. The expression "point of law" in cl. 26 means the same thing as matter of law in sec. 418 of the Cr. P. Code. It includes such mis-direction or non-direction as would permit an appeal against the verdict of a jury. Any misdirection includes not only an error in laying down the law by which the jury are to be guided but also a defect in summing up the evidence or in not summing it up or in summing it up erroneously. 1930 M.W.N. 249. As to whether the presiding Judge can reserve a question, when a point was raised after reading out charge and accused called upon to plead, *see* 1936 M.W.N. 281=1936 M. 353=70 M.L.J. 635 (F.B.).

CLS. 25 AND 26: CALCUTTA CASES.—Under cls. 25 and 26 the Full Bench is not competent to order a retrial but should finally decide the matter on review. 47 C. 671=71 C. L.J. 402=24 C.W.N. 501 (F.B.). (44 C. 477; 2 B. 61; 17 C. 642, Ref.). As to right of appeal or revision in the case of trials on the Sessions Side of a High Court, *see* 44 C. 723 =21 C.W.N. 167.

CL. 26: BOMBAY CASES.—Under Cl. 26 of the Letters Patent if the Advocate-General certifies that there is a point of law involved in the case which requires further consideration, the High Court has to determine the point of law, and if it thinks that there has been an error in law, it can review the whole case and pass the requisite sentence or judgment. It is not, however, essential to set aside the conviction whenever there has been some error of law, but if the High Court thinks that the error of law has prejudiced the accused, it must set aside the conviction. I.L.R. (1942) Bom. 384=199 I.C. 202=44 Bom.L.R.27 =1942 Bom. 71 (F.B.) In dealing with a case coming before the High Court under Cl. 26, the High Court is not entitled to go into questions which are not covered by the certi-

ficate of the Advocate-General. The jurisdiction of the High Court under Cl. 26 is restricted to the point or points of law mentioned in the certificate of the Advocate-General as involving an error; and if the High Court comes to the conclusion that there has been no error with regard to the point or points of law mentioned in the certificate of the Advocate General, the High Court has no power to go into any other question, or to review the case generally, even to the extent of altering the sentence. 46 Bom.L.R. 566=A.I.R. 1944 Bom. 274 (F.B.)=I.L.R. (1945) Bom. 52. The failure of the Judge to comply with sec. 297, Cr.P. Code, is an error of law which brings the case within cl. 26 of the Letters Patent. But that clause does not entail that wherever any misdirection is found to exist, the Court has no option but to set aside the verdict. 60 B. 599=38 Bom.L.R. 19 =1936 B. 52 (F.B.). Although the wording of sec. 537, Cr.P. Code, does not apply to a case under cl. 26 of the Letters Patent, the Court ought to apply the principle which underlies that section, that is, that where there has been no illegality in the mode of trial, but some irregularity in the process of trial, the High Court is not entitled to set aside the verdict or judgment unless it is satisfied that irregularity has led to a miscarriage of justice, or has prejudiced the accused. 60 Bom. 599=38 Bom.L.R. 62 (F.B.). It is clearly open to the Court to consider, not so much what effect the misdirection has upon its mind sitting in place of a jury, but what the effect of the misdirection was or may have been upon the minds of the jury which tried the case; and in so doing, it must assume that the jury was a reasonably competent jury, though it must remember that a jury consists of laymen and that a misdirection may have more effect upon the minds of laymen than upon the mind of a trained Judge. 60 Bom. 599. According to the language of Cl. 26, the High Court must be satisfied that there has been an error in the decision of a point or points of law or that there is a point or points of law requiring further consideration before any question can arise of interference with the verdict of the jury. To justify such interference, the point of law in question must clearly be a substantial and important one and it must appear that there has been some error by which the accused has been prejudiced and the fair trial of the case affected. 44 Cr.L.J. 534=45 Bom.L.R. 281=A.I.R. 1943 Bom. 105. *See also* 46 Bom.L.R. 566=1944 Bom. 274 (F.B.).

CL. 26: CALCUTTA CASES.—The powers of the High Court are limited under cl. 26. 28 C.W.N. 170=1924 C. 257 (F.B.). Where a Judge in his discretion under sec. 239, Cr. P. Code, desires to try a number of accused jointly it is not a matter for interference on a certificate of the Advocate-General under Cl. 26. 38 C.L.J. 309 (F.B.). A defective summing up to the jury, unless it causes a failure of justice is no ground for reversing a conviction. 38 C.L.J. 309 (F.B.). Where there was a misdirection to the jury and it appeared that the accused was prejudiced thereby and the Advocate-General granted a certificate under cl. 26 of the Letters Patent, *held*, that the conviction must be set aside. Under cl. 26 the Court can review the entire case and determine the point of law reserved or certified; the word 'thereupon' means that the point is in favour of the prisoner. The Court cannot order a re-trial if the point is held in favour of the accused. Where improper evidence has been admitted the Court must consider whether such evidence could possibly have considerably influenced the minds of the jury and whether it was reasonably certain that the jury would, not might, have acted on the unobjectionable evidence if the wrongly admitted evidence or matter had not also been presented to them. 1929 C. 617 (F.B.). *Per* Rankin, C.J.—The phrase "to review the case" as used in cl. 26 of the Letters Patent applies as much where a point of law is reserved by the trial Judge as where the Advocate-General has given a certificate. I am far from saying that inordinate delay may not be a matter for consideration by the Advocate-General at the time when he is called upon to consider whether a certificate should be granted. *Per* Jack, J., dissenting.—In a proceeding under cl. 26, the Court can examine the evidence for itself and determine without reference to the probable verdict of a jury whether excluding the inadmissible evidence the residue is sufficient to justify the conviction. The fact that a retrial cannot be ordered ought to make the Court careful to avoid setting aside a conviction on immaterial grounds. 33 C.W.N. 1121 =1929 C. 617 (F.B.). Where the accused was prosecuted for offences under secs. 406 and 477, I.P. Code, but it appeared that the Judge had misdirected the jury on the question of law, namely, as to the ingredients forming the offence. *Held*, that it was a fit case for interference under cl. 26. 58 C. 1051=35 C.W.N. 425=1931 C. 184 (S.B.). Contents of certificate. 21 C.L.J. 377=30 I.C. 113=16 Cr.L.J. 561=19 C.W.N. 53 (F.B.). Once the Advocate-General grants a certificate the Court has to deal with the case. The statement of the trial Judge as to what took place before him is conclusive. 30 I.C. 113. When the Advocate-General, after considering the matter and exercising his judgment, refuses a certificate it is not within the province of the High Court to issue a Rule to call upon him to show cause why he should not issue a certificate. 63 C. 838. The refusal by the Advocate-General to give a certificate is not a matter which can be called in question by any proceeding in the High Court. The revisional jurisdiction of the High Court in criminal matters is limited to matters arising in the Criminal Courts subject to the appellate jurisdiction of the High Court. 63 Cal. 838.

CL. 26: MADRAS CASES—"DECISION ON A POINT OF LAW—WHAT CONSTITUTES.—*Held*, by the majority (Madhavan Nair and Curgenven, JJ., dissenting): A point of law referred to in cl. 26 of the Letters Patent means a point of law submitted to and decided by the trial Judge or any direction as to the law

Appeal from Criminal Courts in the Provinces.

27. And We do further ordain that the said High Court of Judicature at Madras, [Fort William in Bengal] [Bombay], shall be a Court of appeal from the Criminal Courts of the Presidency of Madras, [Bengal division of the Presidency of Fort William] [Bombay], and from all other Courts, subject to its superintendence, and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said High Court by virtue of any law now in force.

Hearing of referred cases and revision of criminal trials.

28. And We do further ordain that the said High Court of Judicature at Madras, [Fort William in Bengal] [Bombay], shall be a Court of reference and revision from the Criminal Courts subject to its appellate jurisdiction, and shall have power to hear and determine all such cases referred to it by the Sessions Judges, or by any other Officers now authorized to refer cases to the said High Court, and to revise all such cases tried by any officer or Court possessing criminal jurisdiction ,as are now subject to reference or to revision by the said High Court.

High Court may direct the transfer of a case from one Court to another.

29. And We do further ordain that the said High Court shall have power to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also direct the preliminary investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it, though such case belongs, in ordinary course, to the jurisdiction of some other officer or Court.

Criminal Law.

Offenders to be punished under Indian Penal Code.

30. And We do further ordain that all persons brought for trial before the said High Court of Judicature at Madras, [Fort William in Bengal] [Bombay], either in the exercise of its original jurisdiction, or in the exercise of its jurisdiction as a Court of appeal, reference or revision, charged with any offence for which provision is made by Act XLV of 18600, called the "Indian Penal Code," or by any Act amending or excluding the said Act which have been passed prior to the publication of these presents, shall be liable to punishment under the said Act or Acts, and not otherwise.

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given by him in the course of his summing up to the jury. The word 'decision' cannot be read so as to cover cases where the Judge has never applied his mind to the matter and has not pronounctd an opinion on it. *Per* Madhavan Nair and Curgenven, JJ., dissenting: All questions which have to be necessarily decided in a trial and which in effect have been decided by the Judge, though not expressly, would fall within the meaning of the word "decision". 68 M.L.J. (Supp.) 1 (F.B.). In an enquiry following the grant of a certificate by the Advocate-General the High Court has jurisdiction to say that the Advocate-General's certificate should not have been granted on the ground that there was no decision on a point of law involved in the case and if it came to that conclusion, the petition could straightaway be dismissed without any further consideration of the merits of the case. 58 M. 523=68 M.L.J. (Supp.) 1=1935 M. 486 (F.B.).

CLS. 27 AND 28: BOMBAY CASES.—Order of Chief Presidency Magistrate under Maintenance Orders Enforcement Act, 1921—Power of High Court to interfere in revision. 1928 B. 117=30 Bom.L.R. 350.

CL. 29: BOMBAY CASES.—Bombay High Court has no power to quash proceedings before Village Patil under the Cr. P. Code, but it has such power under the Letters Patent. 50 I.C. 491=21 Bom.L.R. 274 (10 Bom.L.R. 630, Rel.).

CL. 29: CALCUTTA CASES.—The second half of cl. 29 is addressed to the same subject-matter as the first-half. The section merely confers a power of transfer. If the High Court transfers the case to its file it assumes original jurisdiction. The High Court has no power under this clause to take proceedings against certain persons one of whom is not in India at all and others are either Indian subjects or else residing within the original jurisdiction of the High Court. 35 C.W.N. 1088=1932 C. 123. Where certain British Indian subjects resident within the original jurisdiction were accused of offences committed outside British India. Held, that the complaint cannot be entertained by the Court on its appellate side, cls. 24 and 29 not being applicable to such a case. 35 C.W.N. 1082=1932 C. 229. *See also* 35 C.W.N. 1086=1932 C. 394.

Exercise of jurisdiction elsewhere than at the ordinary place of sitting of the High Court.

Judges may be authorized to sit in any place by way of circuit or special commission.

31. And We do further ordain that whenever it shall appear to the Governor in Council convenient that the jurisdiction and power by these Our Letters Patent or by the recited Act, vested in the said High Court of Judicature at Madras, [Fort William in Bengal] [Bombay], should be exercised in any place within the jurisdiction of any Court now subject to the superintendence of the said High Court other than the usual place of sitting of the said High Court, or at several such places by way of circuit, the proceedings in cases before the said High Court at such place or places shall be regulated by any law relating thereto, which has been or may be made by competent legislative authority for India.

Admiralty and Vice-Admiralty Jurisdiction.

Civil.

32. And We do further ordain that the said High Court of Judicature at Madras, [Fort William in Bengal] [Bombay], shall have and exercise all such civil and maritime jurisdiction as may now be exercised by the said High Court as a Court of Admiralty, or of Vice-Admiralty, and also such jurisdiction for the trial and adjudication of prize causes and other maritime questions arising in Inda as may now be exercised by the said High Court.

Criminal.

33. And We do further ordain that the said High Court of Judicature at Madras, [Fort William in Bengal] [Bombay], shall have and exercise all such criminal jurisdiction as may now be exercised by the said High Court as a Court of Admiralty, or of Vice-Admiralty, or otherwise in connection with maritime matters, or matters of prize.

Testamentary and Intestate Jurisdiction.

Testamentary and intestate jurisdiction.

34. And We do further ordain that the said High Court of Judicature at Madras, [Fort William in Bengal] [Bombay], shall have the like power and authority as that which may now be lawfully exercised by the said High Court, in relation to the granting of probates of last wills and testaments, and letters of administration of the goods, chattels, credits, and all other effects whatsoever of persons dying intestate, within or without the Presidency of Madras, [Bengal Division of the Presidency of Fort William] [Bombay]: Provided always that nothing in these Letters Patent contained shall interfere with the provisions of any law which has been made by competent legislative authority for India, by which power is given to any other Court to grant such probates and letters of administration.

Matrimonial jurisdiction.

Matrimonial jurisdiction.

35. And We do further ordain that the said High Court of Judicature at Madras, [Fort William in Bengal] [Bombay], shall have jurisdiction, within the Presidency of Madras, [Bengal Division of the Presidency of Fort William] [Bombay], in matters

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CL. 32: CALCUTTA CASES.—Admiralty jurisdiction—High Court—Law applicable. **28 I.C. 463=42 C. 85. The Admiralty Jurisdiction of the Calcutta High Court rests on cl. 32. The effect is to vest in the High Court such civil and maritime jurisdiction as might be exercised by the Supreme Court as a Court of Admiralty, or by any Judge of that Court as Commissary of the Vice-Admiralty Court. The Admiralty Jurisdiction of the Supreme Court is defined by Cl. 26 of the Charter of 1774 which conferred upon the** Supreme Court a Jurisdiction of Admiralty as the same is used and exercised in that part of Great Britain called England. 171 I.C. 513=1937 Cal. 122.

CL. 34.—Testamentary jurisdiction of Calcutta High Court over Assam. *See* 49 C. W.N. 695.

CL. 35.—The Court cannot give relief to parties who are Jews by religion under cl. 35 of the Letters Patent. 57 C. 1089=34 C W.N. 319=1930 C. 558.

matrimonial between Our subjects professing the Christian religion: Provided always that nothing herein contained shall be held to interfere with the exercise of any jurisdiction in matters matrimonial by any Court not established by Royal Charter within the said Presidency lawfully possessed thereof.

Powers of Single Judges and Division Courts.

Single Judges and Division Courts.

36. And We do hereby declare that any function which is hereby directed to be performed by the said High Court of Judicature at Madras, [Fort William in Bengal] [Bombay], in the exercise of its original or appellate jurisdiction, may be performed by any Judge, or by any Division Court thereof, appointed or constituted for such purpose, [1][in pursuance of section 108 of the Government of India Act, 1915]; and if such Division Court is composed of two or more Judges and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges if there shall be a majority, but if the Judges should be equally divided, [2][they shall state the point upon which they differ and the case shall then be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it]:

Civil Procedure.

Regulation of proceedings.

37. And We do further ordain that it shall be lawful for the said High Court of Judicature at Madras, [Fort William in Bengal] [Bombay], from time to time to make rules and orders for the purposes of regulating all proceedings in civil cases which may be brought before the said High Court, including proceedings in its admiralty, vice-admiralty, testamentary, intestate and matrimonial jurisdiction respectively: Provided always that the said High Court shall be guided in making such rules and orders as far as possible by the provisions of the Code of Civil Procedure, being an Act passed by the Governor-General in Council, and being Act No. VIII of 1859, and the provisions of any law which has been made, amending or altering the same, by competent legislative authority for India.

LEG. REF.

1 Substituted by Amending Letters Patent, dated 11th March, 1919.

2 Added by the Letters Patent Amendment of 1927.

CL. 36: MADRAS CASES.—The amended cl. 36 applies to all pending cases. 52 M. 584 =1929 M. 497=57 M.L.J. 22 (F.B.). In all cases of equal division of opinion between the Judges of the High Court the procedure to be adopted is that prescribed in cl. 36 of the Letters Patent and not that mentioned in sec. 98, C. P. Code. 52 M. 563=1929 M. 641=57 M.L.J. 264 (F.B.). In the case of difference of opinion in revision cases cl. 36 and not sec. 98, C. P. Code, regulates the procedure. 32 I.C. 330=18 M.L.T. 591. Difference of opinion among Judges—Sanction under Cr. P. Code, sec. 195 (6)—Opinion of the senior Judge prevails. 39 M. 750=14 I.C. 305=22 M.L.J. 419 (F.B.); 1925 Mad. 281=47 M.L.J. 76. Proceeding before High Court under sec. 439, Cr. P. Code—Difference of opinion—Procedure. *See* 1932 M.W.N. 873.

BOMBAY CASES.—According to cl. 36, if the Judges are equally divided in opinion that of the senior prevailed. 45 B. 718= 48 I.A. 181=40 M.L.J. 519 (P.C.). [*N.B.*: This is not now good law in view of the amendment of the Letters Patent in 1927.] *See also* 26 Bom.L.R. 470=1925 B. 113=85 I.C. 778. Sec. 98 of the C. P. Code which provides for reference of the disputed point to one or more other Judges does not affect cl. 36 of the Letters Patent. (*Ibid.*) On a difference of opinion in an appeal from the Mofussil the procedure is governed by sec. 98 C. P. Code and not by cl. 36. 43 B. 433 and 492=50 I.C. 715=21 Bom.L.R. 157 (F.B.).

CALCUTTA CASES.—As regards the costs of an original side appeal the Judges having differed. Sec. 98, C. P. Code, is not applicable, but cl. 36 applies and the opinion of the Chief Justice prevailed. 58 I.C. 421= 24 C.W.N. 352. *See also* 18 C.W.N. 106= 16 I.C. 922=17 C.L.J. 75. (Not now good law in view of the amendment of the Letters Patent in 1927). Difference of opinion between two Judges of High Court on appellate side—Procedure. 52 C. 1018. 1926 C. 121. Reference under sec. 66 of the Indian Income-tax Act—Difference of opinion among members of Division Bench—If opinion of senior Judge prevails 51 C. 504. [But sec. 66-A of the Income-tax Act enacted recently provides otherwise. *See also* the amended Letters Patent of 1927.]

CL. 37: MADRAS CASES.—R. 107 of the

Criminal Procedure.

38. And We do further ordain that the proceedings in all criminal cases which shall be brought before the said High Court of Judicature at Madras,]Fort William in Bengal[ ]Bombay[, in the exercise of its ordinary original criminal jurisdiction, and also in all other criminal cases over which the said High Court had jurisdiction immediately before the publication of these presents, shall be regulated by the procedure and practice which was in use in the said High Court immediately before such publication subject to any law which has been or may be made in relation thereto by competent legislative authority for India; and that proceedings in all other criminal cases shall be regulated by the Code of Criminal Procedure prescribed by an Act passed by the Governor-General in Council, and being Act No. XXV of 1861, or by such further or other laws in relation to criminal procedure as may have been or may be made by such authority as aforesaid.

Regulation of proceedings.

Appeals to Privy Council.

39. And We do further ordain that any person or persons may appeal to Us, Our heirs and Successors, in Our or Their Privy Council, in any matter not being of criminal jurisdiction, from any final judgment, decree or order of the said High Court of Judicature at Madras, [Fort William in Bengal] [Bombay], made on appeal, and

Power to appeal.

Appellate Side Rules of the High Court is authorised by cl. 37 of the L. P. and is therefore not *ultra vires*. 29 M.L.J. 784=31 I.C. 74. R. 105 of the High Court Appellate Side Rules does not contravene the provisions of the C. P. Code by limiting the right of appeal conferred by sec. 100, C. P. Code, or by varying the provisions of O. 41 as to the mode of disposing of appeals. (*Ibid.*)

BOMBAY CASES: POWER OF HIGH COURT TO MAKE RULES FOR REGULATING PROCEDURE IN SUBORDINATE COURT.—Cl. 37 does not empower the High Court to make rules and orders for the purpose of regulating proceedings in civil cases in Courts subordinate to it. For that purpose the High Court must resort to sec. 122, C. P. Code, or sec. 224 (1) (*b*) of the Government of India Act 1935. 47 Bom.L.R. 808.

CALCUTTA CASES.—O. 3, R. 4 (5) is inconsistent with the rules of the Calcutta High Court framed under cl. 37, Letters Patent and O. 3, R. 4 (5) being contrary to rules under cl. 37 the latter must prevail. 135 I. C. 789=1932 C. I=59 C. 370.

CL. 39: MADRAS CASES.—*See* (1939) 2 M. L.J. 667 (F.B.). 1939 M. 903=I.L.R. 1939 M. 770. An application for leave to appeal to Privy Council in an insolvency matter (original or appellate) lies under cl. 39 of the L. P. 22 L.W. 362=1925 M. 243. Deputy Collector sanctioning prosecution as Income-tax Officer—High Court order refusing to quash proceedings if appealable. 25 M.L.J. 565=21 I.C. 896. If the High Court has powers to allow an appeal to the Privy Council against an order in a disciplinary matter, such as suspending a vakil from practice, *see* 43 M.L.J. 382=1922 M. 440.

BOMBAY CASES: MEANING OF WORDS.—The meaning of "final" is that the judgment or order must finally determine the rights of the parties. 38 B. 421=61 Bom.L.R. 195.

ILLUSTRATIVE CASES.—An award made in a land acquisition case by the High Court is not a decree. Nor is it a final judgment or order within the meaning of cl. 39. No appeal lies in such cases. 37 B. 506=17 I.C. 952=14 Bom.L.R. 1194. *See* on appeal 20 I. C. 763=17 C.W.N. 421 (P.C.). As to scope of cl. 39, *see* 55 B. 785=1932 B. 90=33 Bom.L.R. 1476. The decision of the High Court on a reference from the Chief Revenue Authority under Income-tax Act is a judgment within cl. 39, and an appeal lies to the Privy Council from the same. 64 I.C. 931= 9.3 Bom.L.R. 1102=1921 B. 128 (2). *See also* (1939) 2 M.L.J. 667 (F.B.)=1939 M. 903. A decision of the High Court on reference by case stated under sec. 51, Income-tax Act (now sec. 66) is not final but merely advisory, and as such is not open to an appeal. 47 B. 724=50 I.A. 212=45 M.L.J. 295= 1923 P.C. 148 (P.C.). But sec. 66-A provides for such appeal). Application under Sp. Rel. Act, sec. 45—Order refusing—Leave to appeal ought to be granted. 1921 B. 378 =64 I.C. 959=23 Bom.L.R. 1132. Order in civil extraordinary jurisdiction not appealable. 1923 B. 39. An order of the High Court rejecting the application of a legal representative to be brought on record not being final, but interlocutory, no appeal lies to the Privy Council. 38 B. 421=23 I.C. 373 =16 Bom.L.R. 195. No appeal lies to His Majesty in Council from he decision of a single Judge of the High Court in the exercise of appellate or revisional jurisdiction. To this extent, sec. 111, C. P. Code, overrides cl. 39 of the Letters Patent. (56 C. 512=46 M. 958, Foll.); 1931 B. 503=33 Bom.L.R. 1106.

CALCUTTA CASES.—By *"final order"* in cl. 39 is meant an order finally deciding any matter directly at issue in the case in res-

from any final judgment, decree or order made in the exercise of original jurisdiction by Judges of the said High Court, or of any Division Court from which an appeal shall not lie to the said High Court under the provisions contained in the 15th clause of these presents: Provided, in either case, that the sum or matter at issue is of the amount or value of not less than Rs. 10,000 or that such judgment, decree or order shall involve, directly or indirectly, some claim, demand or question to or respecting property amounting to or of the value of not less than Rs. 10,000 or from any other final judgment, decree or order made either on appeal or otherwise as aforesaid, when the said High Court shall declare that the case is a fit one for appeal to Us, Our heirs or Successors, in Our or Their Privy Council, subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council from the Courts of the said Presidency, except so far as the said existing rules and orders respectively are hereby varied, and subject also to such further rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

Appeal from interlocutory judgment.

40. And We do further ordain that it shall be lawful for the said High Court of Judicature at Madras, [Fort William in Bengal] [Bombay], at its discretion, on the motion, or if the said High Court be not sitting, then for any Judge of the said High Court, upon the petition of any party who considers himself aggrieved by any preliminary or interlocutory judgment, decree, order or sentence of the said High Court in any such proceeding as aforesaid, not being of criminal jurisdiction to grant permission to such party to appeal against the same to Us, Our heirs and Successors, in Our or Their Privy Council, subject to the same rules, regulations and limitation as are herein expressed respecting appeals from final judgments, decrees, orders and sentences.

Appeal in criminal cases, etc.

41. And We do further ordain that from any judgment, order or sentence, of the said High Court of Judicature at Madras, [Fort William in Bengal] [Bombay], made in the exercise of original criminal jurisdiction, or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court in manner hereinbefore provided, by any Court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgment, order or sentence to apepal to Us, Our heirs or Successors, in Council, provided the said High Court shall declare that the case is a fit one for such appeal, and under such conditions as the said High Court may establish or require subject always to such rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

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pect of the rights of the parties. *See* 9 I. C. 183=15 C.W.N. 848. The words *"in any matter not being of criminal jurisdiction"* govern all the classes of judgments or decree or orders which are hereinafter in that clause mentioned. *Held,* that no appeal lies to the Privy Council against a decision of the High Court sitting in criminal appeal and that the applition for leave was not maintainable. 58 C. 344=1931 C. 526.

CL. 41—CALCUTTA CASES.—The High Court is not empowered to grant leave to appeal to His Majesty in Council from its decision in a criminal appeal either under cl. 41 or any other provision of law. 38 C.L.J. 406=1924 C. 338. As to whether appeal lies to Privy Council from order on certificate by the Advocate-Generral, *see* 48 M.L.J. 543=52 I.A. 40=52 C. 197=29 C. W.N. 181=1 O.W.N. 935=1925 P.C. 1 (25 M. 61, Expl.). Criminal case—Leave to appeal to His Majesty in Council—Grounds for—Stay of execution of sentence. 28 C. W.N. 377=83 I.C. 580=1924 C. 545. Criminal proceedings however are, in practice, reviewed only if it is shown that by a disregard of the forms of legal process or by some violation of the principles of natural justice or otherwise, substantial and grave injustice has been done. 28 C.W.N. 377= 1924 Cal. 545. *See also* 52 I.A. 40=52 C. 197 (P.C.); I.L.R. (1939) 1 Cal. 187=43 C. W.N. 133=1939 Cal. 682 (Conditions for grant of certificate under cl. 41). There is no right of appeal to the Privy Council under cl. 41 of the Letters Patent, from an order of a single Judge passed in revisional

Rule as to transmission of copies of evidence and other documents.

42 And We do further ordain that, in all cases of appeal made from any judgment, order, sentence or decree of the said High Court of Judicature at Madras, [Fort William in Bengal] [Bombay], to Us, Our heirs or Successors, in Our or Their Privy Council, such High Court shall certify and transmit to Us, Our Heirs and Successors, in Our or Their Privy Council, a true and correct copy of all evidence, proceedings, judgments, decrees and orders had or made in such cases appealed, so far as the same have relation to the matters of appeal, such copies to be certified under the seal of the said High Court. And that the said High Court shall also certify and transmit reasons given by the Judges of such Court, or by any of such Judges, for or against the judgment or determination appealed against. And We do further ordain that the said High Court shall, in all cases of appeal to Us, Our heirs or Successors, conform to and execute, or cause to be executed, such judgments and orders as We, Our heirs, or Successors, in Our or Their Privy Council, shall think fit to make in the premises in such manner as any original judgment, decree or decretal orders, or other order or rule of the said High Court, should or might have been executed.

Calls for Records, etc., by the Government.

High Court to comply with requisition from Government for records, etc.

43 And it is Our further will and pleasure that the said High Court of Judicature at Madras, [Fort William in Bengal] [Bombay], shall comply with such requisitions as may be made by the Government for records, returns and statements, in such form and manner as such Government may deem proper

Powers of the Indian Legislature preserved.

[1][44 And We do further ordain and declare that all the provisions of these Our Letters Patent are subject to the Legislative powers of the Governor-General in Legislative Council, and also of the Governor-General in Council under section 71 of the Government of India Act, 1915, and also of the Governor-General in cases of emergency under section 72 of the Act, and may be in all respects amended and altered thereby.]

Provisions of former Letters Patent, inconsistent with these Letters Patent, to be void.

45. And it is Our further will and pleasure that these Letters Patent shall be published by the Governor in Council, and shall come into operation from and after the date of such publication; and that from and after the date on which effect shall have been given to them, so much of the aforesaid Letters Patent granted by His Ma-

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LEG. REF.

1 This clause was substituted by Amending L. P., dated 11th March, 1919.

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criminal jurisdiction. 62 C. 389=39 C.W.N. 235=1935 C. 477.

MADRAS CASES: LEAVE TO APPEAL—QUESTION AS TO INADMISSIBILITY OF EVIDENCE.—The accused was convicted at the Criminal Sessions of the High Court of an offence under sec. 302, I. P. Code, and sentenced to death. He then applied to the Advocate General and obtained a certificate under cl. 26 of the Letters Patent on the ground that certain inadmissible evidence had been put to the jury at the trial. The majority of the Full Bench who heard the review application held that there was no decision on a point of law with reference to the question raised and dismissed the review application. At the same time the trial Judge acting under cl. 25 of the Letters Patent referred the question as to the admissibility of the evidence for further consideration by the High Court. The matter once again came up before a Full Bench and it was held that the evidence was admissible in law and that in any case there was ample evidence, quite apart from the evidence called in question, to support the conviction. The accused having applied for leave to appeal to the Privy Council. *Held*, that it was not a fit case for leave being granted as the Court had found that there was ample evidence to support the conviction apart from the evidence objected to. Jurisdiction of Privy Council in criminal cases pointed out. 68 M.L.J. (Supp) 93 (F.B); 1935 M. 793. The provisions of cl. 44 do not enable Courts by implication to supplement the Letters Patent by importing into it all Acts *ejusdem generis* passed by the Governor-General in Council. 40 M. 651=32 I.C. 873=32 M.L.J. 144.

jesty, King George the Third as was not revoked or determined by the said Letters Patent of the Twenty-sixth of June, One thousand eight hundred and sixty-two, and is inconsistent with these Letters Patent, shall cease, determine, and be utterly void, to all intents and purposes whatsoever.

In witness whereof, We have caused these Our Letters to be made Patent Witness Ourself, at Westminster, the Twenty-eighth day of December in the Twenty-ninth year of Our Reign.

By warrant under the Queen's Sign Manual. (Sd.) C. ROMILLY.

LETTERS PATENT (LAHORE).

(9th February, 1919.)

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Letters Patent constituting the High Court of Judicature at Lahore for the Provinces of Punjab and Delhi, dated 21st March, 1919.

GEORGE THE FIFTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India. To all to whom these Presents shall come, greeting: Whereas by an Act of Parliament passed in the Fifth and Sixth years of Our Reign and called the Government of India Act, 1915, it was

amongst other things enacted that it should be lawful for Us by Letters Patent to establish a High Court of Judicature in any territory in British India whether or not included with the limits of the local jurisdiction of another High Court and to confer on any High Court so established any such jurisdiction, powers and authority as were vested in or might be conferred on any High Court existing at the commencement of that Act: and

WHEREAS the Provinces of the Punjab and Delhi are now subject to the jurisdiction of the Chief Court of the Punjab which was established by an Act of the Governor-General of India in Council, being Act No. XXIII of 1865, and was continued by later enactments and no part of the said Provinces is included within the limits of the local jurisdiction of any High Court.

Establishment of High Court at Lahore.

1. Now know ye that We, upon full consideration of the premises, and of Our special grace, certain knowledge, and mere motion, have thought fit to erect and establish, and by these presents We do accordingly, for us, Our Heirs and Successors, erect and establish, for the Provinces of the Punjab and Delhi aforesaid, with effect from the date of the publication of these presents in the *Gazette of India*, a High Court of Judicature, which shall be called the High Court of Judicature at Lahore, and We do hereby constitute the said Court to be a Court of Record.

Constitution and first Judges of the High Court.

2. And We do hereby appoint and ordain that the High Court of Judicature at Lahore shall, until further or other provision be made by Us, or Our Heirs and Successors, in that behalf in accordance with section one hundred and one of the said recited Government of India Act, 1915, consist of a Chief Justice and six other Judges, the first Chief Justice being Sir Henry Adolphus Rattigan Knight, and the six other Judges being William Chevis, Esquire, Henry Scott Smith, Esquire, Shadi Lal, Esquire, Rai Bahadur Walter Aubin Le Rossignol, Esquire, Leycester Hudson Leslie Jones, Esquire, and Alan Brice Broadway, Esquire, being respectively qualified as in the said Act is declared.

Declaration to be made by Judges.

3. And We do hereby ordain that the Chief Justice and every other Judge of the High Court of Judicature at Lahore previously to entering in the execution of the duties of his office, shall make and subscribe the following declaration before such authority or person as the Lieutenant-Governor of the Punjab may commission to receive it:—

"I, *A.B.*, appointed Chief Justice [*or* a Judge] of the High Court of Judicature at Lahore, do solemnly declare that I will faithfully perform the duties of my office to the best of my ability, knowledge and judgment."

Seal.

4. And We do hereby grant, ordain and appoint that the High Court of Judicature at Lahore shall have and use as occasion may require, a seal bearing a device and impression of Our Royal Arms, within an exergue or label surrounding the same, with this inscription, "The seal of the High Court at Lahore." And We do further grant, ordain and appoint that the said seal shall be delivered to and kept in the custody of the Chief Justice, and in case of vacancy of the office of Chief Justice, or during any absence of the Chief Justice, the same shall be delivered over and kept in the custody of the person appointed to act as Chief Justice under the provisions of section 105 of the Government of India Act, 1915; and We do further grant, ordain and appoint that, whensoever the office of Chief Justice or of the Judge to whom the custody of the said seal be committed is vacant, the said High Court shall be, and is hereby, authorized and empowered to demand, seize and take the said seal from any person or persons whomsoever, by what ways and means soever the same may have come to him, her or their possession.

5. And We do hereby further grant, ordain and appoint that all writs, summonses, precepts, rules, orders and other mandatory process to be used, issued or awarded by the High Court of Judicature at Lahore shall run and be in the name and style of Us, or of Our Heirs and Successors, and shall be sealed with the seal of the said High Court.

Writs, etc., to issue in name of the Crown, and under seal.

6. And We do hereby authorize and empower the Chief Justice of the High Court of Judicature at Lahore from time to time, as occasion may require, and subject to any rules and restrictions which may be prescribed from time to time by the Lieutenant-Governor of the Punjab, to appoint so many and such clerks and other ministerial officers as may be found necessary for the administration of justice and the due execution of all the powers and authorities granted and committed to the said High Court by these Our Letters Patent. And it is Our further will and pleasure, and We do hereby, for Us, Our Heirs and Successors, give, grant, direct and appoint, that all and every the officers and clerks to be appointed as aforesaid shall have and receive respectively such reasonable salaries as the Chief Justice may, from time to time, appoint for each office and place respectively, and as the Lieutenant-Governor of the Punjab, subject to the control of the Governor-General in Council, may approve of: Provided always and it is Our will and pleasure, that all and every the officers and clerks to be appointed as aforesaid shall be resident within the limits of the jurisdiction of the said Court, so long as they hold their respective offices; but this proviso shall not interfere with or prejudice the right of any officer or clerk to avail himself of leave of absence under any rules prescribed from time to time by the Governor-General in Council, and to absent himself from the said limits during the term of such leave in accordance with the said rules.

Appointment of officers.

Admission of Advocates, Vakils and Attorneys.

7. And We do hereby authorize and empower the High Court of Judicature at Lahore to approve, admit and enrol such and so many Advocates, Vakils and Attorneys as to the said High Court may seem meet; and such Advocates, Vakils and Attorneys shall be and are hereby authorized to appear for the suitors of the said High Court and to plead or to act, or to plead and act, for the said suitors, according as the said High Court may by its rules and directions determine, and subject to such rules and directions.

Powers of High Court in admitting Advocates, Vakils and Attorneys.

8. And We do hereby ordain that the High Court of Judicature at Lahore shall have power to make rules from time to time for the qualification and admission of proper persons to be Advocates, Vakils and Attorneys-at-Law of the said High Court, and shall be empowered to remove or to suspend from practice, on reasonable cause, the said Advocates, Vakils or Attorneys-at-Law; and no person whatsoever but such Advocates, Vakils or Attorneys shall be allowed to act or to plead for, or on behalf of, any suitor in the said High Court, except that any suitor shall be allowed to appear, plead or act on his own behalf, or on behalf of a co-suitor.

Power of High Court in making rules for the qualifications, etc., of Advocates, Vakils and Attorneys.

CL. 7.—Counsel in a Letters Patent appeal are not confined to the arguments addressed to the single Judge. 1926 L. 113=89 I.C. 958.

CL. 8.—Under cl. 8 only an advocate, vakil or attorney of a High Court can appear, act or plead for or an behalf of a suitor. An application therefore for leave to appeal *in forma pauperis* by a person who is not so qualified is not proper. 1937 L. 318=174 I.C. 239. Proceedings under—Nature of—Propriety of conviction cannot be gone into—Duties of legal practitioners. 4 L. 271=1924 L. 123 (S.B.). *See also* 1933 L. 577=143 I.C. 727=14 L. 532 (S.B.). There is a distinction between being a member of an unlawful association and assisting the operations of an unlawful association. The former interferes with the maintenance of law and order or is a danger to public

Civil Jurisdiction of the High Court.

Extraordinary original civil judisdiction.

9 And We do further ordain that the High Court of Judicature at Lahore shall have power to remove and to try and determine as a Court of extraordinary original jurisdiction, any suit being or falling within the jurisdiction of any Court subject to its superintendence, when the said High Court may think proper to do so, either on the agreement of the parties to that effect, or for purposes of justice, the reasons for so doing being recorded on the proceedings of the said High Court

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peace and it may well be considered to render a man an improper person to be a practitioner in a Court of justice, but it by no means follows that a man who has committed an isolated act which assists the operations of an unlawful association is necessarily such an improper person. Much would depend upon the nature of the act done and the particular operation assisted. Where, apart from the conviction of the legal practitioner under sec. 17 (1) of the Criminal Law Amendment Act, for having assisted in the celebration of the Independenee Day, there was nothing on the record to show what exactly he did on the occasion. *Held*, that there was no reasonable cause within the meaning of cl. 8 to take disciplinary action: *held also*, that the speech made by the practitioner at a meeting organised by an unlawful association protesting against the arrest of a political leader did not warrant disciplinary action. 14 L. 532=1933 L. 577 (S.B.). An advocate received money from a client for filing an appeal. He did not file the appeal as he found out later that the appeal was barred by time. The explanation given by the advocate as to the application of the money was not quite satisfactory nor did the client give out the correct and true information to the Court, and the client's conduct also was not consistent with what normally would have happened under the circumstances of the case. *Held*, that having admitted the receipt of money, though it was for the advocate to account for its application, there was no reasonable cause established to enable the Court to remove or suspend the advocate from practice, that the Court cannot be uninfluenced by the conduct of the client in withholding the correct information and that the advocate should return the money received. 1933 L. 575=34 Cr.L.J. 954 (S.B). *A*, an advocate, allowed his clerk to enter into agreements with his clients to finance the litigation about property which they launched against others: the clerk was to be compensated for his labour and expenses by being given a share in the property in dispute if the cases be ultimately decided in favour of his clients; and in pursuance of this *A* appeared for those clients without receiving any fees in advance. It was proved that the advocate's clerk consulted him and showed him the papers before he entered into agreements with his clients and that he gave him advice regarding the prospect of the litigation. *Held*, that a counsel is expected to be free from any personal as distinguished from professional interest in litigation and the conduct of the Advocate in allowing his clerk to enter into such a transaction called for severe censure, but his conduct in advising him in the matter and then appearing for the litigants without receiving the usual fees in advance amounted to processional misconduct. 1932 L. 584.

CL. 9.—The word 'suit' in cl. 9 of the Letters Patent includes a proceeding in the Insolvency Court, and the High Court under its extraordinary powers has jurisdiction to transfer a proceeding in insolvency from the District Court to itself for disposal. 17 L. 582=160 I.C. 972=1936 L. 608.

CL. 10.—Under cl. 10 the authority to make the declaration that the case is a fit one for appeal is conferred only on the Judge who passed the judgment and on none other. No other Judge or Judges of the High Court have any jurisdiction to grant a certificate. 1935 L. 330 (1)=16 L. 602.

JUDGMENT.—In order to decide whether an adjudication should be treated as a "judgment", regard should be had, not to the form of the adjudication, but to its effect upon the suit or other civil proceeding in which it was made. 3 L. 188=1922 L. 380 (2). *See also* 1922 L. 185=77 I.C. 32. Judgment also includes an interlocutory judgment. 1 L. 348=55 I.C. 933=79 P.L.R. 1920. Order refusing transfer of case is not a judgment. 8 L. 681=1927 L. 540. Judgment—If synonymous with decree—Order staying further proceedings. *See* 10 L. 132=1928 L. 904. An order of the High Court transmitting the order of His Majesty in Council for execution is a judgment and is appealable. 11 L. 365=123 I.C. 277=1930 L. 674. An order of a single Judge of the High Court directing a decree of a Subordinate Judge to be registered under sec. 100 (2) of the Punjab Tenancy Act as a decree of a Revenue Court, by which the suit was triable, is not a judgment within the meaning of cl. 10 of the Letters Patent and is not, therefore, appealable. 17 L. 606=38 P.L.R. 611 =1936 L. 785. *"Final order"*, meaning of. 5 L.L.J. 287=1923 L. 428. An order of a Judge in Single Bench on appeal holding that the trial Court had jurisdiction to try a suit and directing it to proceed with the suit, is a judgment within the meaning of cl. 10 and therefore appealable. 1942 L. 95= 44 P.L.R. 140 (F.B.)=I.L.R. (1942) Lah. 491.

CASES WHERE APPEAL LIES.—Where a Judge of the High Court refuses to set aside

[1][10. And We do further ordain that an appeal shall lie to the said High Court of Judicature at Lahore from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of S. 107 of the Government of India Act, or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to S. 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one Judge of the said Court or one Judge of any Division Court, pursuant to S. 108 of the Government of India Act, made in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the High Court, where the Judge who passed the judgment declares that the case is a fit one for appeal: but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us, Our Heirs or Successors in Our or Their Privy Council, as hereinafter provided]

Appeal to the High Court from Judges of the Court.

11. And We do further ordain that the High Court of Judicature at Lahore

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LEG. REF.

[1] Amended by Letters Patent, 1927. As to the effect of this amendment, *see* notes under cl. 10 of Letters Patent, Allahabad.

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a dismissal of an appeal for default, his order of refusal is a judgment and is appealable. 1924 L. 412=71 I.C. 824. An order rejecting an application to re-admit an appeal dismissed for default amounts to a judgment and is appealable. 89 I.C. 795=1925 L. 617. A new point cannot be raised in an appeal under the Letters Patent. 1933 L. 685=34 P.L.R. 853. As to *appeal from the decision of a single Judge* who hears a reference under sec. 66, Income-tax Act, *see* 6 L. 30=1925 L. 336 (1). No appeal lies against an order passed in revision. 6 L. 250=1925 L. 624. As to *appeal from an order of remand*, see 1926 A. 669=48 A. 684. A Judge of the High Court disposing of a petition under sec. 491, Cr. P. Code, exercises criminal jurisdiction, and as such no appeal is competent under cl. 10 of the Letters Patent from his order rejecting the petition. I.L.R. (1945) Lah. 573.

PRACTICE AND PROCEDURE.—An appellant in Letters Patent appeal cannot put forward a new case not suggested in the Courts below and claim relief on that footing. 4 L.L.J. 293=1921 L. 326. *See also* 80 I.C. 321=1924 L. 468; 1923 L. 151=79 I.C. 281; 2 L.L.J. 1=55 I.C. 983. The point not raised before the Division Bench who heard the appeal cannot be taken in an appeal under Letters Patent. 30 Punj.L.R. 433=1929 L. 536; 31 Punj.L.R. 281=1930 L. 632. But *see* 1940 Lah. 204. Where a point is not taken before a single Judge of the High Court the Court will not allow it to be raised on Letters Patent appeal, nor will it remit the case on the point. 1925 L. 281(1)=89 I.C. 958. On interference with a finding of fact of the lower appellate Court by a single Judge of the High Court, it is open to a Division Bench in an appeal under cl. 10 to set aside his decision and restore that of the lower appellate Court. 5 L.L.J. 109. *See also* 89 I.C. 298 (1)=1925 L. 392 (1). *Held*, that in an appeal under cl. 10 of the Letters Patent, the High Court can set aside the judgment of a single Judge who has interfered with an erroneous finding of fact in second appeal. 31 Punj.L.R. 381=1931 L. 144. Application for leave under cl. 10—Conversion into petition for review on refusal of leave—Permisssibility. *See* 1935 L. 330 (1)=16 L. 602. Mistake in trial Court's decree apparent on record can be corrected in Letters Patent Appeal. 42 P. L.R. 7=1940 Lah. 204.

LIMITATION.—In appeals under cl 10 the provisions of the Limitation Act, sec. 4, do not apply. 2 L. 127=61 I.C. 327=1921 L. 26. New plea as to limitation not allowed in Letters Patent appeal. 80 I.C. 321=1924 L. 468.

CLS. 10 AND 26.—Under cl. 10 the declaration that the case is a fit one for further appeal to the Privy Council can only be made by the Judge who passed the judgment and cl. 26 does not confer such power on any other Judge. 34 P.L.R. 469=1933 L. 534 (1). Where a guardian for a minor is appointed by a single Judge in the exercise of his discretion, though an appeal is competent from his order, the fact that the making of the order is a matter of discretion is a good ground for refusing to exercise the appellate jurisdiction, unless the appellant succeeds in establishing a strong case, such as would justify interference in appeal. (71 I.C. 824 and 21 M.L.J. 1, Rel. on.3. 144 I.C. 672=1933 L. 881=14 L. 804.

Appeal from other Civil Courts in the Provinces of the Punjab and Delhi.

shall be a Court of Appeal from the Civil Courts of the Provinces of the Punjab and Delhi and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as were, immediately before the date of the publication of these presents, subject to appeal to the Chief Court of the Punjab by virtue of any law then in force, or as may after the date be declared subject to appeal to the High Court of Judicature at Lahore by any law made by competent legislatipe authority for India.

Jurisdiction as to infants and lunatics.

12. And We do further ordain that the High Court of Judicature at Lahore shall have the like power and authority with respect to the persons and estates of infants, idiots and lunatics within the Provinces of the Punjab and Delhi as that which was vested in the Chief Court of the Punjab immediately before the publication of these presents.

Law to be administered by the High Court.

By the High Court in the exercise of extraordinary original civil jurisdiction.

13 And We do further ordain that, with respect to the law or equity to be applied to each case coming before the High Court of Judicature at Lahore in the exercise of its extraordinary original civil jurisdiction, such law or equity shall, until otherwise provided, be the law or equity which would have been applied to such case by any local Court having jurisdiction therein.

By the High Court in the exercise of appellate jurisdiction.

14. And We do further ordain that, with respect to the law or equity and rule of good conscience to be applied by the High Court of Judicature at Lahore to each case coming before it in the exercise of its appellate jurisdiction, such law or equity and rule of good conscience shall be the law or equity and rule of good conscience which the Court in which the proceedings in such case were originally instituted ought to have applied to such case.

Criminal Jurisdiction.

Ordinary original criminal jurisdiction of the High Court.

15. And We do further ordain that the High Court of Judicature at Lahore shall have ordinary original criminal jurisdiction in respect of all such persons within the Provinces of the Punjab and Delhi as the Chief Court of the Punjab had such criminal jurisdiction over immediately before the publication of these presents.

Jurisdiction as to persons.

16. And We do further ordain that the High Court of Judicature at Lahore, in the exercise of its ordinary original criminal jurisdiction, shall be empowered to try all persons brought before it in due course of law.

Extraordinary original criminal jurisdiction.

17. And We do further ordain that the High Court of Judicature at Lahore shall have extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court subject to its superintendence, and shall have authority to try at its discretion any such persons brought before it on charges preferred by any Magistrate or other officer specially empowered by the Government in that behalf.

No appeal from High Court exercising original jurisdiction.

18. And We do further ordain that there shall be no appeal to the High Court of Judicature at Lahore from any sentence or order passed or made by the Courts of original criminal jurisdiction which may be constituted by one or more Judges of the said High Court. But it shall be at

Court may reserve points of law.

the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court.

19. And We do further ordain that, on such point or points of law being so reserved as aforesaid, the High Court of Judicature at Lahore shall have full power and authority to review the case, or such part of it as may be necessary, and finally determine such point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction, and pass such judgment and sentence as to the said High Court may seem right.

High Court to review cases on points of law reserved by one or more Judges of the High Court.

20. And We do further ordain that the High Court of Judicature at Lahore shall be a Court of Appeal from the Criminal Courts of the Provinces of the Punjab and Delhi and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as were, immediately before the date of the publication of these presents, subject to appeal to the Chief Court of the Punjab by virtue of any law then in force, or as may after that date be declared subject to appeal to the High Court of Judicature at Lahore by any law made by competent legislative authority for India.

Appeals from other Criminal Courts in the Provinces of the Punjab and Delhi.

21. And We do further ordain that the High Court of Judicature at Lahore shall be a Court of reference and revision from the Criminal Courts subject to its appellate jurisdiction, and shall have power to hear and determine all such cases referred to it by the Sessions Judges, or by any other officers in the Provinces of the Punjab and Delhi, who were, immediately before the publication of these presents, authorized to refer cases to the Chief Court of the Punjab, and to revise all such cases tried by any officer or Court possessing criminal jurisdiction in the Provinces of the Punjab and Delhi, as were, immediately before the publication of these presents, subject to reference to or revision by the Chief Court of the Punjab.

Hearing of referred cases and revision of criminal trials.

22. And We do further ordain that the High Court of Judicature at Lahore shall have power to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also to direct the preliminary investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it, though such case belongs in ordinary course to the jurisdictios of some other officer or Court.

High Court may direct the transfer of a case from one Court to another.

Criminal Law.

23. And We do further ordain that all persons brought for trial before the High Court of Judicature at Lahore, either in the exercise of its original jurisdiction, or in the exercise of its jurisdiction as a Court of appeal, reference or revision, charged with any offence for which provision is made by Act No. XLV of 1860, called the "Indian Penal Code," or by any Act amending or excluding the said Act which may have been passed prior to the publication of these presents, shall be liable to punishment under the said Act or Acts, and not otherwise.

Offenders to be punished under Indian Penal Code.

CL. 15.—According to the Letters Patent, the original criminal jurisdiction of the Lahore High Court is co-extensive with that of the Chief Court of the Punjab, which had no original criminal jurisdiction to try any person except European British subjects. 115 I.C. 428=1929 L. 217.

Testamentary and Intestate Jurisdiction.

Testamentary and intestate jurisdiction

24. And We do further ordain that the High Court of Judicature at Lahore shall have the like power and authority as that which was immediately before the publication of these presents lawfully exercised within the provinces of the Punjab and Delhi by the Chief Court of the Punjab in relation to the granting of probates of last wills and testaments, and letters of administration of the goods, chattels, credits and all other effects whatsoever, of persons dying intestate: Provided always that nothing in these Letters Patent contained shall interfere with the provisions of any law which has been made by competent legislative authority for India, by which power is given to any other Court to grant such probates and letters of administration.

Matrimonial Jurisdiction.

Matrimonial jurisdiction.

25. And We do further ordain that the High Court of Judicature at Lahore shall have jurisdiction, within the Provinces of the Punjab and Delhi, in matters matrimonial between Our subjects professing the Christian Religion: Provided always that nothing herein contained shall be held to interfere with the exercise of any jurisdiction in matters matrimonial by any Court, not established by Letters Patent within the said Provinces, which is lawfully possessed of that jurisdiction.

Powers of Single Judges and Division Courts

Single Judges and Division Courts.

26. And We do hereby declare that any function which is hereby directed to be performed by the High Court of Judicature at Lahore, in the exercise of its original or appellate jurisdiction may be performed by any Judge, or by any Division Court thereof, appointed or constituted for such purpose in pursuance of S. 108 of the Government of India Act, 1915; and if such Division Court is composed of two or more Judges and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges if there by a majority, but if the Judges be equally divided, [they shall state the point upon which they differ and the case shall then be heard upon that point by one or more of the other Judges and the point shall be decided according to the opinion of the majority of the Judges who have haerd the case including those who first heard it.][1]

LEG. REF.

1 Substituted by Amended Letters Patent, 1927.

CL. 26.—Under the old clause the opinion of the senior judge prevailed in case of difference of opinion among the judges, under certain circumstances. Under the amended section, there is no provision for the opinion of the senior judge prevailing in the case. *See* 32 C.W.N. (Journal), p. 46.

Cl. 26 of the Letters Patent (Lahore), and not sec. 98 of the C P. Code, applies in case of a difference of opinion between the judges of a Division Bench even in the case of an appeal from the moffusil (52 M. 563, Foll.). 142 I.C. 427=1933 L. 648 (1)=34 P.L.R. 584. When a point is referred to a third Judge under Cl. 26 on a difference of opinion between the two Judges hearing the appeal, the jurisdiction for the decision not only of the appeal as a whole but also of the point of difference, remains with the referring Bench. All that Cl. 26 lays down is a method by which in the case of a difference of opinion, the difficulty is to be resolved. Therefore, it would be the duty of the referee Judge to express an opinion on the point of points of difference and to return the case with his opinion to the Division Bench seized of the case which must pronounce the final judgment, according to the method provided by Cl. 26. If in the interval a change has occurred in the constitution of the Division Bench, in question, it would be necessary for the Chief Justice to constitute another Division Bench as the successor of the referring Bench. It is therefore the duty of the third or referee Judge to return his finding on the point of difference to the referring Bench for it to pronounce the decision of the appeal. The decree in such a case is that of the original Bench and not of any other Bench. I.L.R. (1945) Lah. 530=45 P.L.R 166=A.I.R. 1943 Lah. 84 (F.B.).

Civil Procedure.

Regulation of proceedings.

27. And We do further ordain that it shall be lawful for the High Court of Judicature at Lahore from time to time to make rules and orders for regulating the practice of the Court and for the purpose of adapting, as far as possible, the provisions of the Code of Civil Procedure, being an Act No. V of 1908 passed by the Governor-General in Council and the provisions of any law which has been or may be made, amending or altering the same, by competent legislative authority for India, to all proceedings in its testamentary, intestate and matrimonial jurisdiction, respectively.

Criminal Procedure.

Regulation of proceedings.

28. And We do further ordain that the proceedings in all criminal cases brought before the High Court of Judicature at Lahore shall be regulated by the Code of Criminal Procedure, being an Act No. V of 1898, passed by the Governor-General in Council, or by such further or other laws in relation to criminal procedure as may have been or may be made by competent legislative authority for India.

Appeals to Privy Council.

Power to appeal in civil cases.

29. And We do further ordain that any person or persons may appeal to Us, Our heirs and Successors, in Our or Their Privy Council, in any matter not being of criminal jurisdiction, from any final judgment, decree or order of the High Court of Judicature at Lahore made on appeal, and from any final judgment, decree or order made in the exercise of original jurisdiction by Judges of the said High Court, or of any Division Court, from which an appeal does not lie to the said High Court under the provisions contained in the 10th clause of the presents: Prvoided, in either case, that the sum or matter at issue is of the amount or value of not less than 10,000 rupees or that such judgment, decree or order involves, directly, or indirectly, some claim, demand or question to or respecting property amounting to or of the value of not less than 10,000 rupees; or from any other final judgment, decree or order made either on appeal or otherwise as aforesaid, when the said High Court declares that the case is a fit one for appeal to Us, Our heirs or Successors, in Our or Their Privy Council; but subject always to such rules and orders as are now in force, or may from time to time be made respecting appeals to Ourselves in Council from the Courts of the Provinces of the Punjab and Delhi, except so far as the said existing rules and orders respectively are hereby varied; and subject also to such further rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

Appeal from interlocutory judgments.

30. And We do further ordain that it shall be lawful for the High Court of Judicature at Lahore at its discretion, on the motion, or, if the said High Court be not sitting, then for any Judges of the said High Court, upon the petition of any party who considers himself aggrieved by any preliminary or interlocutory judgment, decree or order of the said High Court, in any such proceedings as aforesaid, not being of criminal jurisdiction, to grant permission to such party to appeal against the same to Us, Our heirs and Successors, in Our or Their Privy Council, subject to the same rules, regulations and limitations as are herein expressed respecting appeals from final judgments, decrees and orders.

Appeal in criminal cases.

31. And We do further ordain that from any judgment, order or sentence of the High Court of Judicature at Lahore, made in the exercise of original criminal jurisdiction or in any criminal case where any point or points of law have been reserved for the opi-

nion of the said High Court, in manner provided by the 18th clause of these presents, by any Court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgment, order or sentence to appeal to Us, Our heirs or Successors in Council, provided the said High Court declare that the case is a fit one for such appeal, and that the appeal be made under such conditions as the said High Court may establish or require, but subject always to such rules and orders, as are now in force, or may from time to time be made respecting appeals to Ourselves in Council from the Courts of the Provinces of the Punjab and Delhi.

Rules as to transmission of copies of evidence and other documents.

32. And We do further ordain that, in all cases of appeal made from any judgment, decree, order or sentence of the High Court of Judicature at Lahore to Us, Our heirs or Successors, in Our or Their Privy Council, such High Court shall certify and transmit to Us, Our heirs and Successors in Our or Their Privy Council, a true and correct copy of all evidence, proceedings, judgments, decrees and orders had or made in such cases appealed, so far as the same have relation to the matters of appeal, such copies to be certified under the seal of the said High Cuort. And that the said High Court shall also certify and transmit to Us, Our heirs and Successors, in Our or Their Privy Council, a copy of the reasons given by the Judges of such Court, or by any of such Judges, for or against the judgment or determination appealed against. And We do further ordain that the said High Court shall, in all cases of appeal to Us, Our heirs or Successors, conform to and execute, or cause to be exercised, such judgments and orders as We, Our heirs or Successors in Our or Their Privy Council, may think fit to make in the premises in such manner as any original judgment, decree or decretal orders, or other order or rule of the said High Court, should or might have been executed.

Exercise of Jurisdiction elsewhere than at the usual place of sitting of the High Court.

Special Commissions and circuits.

33. And We do further ordain that whenever it appears to the Lieutenant-Governor of the Punjab, subject to the control of the Governor-General in Council, convenient that the jurisdiction and power by these Our Letters Patent, or by or under the Government of India Act, 1915, vested in the High Court of Judicature at Lahore, should be exercised in any place within the jurisdiction of any Court subject to the superintendence of the said High Court, other than the usual place of sitting of the said High Court, or at several such places by way of circuit, one or more Judges of the Court shall visit such place or places accordingly.

Proceedings of Judges on special commissions or circuit.

34. And We do further ordain that whenever any Judge or Judges of the High Court of Judicature at Lahore visit any place under the 33rd clause of these presents, the proceedings in cases before him or them at such place shall be regulated by any law relating thereto which has been or may be made by competent legislative authority for India.

Delegation of Duties to Officers.

Power to delegate duties.

35. The High Court of Judicature at Lahore may from time to time make rules for delegating to any Registrar, Prothonotary or Master or other official of the Court any judicial, quasi-judicial and non-judicial duties.

Calls for records, etc., by the Government.

High Court to comply with requisitions from Government for records, etc.

36. And it is Our further will and pleasure that the High Court of Judicature at Lahore shall comply with such requisitions as may be made by the Governor-General in Council or by the Lieutenant-Governor of the Punjab for records, returns and statements, in such form and manner as he may deem proper.

Powers of ndian Legislatures.

Powers of Indian Legislatures preserved.

37. And We do further ordain and declare that all the provisions of these Our Letters Patent are subject to the legislative powers of the Governor-General in Legislative Council, and also of the Governor-General in Council under section seventy-one of the Government of India Act, 1915; and also of the Governor-General in cases of emergency under section seventy-two of that Act, and may be in all respects amended and altered thereby.

IN WITNESS whereof We have caused these Our Letters to be made Patent.

WITNESS Ourself at Westminster the 21st day of March in the Year of Our Lord One thousand nine hundred and nineteen and in the ninth year of Our Reign.

BY WARRANT under the King's Sign Manual.

(Sd.) SCHUSTER.

LETTERS PATENT (NAGPUR).

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Letters Patent constituting the High Court of Judicature at Nagpur in the Central Provinces.

[*2nd January*, 1936.

George the Fifth, by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India.

To all to whom these Presents shall come, greeting:

Whereas in the Government of India Act, it was amongst other things enacted that it should be lawful for us by Letters Patent to establish a High Court of Judicature in any territory in British India whether or not included within the limits of the local jurisdiction of another High Court and to confer on any High Court so established any such jurisdiction, powers and authority as were vested in or might be conferred on any High Court existing at the commencement of that Act:

And whereas the Province known as the Central Provinces is now subject to the jurisdiction of the Court of the Judicial Commissioner of the Central Provinces which was established by an Act of the Governor-General of India in Council, being Act No. XIV of 1865, and was continued by later enactments and no part of the said province is included within the limits of the local jurisdiction of any High Courts:

Establishment of a High Court at Nagpur.

1. Now know ye that We, upon full consideration of the premises, and of Our special grace, certain knowledge, and mere motion, have thought fit to erect and establish, and by these presents We do accordingly for Us, Our heirs and successors, erect and establish, for the Central Provinces aforesaid, with effect from the date of the publication of these presents in the Gazette of India, a High Court of Judicature, which shall be called the High Court of Judicature at Nagpur, and We do hereby constitute the said Court to be a Court of Record.

Constitution and the first Judges of the High Court.

2. And We do hereby appoint and ordain that the High Court of Judicature at Nagpur shall, until further or other provision be made by Us, or Our heirs and successors, in that behalf in accordance with Section One hundred and one of the Government of India Act, ordinarily consist of a Chief Justice and not less than five other Judges, the first Chief Justice being Gilbert Stone, Esquire, and the other Judges being Frederick Louis Grille, Esquire, M. Bhawani Shankar Nyogi, Esquire, Ronald Evelyn Pollock, Esquire, Harold George Gruer, Esquire, and Vivian Bose, Esquire, being respectively qualified as in the said Act is declared.

Declaration to be made by the Judges.

3. And We do hereby ordain that the Chief Justice and every other Judge of the High Court of Judicature at Nagpur, previously to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before such authority or person as the Governor of the Central Provinces may commission to receive it:—

"I, *A, B,* appointed Chief Justice (*or* a Judge) of the High Court of Judicature at Nagpur, do solemnly declare that I will faithfully perform the duties of my office to the best of my ability, knowledge and judgment."

Seal.

4. And We do hereby grant, ordain and appoint that the High Court of Judicature at Nagpur shall have and use as occasion may require, a Seal bearing a devise and impression of Our Royal Arms, within an exergue or label surrounding the same, with this inscription, "The Seal of the High Court at Nagpur." And We do further grant, ordain and appoint that the said seal shall be delivered to and kept in the custody of the Chief Justice, and in case of vacancy of the office of

Chief Justice, or during any absenec of the Chief Justice, the same shall be delivered over and kept in the custody of the person appointed to act as Chief Justice under the provisions of Section One hundred and five of the Government of India Act; and We do further grant, ordain and appoint that, whensoever the office of Chief Justice or of the Judge to whom the custody of the said Seal be committed is vacant, the said High Court shall be, and is hereby, authorised and empowered to demand, seize and take the said Seal from any person or persons whomsoever, by what ways and means soever the same may have come to his, or their possession.

Writs, etc., to issue in name of the Crown, and under seal.

5. And We do hereby further grant, ordain and appoint that all writs, summonses, precepts, rules, orders and other mandatory process to be used, issued or awarded by the High Court of Judicature at Nagpur shall run and be in the name and style of Us, or of Our heirs and successors, and shall be sealed with the Seal of the said High Court.

Appointment of officers.

6. And We do hereby authorize and empower the Chief Justice of the High Court of Judicature at Nagpur from time to time, as occasion may require, and subject to any rules and restrictions which may be prescribed from time to time by the Governor of the Central Provinces in Council, to appoint so may and such clerks and other ministerial officers as may be found necessary for the administratoin of justice and the due execution of all the powers and authorities granted and committed to the said High Court by these Our Letters Patent. And it is Our further will and pleasure, and We do hereby, for Us, Our heirs and successors, give, grant, direct and appoint, that all and every the officers and clerks to be appointed as aforesaid shall have and receive respectively such reasonable salaries as the Chief Justice may, from time to time,appoint for each office and place respectively, and as the Governor of the Central Provinces in Council may approve:

Provided always and it is Our will and pleasure, that all and every the officers and clerks to be appointed as aforesaid shall be resident within the limits of the jurisdiction of the said Court, so long as they hold their respective offices; but this proviso shall not interfere with or prejudice the right of any officer or clerk to avail himself of leave of absence under any rules prescribed from time to time by the Governor in Council, and to absent himself from the said limits during the term of such leave in accordance with the said rules.

Admission of Advocates, Pleaders and Attorneys.

Powers of High Court in admitting Advocates, Pleaders and Attorneys.

7. And We do hereby authorize and empower the High Court of Judicature at Nagpur to approve, admit and enrol such and so many Advocates, Pleaders and Attorneys as to the said High Court may seem meet; and such Advocates, Pleaders and Attorneys shall be and are hereby authorized to appear for the suitors of the said High Court, and to plead or to act, or to plead and act, for the said suitors, according as the said High Court may by its rules and directions determine, and subject to such rules and directions.

Powers of High Court in making rules for the qualifications, etc., of Advocates, Pleaders and Attorneys.

8. And We do hereby ordain that the High Court of Judicature at Nagpur shall have power to make rules from time to time for the qualification and admission of proper persons to be Advocates, Pleaders and Attorneys of the said High Court, and shall be empowered to remove, or to suspend from practice, on reasonable cause, the said Advocates, Pleaders or Attorneys; and no person whatsoever but such Advocates, Pleaders or Attorneys shall be allowed to act or to plead for, or on behalf of, any suitor in the said High Court, except that any suitor shall be allowed to appear, plead or act on his own behalf, or on behalf of a co-suitor.

Civil Jurisdiction of the High Court.

Extraordinary original civil jurisdiction.

9. And We do further ordain that the High Court of Judicature at Nagpur shall have power to remove and to try and determine, as a Court of Extraordinary Original Jurisdiction, any suit being or falling within the jurisdiction of any Court, subject to its superintendence, when the said High Court may think proper to do so, either on the agreement of the parties to that effect, or for purpose of justice, the reasons for so doing being recorded on the proceedings of the said High Court.

Appeal to the High Court from Judges of the Court.

10. And We do further ordain that an appeal shall lie to the said High Court of Judicature at Nagpur from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decre or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the powers of superintendence under the provisions of Section One hundred and seven of the Government of India Act or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one

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(1945) Nag. 286=1945 N.L.J. 128=A.I.R.

SL. 10.—The word "judgment" in cl. 10 means in civil cases a decree. Therefore, an order by a single Judge of the High Court allowing certain persons to be brought on the record as the legal representatives of a deceased respondent is not appealable. I.L.R. 1945 Nag. 156. Cl. 10 deals with appeals against judgments of one Judge of High Court or of one Judge of any Division Court and it has no application to judgments delivered previous to the constitution of the present High Court. I.L.R. 1936 Nag. 58=1936 Nag. 118. Though it is impossible to lay down any hard and fast rule as to the granting of leave to appeal under the Letters Patent, leave should not be granted where the matter in dispute is triffling, however interesting it may be. 1942 N.L.J. 506=1943 Nag. 23=I.L.R. (1943) Nag. 67. The condition of certificate that a case is a fit one for appeal under Cl. 10 applies only to those decrees or orders which are passed by a single Judge in the exercise of his second appellate jurisdiction and to no other cases. I.L.R. (1940) Nag. 141=1940 N.L.J. 37=1940 Nag. 39 (F.B.). An order reiecting an application for review is not a judgment within the meaning of the Letters Paten and a Letters Patent appeal does not lie. 1941 N.L.J. 617. 1942 Nag. 18=I.L.R. (1942) Nag. 41. Decision of Judge of H. C. in appeal against award under Workman's Compensation Act is not a Judgment" under Cl. 10. But Judge may refer any matter of importance to a Bench. I. L.R. (1939) Nag. 124=1939 N.L.R. 63=1939 Nag. 122.

In a Letters Patent appeal, the appellant is not entitled to urge grounds that are concluded by the decision in second appeal except the one to which leave was confined. I.L.R. (1944) Nag. 743=1944 N.L.. 337=A.I.R. 1944 Nag. 370. It is as competent for a judge to declare on what point of law he allows permission to appeal under Cl. 10 of the Letters Patent as it is for him to refer a case for opinion to a Divisional Bench. A prohibition against the judge who grants leave to appeal on deciding in what respect he does grant leave cannot be read into Cl. 10. I.L.R. (1943) Nag. 540=1943 N.L.J. 79 =A.I.R. 1943 Nag. 175. An order under O. 41 R. 5, C. P. Code, is not a decree and is therefore, not a judgment within the meaning of Cl. 10 of the Letters Patent. It is therefore not appealable. I.L.R. (1943) Nag. 453=1943 N.L.J. 389=A.I.R. 1943 Nag. 282. An order passed by a single judge of the High Court on a reference made under stc. 83 (2) of the C. P. Municipalities Act is merely advisory and no appeal lies from it under Cl. 10 of the Letters Patent. I.L.R. (1944) Nag. 827=1944 N.L.J. 499.

LIMITATION.—Appeals under Letters Patent may be held to be out of time if not filed within 30 days. I.L R. (1939) Nag. 124 =1939 N.L.J. 63=1939 Nag. 122. *See* same case as to whether intervening holidays should be excluded in computing the period of 30 days). Where according to the rules of the Court provision is made for filing of Letters Patent appeals alone during the long vacation, it cannot be said that the Court is closed so far as that business is concerned. So limitation for such an appeal is not affected by sec. 4, Limitation Act. I.L R. (1941) Nag. 563=1941 N.L.J. 284=1941 Nag. 216. Rule 13 of Chapter 4 of the Nagpur High Court Rules does not expressly exclude the operation of sec. 12 of the Limitation Act. The time taken for obtaining a copy of the judgment must, therefore, be excluded in calculating the period of limitation for an appeal under sec. 10 of the Letfers Patent. I.L. R. (1944) Nag. 714=1944 N.L.J. 455=1945 Nag. 52.

CLS. 10 AND 27 AND RULES FRAMED BY HIGH COURT, R. 10.—Refusal of leave—No second application lies. *See* I.L.R. (1940) Nag. 34 =1939 N.L.J. 535=1940 Nag. 47.

Judge of any Division Court, pursuant to Section One hundred and eight of the Government of India Act, and that notwithstanding anything hereinbefore provided, an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section One hundred and eight of the Government of India Act, made in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, where the Judge who passed the judgment declares that the case is a fit one for appeal, but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us, our Heirs and Successors in Our or Their Privy Council as hereinafter provided.

Appeal from other Civil Courts in the Central Provinces.

11. And We do further ordain that the High Court of Judicature at Nagpur shall be a Court of Appeal from the Civil Courts of the Central Provinces and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as were, immediately before the date of the publication of these presents subject to appeal to the Court of the Judicial Commissioner of the Central Provinces by virtue of any law then in force, or as may after that date be declared subject to appeal to the High Court of Judicature at Nagpur by any law made by competent legislative authority for India.

Jurisdiction as to infants and lunatics.

12. And We do further ordain that the High Court of Judicature at Nagpur shall have the like powers and authority with respect to the persons and estates of infants, idiots and lunatics within the Central Provinecs as that which was vested in the Court of the Judicial Commissioner of the Central Provinces immediately before the publication of these presents.

Law to be administered by the High Court.

By the High Court in the exercise of extraordinary original civil jurisdiction.

13. And We do further ordain that, with respect to the law or equity and rule of good conscience to be applied to each case coming before the High Court of Judicature at Nagpur in the exercise of its ordinary original civil jurisdiction, such law or equity and rule of good conscience shall, until otherwise provided, be the law or equity and rule of good conscience which would have been applied to such case by any local Court having jurisdiction therein.

By the High Court in the exercise of appelllate jurisdiction.

14. And We do further ordain that, with respect to the law or equity and rule of good conscience to be applied by the High Court of Judicature at Nagpur to each case coming before it in the exercise of its appellate jurisdiction, such law or equity and rule of good conscience shall be the law or equity and rule of good conscience which the Court in which the proceedings in such case were originally instituted ought to have been applied to such case.

Criminal Jurisdiction of the High Court.

Ordinary original criminal jurisdiction of the High Court.

15. And We do further ordain that the High Court of Judicature at Nagpur shall have ordinary original criminal jurisdiction in respect of all such persons within the Central Provinces as the Court of Judicial Commissioner of the Central Provinces had such criminal jurisdiction over immediately before the publication of these presents.

Jurisdiction as to persons.

16. And We do further ordain that the High Court of Judicature at Nagpur in the exercise of its ordinary original criminal jurisdiction, shal be empowered to try all persons brought before it in due course of law.

Extraordinary original criminal jurisdiction.

17. And We do further ordain that the High Court of Judicature at Nagpur shall have extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court subject to its superintendence, and shall have authority to try at its discretion any such persons brought before it on charges preferred by any magistrate or other officer specially empowered by the Government in that behalf.

No appeal from High Court exercising original jurisdiction, Court may reserve points of law.

18. And We do further ordain that there shall be no appeal to the High Court of Judicature at Nagpur from any sentence or order passed or made by the Courts of original criminal jurisdiction which may be constituted by one or more Judges of the said High Court. But it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court.

High Court to review cases on points of law reserved by one or more Judges of the High Court.

19. And We do further ordain that, on such point or points of law being so reserved as aforesaid the High Court of Judicature at Nagpur shall have full power and authority to review the case, or such part of it as may be necessary and finally determine such point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as to the said High Court may seem right.

Appeals from other Criminal Courts in the Central Provinces.

20. And We do further ordain that the High Court of Judicature at Nagpur shall be a Court of Appeal from the Criminal Courts of the Central Provinces and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as were, immediately before the date of the publication of these presents, subject to appeal to the Court of the Judicial Commissioner of the Central Provinces by virtue of any law then in force, or as may after that date be declared subject to appeal to the High Court of Judicature at Nagpur by any law made by competent legislative authority for India.

Hearing of referred cases and revision of criminal trials.

21. And We do further ordain that the High Court of Judicature at Nagpur shall be a Court of reference and revision from the Criminal Courts subject to its appellate jurisdiction, and shall have power to hear and determine all such cases referred to it by the Sessions Judges, or by any other officers in the Central Provinces, who were, immediately before the publication of these presents, authorised to refer cases to the Court of the Judicial Commissioner of the Central Provinces and to revise all such cases tried by any officer or Court possessing criminal jurisdiction of the Central Provinces, as were immediately before the publication of these presents subject to reference to or revision by the Court of the Judicial Commissioner of the Central Provinces.

High Court may direct the transfer of a case from one Court to another.

22. And We do further ordain that the High Court of Judicature at Nagpur shall have power to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also to direct the preliminary investigation or trial of any criminal case by any officer or Court otherwis ecompetent to investigate or try it, though such case belongs in ordinary course to the jurisdiction of some other officer or Court.

Criminal Law.

Offenders to be punished under Indian Penal Code.

23. And We do further ordain that all persons brought for trial before the High Court of Judicature at Nagpur, either in the exercise of its original jurisdiction, or in the exercise of its jurisdiction as a Court of Appeal, reference or revision, charged with any offence for which provision is made by Act No. XLV of 1860, called the Indian Penal Code, or by any Act amending or excluding the said Act which may have been passed prior to the publication of these presents, shall be liable to punishment under the said Act or Acts, and not otherwise.

Testamentary and intestate jurisdiction.

Testamentary and intestate jurisdiction.

24. And We do further ordain that the High Court of Judicature at Nagpur shal have the like power and authority as that which was immediately before the publication of these presents lawfully exercised within the Central Provinces by the Court of Judicial Commissioner of the Central Provinces in relation to the granting of probates of last wills and testaments, and letters of administration of the goods, chattels, credits and all other effects whatsoever of persons dying intestate: Provided always that nothing in these Letters Patent contained shall interfere with the provisions of any law which has been made by competent legislative authority for India, by which power is given to any other Court to grant such probates and letters of administration.

Matrimonial Jurisdiction.

Matrimonial jurisdiction.

25. And We do further ordain that the High Court of Judicature at Nagpur shall have jurisdiction within the Central Provinces in matters matrimonial between Our Subjects professing the Christian religion:

Provided always that nothing herein contained shall be held to interfere with the exercise of any jurisdiction in matters matrimonial by any Court, not established by Letters Patent within the said Province, which is lawfully possessed of that jurisdiction.

Powers of Single Judges and Division Courts.

Single Judges and Division Courts.

26. And We do hereby declare that any function which is hereby directed to be performed by the High Court of Judicature at Nagpur in the exercise of its original or appellate jurisdiction may be performed by any Judge or by any Division Court, thereof appointed or constituted for such purpose in pursuance of Section one hundred and eight of the Government of India Act; and if such Division Court is composed of two or more Judges and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges if there be a majority, but, if the Judges be equally divided, they shall state the point on which they differ and the case shall then be heard upon that point by one or more of the other Judges and the point shall be decided according to the opinion of the majority of the Judges which have heard the case including those who first heard it.

Civil Procedure.

Regulation of Proceedings.

27. And We do further ordain that it shall be lawful for the High Court of Judicature at Nagpur from time to time to make rules and orders for regulating the practice of the Court and for the purpose of adapting as far as possible the provisions of the Code of Civil Procedure, being an Act No. V of 1908, passed by the Governor-General in Council and the provisions of any law which has been or may be made, amending or altering the same by competent

legislative authority for India, to proceedings in its testamentary, intestate and matrimonial jurisdiction, respectively.

Criminal Procedure.

Regulation of Proceedings.

28. And We do further ordain that the proceedings in all criminal cases brought before the High Court of Judicature at Nagpur shall be regulated by the Code of Criminal Procedure, being an Act, No. V of 1898, passed by the Governor-General in Council, or by such further or other laws in relation to criminal proredure as may have been or may be made by competent legislative authority for India.

Appeals to Privy Council.

Power to appeal in civil cases.

29. And We do further ordain that any person or persons may appeal to Us, Our heirs and successors, in Our or Their Privy Council, in any matter not being of criminal jurisdiction from any final judgment, decree or order of the High Court of Judicature at Nagpur made on appeal, and from any final judgment, decree or order made in the exercise of original jurisdiction by Judges of the said High Court, or of any Division Court, from which an appeal does not lie to the said High Court under the provisions contained in the tenth clause of these presents:

Provided, in either case, that the sum or matter at issue is of the amount or value of not less than Rs. 10,000, or that such judgment, decree or order involves, directly or indirectly, some claim, demand or question to or respecting property amounting to or of the value of not less than 10,000 rupees; or from any other final judgment, decree or order made either on appeal or otherwise aforesaid, when the said High Court declares that the case is a fit one for appeal to Us, Our heirs or successors, in Our or Their Privy Council; but subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council from the Courts of the Central Provinces except so far as the said existing rules and orders respectively are hereby varied; and subject also to such further rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

Appeal from interlocutory judgments.

30. And We do further ordain that it shall be lawful for the High Court of Judicture at Nagpur at its discretion, on the motion, or, if the said High Court be not sitting, then for any Judge of the said High Court, upon the petition, of any party who considers himself aggrieved by any preliminary or interlocutory judgment, decree or order of the said High Court, in any such proceeding as aforesaid, not being of criminal jurisdiction to grant permission to such party to appeal against the same to Us, Our heirs and successors, in Our or Their Privy Council, subject to the same rules, regulations and limitations as are herein expressed respecting appeals from final judgments, decrees and orders.

Appeal in criminal cases.

31. And We do further ordain that from any judgment, order or sentence of the High Court of Judicature at Nagpur made in the exercise of original criminal jurisdiction, or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court, in manner provided by the 18th clause of these presents by any Court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgment, order or sentence to appeal to Us, Our heirs and successors, in Council, provided that the said High Court declares that the case is a fit one for such appeal and that the appeal be made

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CLS. 29 AND 30.—Petition by First Grade Pleader of Judicial Commissioner's Court for being enrolled as Advocate or Pleader of High Court without requiring to pay Stamp duty rejected—No leave to appeal, to Privy Council can be granted. I.L.R. (1938) Nag. 186=1937 Nag. 318.

under such conditions as the said High Court may establish or require, but subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council from the Courts of the Central Provinces.

Rules as to transmission of copies of evidence and other documents.

32. And we do further ordain that, in all cases of appeal made from any judgment, decree, order or sentence of the High Court of Judicature at Nagpur to Us, Our heirs and successors, in Our or Their Privy Council, such High Court shall certify and transmit to Us, Our heirs and successors, in Our or Their Privy Council, a true and correct copy of all evidence, proceedings, judgments, decrees and orders had or made, in such cases appealed, so far as the same have relation to the matters of appeal, such copies to be certified under the Seal of the said High Court. And that the said High Court shall also certify and transmit to Us, Our heirs and successors, in Our or Their Privy Council, a copy of the reasons given by the Judges of such Court, or by any of such Judges, for or against the judgment or determination appealed against. And We do further ordain that the said High Court shall in all cases of appeal, to Us, Our heirs or successors, conform to and execute, or cause to be executed, such judgments and orders as We, Our heirs or successor, in Our or Their Privy Council, may think fit to make in the premises, in such manner as any original judgment, decree or decretal orders, or other order or rule of the said High Court, should or might have been executed.

Exercise of jurisdiction elsewhere than at the usual place of sitting of the High Court.

Special commissions and circuits.

33. And We do further ordain that whenever it appears to the Governor in Council of the Central Provinces subject to the control of the Governor-General in Council, convenient that the jurisdiction and power by these Our Letters Patent, or by or under the Government of India Act, vested in the High Court of Judicature at Nagpur should be exercised in any plcae within the jurisdiction of any Court subject to the superintendence of the said High Court other than the usual place of sitting of the said High Court, or at several such places by way of circuit, one or more Judges of the Court shall visit such place or places accordingly.

Proceedings of Judges on special commission or circuit.

34. And We do further ordain that whenever any Judge or Judges of the High Court of Judicature at Nagpur visit any place under the 33rd clause of these presents the proceedings in cases before him or them at such place shall be regulated by any law relating thereto which has been or may be made by competent legislative authority, for India.

Provisions regarding pending proceedings.

Provisions regarding pending proceedings.

35. And We do further ordain that all suits, appeals, revisions, applications, reviews, executions and other proceedings whatsoever pending immediately before the publication of these presents in the Court of the Judicial Commissioner of the Central Provinces in the exercise of any jurisdiction vested in it by any law, shall be continued and concluded in the High Court of Judicature at Nagpur as if the same had been instituted in the said High Court; the said High Court shall in relation to all such proceedings exercise the jurisdiction given to it by these presents.

Delegation of duties to Officers.

Powers to delegate duties.

36. The High Court of Judicature at Nagpur may from time to time make rules for delegating to any Registrar, Prothonotary or Master or other official of the Court any judicial, quasi-judicial and non-judicial duties.

Calls for returns, etc., by the Government.

37. And it is Our further will and pleasure that the High Court of Judicature at Nagpur shall comply with such requisitions as may be made by the Governor-General in Council or by the Governor in Council of the Central Provinces for records, returns and statements, in such form and manner as he may deem proper.

High Court to comply with requisitions from Government for records, etc.

Powers of Indian Legislatures.

38. And We do further ordain and declare that all the proisions of these, Our Letters Patent, are subject to the legislative powers of the local legislature and of the Indian legislature, and also of the Governor-General in Council under Section Seventy-one of the Government of India Act; and also of the Governor-General under Section Seventy-two of that Act; and may be in all respects amended and altered thereby.

Powers of Indian Legislatures preserved.

In witness whereof We have caused these Our Letters to be made Patent.

Witness Ourself at Westminster the 2nd day of January in the year of Our Lord One thousand nine hundred and thirty-six and in the Twenty-six year of Our Reign.

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20. Appeals from other Criminal Courts in the Province of Bihar and Orissa.
21. Hearing of referred cases and revision of criminal trials.
22. High Court may direct the transfer of a case from one Court to another.

Criminal Law.

23. Offenders to be punished under Indian Penal Code.

Admiralty Jurisdiction.

24. Civil.
25. Criminal.

Testamentary and Intestate Jurisdiction.

26. Testamentary and intestate jurisdiction.
27. Matrimonial jurisdiction.

Powers of Single Judges and Division Courts.

28. Single Judges and Division Courts.

Civil Procedure.

29. Regulation of proceedings.

CLAUSES.

Criminal Procedure.

30. Regulation of proceedings.

Appeals to Privy Council.

31. Power to appeal in civil cases.
32. Appeal from interlocutory judgments.
33. Appeal in criminal cases.
34. Rule as to transmission of copies of evidence and other documents.

Exercise of Jurisdiction elsewhhre than at the usual place of sitting of the High Court.

35. Judges to visit Orissa by way of circuit.
36. Special commissions and circuits.
37. Proceedings of Judges on special commission or circuit.

Delegation of Duties to Officers.

38. Power to delegates duties.

Cessation of Jurisdiction of the High Court of Judicature at Fort William in Bengal.

39. Cessation of jurisdiction of the High Court of Judicature at Fort William over the Provinces of Bihar and Orissa.

Calls for Records, etc., by the Government.

40. High Court to comply with requisitions from Government for records, etc.

Powers of Indian Legislatures.

41. Powers of Indian Legislatures preserved.

[*9th Februady*, 1916.

GEORGE THE FIFTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India. To all to whom these Presents shall come, greeting: Whereas by an Act of Parliament passed in the Twenty-fourth and Twenty-fifth Years of the Reign of Her late Majesty Queen Victoria, and called the Indian High Courts Act, 1861, it was, amongst other things, enacted, by section one, that it should be lawful for Her Majesty, by Letters Patent under the Great Seal of the United Kingdom, to erect and establish a High Court of Judicature at Fort William in Bengal, for the Bengal Division of the Presidency of Fort William;

Recital of Acts 24 and 25 Vict., c. 164.

and, by section two, that such High Court should consist of a Chief Justice and as many Judges, not exceeding fifteen, as Her Majesty, might, from time to time, think fit to appoint, who should be selected from among persons qualified as in the said Act was declared;

and, by section eight, that upon the establishment of such High Court as aforesaid the Supreme Court and the Court of Sadar Diwani Adalat and Sadar Nizamat Adalat at Calcutta, in the said Presidency, should be abolished;

and, by section nine, that the High Court of Judicature so to be established should have and exercise all such civil, criminal, admiralty and vice-admiralty, testamentary, intestate and matrimonial jurisdiction, original and appellate, and all such powers and authority for and in relation to the administration of justice in the said Presidency, as Her Majesty might by such Letters Patent as aforesaid grant and direct, subect, however, to such directions and limitations, as to the exercise of original, civil and criminal jurisdiction beyond the limits of the Presidency-town, as might be prescribed thereby; and that, save as by such Letters Patent might be otherwise directed, and subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor-General of India in Council, the High Court so to be established should have and exercise all jurisdiction, and every power and authority whatsoever in any manner vested in any of the Courts in the same Presidency abolished under the said Act at the time of the abolition of such last mentioned Courts:

And whereas it was further declared by section sixteen of the said recited Act that it should be lawful for Us by Letters Patent to erect and establish a High Court of Judicature in and for any portion of territories within Our Dominions in India, not included within the limits of the local jurisdiction of another High Court, to consist of a Chief Justice and such number of other Judges, with such qualifications as were by the same Act required in persons to be appointtd to the High Courts established at the Presidencies of Fort William in Bengal, of Madras, and of Bombay, as We from time to time might think fit and appoint; and that it should be lawful for Us, by such Letters Patent, to

confer on any new High Court which might be so established any such jurisdiction, powers and authority as under the same Act was authorized to be conferred on or would become vested in the High Court established in any of the said Presidencies; and that subject to the directions of the Letters Patent all the provisions of the said recited Act relative to High Courts and to the Chief Justice and other Judges of such Courts, and to the Governor-General or Governor of the Presidency in which such High Courts were established, should as far as circumstances might permit, be applicable to any new High Court which might be established in the said territories, and to the Chief Justice and other Judges thereof, and to the Persons administering the Government of the said territories:

Recital of establishment of High Courts at Fort William and Allahabad.

And whereas, upon full consideration of the premises, Her late Majesty Queen Victoria, by Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster the Fourteenth day of May, in the Twenty-fifth Year of Her Reign, in the year of Our Lord One thousand eight hundred and sixty-two, did erect and establish a High Court of Judicature at Fort William in Bengal for the Bengal Division of the Presidency of Fort William aforesaid, and did constitute that Court to be a Court of Record:

And whereas Her late Majesty Queen Victoria, by Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster the Twenty-eighth day of December, in the Twenty-ninth Year of Her Reign, in the Year of Our Lord One thousand eight hundred and sixty-five, did revoke the said Letters Patent bearing date the Fourteenth day of May in the Year of Our Lord One thousand eight hundred and sixty-two, but notwithstanding that revocation did continue the said High Court of Judicature at Fort William in Bengal and declared that the Court should continue to be a Court of Record:

And whereas, upon full consideration of the premises, Her late Majesty Queen Victoria, by Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster the Seventeenth day of March, in the Twenty-ninth Year of Her Reign, in the Year of Our Lord One thousand eight hundred and sixty-six, did erect and establish a High Court of Judicature for the North-Western Provinces, which said Court is situated at Allahabad in the Province of Agra and is now called the High Court of Judicature at Allahabad and did constitute that Court to be a Court of Record:

Recital of Act 1 & 2 Geo. 5, c. 18.

And whereas by an Act of Parliament passed in the First and Second Years of Our Reign, and called the Indian High Courts Act, 1911, it was enacted, amongst other things, by section one that the maximum number of Judges of a High Court of Judicature in India including the Chief Justice, should be twenty;

and, by section two, that Our power under section sixteen of the Indian High Courts Act, 1861, might be exercised from time to time and that a High Court might be established under the said section sixteen in any portion of the territories within Our Dominions in India, whether or not included within the limits of the local jurisdiction of another High Court; and that, where such a High Court was established in any part of such territories included within the limits of the local jurisdiction of another High Court, it should be lawful for us by Letters Patent to alter the local jurisdiction of that other High Court, and to make such incidental, consequential and supplemental provisions as might appear to be necessary by reason of the alteration of those limits:

Recital of Act 5 &6 Geo. 5, c. 61.

And whereas the said Indian High Courts Acts, 1861 and 1911, have been repealed and re-enacted by an Act of Parliament passed in the Fifth and Sixth Years of Our Reign, and called the Government of India Act, 1915.

And whereas certain territories formerly subject to and included within the limits of the Presidency of Fort William in Bengal were, by Proclamation made by the Governor-General of India on the Twenty-second day of March in the Year of Our Lord One thousand nine hundred and twelve, constituted a separate Province, called the Province of Bihar and Orissa, and are now governed by a Lieutenant-Governor in Council.

Recital of creation of Province of Bihar and Orissa.

1. Now know ye that We, upon full consideration of the premises, and of Our special grace, certain knowledge, and mere motion, have thought fit to erect and establish, and by these presents We do accordingly for Us, Our Heirs and Successors, erect and establish, for the Province of Bihar and Orissa aforesaid, with effect from the date of the Publication of these presents in the Bihar and Orissa Gazette, a High Court of Judicature, which shall be called the High Court of Judicature at Patna, and We do hereby constitute the said Court to be a Court of Record.

Establishment of High Court at Patna.

2. And We do hereby appoint and ordain that the High Court of Judicature at Patna shall, until further or other provision be made by Us, or Our Heirs and Successors, in that behalf in accordance with section One hundred and one of the said recited Government of India Act, 1915, consist of a Chief Justice and six other Judges, the first Chief Justice being Sir Edward Maynard Des Champs Chamier, Knight, and the six other Judges being Saiyid Shurf-ud-din, Esquire, Edmund Pelly Chapman, Esquire, Basanta Kumar Mullick, Esquire, Francis Reginald Roe, Esquire, the Hon'ble Cecil Atkinson, and Jowala Persad, Esquire, being respectively qualified as in the said Act is declared.

Constitution and first Judges of the High Court.

3. And We do hereby ordain that the Chief Justice and every other Judge of the High Court of Judicature at Patna, previously to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before such authority or person as the Lieutenant-Governor in Council may commission to receive it:—

Declaration to be made by Judges.

"I. *A.B.*, appointed Chief Justice (*or* a Judge of the High Court of Judicature at Patna, do solemnly declare tha I will faithfuly perform the duties of my office to the best of may ability, knowledge and judgment."

4. And We do hereby grant, ordain and appoint that the High Court of Judicature at Patna shall have, and use as occasion may require, a seal bearing a device and impression of Our Royal arms, within an exergue or label surrounding the same, with this inscription. "The Seal of the High Court at Patna." And We do further grant, ordain and appoint that the said seal shall be delivered to and kept in the custody of the Chief Justice, and in case of vacancy of the office of Chief Justice, or during any absence of the Chief Justice the same shall be delivered over and kept in the custody of the person appointed to act as Chief Justice under the provisions of section One hundred and five of the Government of India Act, 1915; and We do further grant, ordain and appoint that, whensoever the office of Chief Justice or of the Judge to whom the custody of the said seal be committed is vacant, the said High Court shall be, and is hereby, authorized and empowered to demand, seize and take the said seal from any person or persons

Seal.

CL. 2.—Death of Chief Justice during vacation—Effect of—Jurisdiction of Vacation Bench to decide cases during vacancy in office of Chief Justice not affected. **17 Pat. 574** =19 Pat.L.T. 675=1938 Pat. 550=1938 P. W.N. 683.

whomsoever, by what ways and means soever the same may have come to his, her or their possession.

Writs, etc., to issue in name of the Crown and under seal.

5. And We do hereby further grant, ordain and appoint that all writs, summonses, precepts, rules, orders and other mandatory process to be used, issued or awarded by the High Court of Judicature at Patna shall run and be in the name and style of Us, or of Our Heirs and Successors, and shall be sealed with the seal of the said High Court.

Appointment of officers.

6. And We do hereby authorize and empower the Chief Justice of the High Court of Judicature at Patna from time to time, as occasion may require, and subject to any rules and restrictions which may be prescribed from time to time by the Lieutenant-Governor in Council, to appoint so many and such clerks and other ministerial officers as may be found necessary for the administration of justice and the due execution of all the powers and authorities granted and committed to the said High Court by these Our Letters Patent. And We do hereby ordain that every such appointment shall be forthwith submitted to the approval of the Lieutenant-Governor in Council and shall be either confirmed or disallowed by the Lieutenant-Governor in Council. And it is Our further will and pleasure, and We do hereby, for Us, Our Heirs and Successors, give grant, direct and appoint that all and every the officers and clerks to be appointed as aforesaid shall have and receive respectively such reasonable salaries as the Chief Justice may, from time to time, appoint for each office and place respectively, and as the Lieutenant-Governor in Council, subject to the control of the Governor-General in Council, may approve of: Provided always, and it is Our will and pleasure, that all and every the officers and clerks to be appointed as aforesaid shall be resident within the limits of the jurisdiction of the said Court, so long as they hold their respective offices; but this proviso shall not interfere with or prejudice the right of any officer or clerk to avail himself of leave of absence under any rules prescribed from time to time by the Governor-General in Council, and to absent himself from the said limits during the term of such leave in accordanie with the said rules.

Admission of Advocates, Vakils and Attorneys.

Powers of High Court in admitting Advocates, Vakils and Attorneys.

7. And We do hereby authorise and empower the High Court of Judicature at Patna to approve, admit and enrol such and so many Advocates, Vakils and Attorneys as to the said High Court may seem meet; and such Advocates, Vakils and Attorneys shall be and are hereby authorized to appear for the suitors of the said High Court, and to plead or to act, or to plead and act, for the said suitors, according as the said High Court may by its rules and directions determine, and subject to such rules and directions.

Powers of High Court in making rules for the qualification, etc., of Advocates, Vakils and Attorneys.

8. And We do hereby ordain that the High Court of Judicature at Patna shall have power to make rules from time to time for the qualification and admission of proper persons to be Advocates, Vakils and Attorneys-at-Law of the said High Court, and shall be empowered to remove or to suspend from practice, on reasonable cause, the said Advocates, Vakils or Attorneys-at-Law; and no person whatsoever but such Advocates, Vakils or Attorneys shall be allowed to act or to plead for, or on behalf of, any suitor in the said High Court, except that any suitor shall be allowed to appear plead or act on his own behalf, or on behalf of a co-suitor.

CL. 8.—Disciplinary Jurisdiction— General infamy of Vakil not necessary. T. 725=1923 Pat. 185 (2). 12 Pat.L.

Civil Jurisdiction of the High Court.

9. And We do further ordain that the High Court of Judicature at Patna shall have power to remove, and to try and determine, as a Court of extraordinary original jurisdiction, any suit being or falling within the jurisdiction of any Court subject to its superintendence, when the said High Court may think proper to do so, either on the agreement of the parties to that effect, or for purposes of justice, the reasons for so doing being recorded on the proceedings of the said High Court.

Extraordinary original civil jurisdiction.

[1][10. And We do further ordain that an appeal shall lie to the said High Court of Judicature at Patna from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of section 107 of the Government of India Act, or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court pursuant to section 108 of the Government of India Act, made

Appeal to the High Court from Judges of the Court.

LEG. REF.

1 Amended by the Letters Patent, 1927—As to the effect of this amendment, *see* notes under Cl. 15 of the Madras Letters Patent.

CL. 9.—The mere non-recording of reasons where a case is removed from the Court of the Subordinate Judge to the High Court is only an irregularity which does not affect the jurisdiction of the High Court and does not make its decision illegal. 14 Pat.L.T. 258=12 P. 727=1933 P. 250.

CL. 10: SCOPE AND OBJECT.—*See* 3 Pat.L.J. 509=48 I.C. 348. Sec. 9 of the High Courts Act, 1861, is not inconsistent with the provision of the Letters Patent. 20 Pat.L.T. 404=1939 Pat. 425. A certificate of "leave to appeal" should not be granted merely on the ground that a point of law arises in the case. It is only when a case presents some difficulty and the Judge feels really that the matter before him requires further consideration by a larger Court that "leave" should be granted. If the Judge decides the case with confidence, that should indicate that it is not a fit case for appeal; and if he accepts the responsibility which is cast upon him by the Letters Patent his decision will be final. 13 P. 587=15 Pat.L.T. 456=1934 P. 466. If a single Judge by order reverses and remands a case for being tried anew, then this is a judgment, and can be appealed under Cl. 10. But it is not a judgment if the remand is made for a finding. 1924 P. 336. *See also* 1 P. 246=3 Pat.L.T. 343=1922 P. 384. An order of a Judge of the High Court sitting alone staying a criminal trial is not a judgment and is not appealable under Cl. 10. 3 Pat.L.J. 509=19 Cr.L.J. 1008=48 I.C. 348. No appeal lies under the Letters Patent from a decision of a single Judge of the High Court passed in revision. The words "which has been called for by the said Court" (which occurred in Cl. 10 prior to the amendment of 1929) are general in their application and refer both to the case in which the High Court has *suo motu* called for records and the case where the records have been called for on the application of one of the parties. In both cases, no appeal is competent. 10 P. 428=1931 P. 292. Ch. VII, R. 2 of the High Court Rules excludes the applicability of sec. 12 of the Limitation Act to appeals which are preferred under Letters Patent. 1921 P. 165=5 Pat.L.J. 701=2 Pat. L.T. 42=59 I.C. 179. Right of appeal given by the Letters Patent does not apply to administrative or disciplinary powers. 1 P. 590 =1922 P. 603. New point not to be raised in Letters Patent appeal. 19 Pat. 194=1940 Pat. 322. No application for review lies against a decision on appeal under the Letters Patent. [1931 A.L.J. 187 (F.B.). and 40 M. 651, Foll.] 12 Pat.L.T. 652=1931 P. 409. Where a Judge refuses to exercise his discretion under sec. 151, C. P. Code, and grant a review his order is not a "judgment" and is not appealable. 12 P. 203=142 I.C. 455=1933 P. 139.

"Judgment"—Order granting application for delivery of property under sec. 185, Companies Act, reversed—Order refusing restitution is a judgment within the meaning of Cl. 10 and is appealable. 23 Pat. 24=213 I.C. 340=A.I.R. 1944 Pat. 192.

PRACTICE.—Appeal— Questions not raised before Bench cannot be raised later. 3 Pat. L.T. 386=1922 P. 171. Appeal—Preliminary hearing—Practice—High Court Rules—Validity and effect. *See* 4 Pat.L.J. 695=54 I.C. 230.

in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, where the Judge who passed the judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us, Our heirs or Successors in Our or Their Privy Council as hereinafter provided.]

Appeal from other Civil Courts in the Province of Bihad and Orissa.

11. And We do further ordain that the High Court of Judicature at Patna shall be a Court of Appeal from the Civil Court of the Province of Bihar and Orissa and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as were, immediately before the date of the publication of these presents, subject to appeal to the High Court of Judicature at Fort William in Bengal by virtue of any law then in force, or as may after that date be declared subject to appeal to the High Court of Judicature at Patna by any law made by competent legislative authority for India.

Jurisdiction as to Infants and Lunatics.

12. And We do further ordain that the High Court of Judicature at Patna shall have the like power and authority with respect to the persons and estates of infants, idiots and lunatics within the Province of Bihar and Orissa as that which was vested in the High Court of Judicature at Fort William in Bengal immediately before the publication of these presents.

Law to be administered by the High Court.

By the High Court in the exercise of extraordinary original civil jurisdiction.

13. And We do further ordain that, with respect to the law or equity to be applied to each case coming before the High Court of Judicature at Patna in the exercise of its extraordinary original civil jurisdiction, such law or equity shall, until otherwise provided, be the law or equity which would have been applied to such case by any local Court having jurisdiction therein.

By the High Court in the exercise of appellate jurisdiction.

14. And We do further ordain that, with respect to the law or equity and rule of good conscience to be applied by the High Court of Judicature at Patna to each case coming before it in the exercise of its appellate jurisdiction, such law or equity and rule of good conscience shall be the law or equity and rule of good conscience which the Court in which the proceedings in such case were originally instituted ought to have applied to such case.

Criminal Jurisdiction.

Ordinary original criminal jurisdiction of the High Court.

15. And We do further ordain that the High Court of Judicature at Patna shall have ordinary original criminal jurisdiction in respect of all such persons within the Province of Bihar and Orissa as the High Court of Judicature at Fort William in Bengal had such criminal jurisdiction over immediately before the publication of these presents.

Jurisdiction as to persons.

46. And We do further ordain that the High Court of Judicature at Patna, in the exercise of its ordinarp original criminal jurisdiction, shall be empowered to try all persons brought before it in due course of law.

CL. 12.—Applicability of Cl. 12—Submission to jurisdiction—Part of the cause of action outside jurisdiction—Waiver of objection. 1923 P. 562=5 Pat.L.T. 342.

17. And We do further ordain that the High Court of Judicature at Patna shall have extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court subject to its superintendence, and shall have authority to try at its discretion any such persons brought before it on charges preferred by any Magistrate or other officer specially empowered by the Government in that behalf.

Extraordinary original criminal jurisdiction.

18. And We do further ordain that there shall be no appeal to the High Court of Judicature at Patna from any sentence or order passed or made by the Courts of original criminal jurisdiction which may be constituted by one or more Judges of the said High Court. But it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court.

No appeal from High Court exercising original jurisdiction.

Court may reserve points of law.

19. And We do further ordain that, on such point or points of law being so reserved as aforesaid, the High Court of Judicature at Patna shall have full power and authority to review the case, or such part of it as may be necessary, and finally determine such point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction, and pass such judgment and sentence as to the said High Court may seem right.

High Court to review cases on points of law reserved by one or more Judges of the High Court.

20. And We do further ordain that the High Court of Judicature at Patna shall be a Court of appeal from the Criminal Courts of the Province of Bihar and Orissa and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as were, immediately before the date of the publication of these presents, subject to appeal to the High Court of Judicature at Fort William in Bengal by virtue of any law then in force or as may after that date be declared subject to appeal to the High Court of Judicature at Patna by any law made by competent legislative authority for India.

Appeals from other Criminal Courts in the province of Bihar and Orissa.

21. And We do further ordain that the High Court of Judicature at Patna shall be a Court of reference and revision from the Criminal Courts subject to its appellate jurisdiction, and shall have power to hear and determine all such cases referred to it by the Sessions Judges, or by any other officers in the Province of Bihar and Orissa who were, immediately before the publication of these presents, authorised to refer cases to the High Court of Judicature at Fort William in Bengal and to revise all such cases tried by any officer or Court possessing criminal jurisdiction in the Province of Bihar and Orissa as were, immediately before the publication of these presents, subject to reference to or revision by the High Court of Judicature at Fort William in Bengal.

Hearing of referred cases, and revision of criminal trials.

22. And We do further ordain that the High Court of Judicature at Patna shall have power to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also to direct the preliminary invesitgation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it, though such case belongs in ordinary course to the jurisdiction of some other officer or Court.

High Court may direct the transfer of a case from one Court to another.

CL. 17.—The High Court of Patna has jurisdiction to try persons against whom the Government Advocate with the previous sanction of the Local Government has exhibited an *ex officio* information. 1933 P.C. 124=64 M.L.J. 466=142 I.C. 335 (P.C.).

Criminal Law.

Offenders to be punished under Indian Penal Code.

23. And We do further ordain that all persons brought for trial before the High Court of Judicature at Patna, either in the exercise of its original jurisdiction, or in the exercise of its jurisdiction as a Court of appeal, reference or revision charged with any offence for which provision is made by Act No. XLV of 1860, called the "Indian Penal Code," or by any Act amending or excluding the said Act which may have been passed prior to the publication of these presents, shall be liable to punishment under the said Act or Acts, and not otherwise.

Admiralty Jurisdiction.

Civil.

24. And We do further ordain that the High Court of Judicature at Patna shall have and exercise in the Province of Bihar and Orissa, all such civil and maritime jurisdiction as was exercisable therein immediately before the publication of these presents by the High Court of Judicature at Fort William in Bengal, as a Court of Admiralty, and also such jurisdiction for the trial and adjudication of prize cases and other maritime questions as was so exercisable by the High Court of Judicature at Fort William in Bengal.

Criminal.

25. And We do further ordain that the High Court of Judicature at Patna shall have and exercise in the Province of Bihar and Orissa all such criminal jurisdiction as was exercisable therein immediately before the publication of these presents by the High Court of Judicature at Fort William in Bengal as a Court of Admiralty, or otherwise in connection with maritime matters or matters of prize.

Testamentary and Intestate Jurisdiction.

Testamentary and intestate jurisdiction.

26. Any We do further ordain that the High Court of Judicature at Patna shall have the like power and authority as that which was immediately before the publication of these presents lawfully exercised within the Province of Bihar and Orissa by the High Court of Judicature at Fort William in Bengal, in relation to the granting of probates of last wills and testaments, and letters of administration of the goods, chattels, credits and all other effects whatsoever of persons dying intestate: Provided always that nothing in these Letters Patent contained shall interfere with the provisions of any law which has been made by competent legislative authority for India, by which power is given to any other Court to grant such probates and letters of administration.

Matrimonial Jurisdiction.

Matrimonial jurisdiction.

27. And We do further ordain that the High Court of Judicature at Patna shall have jurisdiction, within the Province of Bihar and Orissa, in matters matrimonial between Our subjects professing the Christian religion: Provided always that nothing herein contained shall be held to interfere with the exercise of any jurisdiction in matters matrimonial by any Court, not established by Letters Patent within the said Province, which is lawfully possessed of that jurisdiction.

Powers of Single Judges and Division Courts.

Single Judges and Division Courts.

28. And We do hereby declare that any function which is hereby directed to be performed by the High Court of Judicature at Patna, in the exercise of its original or appellate jurisdiction, may be performed by any Judge, or by any Division Court thereof, appointed or constituted for such purpose in pursu-

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CL. 27.—The jurisdiction of the High Court in matters matrimonial is only such jurisdiction as is comprised within the provisions of the Divorce Act. 1923 P. 301.

CL. 28.—As to the effect of this amendment, *see* notes under Cl. 15, Madras Letters Patent. The amendment of Cl. 28 and the addition of Cl. 3 to sec. 98 of the C. P. Code

ance of section One hundred and eight of the Government of India Act, 1915; and if such Division Court is composed of two or more Judges and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges, if there be a majority, but if the Judges be equally divided, [1][they shall state the point upon which they differ and the case shall then be heard upon that point by one or more of the other Judges and the point shall be decided according to the opinion of the majority of Judges who have heard the case including those who first heard it].

Civil Procedure.

Regulation of proceedings.

29. And We do further ordain that it shall be lawful for the High Court of Judicature at Patna from time to time to make rules and orders for regulating the practice of the Court and for the purpose of adapting, as far as possible, the provisions of the Code of Civil Procedure, being an Act, No. V of 1908, passed by the Governor-General in Council, and the provisions of any law which has been or may be made, amending or altering the same, by competent legislative authority for India, to all proceedings in its testamentary, intestate and matrimonial jurisdiction, respectively.

Criminal Procedure.

Regulation of proceedings.

30. And We do further ordain that the proceedings in all criminal cases brought before the High Court of Judicature at Patna in the exercise of its ordinary original criminal jurisdiction, shall be regulated by the procedure and practice which was in use in the High Court of Judicature at Fort William in Bengal immediately before the publication of these presents, subject to any law which has been or may be made in relation thereto by competent legislative authority for India; and that the proceedings in all other criminal cases shall be regulated by the Code of Criminal Procedure, being an Act, No. V of 1898, passed by the Governor-General in Council, or by such further or other laws in relation to criminal procedure as may have been or may be made by such authority as aforesaid.

Appeals to Privy Council.

Power to appeal in civil cases.

31. And We do further ordain that any person or persons may appeal to Us, Our Heirs and Successors, in Our or Their Privy Council in any matter not being of criminal jurisdiction, from any final judgment, decree or order of the High Court of Judicature at Patna made on appeal, and from any final judgment, decree or order made in the exercise of original jurisdiction by Judges of the said High Court, or of any Division Court, from which an appeal does not lie to the said High Court under the provisions contained in the 10th clause of these presents: Provided, in either case, that the sum or matter at issue is of the amount or value of not less than 10,000 rupees, or that such judgment, decree or order involves, directly or indirectly, some claim, demand or question to or respecting property mounting to or of the value of not less than

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LEG. REF.

[1] Added and substituted by amended Letters Patent of 1927.

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by Act XVIII of 1928 has now settled the conflict of opinion as to the effect of a difference between the two Judges constituting the Bench hearing an appeal from a Subordinate Court. The Chartered High Courts of which the Letters Patent provide for a difference of opinion are excluded from the provisions of sec. 98 of the C. P. Code, and the procedure indicated in Cl. 28 should only be followed. [52 M. 563 (F.B.)., Foll.] 11 P. 772=1933 P. 67. A single Judge is competent to hear a reference under Cl. 28. 11 P. 772=1933 P. 67.

CL. 31: DISCIPLINARY JURISDICTION.—No right of appeal to His Majesty in Council. 1 P. 590=1922 P. 603. *See also* 52 I.C. 599 =4 P.L.J. 423; 22 Pat.L.T. 341=20 Pat. 561 =1941 Pat. 225 (No leave to appeal to P.C. can be granted from summary rejection application for reference under sec. 66 (3). Income-tax Act.

10,000 rupees; or from any other final judgment, decree or order made either on appeal or otherwise as aforesaid when the said High Court declares that the case is a fit one for appeal to Us, Our Heirs or Successors, in Our or Their Privy Council; but subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council from the Courts of the province of Bihar and Orissa, except so far as the said existing rules and orders respectively are hereby varied; and subject also to such further rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

Appeal from interlocutory judgments.

32. And We do further ordain that it shall be lawful for the High Court of Judicature at Patna, at its discretion, on the motion, or, if the said High Court be not sitting, then for any Judge of the said High Court, upon the petition, of any party who considers himself aggrieved by any preliminary or interlocutory judgment, decree or order of the said High Court, in any such proceeding as aforesaid, not being of criminal jurisdiction, to grant permission to such party to appeal against the same to Us, Our Heirs and Successors, in Our or Their Privy Council, subject to the same rules, regulations and limitations as are herein expressed respecting appeals from final judgments, decrees and orders.

Appeal in criminal cases.

33. And We do further ordain that from any judgment, order or sentence of the High Court of Judicature at Patna, made in the exercise of original criminal jurisdiction, or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court, in manner provided by the 18th clause of these presents, by any Court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgment, order or sentence to appeal to Us, Our Heirs or Successors in Council, provided the said High Court declares that the case is a fit one for such appeal and the appeal be made under such conditions as the said High Court may establish or require, but subject always to such rules and orders as are now in force, or may from time to time be made respecting appeals to Ourselves in Council from the Courts of the Province of Bihar and Orissa.

Rule as to transmission of copies of evidence and other documents.

34. And We do further ordain that, in all cases of appeal made from any judgment, decree, order or sentence of the High Court of Judicature at Patna, to Us, Our Heirs or Successors in Our or Their Privy Council, such High Court shall certify and transmit to Us, Our Heirs and Successors in Our or Their Privy Council, a true and correct copy of all evidence, proceedings, judgments, decrees and orders had or made in such cases appealed so far as the same have relation to the matters of appeal, such copies to be certified under the seal of the said High Court. And that the said High Court shall also certify and transmit to Us, Our Heirs and Successors, in Our or Their Privy Council, a copy of the reasons given by the Judges of the said High Cuort, or by any such Judges, for or against the judgment or determination appealed against. And We do further ordain that the said High Court shall, in all cases of appeal to Us, Our Heirs or Successors, conform to and execute, or cause to be executed, such judgments and orders, as we, Our Heirs

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CL. 33: CONSTRUCTION AND SCOPE—CRIMINAL CASE—LEAVE TO APPEAL—GRANT OF.—The matter of appeals to His Majesty in Council from decisions of the High Court is limited by the Letters Patent under which the High Court's jurisdiction is exercised. While Cl. 31 of the Letters Patent refers to civil appeals, the matter of criminal appeals is dealt with by Cl. 33. The wording of Cl. 33 is very precise and must be strictly construed. Under that clause there is a right of appeal from any judgment or order or sentence made in the exercise of original criminal juridiction. Leave to appeal is also granted when a point or points of law have been reserved for the opinion of the High Court in the manner provided by Cl. 18. When the case does not fall under either of these two categories, there is no right of appeal. 14 P. 318=15 Pat.L.T. 833=1935 **P. 66.**

or Successors, in Our or Their Privy Council, may think fit to make in the premises, in such manner as any original judgment, decree or decretal orders, or other order or rule of the said High Court, should or might have been executed.

Exercise of jurisdiction elsewhere than at the usual place of sitting of the High Court.

Judges to visit Orissa by way of circuit.

45. And We do further ordain that, unless the Governor-General in Council otherwise directs, one or more Judges of the High Court of Judicature at Patna shall visit the Division of Orissa, by way of circuit, whenever the Chief Justice from time to time appoints, in order to exercise in respect of cases arising in that Division the Jurisdiction and power by these Our Letters Patent, or by or under the Government of India Act, 1915, vested in the said High Court: Provided always that such visits shall be made not less than four times in every year, unless the Chief Justice, with the approval of the Lieutenant-Governor in Council, otherwise directs: Provided also that the said High Court shall have power from time to time to make rules, with the previous sanction of the Lieutenant-Governor in Council, for declaring what cases or classes of cases arising in the Division of Orissa shall be heard at Patna and not in that Division, and that the Chief Justice may, in his discretion, order that any particular case arising in the Division of Orissa shall be heard at Patna or in that Division.

Special commission and circuits.

36. And We do further ordain that whenever it appears to the Lieutenant-Governor in Council, subject to the control of the Governor-General in Council, convenient that the jurisdiction and power by these Our Letters Patent, or by or under the Government of India Act, 1915, vested in the High Court of Judicature at Patna should be exercised in any place within the jurisdiction of any Court subject to the superintendence of the said High Court, other than the usual place of sitting of the said High Court, or at several such places by way of circuit, one or more Judges of the Court shall visit such place or places accordingly.

Proceedings of Judges on special commission or circuit.

37. And We do further ordain that whenever any Judge or Judges of the High Court of Judicature at Patna visit any place under the 35th or the 36th clause of these presents the proceedings in cases before him or them at such place shall be regulated by any law relating thereto which has been or may be made by competent legislative authority for India.

Delegation of Duties to Officers.

Power to delegate duties.

38. The High Court of Judicature at Patna may from time to time make rules for delegating to any Registrar, Prothonotary or Master or other official of the Court any judicial, quasi-judicial and non-judicial duties.

CL. 35.—Patna High Court Rules, Ch. XXII, R. 5 and Ch. II, R. 4—Vacation Judge—Power to hear case arising in Orissa, 130 I.C. 262=1931 P. 61. Under Cl. 35 read with R. 5 of Ch. XXII of the Rules of the High Court, the Vacation Judge has no jurisdiction to hear a matter which is required by those provisions to be heard in Orissa. The power given to the Vacation Judge by R. 4 in Chapter II of the Rules is confined to Patna as distinguished from Orissa. R. 5 cannot be read with, or as controlling, R. 4 of Chapter II and therefore the discretionary power of the Chief Justice under Cl. 35 of Letters Patent to order that any particular case arising in the Division of Orissa shall be heard at Patna does not vest in the Vacation Judge. The possible inconvenience arising from the absence of a Vacation Judge for Orissa is no reason for placing upon R. 4 an interpretation which it will not bear if regard is had to the other rules in Chs. II and XXII and Cl. 35 of the Letters Patent. 1931 P. 61=11 Pat. L.T. 862. As to jurisdiction of Vacation Judges to decide cases when office of Chief Judge is vacant. *See* 17 Pat. 574=1938 Pat. 550.

Cessation of Jurisdiction of the High Court of Judicature at Fort William in Bengal.

39. And We do further ordain that the jurisdiction of the High Court of Judicature at Fort William in Bengal in any matter in which jurisdiction is by these presents given to the High Court of Judicature at Patna shall cease from the date of the publication of these presents, and that all proceedings pending in the former Court on that date in reference to any such matter shall be transferred to the latter Court:

Cessation of jurisdiction of the High Court of Judicature at Fort William over the province of Bihar and Orissa.

Provided, first, that the High Court of Judicature at Fort William in Bengal shall continue to exercise jurisdiction—

(*a*) in all proceedings pending in that Court on the date of the publication of these presents in which any decree or order, other than an order of an interlocutory nature, has been passed or made by that Court, or in which the validity of any such decree or order is directly in question; and

(*b*) in all proceedings [not being proceedings referred to in paragraph (*a*) of this clause] pending in that Court, on the date of the publication of these presents, under the 13th, 15th, 22nd, 23rd 24th, 25th, 26th, 27th, 28th, 29th, 32nd, 33rd, 34th or 35th clause of the Letters Patent bearing date at Westminster the twenty-eighth day of December, in the Year of Our Lord One thousand eight hundred and sixty-five, relating to that Court; and

(*c*) in all proceedings instituted in that Court, on or after the date of the publication of these presents, with reference to any decree or order passed or made by that Court:

Provided, secondly, that if any question arises as to whether any case is covered by the first proviso to this clause, the matter shall be referred to the Chief Justice of the High Court of Judicature at Fort William in Bengal, and his decision shall be final.

Calls for Records, etc., by the Government.

40. And it is Our further will and pleasure that the High Court of Judicature at Patna shall comply with such requisitions as may be made by the Lieutenant-Governor in Council, for records, returns and statements, in such form and manner as he may deem proper.

High Court to comply with requisitions from Government for records, etc.

Powers of Indian Legislatures.

41. And We do further ordain and declare that all the provisions of these Our Letters Patent are subject to the legislative power of the Governor-General in Legislative Council, and also of the Governor-General in Council under section seventy-one of the Government of India Act, 1915, and also of the Governor-General in cases of emergency under section seventy-two of that Act, and may be in all respects amended and altered thereby.

Powers of Indian Legislatures preserved.

In witness whereof We have caused these Our letters to be made patent. Witness Ourself at Westminster the Ninth day of February, in the year of Our Lord One thousand nine hundred and sixteen and in the sixth year of Our Reign.

By warrant under the King's Sign Manual.

(Sd.) SCHUSTER.

THE INDIAN LIFE ASSURANCE COMPANIES ACT.

See **The Insurace Act (IV of 1938),** *supra.*

CL. 40.—"Judgment"—Order directing trial of certain issue—Court hearing appeal after return of findings entitled to disregard order of remand. *See* 2 Pat.L.J. 663=41 I. C. 337.

THE INDIAN LIGHTHOUSE ACT (XVII OF 1927).

[*Rep. in part by Act I of* 1938.]

[21*st September*, 1927.

An Act to consolidate and amend the law relating to the provision, maintenance and control of lighthouses by the Government in British India.

WHEREAS it is expedient to consolidate and amend the law relating to the provision, maintenance and control of lighthouses by the Government in British India; It is hereby enacted as follows:—

PRELIMINARY.

Short title, extent and commencement.

1. (1) This Act may be called THE INDIAN LIGHTHOUSE ACT, 1927.

(2) It extends to the whole of British India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "Customs-collector" means an officer of customs exercising the powers of a Customs-collector under the Sea Customs Act, 1878, and includes any person appointed by the Central Government to discharge the functions of a Customs-collector under this Act;

(*b*) "district" means an area defined as a district for the purposes of this Act under section 3;

(*c*) "general lighthouse" means any lighthouse which the Central Government may, by notification in the Official Gazette, declare to be a general lighthouse for the purposes of this Act;

(*d*) "lighthouse" includes any light-vessel, fog-signal, buoy beacon, or any mark, sign or apparatus exhibited or used for the guidance of ships;

(*e*) "local lighthouse" means any lighthouse which is not a general lighthouse;

(*f*) "local lighthouse authority" means a Provincial Government, local authority or other person having the superintendence and management of a local lighthouse;

(*g*) "owner" includes any part-owner, charterer or mortgagee in possession and any agent to him a ship is consigned;

(*h*) "port" means any port, as defined in the Indian Ports Act, 1908, to which that Act extends; and

(*i*) words and expressions used in this Act and not otherwise defined have the same meanings respectively as in the Indian Merchant Shipping Act, 1923.

Appointment of officers.

3. The Central Government may, by notification in the Official Gazette,—

(*a*) define areas to be districts for the purposes of this Act;

(*b*) appoint a person to be the Superintendent of Lighthouses in each district;

(*c*) appoint a person to be the Chief Inspector of Lighthouses in British India; and

(*d*) appoint persons to be Inspectors of Lighthouses.

Advisory Committees.

4. (1) The Central Government shall appoint a Central Advisory Committee and shall consult it in regard to—

(*a*) the erection or position of lighthouses or of any works appertaining thereto;

(*b*) additions to, or the alteration or removal of lighthouses;

(*c*) the variation of the character of any lighthouse or of the mode of use thereof;

(*d*) the cost of any proposals relating to lighthouses; or

(*e*) the making or alteration of any rules or rates of dues under this Act.

(2) The Central Government may, if he thinks fit, appoint an Advisory Committee for any district for the purpose of advising in regard to any of the matters specified in sub-section (1) in so far as the interests of the district are affected thereby.

(3) Advisory Committees shall consist of persons representing interests affected by this Act or having special knowledge of the subject-matter thereof.

GENERAL LIGHTHOUSES.

Management of general lighthouses by the Central Government and delegation of management.

5. (1) The superintendence and management of all general lighthouses are vested in the Central Government.

(2) The Central Government may require any local lighthouse authority to undertake the superintendence and management of any general lighthouse situated in or adjacent to the local limits within which the authority exercise its powers, and shall pay to the authority such sums to defray the cost of superintendence and management as he may determine.

LOCAL LIGHTHOUSES.

Power to inspect local lighthouses.

6. (1) The Chief Inspector of Lighthouses may, at any time, and any Superintendent or Inspector of Lighthouses may, if authorised in this behalf by a general or special order in writing of the Central Government, enter upon and inspect any local lighthouse and make such inquiries in respect thereof or of the management thereof as he thinks fit.

(2) Every person having the charge of, or concerned in the management of, any lighthouse shall be bound to furnish to any officer authorised by or under sub-section (1) to inspect the lighthouse all such information regarding the same as the officer may require.

(3) Every local lighthouse authority shall furnish to the Central Government all such returns and other information in respect of the lighthouses under its supervision and management, or of any of them, as he may require.

Control of local lighthouses by the Central Government.

7. (1) If, after an inspection under section 6 or such other inquiry as he thinks fit, the Central Government is satisfied that a direction under this sub-section is necessary or expedient for the safety, or otherwise in the interests of shipping, he may direct any local lighthouse authority—

(*a*) to remove or discontinue or to refrain from moving or discontinuing any lighthouse under its superintendence and management or to make or refrain from making any variation in the character or mode of use of any such lighthouse, or

(*b*) to erect, place or maintain, or to refrain from erecting, placing or maintaining, any lighthouse within the local limits within which the local lighthouse authority exercises its powers.

(2) A local lighthouse authority shall not erect, place remove or discontinue any lighthouse or vary the character or mode of use of any lighthouse, unless it has given to the Central Government at least one month's notice in writing of its intention so to do:

Provided that, in cases of emergency, a local lighthouse authority may take such action as it deems necessary and shall give immediate notice of the same to the Central Government and, so far as is possible, to all shipping approaching or in the vicinity of the lighthouse.

(3) If a local lighthouse authority—

(*a*) fails to comply with any direction made under sub-section (1), or

(*b*) fails to exercise or perform, or exercises or performs in an improper, inefficient or unsuitable manner, any power or duty relating to the superintendence or management of lighthouses conferred or imposed upon it by or under any law for the time being in force, or

(*c*) fails to make adequate financial provision for the performance of any such duty,

the Central Government may, by order in writing, require the local lighthouse authority to comply with the direction, or to make arrangements to the satisfaction of the Central Government for the proper exercise of the power or performance of the duty, or to mane financial provision to the satisfaction of the Central Government for the performance of the duty, as the case may be, within such period as the Central Government may specify.

(4) If the local lighthouse authority fails to comply with an order made under sub-section (3) within the specified period or within such further time as the Central Government may allow, the Central Government may exercise the power or perform the duty or make the requisite financial provision, as the case may be, and the local lighthouse authority shall be liable to repay to the Central Government any expenditure incurred by it in so doing.

Management of local lighthouses by the Central Government.

8. The Central Government may, at the request of a local lighthouse authority, undertake the superintendence and management of any local lighthouse on its behalf, and the local lighthouse authority shall pay to the Central Government such sums to defray the cost of superintendence and management as may be agreed.

LIGHT-DUES.

Levy and collection of light-dues.

9. For the purpose of providing or maintaining or of providing and maintaining lighthouses for the benefit of ships voyaging to or from British India or between ports in British India, the Central Government shall, subject to the provisions of this Act, cause light-dues to be levied and collected in respect of every ship arriving at or departing from any port in British India.

Rates of light-dues leviable.

10. (1) The Central Government may, by notification in the Official Gazette, prescribe rates, not exceeding two annas per ton, at which light-dues shall be payable, and may prescribe, different rates for different classes of ships or for ships of the same class when in use for different purposes or in different circumstances.

(2) Light-dues payable in respect of a ship shall be paid by the owner or master of the ship on its arrival at, and on its departure from, any port in British India:

Provided that, if light-dues have been paid in accordance with the provisions of this Act in respect of any ship, no further dues shall become payable in respect of that ship for a period of thirty days from the date on which the dues so paid became payable.

(3) An order under sub-section (1) imposing, abolishing or varying light-dues shall not take effect till the expiration of thirty days from the day on which the order was notified in the Official Gazette.

Receipts for light-dues

11. Light-dues shall be paid to the Customs-collector who shall grant to the person paying the same a receipt in writing specifying—

(*a*) the port at which the dues have been paid;

(*b*) the amount of the payment;

(*c*) the date on which the dues became payable; and

(*d*) the name, tonnage and other proper description of the ship in respect of which the payment is made.

Ascertainment of tonnage.

12. (1) For the purpose of the levy of light-dues, a ship's tonnage shall be reckoned as under the Merchant Shipping Acts for dues payable on a ship's tonnage, with the addition required under section 85 of the Merchant Shipping Act, 1894, with respect to deck cargo.

(2) In order to ascertain the tonnage of any ship for the purpose of levying light-dues, the Customs-collector may—

(*a*) if the ship is registered under any law for the time being in force in British India or under the law of any foreign country in respect of which an Order in Council has been made under section 84 of the Merchant Shipping Act, 1894, that ships of that country shall be deemed to be of the tonnage denoted in their certificates of registry or other national papers (any such ship being hereafter in this section referred to as a registered ship), require the owner or master or other person having possession of the ship's register or other papers denoting her tonnage to produce the same for inspection and, if such owner, master or other person refuses or neglects to produce the register or papers, as the case may be, or otherwise to satisfy the Customs-collector as to the tonnage of the ship, cause the ship to be measured and the tonnage to be ascertained; or

(*b*) if the ship is not a registered ship and the owner or master fails to satisfy the Customs-collector as to the true tonnage thereof according to the mode of measurement prescribed by the law for the time being in force for regulating the measurement of registered ships, cause the ship to be measured and the tonnage thereof to be ascertained according to such mode.

(3) If any person refuses or neglects to produce any register or other papers or otherwise to satisfy the Customs collector as to the true tonnage of any ship when required to do so under this section, such person shall be liable to pay the expenses of the measurement of the ship and of the ascertainment of the tonnage, and, if the ship is a registered ship, shall further, on conviction by a Presidency Magistrate or Magistrate of the first class having jurisdiction in the port where the ship lies or in any port to which she may proceed be punishable with fine which may extend to one thousand rupees.

Recovery of light-dues, expenses and costs.

13. (1) If the owner or master of any ship refuses or neglects to pay to the Customs-collector on demand the amount of any light-dues or expenses payable under this Act in respect of the ship, the Customs-collector may seize the ship and the tackle, apparel and furniture belonging thereto, or any part thereof, and detain the same until the amount of the dues or expenses, together with the costs of the seizure and detention, is paid.

(2) If any part of such dues, expenses or costs remains unpaid after the expiry of five days following the date of seizure, the Customs-collector may cause the ship or other thing seized to be sold, and with the proceeds of the sale may satisfy the dues, expenses or costs remaining unpaid, together with the costs of the sale, and shall repay the surplus, if any, to the person by whom the same were payable.

Refusal of port clearance.

14. The officer whose duty it is to grant a port-clearance for any ship shall not grant the port-clearance until the amount of all light-dues, expenses and costs payable in respect of the ship under this Act and of any fines imposed thereunder has been paid, or until security for the payment thereof has been given to his satisfaction.

Determination of disputes as to liability for payment.

15. If any dispute arises as to whether light-dues, expenses or costs are payable in respect of any ship under this Act or as to the amount of such dues, expenses or costs, the dispute shall, on application made in this behalf by either of the disputing parties, be heard and determined by a Presidency

Magistrate or Magistrate of the first class having jurisdiction at the place where the dispute arises, and the decision of such Magistrate shall be final.

Light-dues payable at one port recoverable at another.

16. (1) If the master of any ship in respect of which any light-dues are payable at any port causes the ship to leave such port without having paid the same, the Customs-collector at that port may by writing require the Customs-collector at any other port in British India to which the ship may proceed or in which she may be to recover the dues remaining unpaid.

(2) Any Customs-collector to whom such a requisition is directed shall proceed to levy such sum as if it were payable under this Act at the port at which he is the Customs-collector, and a certificate by the Customs-collector at the port at which the light-dues first became payable, stating the amount payable, shall be sufficient proof in any proceeding under section 13 or section 15 that such amount is payable.

Penalty for evading payment of light-dues.

17. (1) If the owner or master of a ship evades or attempts to evade the payment of any light-dues, expenses or costs payable in respect of the ship under this Act, he shall, on conviction by a Presidency Magistrate or Magistrate of the first class having jurisdiction in any port to which the vessel may proceed or in which she may be found, be punishable with fine which may extend to five times the amount of the sum payable.

(2) In any proceeding before a Magistrate in a prosecution under sub-section (1), any such certificate as is mentioned in sub-section (2) of section 16, stating that the owner or master has evaded such payment, shall be sufficient proof of the evasion, unless the owner or master shows to the satisfaction of the Magistrate that the departure of the vessel without payment of the sum was caused by stress of weather, or that there was lawful or reasonable grounds for such departure.

Exemption from payment of light-dues.

18. The following ships shall be exempted from the payment of light-dues under this Act, namely:—

(*a*) any ship belonging to His Majesty [1][* *] or to a foreign Prince or State and not carrying cargo or passengers for freight or fares; and

(*b*) any ship of a tonnage of less than fifty tons;

and the Central Government may, by notification in the Official Gazette, exempt any other ships or classes of ships performing specified voyages from such payment, either wholly or to such extent only as may be specified in the notification.

Refund of excess payments.

19. Where light-dues have been paid in respect of any ship in excess of the amount payable under this Act, no claim to refund of such excess payment shall be admissible, unless it is made within six months from the date of each payment.

ACCOUNTS.

Accounts, etc.

20. (1) The Central Government shall cause to be maintained a separate account of all amounts received by way of light-dues, expenses, costs and fines under this Act and of all expenditure incurred for the purposes of this Act, and shall cause such account to be laid before the Central Advisory Committee, as soon as possible, after the close of each financial year.

(2) The Central Government shall cause to be laid before the Central Advisory Committee before the close of each financial year a statement of the estimated receipts under, and expenditure for the purposes of, this Act during the forthcoming year.

LEG. REF.

1 Words 'or the Government' omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.

RULES.

Power to make rules.

21. (1) The Central Government may make rules consistent with this Act to carry into effect the purposes thereof.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) the powers and duties of the Chief Inspector of Lighthouses and of Superintendents and Inspectors of Lighthouses;

(*b*) the procedure and conduct of business of Advisory Committees constituted under this Act;

(*c*) the rate of travelling and subsistence allowance payable to members of Advisory Committees; and

(*d*) the period in respcet of which and the form in which the separate account referred to in sub-section (1) of section 20 shall be kept and the forms in which that account and the statement referred to in sub-section (2) of that section shall respectively be presented to the Central Advisory Committee.

22. REPEALS. [*Repealed by Act I of* 1938.]

THE SCHEDULE.—[*Repealed by Act I of* 1938.]

THE INDIAN LIMITATION ACT (IX OF 1908).[1]

Year.	No.	Short title.	Amendment.
1908	IX	The Indian Limitation Act, 1908.	Rep. in part, XVII of 1914, S. 3; XVIII of 1919; VIII of 1930. Amended, XXVI of 1920; X of 1922; XI of 1923; XXX of 1925; I of 1927; IX of 1927; X of 1927; I of 1929; XI of 1929; VIII of 1930; XIV of 1937; XX of 1937; Government of India (Ad. of Ind. Laws) Order, 1937; IV of 1938; XXXIV of 1939; X of 1940; XIII of 1941; XVI of 1942; XXVI of 1943;

LEG. REF.

1 For Statement of Objects and Reasons, *see* Gazette of India, 1908, Pt. V, p. 22; for Report of Select Committee, see *ibid.*, 1908, Pt. V, p. 223 and for Proceedings in Council, *see ibid.*, 1908, Pat. VI, pp. 2, 12, 37 and 145.

LIMITATION ACT.

SCOPE OF ACT.—Act is a complete Code. Provision saving bar of limitation must be contained in, or necessarily implied from, the Act. 57 M. 549=1928 M. 509. Provisions of the Act are exhaustive—Analogical extension of saving clauses not allowed—Considerations of expediency or hardship immaterial. 32 C. W.N. 971=1928 C. 646. *See also* 1938 N.L. J. 336=1938 Nag. 534=I.L.R. (1940) Nag. 334; 40 Bom.L.R. 1134=1939 Bom. 1; 1940 Rang. 276 (F.B.); I.L.R. (1939) All. 207=1939 A.L.J. 29=1939 All. 82; 1944 Nag. 145; (1942) 1 M.L.J. 472=1942 Mad. 487.

OBJECT OF ACT.—The intention of the law of limitation is, not to give a right where there is none, but to interpose a bar after a certain period to a suit to enforce an existing right. 20 I.A. 183=21 C. 8; 33 A. 356 =38 I.A. 87=21 M.L.J. 645 (P.C.); 44 M.L. J. 303=1923 M. 462; 24 C. 1 (P.C.); 44 M. L.J. 303=1923 M. 462; 24 C. 1 (P.C.)=23 I. A. 97; 17 C.W.N. 5=16 I.C. 742=16 C.L.J. 282; 39 M. 456=28 M.L.J. 57; 54 A. 525= 1932 A. 543; 1931 A.L.J. 1018=1931 A. 635 (F.B.). The Limitation Act does not create new obligations but only provides periods within which suits must be brought. 39 M. 456=28 M.L.J. 571; 17 C.W.N. 5=16 C.L.J. 282; 44 M.L.J. 303=1923 M. 462.

APPLICABILITY OF THE ACT.—The law of limitation is a branch of the adjective law

THE INDIAN LIMITATION ACT (IX OF 1908).

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18. Effect of fraud.
19. Effect of acknowledgment in writing.
20. Effect of payment of interest as such or of part payment of principal.
Effect of receipt of produce of mortgaged land.
21. Agent of person under disability.
Acknowledgment or payment by one of several joint contractors, etc.
22. Effect of substituting or adding new plaintiff or defendant.
23. Continuing breaches and wrongs.
24. Suit for compensation for act not actionable without special damage.
25. Computation of time mentioned in instruments.

PART IV.
ACQUISITION OF OWNERSHIP BY POSSESSION.

26. Acquisition of right to easements.
27. Exclusion in favour of reversoner of servient tenement.
28. Extinguishment of right to property.

PART V.
SAVINGS AND REPEALS.

29. Savings.
30 to 32 [*Repealed.*]
THE FIRST SCHEDULE—LIMITATION.
THE SECOND AND THIRD SCHEDULES. [*Repealed.*]

[*7th August*, 1908.

An Act to consolidate and amend the Law for the Limitation of Suits and for other purposes.

WHEREAS it is expedient to consolidate and amend the law relating to the limitation of suits, appeals and certain applications to Court; and whereas it is also expedient to provide rules for acquiring by possession the ownership of easements and other property; It is hereby enacted as follows:—

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and is applicable to all proceedings which it governs from the date of its enactment. 62 I.C. 100=2 P L.T. 667. *See also* 67 I.A. 251 =I.L.R. (1940) Lah. 493=1940 P.C. 116= (1940) 2 M.L.J. 903 (P.C.); 20 C.W.N. 952 =34 I.C. 273 (P.C.); 20 C.W.N. 952=34 I.C. 27. Limitation is a question of procedure and not one of jurisdiction. A wrong decision whether express or implied on a question of limitation does not oust the jurisdiction. 54 A. 573=1932 A.L.J. 365=1932 A. 273 (F. B.); 3 P.L.J. 478=46 I.C. 569. The law applicable to a suit or proceeding is the law in force at the date of the institution of the suit or proceeding. 40 I.A. 74=35 A. 227= 25 M.L.J. 131 (P.C.); 29 I.C. 833=11 N.L.R. 104; 21 I.C. 113; 20 I.C. 821=18 C.L.J. 274; 19 C.L.J. 187=19 I.C. 968; 43 M.L.J. 174= 1922 M. 417 (2). *See also* 62 I.C. 100=2 P. L.T. 667; 20 C.W.N. 952=34 I.C. 27. Courts have no power to devise their own technique for saving claims from the bar which the statutes of limitation create. I.L.R. (1944) Nag. 419=1944 N.L.J. 200=1944 Nag. 145. It is incorrect to say that because the first Limitation Act was not introduced until 1877 there was no law of limitation in force in 1872. There was a law of limitation laid down in sec. 14 of Bengal Regulation (III of 1793) which provided a period of 12 years for the cause of action for any suit. I.L.R. (1939) All. 990=1939 A.L.J. 1127=1940 All. 29. The Act does not apply to actons which it is the Court's duty to take without any formal application. 19 C.W.N. 473=22 C.L.J. 66. Nor to applications to Court which it cannot refuse nor to applications for the exercise of functions of a purely ministerial character. 8 L.B.R. 422=9 Bur.L.T. 148=35 I.C. 950; 13 N.L.J. 83=26 N.L.R. 166=122 I.C. 44=1930 N. 206. Nor to Letters Patent Appeals. 1921 L. 237=60 I.C. 737=3 L.L.J. 361; nor to references to a Judge on an order of the Deputy Registrar of the Chief Court of Lower Burma. 38 I.C. 563=9 Bur.L.T. 226. Act applies to appeals from Revenue Courts. 25

PART I.

PRELIMINARY.

Short title, extent and commencement.

1. (1) This Act may be called THE INDIAN LIMITATION ACT, 1908.

I.C. 703=17 O.C. 254. The provisions of the Act do not govern suits and applications provided for by the Agra Tenancy Act. 1938 A. L.J. 208=1938 All 213. Act not retrospective and cannot revive a right to sue, a judgment or decree barred or unenforceable before the Act. 1922 P.C. 187=48 I.A. 335=26 C.W.N. 878=49 C. 203 (P.C.); 33 A. 356=38 I.A. 87=21 M.L.J. 645 (P.C.); 43 I.C. 50=33 M.L.J. 753; 40 M. 846=41 I.C. 546; 39 M. 645=29 M.L.J. 1. *See also* 1928 B. 28=29 Bom.L.R. 1563. If there has been an interval between the passing and the coming into force of a later Limitation Act, it is a clear indication that the Act was meant to have a retrospective operation. 43 M.L.J. 184=1922 M. 417 (2). New rules of limitation which are merely procedural apply to causes of action arising before their enactment. 1921 M. 650=62 I.C. 795=41 M.L.J. 65. Although it is not a matter of law, still it is a matter of uniform practice that civil revisions are entertained only if they are filed within three months of the date of the order sought to be revised. 1933 P. 582=147 I.C. 200. *See also* 30 S.L.R. 271=1936 Sind 172. Act applies to arbitration proceedings and an arbitrator is bound to give effect to all legal defences including a defence under any statute of limitation 56 C. 1048=1929 P.C. 103 (P.C.). *See also* 1931 M.W.N. 451=34 L.W. 507=1931 M. 319. It does not necessarily follow that awards which have not been decided in accordance with the law of limitation are on that account invalid. 34 L.W. 507=1931 M. 619. As regards the application of the statute of limitation, there is no analogy between the position of a debtor to, and a creditor of, a company in liquidation; and the winding up does not prevent the statute from running in favour of persons indebted to the company. 1933 P.C. 61=60 I.A. 13=54 A. 1067=64 M. L.J. 403 (P.C.). *Per* Boys, J.—The operative sections of the Limitation Act apply to all suits whether in the Civil or the Revenue Courts, while the schedules only refer to the particular matters there dealt with, and for the limitation affecting particular matters with which the Tenancy Act is concerned, reference must be made to the Tenancy Act for the period of limitation. 1930 A.L.J. 256=1930 A. 193 (F.B.). *See* 1938 A.L.J. 208=1938 All 213. The general provisions of the Limitation Act are founded mainly on equitable considerations which apply as much to the period of limitation prescribed by the special Act, as to the period of limitation prescribed by the Limitation Act. The principle of sec. 28 of the Limitation Act can be applied to a reference under sec. 66 (2) of the Income-tax Act. 9 P. 172=122 I.C. 810=1930 P. 14. Under the Limitation Act as amended in 1922, Secs. 4, 9 to 18 and 22 are applicable to a proceeding under the Agra Tenancy Act. 14 R.D. 248. *See also* 1938 All. 213. Also to Sikh Gurdwaras Act, 1930 L. 800. *See also* 1922 M. 268=43 M.L.J. 168=45 M. 785; 41 M.L.J. 84=1921 M. 654=44 M. 817. Where an appeal from the decree of the Consul-General is presented, his duty is only to take the memorandum of appeal when it is presented to him and transmit the same together with other papers to the High Court. He cannot decide whether the appeal is barred by time. It is only when the appeal comes on for hearing that the question of limitation can be taken. 1933 L. 681=146 I.C. 45=14 L. 656. Suit by reversionary heir—Time 'when the cause of action arises.' *See* I.L.R. (1943) Mad. 1=(1942) 2 M.L.J. 249 (P.C.)=46 C.W.N. 1008=1942 P. C. 54.

CONSTRUCTION.—The statute of limitation should be construed strictly. 47 I.C. 122; 27 I.C. 935 (2)=11 N.L.R. 18; 32 I.C. 536; 1929 L. 513; 1938 A.W.R. (B.R.) 200. *See also* 1939 All. 82=I.L.R. 1939 A. 207. The Act is strict and inflexible and does not admit of an equitable construction. 11 Pat.L.T. 403=1930 P. 455; 1932 P.C. 165=59 I.A. 283=M.L.J. 329 (P.C.); 1933 C. 422=144 I.C. 150. In a matter governed by the Act, which in some respects gives the Court a statutory discretion, the Court has no general discretion, outside the limits of the Act, to dispense with its provisions or to relieve a suitor from the operation of the Act in a case of hardship or mistake. 1935 P.C. 85=68 M.L.J. 65=62 I. A. 80=57 A. 242 (P.C.); 1935 A. 323; 1929 A. 677=118 I.C. 670; 1933 C. 422=144 I.C. 150; 1941 Rang. L.R. 1=1940 Rang. 276. The Courts in India are bound by the specific provisions of the Limitation Act and are not permitted to move outside the ambit of these provisions. There is no place in the law of limitation in India for a "general principle of limitation." It is not permissible to the Court to discover in the provisions of the Limitation Act general principles and to apply these principles to cases which are not specifically provided for by the Act itself. I.L.R. (1939) All. 207=1939 A.L.J. 29=1939 All. 82. The Courts should, as far as possible, place upon the Limitation Act, a construction favourable to the plaintiffs. 1930 M. 991=59 M.L.J. 881=54 M. 445. In determining the proper article of the Limitation Act applicable to a suit, what has to be considered is the "true effect of the suit and not its formal or verbal description." 37 P.L.R. 461=1934 L. 725; 1940 O. 134=1939 O.W.N. 1005=15 Luck. 157. If the plaintiff is entitled so to frame his suit as to make a certain article giving a favourable period of limitation applicable, it is not a valid objection to say that he could have framed it otherwise so as to make a less favourable article applicable. 1932 A.L.J. 317=1932 A. 358; 127 I.C. 881=1930 N. 300. *See also* 146 I.C. 811. Lapse of limitation, apart from sec. 28, bars only the remedy and

does not extinguish the title of the claimant. 52 A. 979=1930 A. 858; 132 I.C. 661=1931 L. 668. Nor does it extinguish a debt. 53 A. 969=1932 A. 199. *See also* 54 A. 525=1932 A. 543. Courts are not at liberty to allow new periods of suspension not provided for in the Act. 40 M. 1040=43 I.C. 31=33 M.L.J. 320 (F.B.). As to construction of the Act, *see also* 67 I.C. 365=55 P.L.R. 1922 =1921 Lah. 335 (Particular articles to be applied in preference to general articles); 21 M.L.J. 1041=12 I.C. 695; 41 M. 18=33 M. L.J. 25. *See also* 1930 N. 366; 130 I.C. 157 =1931 N. 47; 127 I.C. 889=1930 N. 300. The provisions of the Limitation Act require to be very strictly interpreted. Limitation laws are very necessary, otherwise no person could remain certain that he would not be dragged before the Courts to answer for a debt allegedly incurred by some earlier ancestor of his. Persons who delay to enforce their claims in the Courts are guilty either of laches or must be held to delay to the uttermost extent for reasons of their own. It is not the duty of the Courts to attempt to interpret the law of limitation wherever possible in favour of the creditor. There must be no attempt to force the Limitation law to condone this suggested technical difficulty. 1946 A.M.L.J. 13. It is an elementary principle of law that where a remedy has existed by way of suit the remedy continues to exist unless it is taken away by statute either expressly or by necessary implication. It is incumbent upon the Court to examine the relevant section of the amending statute to find out whether the right of suit has been taken away. 59 L.W. 143=1946 M. 346=(1946) 1 M.L.J. 185. The Indian Limitation Act is not applicable to the case of a defendant and the party in possession is not affected by it. It refers only to the remedy of the plaintiff and not even to his rights and even though the remedy may be barred, the right may still exist. 1946 O.W.N. 1=21 Luck. 194=1946 Oudh 129. Special article of a special local Act must be applied in preference to general article. 105 I.C. 431=1927 N. 402. The first and the third columns of an article should be given the same meaning as in other columns. 40 M. 1040=33 M.L.J. 320 (F.B.). Where both first and third columns of an article do not apply to a case, the residuary article must be applied. 40 M. 1040=33 M.L.J. 320. The Court, in discovering the Article of the Limitation Act applicable to a suit, is not tied down to the statements in the plaint. In order to determine it, it is the duty of the Court to consider the facts and circumstances admitted and proved in the case. 15 Luck. 157=1940 O. 131=1939 O.W.N. 1005; 39 Bom L.R. 224=1937 Bom. 244. It is impossible for parties by consent or agreement to extend or alter the period of limitation. Parties cannot waive the statute. 178 I.C. 20=1938 Rang. 328. In considering whether a particular remedy is barred one looks not at the relief given but at the cause of action, that is, at the necessary allegations which have to be made and found before the relief sought can be given. I.L.R. (1939) Nag. 1=1938 N. 335 (F.B.). A statutory liability will be governed by the same articles as a Common Law liability, if the words of the articles are capable of covering it. 42 I.C. 502=33 M.L.J. 379. The sections in the Act govern and control the application of the articles, except where the language of a particular article clearly precludes the application of a section. 12 I.C. 695=21 M.L.J. 1041. Exemption from Limitation—Ground for—Not stated in execution application—Party not entitled subsequently to rely on it. 1933 S. 365. Obstruction to a right of way being a "continuing nuisance", limitation does not apply to such a case. 60 C.L.J. 213=1935 C. 201.

BURDEN OF PROOF.—When limitation is pleaded in defence the duty of proving that the suit is in time lies on the plaintiff. 1941 R.D. 672=1941 O.A. (Supp.) 617=1941 A. W.R. (Rev.) 677; 1942 O.W.N. (B.R.) 454.

ACT APPLIES TO CLAIMS, NOT DEFENCES.—Limitation Act does not bar defences to an action, *e.g.*, plea of fraud. 20 C.W.N. 957=34 I.C. 37=1916 P.C. 172=31 M.L.J. 362 (P.C.); 37 Bom.L.R. 471=1935 B. 326=59 B. 502. *See* 35 I.C. 610=32 M.L.J. 84; 49 I.C. 115; 1928 C. 810=110 I.C. 571; 1929 A. 776 but the Act bars a plea of set-off. 66 I.C. 209=25 C.W.N. 800=1921 C. 67=48 C. 817. The Act does not bar the use of a mortgage as a shield, by way of equitable defence, though suit to enforce it is barred. 108 I.C. 149=1928 A. 99. *See also* 132 I.C. 767 =1931 O. 157; 138 I.C. 206=9 O.W.N. 387 =7 Luck. 655=1933 Oudh 9. A party in possession cannot be prejudicially affected by the law of limitation. 132 I.C. 661=1931 L. 688. Even if a claim based on certain facts is barred by efflux of time, a defence based on those facts is not so barred. 182 I.C. 510 =1938 Lah. 286. It is not the law that limitation can never affect a plea urged in defence. Where the plea rests on a right which the defendant had no occasion to urge until his possession was attacked, limitation would not ordinarily affect his defence; but when his defence raises a plea of some incohate and imperfect right, the establishment of which would depend upon a suit within a particular time, he should not be allowed to urge the defence if the suit which has not been brought would, at the time when he urged the defence, have been time-barred. 1939 Mad. 678=(1939) 1 M.L.J. 770. By the Punjab Laws Act, 1872, the Mahomedan Law is made applicable to the religious institutions of Muslims but only in so far as it has not been modified by legislation. Thus the Limitation Act applies though limitation is not an original principle of Mahomedan Law. The rules of limitation which apply to a suit are the rules in force at the date of the institution of the suit, limitation being a matter of procedure. The Limitation Act applies to immovables made waqf, notwithstanding that the ownership in such property is said to be in God. The Limitation Act provides a rule of procedure whereby British

(2) It extends to the whole of British India; and

(3) This section and section 31 shall come into force at once. The rest of this Act shall come into force on the first day of January, 1909.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "applicant" includes any person from or through whom an applicant derives his right to apply:

(2) "bill of exchange" includes a hundi and a cheque:

(3) "bond" includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligations shall be void if a specified act is performed, or is not performed, as the case may be:

Indian Courts do not enforce rights after a certain time, with the result that certain rights come to an end. *It is impossible to read into the modern Limitation Acts any exception for property made waqf for the purpose of a mosque* whether the purpose be merely to provide money for the upkeep and conduct of a mosque or to provide a site and building for the purpose. 67 I.A. 251=I.L.R. (1940) Lah. 493=52 L.W. 266=44 C.W.N. 957=42 Bom.L.R. 1100=1940 P.C. 116 =(1940) 2 M.L.J. 903 (P.C.).

STARTING POINT.—As to starting point of limitation, *see* 64 I.C. 447=19 A.L.J. 836= 1921 All. 73. When an appeal is preferred against an original decree after amendment but not attacking any point in the amendment, the period of limitation is computed from the date of the original decree. 43 A. 380=19 A.L.J. 152=192 I.A. 60. The period during which the execution of a decree is stayed by order of Court can be deducted in computing the period of limitation for executing a decree. 1923 C. 310 (2). Suspension of limitation period during pendency of Insolvency petition, *see* 1938 M. 19=(1937) 2 M.L.J. 703; 1937 M.W.N. 1182. Institution of administration suit does not save or suspend limitation. 38 Bom.L.R. 864=1936 Bom. 423. Time *bona fide* spent in appeal to administrative authorities may be deducted. 29 S.L.R. 382=1936 Sind 108. Decree incapable of execution—Time when begins to run. 1922 C. 136. Where a plaint is amended, it relates back to the date of the presentation of the plaint and limitation is counted from the date of the presentation. 63 I.C. 701. An order of Court cannot give a cause of action to a party to start a judicial proceeding. A cause of action briefly means "right and the infringement of the right". Where a party has an undoubted right and that right is infringed, a cause of action at once accrues to him. When it has so accrued and time has begun to run against him, an act of Court restraining him from interfering with or obstructing the opposite party, passed in a suit by that party, can never amount to an infringement of his right. I.L.R. (1939) Bom. 173=40 Bom.L.R. 1134=1939 Bom. 1. A party cannot claim fresh period of limitation on the basis of an order of execution Court which referred him to a regular suit if so advised. 40 P.L.R. 768=1938 Lah. 437. So long as the attachment is in force, the decree must be considered to be under execution and the decree holder is not called upon to make any fresh application to that effect. If he files a fresh application during the pendency of the previous application, it is not subject to any limitation. 189 I.C. 585. Starting point in case of fresh cause of action. *See* 43 M. 845=59 I.C. 472=39 M.L.J. 312; 1938 M.W.N. 113 =1938 Mad. 429. The question whether an application for review gives a fresh starting point of limitation for a declaratory suit depends upon whether the application reopened the question already decided. 66 I.C. 205=1922 O. 148. The pendency of an arbitration before an arbitrator does not oust the jurisdiction of a Civil Court and the fact of the reference does not suspend the operation of limitation. 61 I.C. 807=6 P.L.J. 273 =1921 P. 166 (2). Condition that suit is to be filed "within two months". Starting point. *See* 1937 M.W.N. 1319. Where time is given to a party to pay a certain sum of money *"by a certain date"*, it includes that date. The word "by" indicates the utmost limit of time, being the end or the expiry of the date or period indicated; and in reckoning a day it is to be taken as from midnight to midnight. Although a Court of Law is not expected to receive money after 5 P.M., or 6 P.M., if a tender is made at any time before midnight that day, it is a valid tender. 15 Mys.L.J. 503=42 Mys.H.C.R. 545. Where in a suit against two defendants, an interlocutory judgment is passed dismissing the suit against one of them, and a final judgment later on dismissing the suit against both, limitation for purposes of appeal begins to run from the date of the interlocutory judgment so far as the former defendant is concerned. 164 I.C. 718=1936 Rang. 313. Suit against two persons—Notice under sec. 80, C. P. Code, required against one only —Limitation period is extended against the other also. 32 S.L.R. 106=1937 Sind 281= 172 I.C. 622.

LACHES.—Defence of laches cannot prevail where a statutory period of limitation is prescribed. 41 C. 771=26 I.C. 284=18 C. W.N. 631. A plea of limitation which is apparent on face of record can be taken in appeal, though not taken in the trial Court, where such plea has not been waived. 1933 L. 1044 (1).

(4) "defendant" includes any person from or through whom a defendant derives his liability to be sued:

(5) "easement" includes a right not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another or anything growing in, or attached to or subsisting upon, the land of another:

(6) 'foreign country,' means any country other than British India:

(7) "good faith" nothing shall be deemed to be done in good faith which is not done with due care and attention:

(8) "plaintiff," includes any person from or through whom a plaintiff derives his right to sue:

(9) "promissory note" means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight:

(10) "suit" does not include an appeal or an application: and

(11) "trustee" does not include a benamidar, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title.

PART II.

LIMITATION OF SUITS, APPEALS AND APPLICATIONS.

Dismissal of suits, etc., instituted, etc., after period of limitation.

3. Subject to the provisions contained in sections 4 to 25 (inclusive), every suit instituted, appeal preferred, and application made, after the period of limitation prescribed therefor by the first schedule shall be dismissed, although limitation has not been set up as a defence.

SEC. 2 (4): "DEFENDANT".—Subsequently born son in a joint Mitakshara Hindu family —Liability to be sued. *See* 3 P.L.T. 709 =1 P. 506=1922 P. 450. Independent trespasser claiming to be in possession in his own right does not derive liability through a former trespasser. 44 C. 858=44 I.A. 104= 32 M.L.J. 505 (P.C.). The definition of "defendant" in sec. 2 (4) must be read into sec. 13. (1945) 1 M.L.J. 275=58 L.W. 181=1945 Mad. 315.

SEC. 2 (5): EASEMENT.—*See* 1944 Pat. 261. "One Person".—An indeterminate and fluctuating body like the Sonthals and Ghatwals cannot acquire easement rights. 2 P.L.J. 323 =39 I.C. 868. A mere right to fish not excluding the rightful owner is a profit *a prendre* and falls within the definition of easement given in sec. 2 (5) of the Act. 148 I.C. 431=1934 P. 420. So also a right to cut bamboos in another's land. 155 I.C. 966 =16 Pat.L.T. 192=1935 P. 188.

SEC. 2 (7): "GOOD FAITH".—Wanton negligence on the part of a legal adviser is not "good faith". 3 P.L.J. 484=46 I.C. 509. *See* 13 I.C. 260=5 S.L.R. 181.

SEC. 2 (8).—The term "plaintiff" does not include "ghatwal". Ghatwal does not claim through his father. 17 C.W.N. 137=40 C. 173. Mere transfer of title does not prolong cause of action. 24 I.C. 216; 7 M.I.A. 323 (353). As to purchaser from Government, *see* 28 C.W.N. 66=1924 C. 394. A succeeding *watandar* claims under his predecessor. So, adverse possession against the previous holder operates equally as bar to a suit by the successor against the vendee of *watan* lands. 55 B. 21=129 I.C. 145=1931 B. 24.

SEC. 2 (10).— "Suit" does not include an appeal. 8 B.R. 397.

SEC. 3: SCOPE OF SECTION.—Sec. 3 is mandatory and a suit or an application shall be dismissed even if limitation has not been set up. 24 C.L.J. 467=21 C.W.N. 564; 39 I.C. 154=11 Bur.L.T. 73; 29 I.C. 476=19 C.W.N. 970. *See also* 155 I.C. 588=1935 N. 109; 152 I.C. 939=1935 A. 92; 62 I.A. 80 =57 All. 242=1935 P.C. 85=68 M.L.J. 665 (P.C.). But *see* 23 I.C. 360; 16 I.C. 418; 42 I.C. 536; 32 I.C. 785; 34 C. 941 (F.B.); 1933 A.L.J. 1283; I.L.R. (1937) Nag. 61=1936 Nag. 285; I.L.R. (1939) All. 990=1939 A.L. J. 1127=1940 All. 29. Sec. 3 is mandatory and leaves no room for equitable considerations. 167 I.C. 217=1942 Pat. 335. Sec. 3 applies to every suit including suits concerning mosques, religious endowments, and lands and buildings dedicated to religious uses. 40 P.L.R. 319=1938 Lah. 369. An application to execute an award under the Bombay Co-operatice Societies Act falls within sec. 3 and the Limitation Act is applicable to such an application. 40 Bom.L.R. 889=1938 Bom. 424. The principle is applicable even to an appellate Court. 1936 N. 285; I.L.R. (1937) Nag. 61. Though limitation is not pleaded or raised in the trial Court, the appellate Court before which the plea is first raised must take notice of it if it appears to that Court that the suit is barred by time. 20 Pat.L.T. 124=1939 Pat. 421. No doubt the plea of limitation can be urged at any stage having regard to sec. 3, but when a party does take the appropriate defence but does not put before the Court materials to

Explanation.—A suit is intsituted, in ordinary cases, when the plaint is presented to the proper officer; in the case of a pauper, when his application for leave to sue as a pauper is made; and, in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator.

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sustain that defence, it is difficult for the Court sitting in appeal to give effect to the contention. 64 C.L.J. 513=1936 Cal. 382. Court has no power to relieve a suitor on the ground of hardship or mistake. 30 S.L.R. 242=165 I.C. 91=1936 S. 169 (Application under O. 22, r. 9, C. P. Code). A combination of claims in one action can be split into its component parts each of which comes under its own rule of limitation. 130 I.C. 574=1931 L. 309. A Court is not bound to take notice *suo motu* of the fact that an application made to the trial Court was barred by limitation. 1929 A. 485=121 I.C. 552. But *see also* 1930 A. 699; 1940 Rang.L.R. 273=1940 R. 207. In an application for transfer of execution, the transferring Court should investigate the question of limitation when raised, as it is the proper Court to decide such objections under sec. 39, C. P. Code. 1929 M. 199=29 L.W. 246. Any Court having an application for execution made to it must *suo motu* determine the question of limitation. It has not only power but duty to determine such question. 1930 A. 699. Sec. 3 is not affected by sec. 151, C. P. Code. 57 I.C. 15. Inherent powers of Court cannot be invoked to evade limitation. 43 M.L.J. 184 =1922 M. 417 (2). Court is assumed to have decided plea of limitation unless contrary is shown. 8 Pat.L.T. 494=1927 P. 261. The question whether a suit is within time must be decided primarily on the basis of the plaintiffs' own pleadings and not on the basis of defence set up. 1933 L. 404. *See also* 1933 L. 491=34 P.L.R. 841. It is in the discretion of the Judge or the officer appointed in that behalf to accept an application beyond office hours, and if the discretion is exercised in favour of a litigant it could not be said that the discretion was not properly exercised. Where an application for execution is presented to an officer appointed to receive such application on the last day of limitation beyond office hours, the presentation is valid. No ratification by the Judge is necessary for such presentation. I.L.R. (1938) Nag. 451=1938 Nag. 46. Sec. 3 is mandatory and leaves no room for equitable considerations. 197 I.C. 217=1942 P. 335.

"SUIT".—Sch. I prescribes periods of limitation for bringing suits and sec. 3 does not apply to defences. 1 P.R. 1916=32 I.C. 485; 40 I.C. 820=1917 M.W.N. 327; 40 I.C. 358 =5 L.W. 593. But *see* 41 M. 102=33 M.L.J. 309 (A person whose right to set aside an alienation is barred cannot attack the alienation by way of defence to a suit for possession brought by the alienee). Exemption from limitation cannot be recognised apart from what the Limitation Act itself provides. 37 M. 186=24 M.L.J. 96; 62 C. 66 =1935 C. 333. Disqualification of a proprietor under the Court of Wards Act is no ground for exemption from limitation. 16 I.A. 60=46 C. 694=23 C.W.N. 531=1918 P. C. 180=36 M.L.J. 210 (P.C.): 28 I.C. 818=19 C.W.N. 1193. An application to execute a decree of a Baroda Court sent to British Court is governed by the local law of the Court where the application to execute is filed and will be rejected if barred by that Act. 40 B. 504=18 Bom.L.R. 481. The Act applies to appeals from Revenue Courts to the District Judge. 25 I.C. 703=17 O.C. 254. The Act does not apply to a reference to a Judge on an order by a Deputy Registrar of the Chief Court. 38 I.C. 563=9 Bur.L.T. 226. Plea of prescriptive right, *i.e.*, positive limitation cannot be taken at any stage. 1928 N. 203. Sec. 3 does not apply to the case of a claim by a liquidator against the company. 8 R. 581 =1931 R. 72. Application by Official Assignee under secs. 7 and 36, Presidency Towns Insolvency Act is equivalent to "suit" for the purpose of this section and Art. 109. 59 M. 1020=1936 M. 778=71 M.L.J. 289 (F.B.).

DATE OF INSTITUTION.—For purposes of Limitation Act a suit must be deemed to be instituted on the date on which the plaint is presented to the proper officer even in the case of suits where leave under Cl. 12 of the Letters Patent is necessary. Therefore a suit is within time if the plaint is presented to the proper officer within the period of limitation even though leave under Cl. 12 of the Letters Patent is obtained after the expiry of such period. 44 C.W.N. 604. Where a memorandum of appeal is presented to the Court on the last day of limitation with insufficient Court-fee and the deficiency in Court-fee is subsequently paid by the appellant of his own accord, the appeal must be deemed to have been presented only on the date when the Court-fee is paid in full, and is therefore out of time. 165 I.C. 57=14 L.W. 249. *See also* 1938 M.W.N. 257=1938 M. 560=(1938) 2 M.L.J. 135. When an amendment has been allowed and a date has been fixed for filing the amended plaint the presentation of the amended plaint relates back to the original presentation of the plaint, and the date of the original presentation of the plaint has to be taken to be the date of institution of the suit for the purpose of sec. 3. 14 Rang. 383=1936 Rang. 508. Where a plaint in a suit presented within the period of limitation is returned for want of pecuniary jurisdiction, and the plaint is reduced in its scope in order to get over the difficulty of want of jurisdiciton and represented to the same Court on a date on which a new suit would be barred, it may be treated as a continuation of the previous, suit; the Court returning the plaint has power to receive the plaint with a reduced scope on re-presentation. 49 L.W. 25=1939 M.W.N. 449=1939 Mad. 397. *See also* 1940 Mad. 689=(1940) 1 M.L.J. 590. Registration

of a document having been refused on 3—11—1928, a suit was instituted on 1—12—1928 under sec. 77 of the Registration Act. The defendant who was a lunatic died on 15—12—1928, without a guardian *ad litem* having been appointed at all. His heirs were substituted on 18—1—1929. *Held*, the suit was instituted on 1—12—1928 and not on 18—12—1929, when the heirs of the deceased defendant were substituted; it cannot be said that, because there was no guardian *ad litem* appointed for the lunatic defendant, there was no legally instituted suit against him. 38 C.W.N. 900=1934 C. 833. Where the person against whom an appeal is to be presented is a minor, the appointment of a proper guardian is not a necessary preliminary to the filing of an appeal, although it is necessary before the appeal can be properly heard and disposed of. The appeal therefore must be deemed to have been presented in time by calculation of the date when it was actually presented. 1936 P.W.N. 321=1936 Pat. 153.

CONSENT OR AGREEMENT OF PARTIES—WAIVER.—Where the plea of limitation is waived though the suit is time-barred, the decree following is a consent decree and thus not appealable. 47 I.A. 200=18 A.L.J 625 =24 C.W.N. 1055 (P.C.)=39 M.L.J. 68 (P. C.). There is no estoppel against a statute. Parties cannot waive or contract themselves out of the Law of Limitation. 38 M. 374= 21 I.C. 24=25 M.L.J. 264. *See also* 44 I.C. 570=3 Pat.L.J. 132; 54 A. 573=1932 A. 273 (F.B.); 18 I.C. 595=17 C.W.N. 518; 1924 O. 127=26 O.C. 324. Willingness to pay barred instalments in previous suit does not operate as estoppel. 24 I.C. 507.

ONUS.—The plaintiff must prove from his own allegation that his suit is not barred by limitation. He cannot rely on defendant's allegations. 6 P.R. 1912=12 I.C. 453 (2). Burden of proof—Suit for recovery of deposit—Plaintiff's case *prima facie* within time—Defendant must plead and prove that particular demand was made and refused beyond period of limitation. 1934 A. 11.

PLEA WHEN CAN BE RAISED.—The question of limitation can be taken at any time in the course of proceedings. 1 Pat.L.J. 221=36 I. C. 960. *See also* 35 I.C. 337; 20 I.C. 360; 1933 N. 130=29 N.L.R. 272. Plea of limitation may be raised for the first time in first appeal. 45 B. 920=23 Bom.L.R. 279=1921 B. 381; 1933 N. 130. But *see* 60 I.C. 280; or in second appeal. 46 C. 455=47 I.C. 25=22 C.W.N. 994; 20 I.C. 360; 25 I.C. 354; 63 I. C. 785; 1928 N. 203; 1930 C. 703; but all facts necessary to support the plea of limitation must be apparent on record if limitation is pleaded in appeal for the first time. 1923 C. 283 (2). *See also* 44 I.C. 890; 16 I.C. 418; 13 I.C. 792=84 P.R. 1911; 49 A. 809=102 I.C. 1=1927 A. 589; 27 Punj.L.R. 870; 16 1926 L. 451; 1934 R. 329=13 R. 43; 1936 C. 382. Sec. 3 does not lay upon an appellate Court the duty of dismissing suits filed out of time in the original Court, unless its attention is drawn to it. 42 I.C. 536. *See also* 28 I.C. 378=28 M.L.J. 115; 17 I.C. 638=8 N.L. R. 174; 4 Pat.L.J. 645=52 I.C. 125.

PERIOD TO OBTAIN SANCTION NOT EXCLUDED. —Where the plaintiff who wanted to sue a native prince applied to the Government of India for previous sanction and it took four years to obtain the same and by that time the suit had become barred, the four years period could not be deducted. 30 Bom.L.R. 1463.

EXPLANATION — "SUIT INSTITUTED".—A mere claim against a company in compulsory liquidation is not by virtue of the explanation to sec. 3 a "suit instituted" within the meaning of sec. 3. The "Explanation" merely enacts that in the case of a suit (*i.e.*, a proceeding instituted by the presentation of a plaint) against a company which is being wound up by the Court, the institution of such a suit is for purposes of sec. 3 advanced to an earlier date, namely, the date when the claim was first sent in to the Official Liquidator. 60 I.A. 13=54 A. 1067=1933 P.C. 63=64 M.L.J. 403 (P.C.). A suit is instituted on the day on which the plaint is presented. 27 C. 814; 31 C. 75; even if insufficiently stamped provided the deficiency is supplied within the time allowed by Court. 27 Cal. 814; 31 Cal. 75. *See also* 1940 Mad. 689=(1940) 1 M.L.J. 590; 1939 Mad. 397. The presentation of a plaint to a Court which has no jurisdiction to try the suit cannot be said to be the institution of the suit, even though the plaint has been accepted as being in order and registered. But when a plaint is presented to a Court having jurisdiction and that Court accepts the plaint as being in order, it must be held that the suit has been instituted. Merely because at some later stage, as the result of a finding on the value of the subject matter of the suit, it is found that the plaint should have been presented to another Court having jurisdiction and that the plaint is returned for presentation to that Court, it does not mean that the suit has not been instituted. And when a plaint has been so returned and re-presented to the Court having jurisdiction, the date of institution of the suit is the date on which the plaint was originally presented and not the date on which it is re-presented. 1941 Mad. 711=(1941) 1 M.L.J. 629. But when deficiency in Court-fee is subsequently paid by a party of his own accord, the appeal must be deemed to have been presented only on the date when the Court-fee is paid in full. 165 I.C. 57=44 L.W. 249. Plaint presented on the last day after Court hours to the Judge. 65 I.C. 674; 34 A. 482 (F.B.). The plaint must be presented to an officer authorized to receive it. 12 A. 57=18 W.R. 172; 8 M. 411. Similarly, in the case of appeals. 15 M. 78; 19 C. 747; 12 A. 129; 20 M. 319=7 M.L.J. 259; 16 C. 250. But *see* 37 P.L.R. 124=1935 L. 124 (2). A pauper suit commences for the purpose of limitation on the day when the petition to sue *in forma pauperis* is presented to the Court. 32 Bom.L.R. 1343=1931 B. 47 (2). *See also* I.L.R. (1938) Nag. 183= 1937 Nag. 36; 41 Bom.L.R. 784; I.L.R. 1943 B. 721=1944 B. 63=45 Bom.L.R. 1002; 45

4. Where the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day that the Court re-opens.

Where Court is closed when period expires.

Bom.L.R. 544=1943 B. 292. Also for purpose of application of rule of *'lis pendens'* under sec. 52, T. P. Act. 1936 M. 853=71 M.L.J. 301. But to save limitation, when application to sue as pauper is rejected, permission of Court should be obtained to pay Court-fee on original plaint. 41 C.W.N. 537=65 C. L.J. 151=1937 C. 241. Such permission will not be given when application to sue as pauper was not *bona fide*, but was made merely to gain time to pay Court-fee. 166 I.C. 796= 1937 N. 36. The plaint is presented when it is handed over to the proper officer in the prothonotary's office. The obtaining of the leave of the Judge under cl. 12 of the Letters Patent in a case where such leave is necessary and the admission of the plaint does not affect in any way the presentation of the plaint for the purposes of the Limitation Act. 36 Bom.L.R. 84=1934 B. 91. Plaint filed by pleader not only authorized in writing—Not valid presentation. 39 C.W.N. 534; 44 L.W. 528=165 I.C. 659=71 M.L.J. 604=I.L.R. 1937 M. 320=1937 M. 239. But *see* 63 C 733=40 C.W.N. 730. The effect of secs. 3 and 9, is that all questions of limitation have to be decided under the Act, and once time has begun to run, no subsequent disability or inability stops it, and no equitable grounds for suspension of the running of the time or of the cause of action outside the provisions of secs. 4 to 25 of the Act can be relied on or added to those provisions. I.L.R. (1939) Bom. 173=40 Bom.L.R. 1134=1939 Bom. 1.

SECS. 3 AND 4.—If a plaintiff, availing himself of the option given to him under O. 2, R. 3, C. P. Code, has united several causes of action against the same defendant before a Court competent to try not necessarily those causes of action separately but the suit as a whole when those causes of action are combined, the question of limitation under secs. 3 and 4 of the Limitation Act has to be regarded with special reference to the jurisdiction of that Court to try the suit and not to the jurisdiction of the other Courts which have been able to try those suits when split up had they been brought before them No restriction can be implied on the facilities given by O. 2, R. 3 to a plaintiff to join several causes of action because it happens that another Court might have tried one of those causes of action. sued on. The law of limitation should not be unduly strained to bar a suit any more than it should be strained to allow it to be tried. 1941 Mad. 786=(1941) 2 M.L.J. 244. Courts have no power to invent new grounds of exemption from limitation. I.L.R. 1942 M. 562=1942 M. 487=(1942) 1 M.L.J. 472.

SEC. 4: APPLICABILITY.—There is a marked distinction in the scope and purpose of secs. 4 and 14 of the Limitation Act. Sec. 14 provides for the exclusion of certain periods in computing the period of limitation. Sec. 4, on the other hand, has nothing to do with computing the period of limitation. What it provides is that where the period prescribed expires on a day when the Court is closed, the application, etc., may be made on the day the Court re-opens. There is nothing in sec. 4 which alters the length of the prescribed period. 62 I.A. 80=57 All. 242=1935 P.C. 85=68 M.L.J. 665 (P.C.); I.L.R. (1937) N. 217=1937 Nag. 215; 1940 N.L.J. 227=1940 N. 401; 1940 N.L.J. 607=1941 N. 100=I.L. R. 1941 N. 144. Sec. 4 has nothing to do with computing the period prescribed under sec. 19. Consequently, an acknowledgment signed after the expiration of the period prescribed by sec. 19 cannot be brought within time by the application of sec. 4. I.L.R. (1941) Nag. 144=1941 Nag. 100. *See also* 1937 Lah. 642; 45 L.W. 72=1937 M. 367. Sec. 19 cannot include the period extended by sec. 4. Where the period of three years prescribed for a suit on a promissory note expires during a period when the Court is closed, an acknowledgment of liability or endorsement made after such date but before the re-opening of the Court will not serve as a fresh starting point of limitation. 1937 Mad. 367=(1937) 1 M.L.J. 262=I.L.R. 1945 M. 634=1945 M. 137= (1945) 1 M.L.J. 38; 1938 A. 606=I.L.R. 1938 All. 861. Sec. 4 applies to cases where a definite period of limitation is given in the section, not applicable to conditions in the decree. No Court has power to alter the terms of the decree when it has become final so as to extend the time allowed for payment. 41 A. 47=48 I.C. 353=16 A.L.J. 892. In order to enable a party to avail himself of the provisions of sec. 4 of the Act, it must be shown that the suit is instituted in a Court which had jurisdiction to entertain the suit. Where the Court in which the suit is instituted on the re-opening day after a vacation is a Court which has no pecuniary jurisdiction to entertain the suit, and the plaint is returned to be filed in proper Court, the plaintiff is not entitled to deduct the period of the vacation in calculating the period of limitation. 48 C. W.N. 187. The furnishing of security or the deposit of costs is not an application within the meaning of sec. 4. An appellant to the Federal Court who deposits the printing charges does not move the Court to do anything. 19 Pat. 123=20 P.L.T. 905=1939 Pat. 667 (F.B.). Even if it be assumed that the application for obtaining a copy of the decree does not strictly fall within the purview of sec. 4, the general principle underlying this section, which has been reproduced in sec. 10, General Clauses Act, must be given effect to, namely that where an act or proceeding is allowed to be done on a certain day, then if the Court or office is closed on that day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day on which the Court or office is opened. 1938 Lah. 707. Sec. 4 has no application

where a certain date has been fixed for payment by agreement of parties. 56 I.C. 495=1 Pat.L.T. 227. But *see* 12 I.C. 810=7 N.L.R. 176. Whether applicable to L. P. appeals. 2 L. 127=1921 Lah. 26; and an application to file an appeal *in forma pauperis*. 30 C. 790. The provisions of sec. 4 are quite general and apply to an application under sec. 12 (2) of the Oudh Courts Act. 14 Luck. 138=1938 O.W.N. 706=1938 Oudh 186; 1942 O. W.N. 106=17 Luck. 628=1942 Oudh 240. Where the time for presenting an application expires while a Court is closed, the applicant may present it to Court on the date when it opens again. The date of presentation goes back to the day when it ought to have been, but could not be, presented. 120 I.C. 377. The period allowed by sec. 4 is not intended to be cut down; and a litigant should not be deprived of his right to go to a normal Court subject to normal procedure because a Court of a very special nature—the Village Court—happens to be open to him. A plaintiff is therefore entitled to wait for the re-opening of the Munsiff's Court after the vacation in order to avail himself of sec. 4 of the Limitation Act, though the suit may be cognizable in the Village Court and there is no compulsion to go to the Village Court which might be open on the day the period of limitation expired. The Court of the lowest grade in sec. 15, C. P. Code, refers to Courts subject to the Code and cannot refer to a Village Court. I.L.R. (1940) Mad. 684=51 L.W. 179 =1940 Mad. 495=(1940) 1 M.L.J. 220. An application to the Civil Court under O. 21, R. 89, C. P. Code, to set aside an execution sale held by the Collector, is one in respect of which the benefit of sec. 4 of the Limitation Act can be availed of. The fact that the Court of the Collector was open when the limition expired does not make sec. 4 inapplicable. 40 Bom.L.R. 15°=1938 Bom. 209. As to presentation of appeal, *see* 1931 P. 60=130 I.C. 265 (1). Sec. 4 applies to suits under sec. 77 of the Registration Act. 12 I.C. 33=16 C.W.N. 20. Also to applications under sec. 54 of the Provincial Insolvency Act, 1920. 1933 M.W.N. 1049. Section is not applicable to the period of grace allowed by sec. 31 (1), Limitation Act. 36 B. 268=12 I.C. 811=13 Bom L.R. 1153. But *see* 15 I.C. 439=15 O. C. 373. The principle laid down in sec. 4 of the Act and in sec. 10 of the General Clauses Act is not applicable to the period of limitation prescribed by a pre-emption decree for the payment of money. 67 I.C. 772=3 L L J. 310=1921 Lah. 6 (F.B.). Sec. 4 of the Limitation Act and sec. 10 of the General Clauses Act give expression to the general principle of law enunciated by the maxims *Lex non cogit ad impossibilia*—the law does not compel a man to do that which he cannot possibly perform, and *Actus curiae neminem gravabit*—an act of the Court shall prejudice no man. These sections do not in any way extend the period of limitation, nor do they furnish any data for computation of time; they merely embody a rule of elementary justice that if the time allowed by statute to do an act or to take a proceeding expires on a day when the court is closed; it may be done on the next sitting of the court. I.L.R. (1943) All. 84=1942 A.L W. 635=1942 A.L.J. 592 =1942 All. 429 (F.B.). Secs. 4 to 25 are not confined in their application to periods prescribed in the Limitation Act but extend also to periods prescribed by other general Acts such as the C. P. Code. 43 M.L.J. 168=45 M. 785=1922 M. 268. *See also* 44 M. 817=1921 M. 651=41 M.L.J. 84 and the cases cited on the point under sec. 1. Section applies to application under sec. 68 of the Prov. Ins. Act. 9 R. 150=1931 R. 209. Although a party cannot extend a period allowed by law for doing an act in Court by his own act, yet if the Court is closed on the last day of that period, he is entitled to do the act on the first opening day. 12 I.C. 810=7 N.L.R. 176. *See also* 19 N.L.R. 116=1923 N. 246; I.L.R. (1937) 2 Cal 612=1937 Cal. 454 (application for substitution of heirs of deceased appellant). Payment under a compromise decree on re-opening day. 60 I.C. 894=19 A.L.J. 49=1921 All. 44; 20 A.L.J. 543=1922 A. 195. Renewal of promissory note by manager on re-opening date to stave off filing of suit—Expiry of three years period during the holidays. *See* I.L.R. 1945 M. 634=1945 M. 137=(1945) 1 M.L.J. 38. When the period prescribed for a suit to recover a debt expires during the Court vacation and before re-opening the debt is assigned, the suit brought by the assignee on the re-opening day is within time. 19 I.C. 820=15 Bom.L.R. 348. If the last day when the debt could have been enforced was a public holiday and on the next re-opening day the debtor is adjudicated an insolvent, the debt is provable in insolvency. It is not necessary for the creditor for the purpose of keeping his debt alive, to file a suit on the re-opening day after the intervention of the insolvency. 55 M. 630=1932 M. 287=62 M.L.J. 256 (F.B). The section avails only where there has been a presentation to the proper Court. 47 I.C. 624 =8 L.W. 256. *See also* 1937 Lah. 464=173 I.C. 740; 41 C.W.N. 956; 48 C.W.N. 187; 1937 Nag. 215=I.L.R. (1937) Nag. 217; 68 M.L.J. 665 (P.C.) noted *supra*. Suit filed in wrong Court—Deduction of holiday not permissible. 43 M.L.J. 579=1923 M. 114 (2). *See also* 11 L. 12=1929 L. 425; 27 A.L.J. 976=118 I.C. 670=1929 A. 677; I.L.R. (1937) Nag. 217=1937 N. 215. Wrong Court —Presentation on re-opening day—Exclusion of holday if allowable. *See* 35 I.C. 292=14 A.L.J. 310. *See also* 44 M. 817=1921 M. 654=41 M.L.J. 84; 36 M. 131=21 M.L.J. 1000; 48 C.W.N. 187. Court closed—Meaning of—Officer absent in camp—Applicability of section. *See* 29 I C. 449=38 M. 295 (F. B.). The absence of a presiding officer of a Court is not tantamount to the Court being closed during the period of his leave within the meaning of sec. 4 where the office of the Court is open and the establishment of the Court is present. 1933 L. 239=34 P.L.R. 338. But *see* 15 L. 308=1934 L. 622 (1). The

5. Any appeal or application for a review of judgment or for leave to

Original Side of the Bombay High Court is not closed within the meaning of the section in order to dispose of summary suits on negotiable instruments. 25 Bom.L.R. 1296 =1924 B. 144. So also in the case of filing short cause suit when provision had been made for urgent business. 51 B. 848=29 Bom.L.R. 981=1927 B. 480. Application to set aside dismissal for default—Court working with special permission of the High Court —Application presented on the next day—Good ground for excusing delay. 17 L.W. 413=1923 M. 489. The period of limitation mentioned in sec. 4 must be understood not only as prescribed in the Schedule but also as qualified by secs. 3 to 22 of the Act. Where the three years period prescribed by sec. 8 expired during the vacation of the trial Court and the plaint was presented a month later on the date when the Court-re-opened, *held*, that sec. 4 applied to the case and that the plaint was within time. 1928 M.W.N. 796= 1928 M. 1255. Suit on promissory note—Courts being closed for summer recess—Assignment of note on re-opening date—Suit filed on same day is maintainable. 52 L.W. 221=1940 Mad. 908=(1940) 2 M.L.J. 251. Where an alleged payment is made at a time beyond 3 years of the execution of a promissory note, the provisions of sec. 4 cannot be invoked to extend the prescribed period under sec. 20. 1939 A.W.R. (H.C.). 153=1939 All. 252. The endorsement of payment on the back of a promissory note made more than 3 years after its execution but during the close holidays of the Civil Courts does not give a fresh start of limitation under sec. 20 and sec. 4. I.L.R. (1938) All. 861=1938 A.L.J. 1183=1938 All. 606. *See* 1938 M. 683=47 L. W. 726. *See also* 61 M.L.J. 675=34 L.W. 650=54 M. 286=1932 M. 129. Suit by plaintiff after attaining majority). (Plaintiff cannot be allowed any extension of time to save limitation merely on equitable considerations unless the extension is provded for by the statute. [1920 M. 1 (F.B.) and 1924 L. 40, Ref.] 146 I.C. 939=1933 L. 615. Period for preferring appeal expiring during vacation, copy of application filed after re-opening and appeal preferred immediately after obtaining copies—Limitation is saved. 6 R. 743. *See* 11 L. 111=1930 L. 216. *See also* 13 P. 632=1934 P. 367; 1934 P. 4. Where the period of limitation for filing an appeal has expired during the vacation the only privilege which is granted to the appellant under sec. 4 of the Limitation Act is that he may file his suit or appeal on the day upon which the Court re-opens and on that particular day alone. If he delays in making his application for a copy until that day, then he is applying for a copy when the period of limitation has already expired and the extension granted by the application of sec. 4 cannot be combined with an extension under sec. 12 of the Act. I.L.R. (1942) Mad. 868=55 L.W. 426=1942 M.W.N. 503=1942 Mad. 604= (1942) 2 M.L.J. 104. *See also* (1943) All. 84. Though sec. 4 allows an appellant to file an appeal on the opening day of the Court though time has expired when the Court was closed, it does not operate so as to extend the prescribed period of limitation. In computing the period of limitation the proper method is to take what is primarily the prescribed period and then add to it the periods which are excluded by reason of sec. 12 or 14 or such like. If these periods all taken together happen to expire on the date on which the Court is closed, the party can wait and file an appeal on the date when the Court reopens. I.L.R. (1946) Lah. 107. A plaint filed in wrong Court was returned. It was represented after holidays as holidays intervened. Limitation was saved under secs. 14 and 4 of the Act. 33 C.W.N. 221=1929 C. 315.

SECS. 4 AND 12.—After filing an award in Court, the respondent served a notice on the petitioner on 21st November, 1941 and obtained judgment in terms of the award under sec. 17 of the Arbitration Act on 22nd December, 1941. Later on the same day the petitioner presented an application to set aside the award. The last day of the period prescribed by Art. 158 of the Limitation Act for making such an application, *viz.*, 21st December, 1941, being a Sunday, was a day on which the Court was closed. *Held*, that sec. 4 of the Limitation Act did not extend the period in cases where the last date of the period was a day on which the Court was closed, but only gave to the party concerned the right to make the application on the day that the Court re-opened, although the period had in fact expired and that, therefore, the privilege which that section conferred upon the petitioner did not prejudice the right of the respondent to obtain judgment in terms of the award on the expiry of thirty days from the date of the service of the notice and that consequently, the Court had jurisdiction to pronounce judgment in terms of the award on 22nd December, 1941. I.L. R. (1942) 2 Cal. 160=1942 Cal. 566.

SECS. 4 AND 20.—Sec. 4 does not prescribe a period of limitation but merely enables a suit, the limitation of which has expired during the time when the Courts are closed, to be filed on the reopening day. It does not add to any period of limitation. Accordingly, a payment made after the expiry of limitation but during the holidays when the suit could not be filed, cannot be pleaded to save limitation. 1946 A.W.R. (C.C.) 175=1946 O.A. (C.C.) 175=1946 O.W.N. 224.

SEC. 5: APPLICABILITY.—An application for leave to appeal to His Majesty in Council comes within the purview of sec. 5. 1923 A. 536; 1923 O. 93=26 O.C. 24. Sec. 5 contemplates an appeal that is to be instituted for the first time and not an appeal which has already been instituted but is amended later on account of any defect in the memorandum of appeal. The section cannot be invoked by an appellant who seeks to implead a necessary party after the limitation for the appeal. 42 P.L.R. 355=1940 Lah. 314.

Extension of period in certain cases.

appeal or any other application to which this section may be made applicable [1][by or under any enactment] for the time being in force may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

LEG. REF.

1 Substituted for the words "by any enactment or rule" by Act X of 1922, sec. 2.

Where a Privy Council appeal was dismissed as incompetent, an application for *review* does not come within the purview of the section. 36 C.W.N. 40=1932 C. 171. The provisions of sec. 5 are not applicable to an application for a final decree in a mortgage suit under Art. 181 and the Court has, therefore, no discretion under sec. 5 to extend the period of limitation prescribed by Art. 181; 62 I. A. 80=57 All. 242=1935 P.C. 85=68 M.L. J. 665 (P.C.); 1946 M. 38=59 L.W. 150= (1946) 1 M.L.J. 192. Where a Privy Council petition is not presented within the time prescribed owing to an agreement between the applicant and the opposite party not to continue the litigation further but to accept as final the decision of the High Court, but the opposite party goes back on the agreement and files an application for leave to appeal, there is sufficient cause for the applicant not presenting his application within time. 181 I.C. 248=1938 Lah. 836. The section applies to applications under O. 22, C. P. Code. 36 A. 235=12 A.L.J. 299. But *see also* 1922 L. 131. Sec. 5 is expressly made applicable by O. 22, r. 9, C. P. Code, to an application to set aside abatement for which time can be extended for "sufficient cause". 54 A. 280=1932 A. 459. *See also* I.L.R. 1938 M. 275=1938 M. 218=1938 1 M.L.J. 54=46 L.W. 898=1938 M.W.N. 14; 1935 L. 443. Sec. 5 is not to be invoked when a person acts in ignorance of specific provisions of law and thereby misses his remedy. 1940 A.W.R. (B.R.) 55= 1940 R.D. 159. Sec. 5 does not apply to applications to set aside execution sales under C. P. Code. I.L.R. (1939) 1 Cal. 452=69 C. L.J. 138=43 C.W.N. 383=1939 Cal. 310. There is no general discretion given to the Court to waive the period of limitation, or to extend it in hard cases. Sec. 5 does provide for extension in certain cases, but this section only applies to appeals or applications to which this section has been made specifically applicable; it does not apply to applications under O. 41, r. 19, C. P. Code, for it has not been specifically made to apply. The provisions of O. 41, r. 18, C. P. Code, read with Art. 168, Limitation Act, are exhaustive. There is therefore no inherent power remaining to the High Court *ex debita justitiae* to allow appeals which are time-barred, or to set aside an order dismissing an appeal under O. 41, r. 18, C. P. Code. Sec. 5 has not been made applicable to applications under O. 44, r. 1 and hence if such an application is out of time, no extension can be allowed. 15 Luck. 390=186 I.C. 161. Sec. 5 applies to proceedings under Provincial Insolvency Act. 33 I.C. 730=80 P.W. R. 1916; 18 L.W. 808=1924 M. 400 (1). The provisions of sec. 5 cannot be applied to the case of a creditor's petition under sec. 9 of the Provincial Insolvency Act, because such a petition is not an application within the meaning of sec. 78 of that Act. 55 M. 766=1932 M. 352=63 M.L.J. 152. *See also* 1933 L. 821. Sec. 5 may be applied to the applications under O. 41, rr. 17 and 19, C. P. Code. 1924 M. 114=45 M.L.J. 813=47 M. 171. Whether section applies to application under sec. 17, Provincial Small Cause Courts Act. 24 C.W.N. 380=31 C.L.J. 197. *See also* 1922 M. 186 (2)=42 M.L.J. 484=45 M. 628; 102 I.C. 228=1927 N. 238; 34 L.W. 795=61 M.L.J. 710; 1933 P. 134=14 Pat. L.T. 20. *See* notes under sec. 17, Provincial Small Cause Courts Act. A Small Cause Court Judge has jurisdiction to excuse delay in deposit under O. 9, r. 13, C. P. Code. 1922 M. 186 (2)=42 M.L.J. 484=45 M. 628. Applicability—U.P. Revenue Manual, Rule 1057—Appointment of Registrar Qanungo by Collector—Appeal—Delay—Power of Commissioner to excuse. 18 R.D. 710=16 L. R. 82 (Rev.). In the absence of any rule or enactment making sec. 5 applicable to an application for execution of decree the section does not apply to such an application. 44 I.C. 570=3 P.L.J. 132. Neither sec. 5 nor sec. 18 applies to cases under sec. 47, C. P. Code. 23 I.C. 240. The Court cannot extend the time prescribed by Art. 158. 18 C.L.J. 35=18 C.W.N. 626; 8 L. 274=1927 L. 273. Section does not apply to suits. 30 N.L.R. 294=149 I.C. 956=1934 N. 145; 87 I.C. 17=1925 O. 369; 56 C. 135=1929 C. 214; 32 C.W.N. 935. Except where there are special rules made by the High Court extending the provision of sec. 5 of the Limitation Act to applications for setting aside *ex parte* decrees, the Courts do not have the power to have recourse to the provisions of sec. 5, or enlarge the period prescribed by Art. 164 by resorting to sec. 151 of the C. P. Code. The Nagpur Judicial Commissioner's Court has not framed any rules under sec. 122 of the C. P. Code extending the application of sec. 5 to applications for setting aside *ex parte* decrees and so that Court has no such power. 1934 N. 43=144 I.C. 394. *See also* 40 Bom.L.R. 957=1938 Bom. 459; 40 C.W.N. 83; 1936 Lah. 672. Sec. 5 does not apply to applications under Art. 164 to set aside *ex parte* decrees. 1922 L. 266; 2 R. 655=1925 R. 187; 1927 L. 342 =100 I.C. 936; 1933 R. 110=144 I.C. 980. In the case of a restoration application under O. 9, r. 13, C. P. Code, sec. 5 of the Limitation Act has no application. 1943 A.L.W. 517. Section does not apply to applications under O. 9, r. 9, C. P. Code. 1928 M. 556; 49 B. 839=27 Bom.L.R. 1150; 1933 P. 557.

See also 51 All. 487=1929 A. 127; 53 B. 453=1929 B. 262. Not to application under O. 21, r. 90, C. P. Code. 1934 A. 314. Nor to application to restore appeal dismissed for default of prosecution. 142 I.C. 185=1933 R. 96. Section has no application to proceedings under the Land Acquisition Act. 1927 P. 333=103 I.C. 295. But *see* 1928 L. 263. Nor to appeals from Special Magistrates under sec. 39 of Ordinance II of 1932. 60 C. 571=37 C.W.N. 195=1933 C. 124. *See also* 1939 Sind 78; I.L.R. 1939 K. 378 (Appeal under sec. 476-B, Criminal Procedure Code); 1937 A.L.J. 365=1937 All. 466 (Appeal to Sessions Judge from conviction under sec. 124-A, Penal Code); 1941 A.W.R. (H.C.) 122=I.L.R. 1941 All. 356=1941 All. 207. The High Court has power to frame a rule making the provisions of sec. 5 applicable to applications to set aside *ex parte* decrees. 47 M. 824=1925 M. 14=47 M.L.J. 409; 53 B. 453=1929 B. 262. Sec. 5 does not apply to extend the period of 30 days provided by Art. 166. 2 P.W.R. 1919=50 I.C. 610. Section does not apply to an application under O. 21, r. 89, C. P. Code. 1925 O. 411=87 I. C. 722; 1933 R. 8. The period of limitation under Art. 166 being fixed by statute and not by the Court, it cannot be extended under sec. 148, C. P. Code, or under sec. 5, Limitation Act. 148 I.C. 1082=1934 Pesh. 25. The proviso to sec. 5 can be applied to extend the time which is limited by a section which is mandatory. 99 I.C. 779=1927 N. 165. Where limitation is prescribed by special rules made by the High Court, sec. 5 does not apply to extend the time. 110 I.C. 719=50 All. 865=1928 All. 708. Question of limitation does not arise when both Courts —District Court and Additional District Judge's Court—are part and parcel of the same District Court. 1928 N. 199. An application for review of judgmnet must be made within 90 days of the passing of the judgment and it is only when sufficient cause is shown that the time can be extended under sec. 5. 1931 A.L.J. 103=1931 A. 218. Sec. 5 applies to an application for review of an order passed under Companies Act. 116 I.C. 427=1929 N. 185. Applicability of sec. 5 to Income-tax Act, sec. 66. *See* 1937 Lah. 876. Sec. 29 of the Act makes it quite clear that sec. 5 would not apply for the purpose of extending the period of limitation prescribed by a special law like that embodied in the Registration Act. 42 C.W.N. 1174. Minority is a factor to be taken into account when considering circumstances which justify the application of sec. 5. Applications for the extension of time under sec. 5 have to be more liberally construed in favour of minors than other litigants. I.L.R. (1939) Lah. 433=1939 Lah. 439. Sec. 5 applies to appeals under Agra Tenancy Act, 1901. 14 R.D. 538. Also to applications under sec. 6, C. P. Tenancy Act. 20 N.L.J. 84. Also to appeals under sec. 112-B of the Bihar Tenancy Act. 9 B.R. 360. Sec. 5 may be applied to an application by a landlord for pre-emption under sec. 6 of the C. P. Tenancy Act. 20 N.L.J. 84.

CONSTRUCTION.—Sec. 5 should be liberally construed so as to advance substantial justice. 31 I.C. 876=13 A.L.J. 1101. *See also* 20 I.C. 3=159 P.W.R. 1913; 78 I.C. 953 =17 S.L.R. 306=1925 S. 60; 1929 C. 240. Delay of one day in presenting an appeal is as fatal as delay of any longer period. 38 I.C. 464=10 S.L.R. 165. In considering the question of "sufficient cause" under sec. 5, the equities on which secs. 4 and 14 are based may be taken into account. The existence of circumstances mentioned in secs. 4 and 14, may, therefore, be regarded as a sufficient ground for excusing the delay. 1941 M.W. N. 989=(1941) 2 M.L.J. 873 - 1942 M. 170.

DELAY NOT EXPLAINED.—When the delay is not sufficiently explained it should not be excused under sec. 5. 25 I.C. 30=12 A.L. J. 837. *See also* 26 I.C. 472=16 M.L.T. 547; I.L.R. 1937 N. 494; 1937 Nag. 65; 1937 Pat. 528; 10 I.C. 210; 1923 L. 144 (1); 4 L.L.J. 475=1923 L. 95; 3 L.W. 109=32 I.C. 579; 50 C.L.J. 397. Each day's delay to be accounted for. 103 I.C. 498=1927 L. 717; 14 L. 656=1933 L. 681; 39 P.L.R. 897 (1); 20 Lah.L.T. 115. Burden of proof is upon person claiming relief under this section. 30 S.L.R. 242=165 I.C. 91=1936 S. 169.

DELAY IN GETTING COPIES.—When the copy of the trial Court's judgment has been obtained before the expiry of the period of limitation, the time spent in obtaining the same cannot be added under sec. 5 to the end of the period of limitation. 148 I.C. 818 (1)=1934 L. 464. Though there is no absolute necessity to obtain a copy of a judgment on review, it may help in drafting the grounds of appeal. Hence the period taken in obtaining such a copy may be excluded in computing time for appeal. 1946 A.M.L.J. 26. Where the appeal was filed late on account of delay in getting copies and the same was due to the mistake of pleader's clerk, there is no sufficient cause to excuse delay. 21 A. L.J. 817=75 I.C. 254=1924 A. 176; 82 I.C. 484=1925 O. 189 (1); 1932 M.W.N. 328. A Court is not bound to show indulgence to a litigant who has not been prompt in applying for copies preparatory to filing an appeal. 1923 L. 96; 24 S L.R. 415=1931 S. 58=132 I.C. 473; 1936 O.W.N. 1109=1936 O. 9; 1936 R.D. 327; 38 P.L.R. 903=1936 Lah. 693. But where the delay was caused by the officer of the Court, it was held that this was sufficient cause for not filing the appeal in time. 13 I.C. 943 (1)=9 A.L.J. 15. *See also* 23 I. C. 874; 13 I.C. 850; 1922 L. 415; 9 I.C. 381 =189 P.W.R. 1911; 1930 L. 129. Where the delay was due to the appellant's ignorance of the procedure of the copying department and the consequent failure to get copies in time, *held*, the Court could excuse the delay. 8 O.W.N. 191=1931 O. 314. Where a person makes an application for a copy of judgment so late as within 3 days of the expiry of the period of limitation for filing an appeal and chooses to obtain it by post and gets it after the period of limitation, the delay in the transit cannot be excused and time

cannot be extended under sec. 5. 1942 O.W. N. (B.R.) 214=1942 A.W.R. 131=1942 O.A. (Supp.) 151. *See also* 35 I.C. 233. Where an application for leave to appeal under sec. 449, Cr. P. Code, was presented out of time, and the delay was due to a mistake on the part of the jailor, *held*, there was sufficient cause for excusing the delay. 54 C. 52=1927 C. 307. A mistake in the copyist office in not preparing copies of the judgment and decree is a sufficient cause. 25 I.C. 26 (1); 10 I.C. 210=55 S.L.R. 47. *See also* 161 I. C. 457=1936 L. 132; 38 P.L.R. 852=1936 L. 670; 38 P.L.R. 903=1936 L. 693. But where delay in filing an appeal is caused by the supply of wrong information to the copying department, a person making the application is not entitled to deduction of time as of right. 155 I.C. 588=1935 N. 109. Non-availability of a copy of a decree is sufficient ground for excusing delay in filing an appeal in time. 22 I.C. 919=26 M.L.J. 356. *See also* 1937 L. 691=39 P.L.R. 34; 39 P.L.R. 897. The fact that the whole country was in disturbed state in 1942, and that it was not easy for litigants to appear in Court to make applications or take delivery of copies of documents applied for by them, within a reasonable time of the copies being ready, would constitute "sufficient cause" entitling litigants to ask the Court to condone the delay in making applications to Court, even when the applications are late after excluding the time requisite for obtaining copies, the period of pendency of other proceedings and the period of the recess of the Court. 224 I.C. 160=1946 P. 417. Where the delay on the part of an appellant for applying for copies is caused by the advice, erroneous though it be, received by the appellant from his advocate, that is a sufficient cause for excusing the delay under sec. 5, Limitation Act. 1946 Bom. 437=48 Bom.L. R. 97. Delay in filing copy of judgment—Inability to file due to accidental loss of papers Extension of time ought to be granted. 100 I.C. 19=28 P.L.R. 1=1927 L. 734. *See also* 12 P. 36=13 Pat.L.T. 612=1932 P. 349 (Copy of order appealed from filed out of time in one of the two connected appeals). The time for obtaining a copy of judgment of the first Court should be excluded. 1928 A. 416. *See also* 1936 L. 1007. Where there was a delay of over three months in delivering a simple judgment which at the bottom contained a note in the Judge's handwriting that it was delivered in open Court after notice, and an application to excuse the delay is filed under sec. 5 in respect of an appeal against such a judgment on the ground that the party was ignorant of the date of the delivery of judgment, it was held that the delay ought to be condoned. 1940 A.M.L. J. 43. Whether the provisions of sec. 5 can be applied in second appeal when there was no application to that effect in the lower Appellate Court. 175 I.C. 33=1938 Nag. 233. *See also* 1936 L. 1007. In a case where the appellant was guilty of a certain amount of unnecessary delay, but in view of the practice of the Court which prevailed, namely, to exclude under sec. 12 (2) the whole period taken in obtaining a copy of the decree, *held*, the appellant had "sufficient cause" for the delay, and the Court would therefore excuse the delay under sec. 5. I.L.R. (1937) Bom. 421=38 Bom.L.R. 1281=1937 Bom. 64.

DISCRETION OF COURT.—The Court under sec. 5 has a discretion to excuse the delay in filing an appeal; and if it applies its mind to the question and exercises its discretion judicially after considering all the circumstances it will be acting correctly. 152 I.C. 419=11 O.W.N. 1359. *See also* 48 P.L.R. 325. The period for preferring an appeal cannot be extended simply because the appellant's case is hard and calls for sympathy, nor will the Courts extend the period of limitation merely out of benevolence to the party seeking relief. A Court granting the indulgence must be satisfied that there was diligence on the part of the appellant and that he was not guilty of any neglicence whatsoever. I.L.R. (1938) Nag. 409=1938 Nag. 156. *See also* 1937 Nag. 65. The appellate Court normally will not interfere with the discretion exercised by the lower Court in admitting or rejecting the application for condonation of delay under sec. 5, Limitation Act, unless it appears that the discretion has not been exercised at all or if exercised, it violates judicial principles. Where the Court does apply its mind and considers in a judicial manner the explanations offered by the applicant for the delay and comes to a conclusion against the applicant's submission, the appellate Court will seldom interfere with such discretion. 1945 O. W.N. 1=1940 Oudh 94. So far as the Madras High Court is concerned, it is settled that the inherent power of Court under sec. 151, C. P. Code, cannot be utilised to take the place of an express provision extending sec. 5 of the Limitation Act, to an application under O. 41, r. 21, C. P. Code, to excuse the delay in seeking to set aside an *ex parte* decree passed on appeal. It is desirable to frame a rule similar to O. 41, r. 19 (2) so as to make sec. 5, Limitation Act, applicable to petitions under O. 41, r. 21. 1944 M.W.N. 522=1944 Mad. 571= (1944) 2 M.L.J. 121. Where the lower appellate Court exercises a judicial discretion in such matters, High Court would not interfere in second appeal, even if it might have taken another view, had it been the lower appellate Court. 45 A. 432=21 A.L.J. 319 =1923 All. 455. *See also* 14 I.C. 59=9 A.L. J. 292; 130 I.C. 840 (2)=1931 A. 28; 1938 Pat. 413. Where the discretion has been exercised arbitrarily, it may be challenged in second appeal. 1933 A. 294=1933 A.L.J. 561; 1937 Pat. 528; 1938 Pat. 413. Where there are conflicting views on a certain point and the delay caused in filing the appeal is caused by adopting one of the views, even though the Court takes the contrary view, it can extend the time under sec. 5. 196 I. C. 654=1941 Pesh. 74. A new ruling or a new statement of the law by High Court cannot be pleaded as a 'sufficient cause' for ex-

using the dleay in filing an appeal. 1942 O.A. 340=1942 O.W.N. 439=1942 Oudh 447. Sufficient cause—Uncertainty in the law as to proper remedy. *See* I.L.R. (1942) Nag. 487=1941 N. 308. The words "sufficient cause" in sec. 5 have to be liberally construed. The test is whether negligence, inaction or want of *bona fides* can be imputed to the applicant. The exercise by the Court of its discretion to excuse the delay would to a certain extent be detrimental to the respondent who has in the meanwhile acquired valuable rights, but the question has to be approached from the point of view of the applicant's conduct rather than of the advantage gained by the respondent. 1941 M.W.N. 989=(1941) 2 M.L.J. 873. *See also* 1942 Oudh 125. An order extending time under sec. 5 should give sufficient indication that the discretion given by the law has been judicially exercised. 59 C. 388=1932 C. 482. If the lower appellate Court has come to a definite finding as to 'sufficient cause' for filing an appeal beyond time, High Court will not interfere in second appeal. 20 C.W.N. 1303; 1 P.L.J. 485. *See also* 14 I.C. 244 (1); 33 I.C. 808; 88 P.R. 1916=35 I.C. 67; 36 I.C. 614=92 P.R. 1916; 103 I.C. 90 (1)=28 Punj.L.R. 257=1927 L. 908; 1930 A.L.J. 1256=1931 All. 28 (1) (Second appeal against order refusing time). Where the necessary papers have not been filed along with the memorandum of appeal, it is open to the Court to excuse the delay. 36 C.L.J. 389=1923 C. 261. Under special circumstances the High Court can (has extended) extend the time by more than 5 years for preferring a Letters Patent appeal. 34 I.C. 584. In the admission of appeals filed out of time, the discretion of the appellate Court should not be fettered by any definite or crystallised set of rules. 31 I.C. 705=19 C. W.N. 1113. *See also* 59 C. 781=1942 C. 589; 1941 A.M.L.J. 57. The High Court will refuse to interfere with the discretion of the Judge in a Letters Patent appeal. 1922 L. 170. An order granting an application for extension of the period of limitation for filing an appeal under cl. 15 of the Letters Patent (Calcutta) without giving notice of the application to the respondent is irregular and is liable to be set aside. 46 C.W. N. 131=I.L.R. (1942) 1 C. 403=1942 C. 606. Where the last day of limitation expired on a holiday and an application was made for copies on the re-opening day and the appeal was filed s soon as soon as the copies were received, it was held that, even deducting the time spent in obtaining copies, the appeal was time-barred. 35 I.C. 233=79 P.R. 1916. "Sufficient cause" is a question of fact and there can be no second appeal as to the exercise of discretion by the lower Court. 88 P. R. 1916=35 I.C. 67. Punjab Chief Court will interfere in exceptional cases, particularly in cases of change introduced by the new Punjab Courts Act, on the ground of erroneous legal advice. 33 I.C. 808=18 P. W.R. 1916. Appeal filed without copy of decree—Appellant asked to file on next hearing day—Copy filed after expiry of limitation—Delay excused. 14 I.C. 244; 1930 R. 182. Where more than 3 years after the decree-holder's death, his minor legal representatives apply to be brought on record, the delay can be excused. 26 O.C. 244=1924 O. 83. Where the parties are living in the same village and there is a delay in applying to add the legal representative on the death of one of the parties, the benefit of sec. 5 should not be extended to such a case. 1940 A.W.R. (B.R.) 128=1940 O.A. 779. When the time for appealing is once passed, a very valuable right is secured to the successful litigant and the Court must be fully satisfied of the justice of the ground for an extension of the time for attacking the decree. 20 I.C. 513=17 C.L.J. 596. *See also* 45 I.A. 25=1917 P.C. 179=41 M. 412=34 M.L.J. 63 (P.C.); 1942 M. 170=(1941) 2 M.L.J. 873. Discretion of Court when to be exercised. 1927 A. 386=100 I.C. 727; 1928 C. 249 (1); 52 C. 798=1928 C. 468; 33 C.W.N. 76=1929 C. 240. Interference by High Court with such discretion. 1928 L. 643; 1929 A. 31=111 I.C. 816.

DOUBTFUL POINT OF PRACTICE.—Doubtful point of practice is sufficient cause for delay in presenting the appeal beyond time. 37 I.C. 818=15 A.L.J. 200. *See also* 161 I.C. 251=1936 Lah. 168; 1942 Oudh 447; I.L.R. (1942) Nag. 487=1941 N. 308; 38 Bom.L. R. 1281=I.L.R. 1937 B. 421=1937 B. 64. Time may be extended when a litigant has been misled by a change in the practice of the Court. 58 I.C. 408=32 C.L.J. 127. *See also* 37 I.C. 818=15 A.L.J. 200; 39 I.C. 54 =13 N.L.R. 25; 58 I.C. 995 (1); 52 I.C. 959. *See also* 48 M. 631=48 M.L.J. 384=1925 M. 725. Mistake as to forum of appeal —Connected suits with a common judgment having different forums of appeal—Absence of negligence. *See* 17 Luck. 487=1942 Oudh 125. As to mistaken advice given by pleader. *See* 1942 Lah. 94. Where the last day of limitation for an apoeal was the last Saturday of the month which was generally regarded as a holiday, but, which, however, was a working day according to the individual practice of the Commissioner. *Held*, the party may be excused for his ignorance of the Commissioner's individual practice and the appeal allowed to be filed on the next working day. 14 L.R. 293 (Rev.)=17 R.D. 412. *See also* 1942 O.W.N. 206=1942 Oudh 362=1942 O.A. 135=1942 A.W.R. (C C.) 156 (deliberate) adoption of a remedy which results in delay not to be excused) Vakalatnamah of vakil invalid—If amounts to sufficient cause within the meaning of section. 102 I.C. 255=1927 A. 816; 103 I C. 537=1927 L. 618. Where notice of an appeal was served by affixture and it was uncertain when he got the notice. *Held*, that a delay of 4 or 5 days in filing the memorandum of cross-objections could be condoned. 15 L.R. 69 (Rev.)=18 R D. 56.

EX PARTE ADMISSION.—The order admitting an appeal *ex parte* can be re-opened on the objection of the respondent at the hearing. 20 I.C. 513=17 C.L.J. 596; 45 I.A. 25=1917 P.C. 179=41 M. 412=34 M.L J. 63 (P.C.); 29 I.C. 265=71 P.W.R. 1915. *See also* 16 L.

W. 662=1923 M. 82; 1929 A. 31; 44 L.W. 152=165 I C. 471=1936 M. 600; 1936 O.W. N. 1109=1936 Oudh 9. An order granting an application for extension of the period of limitation for filing an appeal under cl. 15 of the Letters Patent (Calcutta) without giving notice of the application to the respondent is irregular and is liable to be set aside. I.L.R. (1942) 1 Cal. 403=75 C.L.J. 419=46 C.W.N. 131=1942 Cal. 606. When an appeal has been provisionally admitted, a judge can entertain and decide the question whether there was sufficient cause for extending the time for appeal under sec. 5. 38 B. 613=25 I.C. 369 (2). *See also* 40 C. 259=17 C.W.N. 42; 63 I.C. 726. *Ex parte* admission by Dt. Judge—Transfer to Sub-Judge—Power of Court. 40 C. 259=17 C.W.N. 42; 1936 O. W.N. 1109=158 I.C. 19=1936 O. 9. *Ex parte* admission— Pauper appeal— Application to excuse delay in filing appeal. 60 I.C. 212 =12 L.W. 500. *Ex parte* admission—If can be set aside by the successor of admitting Judge. 25 I C. 746=27 M.L.J. 147. *Ex parte* admission—Objections overruled and appeal admitted—Effect. 21 I C. 96=25 M.L J. 281. Notice without proper order of Court is a nullity and cannot by mere inaction amount to an estoppel. 21 I.C. 96=25 M.L.J. 281. *Ex parte* admission— Sufficient cause—Burden of proof—Duty of Court to decide the question of excusing the delay before final hearing—Question of limitation—Power to decide. 54 I.C. 36. *See also* 3 Pat.L.T. 110 =6 P.L.J. 444=1922 P. 47; 15 I.C. 562=8 N.L.R. 50.

SUFFICIENT CAUSE—WHAT AMOUNTS TO.— 1928 M 690; 9 L. 76=1928 L. 216; 54 M.L. J. 234=1928 M. 404; 35 C.W.N. 283=58 C. 793=1931 C. 506. A Court may give a liberal construction to the words "sufficient cause", but the interpretation should be in accordance with judicial principles. A client preferring a time-barred appeal under the mistaken advice of his counsel may be entitled to the benefit of sec. 5, but the mistake must be *bona fide*, i.e, made in spite of due care and attention. But want of care and attention is not "sufficient cause". Filing an appeal in a wrong Court through carelessness of the counsel is not a "sufficient cause" for presenting the appeal to the proper Court after the expiry of the period of limitation. 146 I C 127 =1933 O. 523 (F.B.). *See also* 40 C.W.N. 83 (Amendment of decree as ground for extension of time). The fact that a decree is amended does not of itself operate to extend the time for appealing; where, however, there has been an amendment and it appears reasonable that the time for appealing should be extended the Court can excuse the delay under sec. 5. 33 C.W.N. 958=50 C.L.J. 12= 1929 C. 676. *See also* 35 C.W.N. 251=1931 C. 578. Amendment of decree unrelated to grounds of appeal, if sufficient cause for extension of time. 59 C. 1052=36 C.W.N. 218 =1932 C. 534; 40 C.W.N. 83=165 I.C. 53. It is not every amendment that entitles a party to claim extension. 1930 O. 463. Where the date actually entered on the decree apparently misled the appeallant, it would obviously be a sufficient cause for admitting the appeal after time. 1930 R. 67. Surety for appearance of judgment-debtor — Execution petition dismissed for default of decree-holder and surety discharged—Application for restoration also dismissed—Appeal from order discharging surety—Extension of time not granted. 1934 L. 349. Memorandum of appeal was filed in time without the judgment and decree of the lower Court. Two days after expiry of limitation, the decree and judgment of the lower Court were filed. *Held*, that the case was a fit case for extension of period under sec. 5. 6 O.W.N. 1035=1930 O. 184 (1). Technical omission should be condoned and allowed to be rectified. 146 I.C. 517=1933 L. 224. Omission to mention vakil's name in vakalatnama through pure mistake is sufficient cause. 1930 A. 112=121 I.C. 546. *See also* 134 I.C. 114 (L.)=1932 L. 134. Also where copy of the decree could not be got as no decree was found in the proceedings and where the appella e Court granted the application for dispensing with the copy and the copy was produced later. 1930 R. 182. *See* 1930 P. 63. Application to bring on record legal representatives—Delay in making—Ignorance of death of deceased—If sufficient cause. 155 I.C. 610=1935 L. 478. Where an application by the wife for reviewing the judgment passed in a suit for restitution of conjugal rights by the husband was filed after long delay, it was excused for sufficient cause. 1930 P. 63. Mere presentation of an application for review does not entitle a litigant as of right to deduct the period during which the application for review remains pending. He must satisfy the Court that there were reasonable grounds for review. 15 Luck. 526=1940 O. W.N. 281=1940 Oudh 310. Wilful putting off of appeal to last date when unexpected contingency prevents appellant from filing appeal—Extension cannot be granted. 1930 N. 121. Execution—Defective application filed on the last day—Failure to get copy of decree owing to misdescription—Case not fit for restoration. 17 R.D. 273=14 L.R. 257 (Rev.). The applicant is only required to satisfy the Court that he was unable to present his appeal in time on account of some misadventure on the *last date* on which it ought to have been presented; it is not necessary for him to account for inactivity during the entire period prescribed by law. 34 C.W. N. 1119=1931 C. 298; 1931 M.W.N. 1161. Where an appeal is filed beyond the time, it is for the appellant to show sufficient cause for extending the time; and for this he has to justify every day taken beyond time. 14 L. 656=1933 L. 681. Poverty of litigant is not sufficient cause. 48 P.L.R. 393.

INABILITY WITHOUT FAULT.—When the Court creates a limitation and the party is unable to conform to it, for no fault of his own, the law will ordinarily excuse him. 38 B. 656=25 I.C. 67. *See also* 38 B. 653=25 I.C. 66. Inconvenience of party to attend Court as per Court's direction is not sufficient cause

under sec. 5. 177 I.C. 364=1938 Rang. 214.

MERITS OF CASE.—The Court would excuse the delay if there are any merits in the appellant's case. But when the appeal is on a mere technical ground, the principle of technicality defeating technicality may well be brought into play. 25 I.C. 28. *See also* 66 P.W.R. 1912=13 I.C. 714; 33 I.C. 546 =14 A.L.J. 212. But *see* 114 I.C. 612=1929 N. 8, where it was held that the appellate Court had no jurisdiction to touch the decree and decide the case on merits on the basis of a time-barred memo.

MISTAKE IN CALCULATION.—Mistake in calculating period of limitation which is a mistake of arithmetic is not sufficient cause for extension. 46 I.C. 480. A *bona fide* mistake by the pleader in calculating the period may constitute sufficient cause, which must be decided by the Court having regard to all the facts and circumstances of the case. 19 I.C. 931=17 C.W.N. 807. *See also* 108 I.C. 619=1928 L. 643; 40 I.C. 425 =13 N.L.R. 89. Where the appellant who filed his appeal on the 19th instead of the 9th December alleged that he made a mistake in reading the date '9' as '19' in the letter written by Counsel's clerk, but the letter was not produced. *Held*, that no sufficient cause was made for condoning the delay. 136 I. C. 838=1932 O. 167. But *see also* 59 I.C. 937. Mistake in calculation made by an assistant in the Office of the Stamp Reporter, who is under no obligation to inform litigants, is not a sufficient ground for extending time. 57 C.L.J. 39=1933 C. 462.

MISTAKE OF COURT.—*See* 16 I.C. 979= 276 P.W.R. 1912. *See also* 26 O.C. 24= 1923 O. 93; 24 I.C. 113=1 O.L.J. 193; 161 I.C. 215=1936 L. 670. A delay in filing an appeal caused by the failure of the Court to give notice of the date of delivery of judgment ought to be excused. 38 I.C. 575 =9 Bur.L.T. 250. *See also* 27 I.C. 784=8 Bur.L.T. 99; 1930 R. 182. A litigant is entitled to expect that the infringement of the rules and orders of the Court by the Judge should not hamper him in his appeal; and if he is allowed a reasonable time within which to bring that appeal the best way of of finding out what time is reasonable is to consult the relevant Article and to assume that the period prescribed will be a reasonable period. No doubt, if after the expiration of that period, he seeks for a further period he must then show that he has acted with due diligence. Where a Judge in appeal pronounced judgment in contravention of O. 41, r. 30 and the parties came to know of the delivery of judgment only a couple of months later, it was *held*, that the aggrieved party was entitled to the full period allowed by law commencing from the date of the knowledge of the delivery of judgment. 1941 Rang.L.R. 213=1941 Rang. 194. Mistake of Court in not discovering in time that the decree was not filed is sufficient cause. 1930 R. 235. Smaller Court-fee was paid as a result of mistake in lower Court's judgment. Extension of time to pay additional Court-fee is allowed under sec. 5. 1928 L. 737. Where, in spite of an order on the 25th March, 1924, directing the plaint to be returned for presentation to the proper Court, it was not returned in fact till the 10th of April owing to delay by office, *held*, that the plaintiff was entitled to have the period between 25th March and 10th April excluded in computing the period of limitation. 144 I.C. 5=1933 L. 611 (1). *See also* 71 C.L.J. 540=1940 Cal. 530.

MISTAKE OF FACT.—Mistake of fact—Mistake of Counsel's clerk. Time can be extended. 59 I.C. 937; 34 L.W. 795=1932 M. 142=61 M.L.J. 710. The Court can extend the period in favour of an appellant under sec. 5 if he has omitted to include the name of a respondent on account of oversight or *bona fide* mistake. 26 I.C. 68=12 A.L.J. 941. After the error regarding ineffective filing of an appeal is pointed out and ample time given for its rectification, the excuse of carelessness cannot be pleaded a second tme for granting a further extension of time. 11 Lah.L.T. 31. Mistake of fact—Recent notification—Ignorance of. 4 L. 122=1924 L. 41. Gazetted holiday—Substitution of, by another day—Second appeal. 77 P.R. 1917=42 I.C. 343. Mistake of fact—Two cross-appeals—Two decrees—Appellant believing in one decree is sufficient cause. 115 P.R. 1912=15 I.C. 140. So also in case of appeal filed against a dead man by a *bona fide* mistake. 165 I.C. 201= 1936 Pesh. 192. A *bona fide* mistake as to the date on which the copying department told the applicant to come to take delivery of decree copy is sufficient cause to justify extension of time under sec. 5. 9 I.C. 607=79 P.L.R. 1911. Where an appellant has no notion at the time of filing his appeal that it is time-barred, he cannot be expected to have explained the cause of delay at the time of filing the appeal. 71 P.W.R. 1911=9 I.C. 607. An appellant is bound to show that there has been no negligence, inaction or want of *bona fides* imputable to the appellant before he can claim an extension of time on the ground of a mistake of fact. 28 I.C. 82=85 L.R. 235. *See also* 32 I.C. 380; 104 I.C. 281= 1928 L. 216=9 L. 7. Party misled by High Court's judgment—Time should be extended. 102 I.C. 123 (2)=1927 N. 247.

MISTAKE OF LAW.—Mistake of law is *per se* no ground for exclusion of time but when in fact erroneous proceedings are instituted owing to the mistake, extension may be granted. 1917 P.C. 156=45 C. 94=44 I.A. 218= 33 M.L.J. 486 (P.C.); 104 I.C. 281. *See also* 1942 O.W.N. 438=1942 O.A. 336. A mistake of law is not 'sufficient cause' unless it was made in 'good faith', *i.e.*, in spite of due care and attention. 18 I.C. 37=59 P.R. 1913. *See also* 1917 M.W.N. 362=39 I.C. 975; 169 I.C. 398=1937 Rang. 199; 26 O.C. 56=1923 O. 238; I.L.R. (1937) Nag. 6=1936 N. 246. Where an application originally filed as an appeal, was as such, within time, but on its being decided by a Judge that it ought to be dealt with as a revision, it is found to be beyond time as revision, the reason for the

delay being the conflict of decisions as to proper remedy, it is sufficient cause for the delay being excused. I.L.R. (1942) Nag. 487=197 I.C. 221=1941 N.L.J. 519=1941 Nag. 308. Where a pardanashin lady is ignorant of the rules of procedure, it is not 'sufficient cause'. 9 I.C. 222=8 P.W.R. 1911. A memorandum of appeal was filed without any stamps and out of time by 21 days. *Held*, that even though the litigant was a pardanashin lady, extension of time ought not to be granted. 37 C.W.N. 179=146 I.C. 359 (1)=1933 C. 796. Ignorance of law is no excuse. 117 I. C. 282=1929 N. 74 (13 C. 266, Dist.; 12 B. 320 and 12 A. 741, Foll.). The time occupied by an application, in good faith for review of the judgment, although made on a mistaken view of the law, might be excused. 1917 P.C. 146=45 C. 17=22 C.W.N. 74=42 I.C. 849=44 I.A. 229=34 M.L.J. 1 (P.C.). *See also* 1937 R. 199; 1944 O.W.N. 46=1944 Oudh 193. But *see* 17 N.L.J. 22. An applicant for leave to appeal to His Majesty in Council was misled by the practice of calculating the period of limitation for such application and thus filed his application beyond time. *Held*, that in the particular case the time should be extended. 62 I.C. 649=6 P. L.J. 350=1921 P. 175 (F.B.); 57 I.C. 312=1 P.L.T. 262. Mistake of law—Pleader's mistake. *See* 1923 L. 612. *See also* 73 I.C. 788. Mistake of law—Illiteracy of clients. 1923 L. 208 (2). Where the appellant, being misled by the only reported decision on the question erroneously preferred an appeal from the decree based on an award, the time during which that appeal was pending may be deducted as a plausible excuse for extension of time under sec. 5 of the Limitation Act for preferring a fresh appeal from the order of the Court modifying the award. 36 C.W.N. 1069=1932 C. 713.

MISTAKE OF PLEADER.—An honest mistake made by a litigant upon incorrect advice of counsel is a sufficient cause for excusing delay. 44 A. 636=20 A.L.J. 674=1922 All. 490; 43 B. 376=23 C.W.N. 753=52 I.C. 897 =46 I.A. 15 (P.C.)=1918 P.C. 135; 43 A. 392=61 I.C. 410=1921 All. 210 (2); 101 I. C. 777; 46 C.L.J. 257=105 I.C. 217=1927 C. 829. *See also* 153 I.C. 161=11 O.W.N. 1530=1935 O. 108; 48 P.L.R. 325; 59 C. 781 =36 C.W.N. 420=1932 C. 589; 14 L.R. 441 (Rev.)=17 R.D. 577. There may be cases where counsel may be faced with two possible views. In such a case if he honestly takes one view rather than the other, his advice given on the strength of this view and acted upon by the litigant cannot be deemed to be advice given negligently. Each case must inevitably depend upon its own special facts and circumstances. Ignorance of law is no excuse and the presumption that the law is well known and well understood is particularly strong in the case of responsible bodies, such as the Municipal Board of Lucknow which including the Chairman, has several legal gentlemen on it. There is not the slightest justification for counsel, in spite of the amended limitation in the matter of appeals to the Privy Council having been in force for nearly 23 years, to think or to labour under any misapprehension that the old period of limitation was still in vogue. 1944 O.W. N. 118=1944 Oudh 135; 1942 Lah. 94. *See also* 48 P.L.R. 325=225 I.C. 291. A lawyer's wrong advice causing an error has to be proved by the party. It is pertinent under sec. 5. 45 I.C. 725; 17 I.C. 155=17 C.L.J. 66; 16 I.C. 425=16 C.L.J. 366. There is no authority for the view that a mistake of a legal adviser, however gross and inexcusable, if *bona fide* acted upon by the litigant, will entitle him to the protection of sec. 5. The facts of each case and the nature of the omission or mistake on the part of the legal adviser in each particular case, will have to be examined and scrutinized in order to find out whether there has been negligence or gross want of legal skill in the legal adviser, or whether there was merely a *bona fide mistake* not through misconduct or negligence or want of reasonable skill, but such as even a skilled person might make. It is only in the latter case that the litigant would be allowed the benefit of the section. 67 C. L.J. 107. Reasonable care by a competent lawyer would be a sufficient cause within the meaning of sec. 5; to attract the operation of the section, it is enough to show that the mistake of the lawyer was of such a description that it may arise even amongst legal practitioners of experience. A litigant should not be made to suffer for such error or mistaken advice given by counsel. 17 Pat. 507=19 Pat.L.T. 309=1938 Pat. 413. Where the delay on the part of an appellant for applying for copies is caused by the advice, erroneous though it be, received by the appellant from his advocate, that is a sufficient cause for excusing the delay under sec. 5, Limitation Act. 48 Bom.L.R. 97=1946 Bom. 437. Mistaken advice given by a legal practitioner may in the circumstances of a particular case give rise to sufficient cause within the meaning of sec. 5, though there is centainly no general doctrine which saves parties from the results of wrong advice. (1934 Oudh 360, Rev.) 31 S.L.R. 672=41 C. W.N. 1189=46 L.W. 219=39 Bom.L.R. 1021 =1937 P.C. 276 (P.C.). *See also* I.L.R. (1938) Nag. 409=1938 Nag. 156 (Party being misled by wrong information given by pleader's clerk not sufficient cause). 43 P. L.R. 502=1942 L. 94. Where owing to his ill-health counsel was not able to pay personal attention to an appeal and filed it out of time acting on a mistake of his clerk in reading the date of the order appealed against, it was *held* that it was a case in which the party was not remiss and that there was sufficient cause which prevented the appeal from being filed within time. 1940 A. L.J. (Supp.) 18. It would be dangerous precedent to allow the benefit of sec. 5 because a litigant's counsel filed an affidavit to say that the delay was due to counsel's illness. 1940 A.L.J. (Supp.) 18. Mistake of pleader —Recalling order excusing delay. 45 C. 798. Mistake of pleader being omission to file copy of decree. 17 I.C. 155=17 C.L.J. 66.

The true test is whether the litigant has acted under honest, though mistaken belief, formed with due care and attention. 12 I.C. 677. A legal adviser's mistake to justify an extension under sec. 5 must be a *bona fide* one. 95 P. R. 1917=43 I.C. 317. *See also* 45 I.C. 542 =69 P.W.R. 1918; 63 I.C. 726; I.L.R. (1937) Nag. 507=19 N.L.J. 273=1937 Nag. 97; 1936 Nag. 246; I.L.R. (1938) Lah. 379=1938 Lah. 81; I.L.R. 1938 Nag. 409; 1938 Nag. 150; 1939 Rang.L.R. 639=1940 Rang. 14; 14 Luck. 701=1939 Oudh 245; 1941 O.W.N. 1282; 1941 Pat. 108=22 Pat.L.T. 549; 32 I.C. 640=37 P.W.R. 1916; 1923 L. 612; 101 I.C. 363 (1); 1927 R. 20=5 Bur.L.J. 187; 110 I.C. 533; 6 O.W.N. 1042=1930 O. 49 (2); 1929 M. 91. The plaintiff is not entitled to the benefit of sec. 5 where he has acted in good faith on the advice of counsel which advice has been given negligently, even though honestly. 149 I.C. 239=11 O. W.N. 653=1934 O. 360. Mistake of pleader —Memorandum not signed by pleader—Extension of time. 63 I.C. 726. *See also* 1923 L. 402; 1 R. 584=1924 R. 148. A mistake of law by an advocate is not by itself a sufficient cause. 11 I.C. 812=4 Bur.L.T. 175. *See also* 27 I.C. 639; 37 I.C. 815=10 Bur.L. T. 221; 49 I.C. 1000; 1923 P. 140=63 I.C. 278=6 Pat.L.J. 237; 1927 L. 92; 7 A.I.Cr. R. 28; 5 Bur.L.J. 227=101 I.C. 363 (1). In a special jurisdiction case valued at Rs. 6,000 and filed in Sub-Court, the appeal was wrongly preferred by the same pleader to the District Court which rejected it. Appeal was then filed in High Court out of time. It was *held* that there was no reasonable doubt as to the forum and the delay was not excused. 31 Bom.L.R. 954=1929 B. 393. *See also* 1933 L. 568=144 I.C. 627. But *see* 152 I. C. 323=1934 Pesh. 57; 152 I.C. 155=1934 M. 637 (1)=67 M.L.J. 902. The decree, as framed by the lower Court, was not clearly worded. The respondent himself was misled in choosing the wrong forum and it was he who was the first to file his appeal in the District Court instead of the High Court and it was only subsequently that appellant filed his appeal to the District Court within time. *Held*, that the provisions of sec. 5 were applicable and the period during which the appeal remained pending in the District Court should be excluded. 161 I.C. 251=1936 L. 168. A wrong advice of a pleader acting on a statement of the Court clerk not to apply for the copy of the judgment until the copy of the decree was drawn up was *held* to be not a *bona fide* mistake. 7 R. 18=1928 R. 116. Mistake of vakil—When a sufficient cause. *See* 1929 M. 91=112 I.C. 307. But a pleader's gross carelessness is no ground. 114 I.C. 101=1929 S. 32; 131 I.C. 507= 1931 R. 80. *See also* 142 I.C. 185=1933 R. 96; 144 I.C. 41=1934 N. 52. Where a pleader whose power has terminated with proceedings in trial Court does not take steps to find out whether or not the appeal has been properly presented, he acts without due care and attention, and as he delays in the hope that the irregularity might escape detection, it does not form proper cause for the delay in filing the appeal. (59 C. 781; 7 R. 18 and 5 N.L.R. 25, Rel.) 145 I.C. 760 =29 N.L.R. 295=1933 N. 219. The fact that a party is a minor and the next friend is a pardanashin lady or that the pleader acting for them has been negligent or ignorant cannot amount to sufficient cause within the meaning of sec. 5 of the Limitation Act. A suitor must suffer for the negligence or ignorance or gross want of skill of his legal adviser. 19 N.L.J. 273=I.L.R. 1937 N. 507=1937 N. 97. The client has his remedy against the defaulting legal adviser. 131 I. C. 507 (1)=1931 R. 80. An honest oversight of an advocate is a sufficient cause. 34 C.W. N. 119. Where the counsel made a *bona fide* mistake in failing to get a fresh power of attorney after the death of the party for impleading the legal representatives, the Court could extend the time under sec. 5. 133 I.C. 877=32 P.L.R. 389. *See also* 150 I.C. 731= 1934 L. 444 (2); 36 P.L.R. 277=1934 L. 1011; 1937 N. 65=I.L.R. 1937 N. 494.

MISTAKE OF PLEADER'S CLERK.—Where decree amount could not be deposited in Court in time as required by sec. 17, Provincial Small Cause Courts Act, owing to the *bona fide* mistake of the vakil's clerk in mislaying the challan, *held*, there was sufficient cause to excuse the delay. 1932 M. 142=34 L.W. 795=61 M.L.J. 710; *see also* 1938 Nag. 156=I.L.R. 1938 N. 409. *Fraud* of pleader's clerk, if sufficient excuse. 36 P.L.R. 284= 1934 L. 986 (2). *Negligence* of pleader's clerk is no sufficient cause. 101 I.C. 448= 1927 P. 232; 110 I.C. 374=1928 L. 488; 1929 S. 206. But *see* 108 I.C. 619=1928 L. 643, where a *bona fide* mistake by a pleader's clerk in calculating the period was excused. *See also* 32 C.W.N. 935=1929 C. 214=56 C. 135; 110 I.C. 837=1928 M. 690, where a clerical mistake of vakil's clerk in omitting the name of the only contesting respondent in the cause title while copying was excused and the respondent's name was added after period of limitation. In the case of delay due to mistake of a clerk, the sole test is whether the appellant has acted with reasonable diligence. 1929 A. 351=119 I.C. 447. [44 I.A. 218=33 M.L.J. 486 (P.C.) Foll.; 1926 A. 252 and 1925 O. 189 and 374, Disc.] Where by a *bona fide* mistake of the clerk, an earlier judgment of the same date and same month but of a different year was filed along with the memorandum of appeal and subsequently on discovery of the mistake the counsel prayed to have the correct judgment filed when the time for presenting the appeal had expired, *held*, that the mistake being *bona fide*, the time should be extended. 33 P.L.R. 1085=1933 L. 1. *See also* 136 I.C. 838=1932 O. 167; 59 I.C. 937.

GOOD FAITH—IF NECESSARY.—In finding a "sufficient cause" under sec. 5 of he Limitation Act, a man's good faith would have to be kept in view but that "good faith" is more in general sense of that word as grammatically understood rather than in the sense in which it has been defined in sec. 2 (7) of the Act. 225 I.C. 291=48 P.L.R. 325.

NEGLIGENCE OF GUARDIAN.—46 I.C. 68=

5 O.L.J. 153. *See also* 30 I.C. 211=2 O.L.J. 325.

NEGLIGENCE OF PARTY.—A Court should not excuse under sec. 5, delay due to gross carelessness. 55 I.C. 271=44 B. 175. *See also* 22 O.C. 379=55 I.C. 837; 37 I.C. 503=12 N.L.R. 171; 55 I.C. 17; 24 S.L.R. 415=1931 S. 58; 10 O.W.N. 1247=1934 O. 10 (1); 11 O.W.N. 256=1934 O. 131 (1). A party who is negligent in complying with the rules of the Court is not entitled to the benefit of sec. 5 of the Act. 47 P.L.R. 193=1945 Lah. 233. The negligence of a servant in the performance of the duties entrusted to him does not amount to sufficient cause. 55 I.C. 17. *See also* 52 I.C. 225 (2)=4 Pat.L.J. 381. One of several persons not impleaded as respondent due to carelessness—Time cannot be extended. 99 I.C. 619=1927 L. 118. Where on the last day of limitation a person though he missed the earliest train fails to avail himself of the time available after he reached the place and presents the appeal after Court hours is not entitled to the indulgence of the Court as he has not been prompt in seeking his remedy. 1942 O.W.N. 475=1942 O.A. 376=1942 Oudh 488.

ONUS.—It is the duty of the litigant to know the last day on which he can present his appeal and if there is delay, the burden rests on him of adducing strict proof of the sufficient couse on which he relies. 41 M. 412 =45 I.A. 25=34 M.L.J. 63 (P.C.); 1931 S. 58=132 I.C. 473=24 S.L.R. 415.

POWER OF SUCCESSOR.—An order made by one Judge extending time owing to delay in getting copies of decree should not be interfered with by his successor. 50 I.C. 882. *See also* 50 I.C. 374.

PAUPER APPEALS.—The provisions of sec. 5 apply to applications for leave to appeal as pauper. 17 Luck. 628=1942 O.A. 57=1942 O.W.N. 106=1942 Oudh 240. An appeal presented after time with full stamp may be admitted if a previous application for leave to appeal as pauper was presented within time and rejected. 74 P.R. 1916=36 I.C. 84. *See also* 1935 O.W.N. 162=1935 O. 231; 34 P.W.R. 1912=13 I.C. 73. Delay in filing an application for leave to appeal *in forma pauperis* cannot be condoned. 101 I.C. 320 (1) 1927 N. 107; 9 Pat.L.T. 619. An appeal was filed as one against an order in execution but the Court required party to pay *ad valorem* Court-fee. The party applied for leave to appeal as pauper and was allowed. 26 A.L.J. 847=1928 A. 499.

POVERTY.—Poverty is not a sufficient cause within sec. 5. 22 I.C. 884=7 L.B.R. 90.

SICKNESS.—Appellant unwell in the last portion of limitation—Filing his appeal two days later—The two days' delay would be excused. 6 R. 571=1928 R. 165. But *see* 119 I.C. 678=1930 N. 132; 1931 C. 298=58 C. 549=34 C.W.N. 1119. Where the applicant suffered from acute apendicitis a week before the expiry of limitation for filing a revision petition and so was unable to file it till 16 days after expiry of the period of limitation, it was *held* that the delay in filing the revision should be excused. 1942 N.L.J. 311. Where no reason is shown why the applicant during the time of his alleged illness should not have given instructions to his advocate which would have enabled him to present the appeal within time and there is no medical certificate or any other corroborative evidence to support his allegation in the affidavit that he was ill, the applicant fails to discharge the onus that lies upon him to satisfy the Court that he had sufficient cause for not preferring the appeal within time. 14 R. 155=1936 R. 183.

WANT OF STAMPS.—Delay in filing an appeal owing to the non-availability of stamp on the last day for filing the appeal will be excused. 37 I.C. 211 (1)=1 P.L.J. 163; 3 P.L.J. 74=42 I.C. 675 (1); 1923 L. 513 (2). Application for copy accepted by copying department without demand for copying fee —Deduction of time taken for obtaining copies allowed. 38 P.L.R. 903=1936 Lah. 693.

INSUFFICIENT STAMP.—One day's delay in payment of deficient Court-fees on copies of judgments excused. 131 I.C. 127=32 P.L.R. 240=1931 L. 349. Where the appellant honestly believed that he paid the proper Court-fee when he originally presented the appeal, the delay in paying adequate Court-fees should be condoned. 1933 L. 264=144 I.C. 184. Where the appellant failed to pay a substantial portion of the Court-fee in time and there is no question of *bone fide* mistake or misapprehension, there is no reason to extend the time. 33 P.L.R. 12. When the appellant knows at the time when he files the appeal that a further sum is due on account of the Court-fees, it is his business or the business of his pleader to ascertain the date fixed for depositing the deficit Court-fees. In a case of this sort it is expected that pleaders shall make themselves acquainted with the nature of the orders passed and it is not the duty of the Court to communicate the orders to them. The omission of Court to communicate its order to the pleader concerned does not entitle the appellant to any indulgence under sec. 5. 71 C.L.J. 540 =1940 Cal. 530.

IGNORANCE OF DEATH.—The mere insertion of the name of a person who is dead long before the institution of the suit, in the array of defendants does not save limitation against his widow and heir who is not impleaded in the suit. 140 I.C. 387=1932 L. 592. *See also* 15 R.D. 244. Mere ignorance of death is not a "sufficient cause" under sec. 5. 38 I.C. 7=118 P.R. 1916. But *see* 1930 A. 131. *See also* 1936 Pesh. 192 (Appeal filed against a dead man by *bona fide* mistake—Time extended). Four days before filing of an appeal respondent had died. The appellants were not aware of the death. An application was made to make necessary additions after the expiry of limitation. The Court was satisfied that the error was *bona fide* and the respondent was living in a different province and that period of limitation extended. 123 I.C. 824=1930 A. 131. *See also* 1940 A.W.R. (B.R.) 128=1940 O.A. 779. Ignorance of the death of one of the respon-

dents, in the absence of any negligence or other act or omission for which the applicant seeking to set aside the abatement can be held responsible, can be "sufficient cause" within the meaning of sec. 5 of the Limitation Act. 54 A. 280=1932 A.L.J. 18=1932 A. 459; 165 I.C. 201=1936 Pesh. 192.

CORPORATE BODY AND PRIVATE PARTY.—If a corporate body chooses to embark on litigation, its officials and advisers must act with at least as much diligence as is expected from an ordinry litigant. The corporate body is not entitled to greater indulgence than a private individual. 123 I.C. 83 (2).

GOVERNMENT AND PRIVATE PARTY—DISTINCTION.—Though any delay is evidence of laches in the case of a private party, the same cannot be said of Government and so delay can be condoned if it is inevitable. 1929 S. 211.

SECS. 5 AND 14.—In exercising its discretion under sec. 5, Court will be guided by the provisions of sec. 14, though sec. 14 does not in terms apply to appeals. 35 C.L.J. 106 =1922 C. 247. *See also* 46 I.C. 116=22 C. W.N. 594; 16 I.C. 940=17 C.W.N. 116; 1933 O. 83; 9 O.W.N. 1165; 1936 O.W.N. 325; 1941 A.L.J. (Supp.) 92=1941 O.W.N. 713. Delay in filing a criminal appeal should be excused under sec. 5, where it was erroneously filed in another Court since there is no question of a successful litigant losing a "valuable right". 59 I.C. 556=1 L. 508. *See also* 48 M.L.J. 457=1925 M. 709; 26 Cr. L.J. 1110. Where an appeal is preferred to a wrong Court in good faith and by the advice of a lawyer, the time which is spent in prosecuting the same should be excused under sec. 5 of the Act. 52 I.C. 235 (1) [45 C. 194 (P.C.) and 20 C.W.N. 49, Foll.] *See also* 205 P.W.R. 1912=15 I.C. 170; 30 I.C. 211=2 O L.J. 325; 27 I C. 967=7 Bur. L.T. 250; 12 I.C. 28=4 Bur.L.T. 274; 1927 A. 758;=101 I.C. 777; 108 I.C. 123=1928 A. 144; 1928 C. 468 (2)=55 C. 798; 1927 A. 755; 1930 O. 15. So also where it is due to wrong valuation in trial Court for purposes of jurisdiction, and especially when such valuation was not questioned by defendant. 1936 O.W.N. 325. Proceedi gs in wrong Court—*Bona fide* mistake of guardian —Sufficient cause. 30 I.C. 2'1=2 O.L.J. 325. When time-barred appeals are filed in wrong Court the Court can dismiss them and need not return them for presentation to the proper Court in order that the latter might consider the question as to whether the time for presentation could be extended. 48 C. 110= 47 I.A. 255=39 M.L.J. 195 (P.C.)=1921 P. C. 50. Where an appeal filed in time but in wrong Court owing to a *bona fide* mistake is returned on the last day of limitation for presentation to a proper Court, the fact that it is not presented on the proper day ought not to be a ground for rejecting it as barred; judicial discretion should point to its admission. 11 I.C. 814 (2)=8 A.L.J. 793. *See also* 1923 A. 364; 45 B. 607=1921 B. 302= 1930 A. 15. When two remedies are available prosecution of one would be a good ground for extending time for the other. 98 I.C. 892=1927 L. 43. A person prosecuting an application under sec. 151, C. P. Code, cannot be said to be acting in good faith when he has a remedy open to him under some other provision of C. P. Code. Delay due to such wrong prosecution cannot be condoned under sec. 5, Limitation Act. 165 I.C. 661= P.L.R. 868=1936 L. 672. Whether pendency of application for amending decree saves limitation, *see* 1928 P. 265. The pendency of application for setting aside *ex parte* order certifying an adjustment of a decree saves limitation for appealing from the *ex parte* order. 30 P.L.R. 512=115 I.C. 467=1930 L. 113. But *see* the cases cited below. Where an appeal lies against the *ex parte* decree, the time taken by the party in applying for setting aside the *ex parte* decree and in preparing an appeal against the order refusing to set it aside cannot be excluded in computing the period of limitation for appeal against the main *ex parte* decree. 1930 R. 270=8 R. 168; 1930 R. 41; 59 C. 1057=36 C.W.N. 352=1932 C. 558. An appeal was preferred under the B. T. Act to the Special Judge on 18th May, 1925, and the same was dismissed on 31st October, 1925, on the ground that it was not maintainable but it was suggested an appeal would be preferred to the District Judge. An appeal was filed on 18th November, 1925, and the delay of 18 days was excused on the ground that the period would be necessary to get copy of the judgment, prepare memo. of appeal, etc. 1929 C. 240=33 C.W.N. 76.

REVIEW.—An appellant is entitled to deduct the period during which an application for review was pending. 1923 C. 291 (1). *See also* 20 I C. 647; 42 B. 295=46 I.C. 14; 22 A.L.J. 365=1924 A. 867; 30 S.L.R. 301 =1936 Sind 43; 1941 A.W.R. (Rev.) 1100; 15 Luck. 526=1940 O.W.N. 281=1940 Oudh 310; 1928 L. 964; 1929 L. 283; 1929 L. 824; 1944 O.W.N. 46=1944 O.A. 72=1944 Oudh 193; 34 C.W.N. 1002=1931 C. 323; 130 I. C. 545=1931 S. 3, following 45 C. 94; 11 Lah.L.T. 37. But *see* 17 N.L.J. 22. He is not entitled as a matter of right but must seek extension of time under sec. 5. 47 I.C. 577=16 A.L J. 440; 80 I.C. 786=1925 C. 253. The time spent in an infructuous application for review will not be excluded if the grounds of review were only grounds of appeal. 31 I.C. 705=19 C.W.N. 1113. *See also* 89 P.R. 1918=46 I.C. 588. Where the appellants act *bona fide* and under legal advice in applying for review and prosecute their application with due diligence, they are entitled to have the period occupied in prosecuting the application excluded in computation of the period of limitation for the appeal. 30 S.L R. 301=162 I.C. 257=1936 S. 43. An application for review preferred with a reasonable expectation of success and not prosecuted with reasonable diligence does not justify an excuse of the delay for filing an appeal caused by the prosecution of the review application. 107 P.R. 1918=46 I. C. 23. Leave to appeal to Privy Council— Time taken in application for review—Reduction when permissible. 29 Bom.L.R. 344 =101 I.C. 432=1927 B. 221. "Leave to ap-

Explanation.—The fact that the appellant or applicant was misled by any order, practice, or judgment of the High Court in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this section.

Legal Disability,

6. (1) Where a person entitled to instiute a suit or make an application for the execution of a decree is, at the time from which the period of limitation is to be reckoned, a minor or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the first schedule.

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peal"—Meaning of. *See* 26 A.L.J. 847=1928 A. 499. Where one party applies for review, the time for cross-review by the other party should be extended if necessary as one is a counterblast to the other. 94 P.W.R. 1917=42 I.C. 54. Time spent in review proceedings based on reasonable grounds may be sufficient cause but an unexplained delay of two months after rejection of the review application is not sufficient cause. 10 I.C. 129=140 P.L.R. 1911. *See also* 28 I.C. 926; 22 I.C. 919=26 M.L.J. 356; 64 I.C. 516=13 Bur.L.T. 219.

REVISION.—An order refusing to excuse delay in presentation of an appeal is not open to revision even for showing that the appeal was in time. 24 I.C. 872. *See also* 35 P.L.R. 374.

PRACTICE.—The practice of admitting appeals "subject to objection at the hearing" has been condemned by Privy Council and should therefore cease. 50 I.C. 374=31 C.L.J. 1. Reliance on a prevailing practice of Court may be taken into consideration in excusing delay. I.L.R. (1937) Bom. 421=38 Bom.L.R. 1281=1937 Bom. 64.

SECS. 5 AND 29.—Sec. 29 (2) (*b*) cannot be read as excluding the operation of sec. 5 of the Act. Sec. 29 (2) (*b*) only applies for the purpose of determining the period of limitation prescribed for a suit appeal or application. Once that period has been determined, sec. 5 of the Act comes in and gives the Court discretion to extend it for sufficient cause. 12 B.R. 62. Scope and effect of sec. 29 (2)—Applicability of sec. 5 to appeals under special laws—Application under Madras Agriculturists' Relief Act (IV of 1938) —Dismissal—Revision—Right of appeal given newly by sec. 25-A—Appeal on dismissal of revision—Application to excuse delay under sec. 5, Limitation Act—Sec. 29 of the Act if excludes the application of sec. 5 of that Act. 59 L.W. 202=1946 M. 351=(1946) 1 M.L.J. 271.

PROCEDURE.—Delay in filing appeal—Extension of time if may be implied from the procedure of the High Court. 43 M. 550= 56 I.C. 163=38 M.L.J. 444 (P.C.). Memorandum of appeal presented beyond time— Procedure. 43 B. 376=46 I.A. 15 (P.C.). Second appeal—Time for obtaining copy of the judgment of first Court when excluded. 1928 A. 416.

SECS. 6 AND 7.—Secs. 6 and 7 of the Act are not mutually exclusive. Sec. 7 supplements sec.. 6. 41 A. 435=49 I.C. 990=17 A.L.J. 649. *See also* 24 O.C. 330=64 I.C. 757; 39 P.L.R. 127=1937 L. 485. Both secs. 6 and 7 go together. Sec. 7 is an extension of sec. 6, where the point of time at which the existence of disability is to be recognised is clearly defined as "the time from which the period of limitation is to be reckoned". Consequently, the joint right of suit dealt with in sec. 7 will also have to exist at the time specified in sec. 6 and if an afterborn reversioner is non-existent then, sec. 7 cannot be invoked in his case. 45 P.L.R. 345 =A.I.R. 1943 Lah. 281 (F.B.). Secs. 6 and 7 do not give a fresh period of limitation; in order to take advantage of sec. 6, the person claiming to take advantage of it must be a person entitled to institute the suit at the the time from which the period of limitation was to be reckoned. 23 Pat.L.T. 528=1942 Pat. 99. Sec. 6 is expressly limited to cases where limitation is prescribed in the first schedule to the Act; and when limitation is provided for in some Act outside the provisions of the Limitation Act, such special limitation is not affected by sec. 6 or sec. 7. The special provision for limitation in sec. 48, C. P. Code, is therefore, not governed by the provisions of sec. 6 or sec. 7. 65 C.L.J. 403=1938 Cal. 25; 1939 N.L.J. 387=1939 N. 245. Sec. 6 is applicable only to suits and applications for which a period of limitation is prescribed in the third column of the first schedule. It does not apply to the period of limitation provided for an application for execution in sec. 48, C. P. Code. 46 P.L.R. 26=A.I.R. 1944 Lah. 106. Sec. 6 is an enabling section to enable persons under disability to exercise their legal rights within a certain time and it should be construed liberally. 41 B. 625=41 I.C. 238. Where adverse possession was not running against a minor alone but was running against his elder brother and mother as well, it cannot cease on account of the disability of any one of the parties and the minor cannot obtain the benefit of the extension of limitation under sec. 6. 1943 A.L.W. 160. The section applies to applications under sec. 144, C. P. Code. 41 B. 625. Sec. 6 applies to every minor, whether he has a guardian or not, and the existence of a guardian competent to sue or to apply is immaterial. A minor under sec. 6 (1) is entitled to sue or to apply for execution of a decree within the statutory period of three years after attaining majority, and the protection given to a minor in the matter of making an application for execution cannot be restricted by the acts of his guardian. 18 Pat.L.T. 989=1938 Pat. 92. By the express terms of sec. 6 the extended period of three

years after majority can be claimed only by a person entitled to institute a suit at the time from which the period of limitation is to be reckoned. A person who was not in existence at the time does not come within the section and therefore he is not entitled to the three years' extension under sec. 6. 46 Bom.L.R. 683=1945 Bom. 63. The benefit of sec. 6 can be claimed by an assignee of the person who is entitled to that benefit in a suit where both the assignor and assignee join in the suit as plaintiffs, so long as the assignor has a subsisting right to sue at the date when the suit is brought, although the benefit would not be available had the assignee alone brought the suit. 40 Bom.L.R. 548=1938 Bom. 358. Where an alienation is made by some of the coparceners without legal necessity and against the wishes of others, it will be invalid not only against the latter but also as against other coparceners born after the alienation. Such coparceners would be entitled to avoid it not as the representatives of their fathers, but in their own right. The period of limitation would run from the date of the sale, and there is only one cause of action which would arise in favour of the other members who had not consented to the sale. Successive causes of action cannot arise as new members are born year after year. A coparcener who is not in existence at the time from which the period of limitation would be reckoned cannot rely upon sec. 6. 185 I.C. 881=1940 Nag. 94. *Sec also* 18 Lah. 395=1937 Lah. 420. *See also* 1939 L. 1=I.L.R. (1939) L. 227. Although under certain systems of law, such as Hindu Law, a child *en ventre sa mere* is by a legal fiction considered to be born in the sense that he has a right of inheritance in his father's property, such a fiction does not govern the rule laid down by the law of limition. Under the law of limitation, minority begins at the date of birth and not at the date of conception. Where therefore a person challenging an alienation of ancestral property was in his mother's womb but not born at the time of the alienation he cannot be said to be a minor and cannot therefore claim an extension of time contemplated by sec. 6. 42 P.L.R. 237=1939 Lah. 290. *See also* 1939 Lah. 1=I.L.R. (1939) L. 227. If the existence of a Hindu reversioner clothes an after born reversioner with a right to sue, though an after-born reversioner cannot claim the benefit of sec. 6 of the Limitation Act in his own right, he cannot be deprived of the extended period of limitation available to the reversioner in existence at the time of the alienation. 1943 M.W.N. 86=1943 Mad. 378 =(1943) 1 M.L.J. 157. Marumakkathayam thavazhi—Alienation by karnavan and adult member—Karnavan acting as guardian of minor member also—Suit by latter within three years of his coming of age not barred. 1939 Mad. 907=(1939) 2 M.L.J. 619. A plaintiff must prove affirmatively and clearly that his suit is within time and that the exemption enacted by this section applies to his case. 1923 L. 41. The point about the minority of a party for the purpose of calling in aid the provisions of sec. 6, cannot be raised for the first time in second appeal. 1940 N.L.J. 607=1941 N. 100. The section lays down a general rule for all kinds of disabilities and in all kinds of suits, while Art. 44 applies to only one case of disability, *i.e.*, minority, and one class of suits, *i.e.*, a suit to set aside a sale by guardian. 12 I.C. 695 =21 M.L.J. 1041. A lunatic is protected under sec. 6 as long as he is under disability. The mere fact that there was a guardian on his behalf, who could have sued earlier, would not deprive him of the protection given by that section. 148 I.C. 1166=1934 A.L.J. 803=1934 A. 434. Where payment is made by a debtor towards a debt due to a minor, the date of payment should be taken under sec. 6 as the date "at the time from which the period of limitation is to be reckoned". 161 I.C. 330=1936 A. 152. A suit could be brought on behalf of the minors in which the minors obtained the benefit of sec. 6. 1936 All. 152=1936 A.L.J. 59. Sec. 6 does not operate to extend the period of twelve years under sec. 48, C. P. Code. 37 M. 186 =24 M.L.J. 96; 37 A. 638=30 I.C. 521=13 A.L.J. 826; 13 A.L.J. 166. *See also* 26 Bom. L.R. 426=1924 B. 468; 1938 Cal. 25=I.L. R. (1937) 2 Cal. 373=65 C.L.J. 403; 20 Pat. 1=22 Pat.L.T. 721=1941 Pat. 45; 46 P.L.R. 25. Minority can be successfully invoked as a plea only in suits and execution applications. 37 I.C. 292=101 P.R. 1916. Where an appeal of a minor appellant has been dismissed for default, he cannot resort to sec. 6 to apply for its restoration. 45 B. 648= 1921 B. 20=23 Bom.L.R. 110. Sec. 6 does not apply to suits under Registration Act. 18 M. 99; nor to a suit under the Bengal Tenancy Act. 29 C. 813. Secs. 6 and 7 do not extend to suits to enforce a right of pre-emption. 52 I.C. 587=86 P.R. 1919. Sec. 6 does not apply to an application to set aside an *ex parte* decree. 37 I.C. 292=101 P.R. 1916; 35 I.C. 438 (Bur.); 10 Bur.L.T. 27; nor to applications for personal decrees under O. 34, r. 6, C. P. Code. 56 C. 1117= 33 C.W.N. 519=1930 C. 34; 12 I.C. 695=21 M.L.J. 1041; nor to an application for a final decree in a mortgage suit. 40 A. 203=16 A. L.J. 85; 37 C.W.N. 184=144 I.C. 768=1933 C. 508. [In this case it was however *held* that having regard to O. 32, r. 10, C. P. Code, the suit did not abate but was kept in abeyance and that the application for a final decree was maintainable]. *See also* I.L.R. (1941) Bom. 435=43 Bom.L.R. 329=1941 Bom. 203; nor to an application to make a decree absolute. 48 I.C. 934=15 N.L.R. 36; nor to applications under O. 22, r. 3 of the C. P. Code. 35 I.C. 438. Sec. 6 does not prevent possession being adverse or the running of limitation against a minor. It only gives an extension of time in his favour. 5 O.W.N. 832=1928 O. 481. The only disabilities which save the operation of the Limitation Act are those which are created by the statute itself, sec. 6 of which recognises only three classes of persons as being under legal disability. It is difficult to bring an idol or a math within the same category as a minor,

lunatic or an idiot for whom express provision has been made. 11 Pat.L.T. 403=1930 P. 455. A disqualified proprietor who e estate is managed by the Court of Wards does not come under tie section. 8 O.W.N. 349=1931 O. 177. *See also* 1943 A.W.R. (Rev.) 187 (2) (Application for execution of decree for profits under U. P. Tenancy Act). Where Court of Wards has assumed the superintendence of the property of a minor, it can apply for execution of a decree passed in favour of the minor's father after the period of limitation and rely upon sec. 6. 30 S.L.R. 30=163 I.C. 379=1936 S. 84. Insolvency is not a disability under the Limitation Act. 61 M.L.J. 688=1932 M. 170. *See also* 53 L.W. 569=1941 Mad. 449=(1941) 1 M.L.J. 644 (As to effect of minority in the case of manager of Hindu Religious Institution). The mother and guardian of a minor sold certain property belonging to the ward in 1873, and, the ward having died an infant in 1879 or 1880, she succeeded to his other property and died in 1921 without taking steps to set aside the alienation. A reversionary heir instituted a suit in 1922 to recover possession of the property sold from persons holding under the original vendee, *held*, that the suit was barred by limitation because of sec. 6 (3) read with Art. 44 of the Limitation Act. The suit became barred on the lapse of three years after the death of the ward, notwithstanding the fact that he was succeeded by a female heir. 1930 M. 821 =59 M.L.J. 196. *See also* 39 P.L.R. 127= 1937 Lah. 485. Both reversioners suing to set aside alienation born at the time of alienation—One of them a minor at the time of suit—Suit by one barred—Suits by the other, if and when barred. *See* (1946) 2 M.L.J. 214. Sec. 6 of the Limitation Act is made applicable to the Kumaun Rules by a notification of 1918 and it confers on a minor a large period of limitation for instituting a suit to avoid a sale of Khaikari right. 14 R.D. 635. Under sec. 6, the last date for a minor decree-holder to apply in execution is within three years after attaining majority. The guardian of a minor can also apply in execution at any time during the minority, even though his previous application is more than three years old. 32 Bom.L.R. 1299= 1930 B. 593 (1). *See also* 32 Bom.L.R. 1093 =1930 B. 508; 1935 L 144 (1). Secs. 6 and 7 import that during minority the operation of the Limitation Act is suspended and since a minor can apply within 3 years after attaining majority, he may by his guardian or next friend apply at any time before he attains majority. 119 I.C. 39=1929 M. 394. A minor in whose favour a decree is assigned is not entitled to the benefit of sec. 6 of the Act. The assignment does not create a fresh cause of action in his favour. 46 P.L.R. 26 =1944 Lah. 106. Where after the death of a tenant the defendant dispossessed his minor sons and the latter brought a suit for possession more than 12 years after their father's death but within one year of one of the plaintiffi's attaining majority, it was *held* that the suit was within time as the plaintiffs were entitled to the benefit of the extension of limitation under sec. 6. 1943 O.W.N. 99= 1943 A.W.R. (C.C.) 25=1943 O.A. (C.C.) 62 =A.I.R. 1943 Oudh 296.

PERSONAL PRIVILEGE.—The assignee of property from a minor cannot avail himself of the benefit of sec. 6. 44 I.C. 890=14 P. W.R. 1918. *See also* 46 I.C. 802=22 C.W.N. 831; 42 M. 637=50 I.C. 380; 9 O.L.J. 88= 1922 O. 31. Sec. 8 is ancillary to and restrictive of the concession granted by secs. 6 and 7 and does not confer any substantial privilege. 42 M. 637=50 I.C. 380. The transferee cannot maintain a suit even if he brings it on the same day on which the transfer takes place, if it is otherwise barred. 9 O. L.J. 88=1922 O. 31. But *see* 27 I.C. 118= 18 O.C. 34. *See also* 90 I.C. 741=2 O.W.N. 811=1926 O. 20. Sec. 15 (2) does not refer to the extension of time allowed to persons under disability under secs. 6 and 8. 52 I. C. 725=37 M.L.J. 256. The provisions regarding legal disability and consequent extension of time do not apply to the legal representatives of minors except as stated in sec. 6. If a minor who is entitled to sue within three years after attaining majority dies after attaining majority, there is no provision which can extend limitation to that period for his representatives. I.L.R. (1942) Nag. 331=1943 N.L.J. 286=A.I.R. 1943 Nag. 284. The fact that the property of a plaintiff has been in continuous possession of the Court of Wards from before the death of the plaintiff's father until the plaintiff attained majority will not prolong the period of limitation under sec. 6 226 I.C. 97=1946 Pat. (Rul.) 342=A.I R. 1946 Pat. 154.

SUBSEQUENT DISABILITY.—A minor is not entitled to the benefit of sec. 6 in respect of a right to sue which accrued before his birth. 54 I.C. 838. Where a cause of ation accrued to a person when he was in embryo, he cannot get the advantage of sec. 6, as he cannot be deemed to be a minor in existence on the date of the conception. 10 L. 713=1929 L. 254 (2). *See also* 1930 L. 394=31 P.L. R. 305; 1931 M. 456=60 M.L J. 521. Sec. 6 does not apply to the case of a minor born subsequent to the alienation objected to. 14 I.C. 60=173 P.W R. 1912; 1927 L. 97=8 L. 19=97 I.C. 435; 59 I.C. 678=1 L. 558; 1927 A. 54=97 I C. 591; 1937 L. 420=I.L.R. (1937) L. 395. *See also* 43 Bom.L.R. 222= 1941 Bom. 197 (Adopted son). But if an elder brother of such a person brings a suit to set aside the alienation. the after-born son can join in the suit. 40 C. 966=40 I.A. 213 =25 M.L.J. 512 (P.C.). This is so because the second son has no independent right to sue and his right is derived from his elder brother's right. 13 L. 520=1932 L. 605.

MISCELLANEOUS.—Medical evidence is not of much help in determining age. 1928 L. 200. Death of minor—Disability of legal representative. 40 B. 564=37 I.C. 221=18 Bom.L.R. 579. Sec. 6 gives the minor the same period of limitation after his attaining majority as an ordinary person gets. There

(2) Where such person is, at the time from which the period of limitation is to be reckoned, affected by two such disbilities, or where, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period, after both disabilites have ceased, as would otherwise have been allowed from the time so prescribed.

(3) Where the disability continues up to the death of such person, his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been allowed from the time so prescribed.

(4) Where such representative is at the date of the death affected by any such disability, the rules contained in sub-sections (1) and (2) shall apply.

Illustrations.

(*a*) The right to sue for the hire of a boat accrues to *A* during his minority. He attains majority four years after such accruer. He may institute his suit at any time within three years from the date of his attaining majority,

(*b*) A right to sue accrues to *Z* during his minority After the accruer, but while *Z* is still a minor, he becomes insane. Time runs against *Z* from the date when his insanity and minority cease.

(*c*) A right to sue accrues to *X* during his minority *X* dies before attaining majority, and is succeeded by *Y*, his minor son. Time runs against *Y* from the date of his attaining majority.

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is nothing in sec. 8 to extend the period. 43 I.C. 712=40 P.L.R. 1918=30 P.W.R. 1918. *See also* 34 A. 496=10 A.L.J. 3. To set aside the sale under Art. 12 the minor must bring an action exactly within one year from the date of his attaining majority. 43 I.C. 712=30 P.W.R. 1918. An application by a minor representative after more than three years but during minority for execution of decree is not barred. 26 O.C. 206=1924 O. 31. *See also* 22 I.C. 637=84 P.L.R. 1914; 21 I.C. 365=16 O.C. 206; 1929 L. 661=117 I.C. 909. Pro-note executed in favour of minor represented by guardian—Minor is entitled to extended period of limitation under sec. 6. 50 B. 831=28 Bom.L.R. 1431=1927 B. 61. *See also* 54 A. 1019=1933 A. 100= 1932 A.L.J. 1012. Application by minor defendant to set aside sale and other proceedings in execution—Not governed by sec. 6. *See* (1942) 2 M.L.J. 558. Alienation by Hindu father—Suit to set aside by subsequently born son—Limitation—Elder brother existing at the time of alienation—Application of sec. 6, Limitation Act. 41 L.W. 610 =1935 M. 431. *See also* 18 Lah. 769=40 P. L.R. 188=1938 Lah. 1; 1942 M. 449 =(1941) 2 M.L.J. 644. Alienation by Hindu widow— Suit by after-born reversioner—Limitation— Benefit of sec. 6—If available. 16 Pat.L.T. 236=1935 P. 256.

Secs. 6 to 9 have been declared not to apply to suits, appeals or applications under the Bengal Public Demands Recovery Act (III of 1913).

SECS. 6 AND 9.—Limitation for a suit on a promissory note begins to run from the date of its execution and *prima facie* the running of limitation could not be stopped by the fact that the payee died and the person who subsequently becomes entitled to sue is under disability. Hence a minor heir of a deceased promisee under a promissory note cannot claim the benefit of sec. 6 of the Limitation Act. 1940 O.W.N. (H.C.) 321 (2)=1943 A. L.W. 546. If a presumptive reversioner has failed to sue, a remote reversioner, who happens to be a minor at the time of the alienation, can avail himself of the benefit of sec. 6. Sec. 9 does not come into operation in such a case. Time no doubt will start running both against the major and minor reversioners but they will have their own periods of limitation and in no case will the one provided for a minor reversioner be affected by that of a major reversioner whether of equal or of a different degree. 46 P.L.R. 316=A.I.R. 1944 Lah. 409 (F.B.)=I.L.R. (1945) Lah. 231.

SECS. 6, 7, 8 AND 9: SCOPE AND EFFECT.— The effect of secs. 6, 7, 8 and 9 of the Limitation Act was to bar the plaintiff's right to sue, whether or not the previously adopted son died a major or a minor. Since the right of the former adopted son was barred by limitation, time having already run against him, no further right to sue in respect of the alienations could accrue to the plaintiff. 43 Bom.L.R. 222=1941 Bom. 197.

SECS. 6 (3) AND 19: SCOPE AND EFFECT.— A mortgage was executed in 1916 in favour of *A*, a period of three years being fixed for payment of the amount. *A* died in 1920, and the right then devolved on his minor son. While he was a minor, there were two acknowledgments, one in 1924 and another in 1927. The son also died a minor, and his mother (*A's* wife) brought a suit on the mortgage in 1941, which was within three years of the date when the son would have attained majority *Held*, (1) that when acknowledgments were made, fresh periods of limitation was to be computed under sec. 19 of the Limitation Act and hence the deceased minor would be entitled to file the suit within three years of his majority; (2) that since he died a minor, and since the disability continued up to his death, his mother was entitled, under sec. 6 (3) of the Limitation Act, to file the suit within the same period after his death and hence the suit was in time. 57 L.W. 612. Scope and combined effect of secs. 6 and 19—Acknowledgment of debt during plaintiff's minority—If extends period of limitation up to three years after plaintiff's becomng major. I.L.R. (1942) Bom. 574=44 Bom.L.R. 522= A.I.R. 1942 Bom. 248.

7. Where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all: but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

Disability of one of several plaintiffs or applicants.

Illustrations.

(*a*) *A* incurs a debt to a firm of which *B*, *C* and *D* are partners. *B* is insane, and *C* is a minor. *D* can give a discharge of the debt without the concurrence of *B* and *C*. Time runs against *B*. *C* and *D*.

(*b*) *A* incurs a debt to a firm of which *E*, *F* and *G* are partner; s *E* and *F* are insane and *G* is a minor. Time will not run aginst any of them until either *E* or *F* becomes sane, or *G* attains majority.

SEC. 7: APPLICABILITY.—Sec. 7 does not apply where disability had not existed when the right to apply accrued. 34 I.C. 86=20 C.W.N. 852. *See also* 11 I.C. 401=15 C.W. N. 845. Sec. 7 is a disabling section, and in so far as it takes away the right conferred by sec. 6, has to be strictly construed. 50 L.W. 562=1939 Mad. 907=(1939) 2 M.L.J. 619. The disability referred to in the section means a disability of a kind which is of the nature and existed at the time referred to in sec. 6. 24 O.C. 330=1921 O. 196=64 I. C. 757. Sec. 7 clearly has no application to any but the cases to which it is made applicable, namely, to debts and execution of decrees. 133 I.C. 155=1931 A. 398. But *see* 25 I.C. 755 (M.). Sec. 7 applies not only to cases of discharge of debts but also to cases involving immovable property; the word "discharge" in sec. 7 is wide enough to include any form of quittance whereby the rights and liabilities between two parties are put an end to. 34 P.L.R. 384=1933 L. 479; 25 I.C. 755; 16 P. 422=18 Pat.L.T. 385= 1937 P. 435 (F.B.). When several persons jointly interested in a property have been dispossessed, section does not apply if each of the several persons can sue for his individual share. 51 I.C. 797. Sec. 48, C. P. Code, cannot override sec. 7, and does not therefore imply that running of time will not be suspended against a minor. 1929 M. 394=119 I.C. 39. Where some minors were impleaded as co-mortgagees in the place of one of the co-mortgagees since deceased and a final decree was passed but the execution application was filed five years after: *Held*, that it was not barred by limitation. 37 C.W.N. 838= 1937 C. 1.

MEMBERS OF A JOINT FAMILY.—A major manager of a joint Hindu family can give a valid discharge of a decree debt within sec. 7 so as to make time run against minor members of the family. 44 I.C. 566; 30 Bom.L. R. 537=52 B. 441=1929 B. 13. *See also* 25 I.C. 755; 15 M.L.T. 100=22 I.C. 76; 30 I. C. 75; 31 Bom.L.R. 963=1929 B. 382; I.L. R. (1941) Kar. 72=1941 Sind 166; I.L.R. (1940) M. 752=1940 M. 530=(1940) 1 M.L.J. 195. But if he happens to be the guardian *ad litem* or the next friend of a minor coparcener, he would not be competent to give a valid discharge in respect of the subject-matter of the suit or decree sought to be executed wherein he occupies such position without the permission of the Court under O. 32, r. 6, C. P. Code, in respect of the interest of such minor. But when he is not the next friend of a minor in respect of the decree sought to be executed, his powers as manager are not restricted or curtailed by any statutory rule. 43 L.W. 390=1936 M. 434= 70 M.L.J. 700. *See also* 19 Pat.L.T. 855 =1939 Pat. 33; 1938 Bom. 392. His right as manager to receive money due under the decree in favour of the family and give a valid discharge without the concurrence of the minor is not in any way affected by the fact that another person than himself represented the minor as next friend in the decree. A minor coparcener cannot therefore claim the benefit of sec. 7, in respect of an application by him to execute the decree. *See* 1936 M. 434=70 M.L.J. 700; 1939 Pat. 33. It is well established that although a suit by the younger of two Hindu brothers constituting a joint family filed within three years of his attaining majority would be barred by limitation if the elder brother had failed to sue within three years of his majority if he was the manager of the family, sec. 7, Limitation Act, would not operate as a bar if the elder (adult) brother was not the manager of the family during the relevant period. 58 L.W. 100 (2)=1945 Mad. 498=(1945) 1 M.L.J. 200. Where a cause of action accrues to two brothers of a joint Hindu family jointly when they are minors, limitation runs from the date on which the elder of the two becomes a major. 43 M. 842=39 M.L.J. 375; 1930 A.L.J. 852=52 All. 768=1930 A. 861; 12 I.C. 695=21 M.L.J. 1041; 86 I.C. 704= 1925 A. 247 (1); 1929 L. 14; 37 Bom.L.R. 225=1935 B. 259; 1934 M. 469=67 M.L.J. 27; 18 Pat.L.T. 385=1937 P. 435=16 P. 422 (F.B.). *See also* 1938 Bom. 206. Mere coming of age of one of the brothers in a joint Hindu family does not raise a presumption that he is the manager of the family in the absence of any evidence. 167 I.C. 934=18 Pat.L.T. 383=1937 P. 155. Where, therefore, a suit is brought by two brothers, one of whom had become a major, for possession of lands of which a wrong entry was made in the record-of-rights, which suit would have been barred by time but for the minority of one of them, and there is no evidence to

show that the major brother was karta of the family, the suit is not barred as major brother could not have given a valid discharge. *See* 36 Mad. 544=24 M.L.J. 333; 40 Bom.L.R. 127=1938 Bom. 206; 40 Bom.L.R. 521 =1938 Bom. 392; 67 C.L.J. 88 (Case of minor memb r represented by certificated guardian—Major member not competent to give valid discharge). Under the Hindu Law, where there is an eldest member of a family, the presumption is that he is the manager of the family, and he is competent to give a discharge without the concurrence of the other members of the family under sec. 7 so far the Madras Presidency is concerned. It cannot be said that an elder brother or eldest brother must be shown to be acting as the manager. If a party wants to displace the ordinary presumption that the eldest member has acted as manager and contends that he was not in a position to give a valid discharge, it is incumbent on him to prove facts rebutting that presumption. I.L.R. (1940) Mad. 752=1940 Mad. 530=(1940) 1 M.L.J. 195. Where the eldest of several Hindu brothers never acts as the manager of the joint family though he becomes a major, and cannot give a valid discharge without the concurrence of the others, time will not run against the latter under sec. 7. 40 Bom.L.R. 1029=1938 Bom. 500. A minor promisee (in a Hindu joint family) of a pronote cannot sue on it after three years, when the adult co-promisee allows it to be barred. 36 M. 544=24 M.L. J. 333 (F.B.). *See also* 1933 M.W.N. 895 =1934 M. 103 (1). Sec. 7 merely refers to the capacity to give discharge. "If he gives a discharge without any benefit to the family his act may be liable to be challenged by the minors but that is immaterial to the question of limitation". (45 B. 446; 38 M. 118, Foll.) 34 P.L.R. 384=1933 L. 479. One co-heir cannot give a valid discharge in respect of a debt due to the ancestor without the concurrence of the other co-heirs. 35 Bom.L.R. 388 =1933 B. 245=145 I.C. 164. But where the cause of action is distinct, the mere fact that the elder brother could have joined it with his does not bring the suit within sec. 7. 41 M. 102=33 M.L.J. 309. *See also* 53 I.C. 161 =10 L.W. 422; 32 I.C. 802=1915 M.W.N. 908; 38 M. 118=25 M.L.J. 405; 12 I.C. 695 =21 M.L.J. 1041; 52 I.C. 725=37 M.L.J. 256; 1928 M. 42=53 M.L.J. 677. Applicability of section to suit by a member of a joint Hindu family against a stranger setting up *title by adverse possession*. 155 I.C. 569 =57 All. 891=1935 All. 746 (2). In the case of alienation by manager or guardian of minors, the bar of limitation as against one member does not affect other members, if such other members have a right to impeach alienation. 133 I.C. 155=1931 A. 398. [This decision proceeds on the ground that sec. 7 applies only to debts.] *See also* 53 L.W. 724 =1941 Mad. 678. In the case of an alienation by a widow a remoter reversioner can sue to set it aside independently of the nearer reversioner and if he is a minor at the time of transfer, he can avoid it within three years of his attaining majority. 1932 L. 39=132 I.C. 665 (L.). *See also* 1940 O.W.N. 1237 =1941 Oudh 165. But *see* 1933 L. 524; 39 P.L.R. 127=1937 Lah. 485. Holding that a suit by a reversioner to challenge an alienation made by the limited owner is a representative one, if a reversioner competent to challenge the alienation fails to do so within the period of limitation, others can't challenge it afterwards whether minors or otherwise. Where a suit to set aside an alienation by a Hindu father is brought by the eldest son within three years of his attaining majority, sons born subsequent to the alienation are entitled to join in the suit and get their share. 40 C. 966=40 I.A. 213=25 M.L.J. 512 (P.C.). In such a case, limitation will run from the date of the cessation of the elder son's minority. The after-born sons have no independent right to sue. Their right is derived from the eldest son's right to sue. 13 L. 520=1932 L. 605. In the absence of fraud a *karnavan* sufficiently represents a tarwad so as to be able to give a discharge even on behalf of the minor members. 25 I.C. 755. Where a Hindu uncle and his minor nephew claim as co-owners under independent titles and not as members of a joint family, the former cannot give a valid discharge of the claim of the latter so as to make limitation run against him also. 31 N.L.R. (Supp.) 191 =162 I.C. 577=1936 N. 80. In the case of brothers who are daughter's sons of the last male Hindu owner, the property is not coparcenary property in the strict sense of the term under the Hindu Law and therefore the elder brother is not a person entitled to give a valid discharge on behalf of his younger brothers within the meaning of sec. 7 of the Limitation Act. In such a case the time for a suit on behalf of the daughter's sons to set aside an alienation by the limited owner does not begin to run until all the brothers entitled to sue become majors, it being a case of several persons jointly entitled to institute a suit. 57 L.W. 459=1944 Mad. 512=(1944) 2 M. L.J. 117. In a Mahomedan family, the heirs are entitled to definite shares as tenants-in-common and the cause of action of such heirs cannot be said to be a joint one for the purpose of limitation. 51 I.C. 748=36 M.L.J. 184. And a bar of limitation against one major son does not affect another son. 1929 L. 582. Under the Punjab Customary law, a minor reversioner's right to contest an alienation of ancestral property even when nearer reversioners are in existence, is saved by sec. 6. 1933 L. 866; 1934 L. 908. So also his right to contest an adoption. 1934 L. 968 (2). Co-heirs must join in a suit for accounts of partnership. 33 I.C. 564. One member of a partnership even if it has been dissolved is entitled to give a valid discharge of a debt due to the partnership. 52 I.C. 456=10 L.W. 57. *See also* 33 I.C. 564. A suit by minor brothers to set aside alienation by their mother brought after three years after the eldest of them attained majority is barred by time. 45 B. 446 =22 Bom.L.R. 1323=1921 B. 289. *See also* 23 Bom.L.R. 1191=46 B. 535=1922 B. 319; 42 B. 277=44 I.C. 851; 38 B. 94=15 Bom. L.R. 882; 58 M. 115=67 M.L.J. 27=150 I.C.

Special exceptions.

8. Nothing in section 6 or in section 7 applies to suits to enforce rights of pre-emption or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period within which any suit must be instituted or application made.

Illustrations.

(*a*) *A*, to whom a right to sue for a legacy has accrued during his minority, attains majority eleven years after such accruer. *A* has, under the ordinary law, only one year remaining within which to sue. But under section 6 and this section an extension of two years will be allowed him, making in all a period of three years from the date of his attaining majority, within which he may bring his suit.

76=1934 M. 469; 37 Bom.L.R. 225; 1935 B. 259; even if the eldest brother was living separately and at a distance. 165 I.C. 656=1936 M. 914. If a manager of a joint Hindu family consisting of himself and his minor brother obtains a decree in a suit brought by him in the name of the joint family firm on his own behalf and as next friend of the minor, he can not lawfully receive any money which may be jointly due to them under the decree without the leave of the Court in view of the prohibition contained in O. 32, R. 6, C. P. Code, and he is consequently not in a position to give a valid discharge for the decretal debt without first obtaining such leave. The prohibition is not removed merely because the decree is passed in the name of the firm without further mention of the minor. Consequently if an application for execution of the decree filed by the manager is dismissed as barred by limitation, a subsequent application for execution filed by the minor within three years after attaining majority is not barred either by reason of sec. 7 of the Limitation Act or by the principle of *res judicata*. 44 P.L.R. 368=1942 Lah. 280. Final decree in mortgage suit in favour of Hindu brothers—Some decree-holders minors represented by eldest brother as next friend—Limitation for execution—Saved. 55 L.W. 835=(1942) (2) M.L.J. 736=I.L.R. (1943) Mad. 595.

DISCHARGE BY GUARDIAN.—A Muhammadan mother who is *de facto* guardian having no authority to transfer or deal with the property of the minors cannot give a valid discharge for payments made to the minors. 41 A. 473 =50 I.C. 730=17 A.L.J. 582.

JOINT DECREE-HOLDERS.—Where one of the decree-holders is a minor, and the other decree-holders are not competent to give a valid discharge without his concurrence, time will not run against any of them till the minor attains majority. 49 C.W.N. 558=A.I.R. 1945 Cal. 387. Decree in favour of major and minor members of joint Hindu family—Discharge—Limitation. 18 I.C. 723. Joint promissory note—Decree in favour of brothers—Elder brother authorised to recover entire amount—Period of minority cannot be excluded. 39 L.W. 62=148 I.C. 54. Joint decree in favour of one adult and two minors—Persons not proved to be members of joint Hindu family—Adult not acting as karta—He cannot give discharge on minor's behalf. 104 I.C. 668 (25 M. 26; 28 M. 487; 28 C. 465; 47 M. 920; 36 M. 295; 44 C. 120; 31 A. 156, Ref.)=55 C. 608=1927 C. 952. If one of several decree-holders can give a discharge without the concurrence of others, sec. 7 applies. 12 I.C. 503 =21 M.L.J. 1088. *See also* 18 I.C. 723 (1); 10 I.C. 464. One of several minor mahomedan daughters, who are joint decree-holders, cannot, after attaining majority, give a discharge without the concurrence of others. Sec. 7 will, therefore, apply and time will not run against any of them till all of them become majors for the purpose of the execution of the decree, and it would make no difference that there was a next friend who had instituted the suit on minor's behalf. 119 I. C. 234=1929 L. 467. *See also* 27 A.L.J. 284 =116 I.C. 481=1929 A. 142 [7 A. 313, (F. B.), Dist.] Where in a suit by widow of deceased brother and minor, a joint decree was passed, the widow cannot give a valid discharge and the execution application filed by the minor within three years of his attaining majority is not barred. 27 A.L.J. 72=118 I. C. 229 (1)=1929 A. 267 (1). Decree in favour of father—His three sons, two majors and one minor forming members of a joint family constitute a single legal representative and one of them cannot execute the decree nor give a valid discharge. 1931 L. 5=130 I.C. 403. *See also* 30 L.W. 361=1929 M. 394 (a case of joint decree in favour of three minors); 1929 C. 165 (a case of joint decree in favour of a minor and karta of joint family).

MISCELLANEOUS.—Court not bound to raise *ex proprio motu* the special plea in party's favour. 18 I.C. 391=17 C.W.N. 667.

SEC. 7 AND ART. 144.—The possession of *debuttur* property under a purchase made during the minority of the shebait, cannot be adverse to the idol until the minor shebait attains majority. 76 C.L.J. 363=1944 Cal. 157 =213 I.C. 234.

SEC. 8.—Under sec. 8 where a plaintiff is a minor when the cause of action arises, time does not run against him until the minority has ceased. A suit brought within the prescribed period after minority is over is not barred. 27 A.L.J. 1233=1929 A. 963. A mortgage was executed in 1916 in favour of the plaintiff's husband, fixing a period of three years for payment. The mortgagee died in 1920, leaving the plaintiff and a minor son. During his minority three were two acknowledgments, one in 1924 and the other in 1927. The son died a minor, and the plaintiff filed a suit on the mortgage within three years. *Held*, (1), that when an acknowledgment was made, a fresh period of limitation was to be computed under sec. 19 of the Limitation Act, and the minor son of the mortgagee was entitled to file a suit within three years after attaining majority under sec. 8 of the Limita-

(*b*) A right to sue for an hereditary office accrues to *A* who at the time is insane. Six years after the accruer *A* recovers his reason. *A* has six years, under the ordinary law, from the date when his insanity ceased within which to institute a suit. No extension of time will be given him under section 6 read with this section.

(*c*) A right to sue as landlord to recover possession from a tenant accrues to *A*, who is an idiot. *A* dies three years after the accruer, his idiocy continuing up to the date of his death. *A's* representative in interest has, under the ordinary law, nine years from the date of *A's* death within which to bring a suit. Section 6 read with this section does not extend that time, except where the representative is himself under disability when the representation devolves upon him.

Continuous running of time.

9. Where once time has begun to run, no subseqent disability or inability to sue stops it:

Provided that where letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.

10. Notwithstanding anything hereinbefore contained, no suit against

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tion Act; (2) under sec. 6 (3) of the Lmitation Act, since the disability continued up to his death, his legal representative, the plaintiff, was entitled to file the suit within the same period after his death as would otherwise have been allowed from the time so prescribed, and the suit was therefore in time. 57 L.W. 612=1944 M.W.N. 732=1945 Mad. 149 =(1945) 1 M.L.J. 3.

SEC. 9: SCOPE OF SECTION.—*See* 43 M. 185 =38 M.L.J. 1; 5 O.W.N. 832=1928 O. 481. *See also* 40 M. 701=31 M.L.J. 231=6 P.L.J. 273=1921 P. 166 (2). Sec. 9 contemplates only cases where the cause of action continues to exist; but where the cause of action is cancelled by reason of subsequent events, this section will not apply. 62 C. 66=1935 C. 333; *see also* I.L.R. (1943) Nag. 422=1943 N.L.J. 159=1943 Nag. 178. "Disability"—Sec. 9 covers the case of an alien enemy who is debarred from suing in consequence of a declaration of war. 46 C. 526=23 C.W.N. 157. *See also* 47 I.C. 122. The period of limitation cannot be suspended once the period has begun to run unless the suspension is itself provided for in the Act. 49 A. 565=102 I.C. 96=1927 O. 446. *See also* 1939 Lah. 270. Adjustment of claim—Re-opening of fresh cause of action. 2 L. 320=64 I.C. 454=1921 L. 71. Suit on promissory note—Time not extended by reason of suit by executant for declaration of invalidity of note. 50 M. 417=1927 M. 597 =52 M.L.J. 396. It is not open to a plaintiff suing on a pro-note to deduct the time during which insolvency proceedings were pending against the defendant. 42 M. 319= 36 M.L.J. 104. When once limitation begins to run for a suit to enforce a mortgage, it is not suspended merely because the mortgaged property is submerged under water, as it does not affect a mortgagee's right to bring a suit on the mortgage. 146 I.C. 856=1933 P. 693. Nor when there has been a fusion of the interests of the mortgagor and mortgagee. 35 A. 227=40 I.A. 74=25 M.L.J. 131 (P.C.); 4 L. 90=1924 L. 40. When time once begins to run against a reversioner for contesting the validity of an alienation of ancestral property, no subsqeuent disability to sue on the ground of minority of another reversioner can suspend it. 29 I.C. 761. When once time has begun to run against a party, the subsequent minority of his heirs does not stop it. 42 I. C. 809. *See also* 1923 R. 98 (2); 18 I.C. 306; 42 M. 319=36 M.L.J. 104. Where a person has begun to hold possession of land adversely to two co-sharers, each being the owner, of a moiety, and before the expiration of the statutory period of limitation succeeds to one moiety upon the death of its owner, his possession continues to be adverse to the owner of the other moiety, although he has become jointly interested with the other. 24 C.W.N. 346=53 I.C. 901=43 M. 244=46 I.A. 285= 1919 P.C. 44; 38 M.L.J. 313 (P.C.).

SECS. 9 AND 15.—Where a decree against the judgment-debtor has been passed before the order of adjudication of the judgment-debtor as insolvent, the time for applying for execution of the decree begins to run, which cannot be suspended by a subsequent disability. Moreover, the disability in such case can be removed by the decree-holder himself applying to the Insolvency Court for permission to sue. Where no such permission is asked, sec. 15 cannot possibly apply. 184 I. C. 573=1939 Lah. 270.

SEC. 9 AND ART. 141.—An adoptive mother executed a will during the minority of her adopted son treating her deceased husband's properties as if they were her own absolute properties. She gave to the adopted son only a house and some cash and dedicated the rest of the properties to an idol. The adopted son after attaining majority executed a receipt in her favour in which he gave his consent to the will and admitted that he had been in separate possession of the house given to him from the date of its execution. The adoptive mother was in possession of the properties dedicated to the idol for more than twelve years after the execution of the receipt and died. In a suit by the reversioners of the adopted son for the recovery of those properties. *Held*, that time began to run against the adopted son in his life time by reason of his adoptive mother's adverse possesion and his title, if any, came to an end in twelve years—that is, before his adoptive mother's death, and that the principle of sec. 9 of the Lmitation Act applied and not Art. 141. I.L.R. (1943) Kar. (P.C.) 69=47 C.W.N. 607=1943 A.L.J. 292 =1943 O.W.N. 334=56 L.W. 593=1943 P.C. 83=(1943) 2 M.L.J. 51 (P.C.).

SEC. 10.—The amendment of sec. 10 (by Act I of 1929) which was effected in consequence of the decision in *Vidya Varuthi's* case

Suits against express trustees and their representatives.

a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assig .s (not being assigns for valuable consideration), for the purpose of following in his or their hands such property or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time.

[1][For the purposes of this section any property comprised in a Hindu, Muhammdan or Buddhist religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose, and the manager of any such property shall be deemed to be the trustee thereof.]

LEG. REF.

[1] Inserted by Act I of 1929. Sec. 2; the necessity for the addition of the new para. and the insertion of the new Articles 48-A, 48-B, 134-A, 134-B and 134-C has been fully stated in the Statement of Objects and Reasons. *See* Fort St. George Gazette, Sept. 1927, Pt. II, pp. 439-444.

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is not retrospective and does not apply to suits instituted prior to it. 61 I.A. 50=56 A. 111=1934 P.C. 77=66 M.L.J. 431 (P.C.). Therefore, in a suit brought in 1926 by the Sajjadanashin of a Mahomedan *dargah* (Shrine) for possession of wakf lands from defendants who were at one time mujawars (*i.e.*, attendants and servants of the shrine) and who were in possession in lieu of their services but had been dismissed in 1898. *Held*, that in view of the decision in *Vidya Varuthi's* case the suit did not come within the provisions of sec. 10, as it stood before the amendment; that the Sajjadanashin is not a "trustee" in the technical sense nor is any property belonging to the wakf "vested" in him. 61 I.A. 50=56 A. 111=1934 P.C. 77=66 M.L.J. 431 (P.C.). *See also* 157 I.C. 181 (2)=1935 M. 483. Where the right of the plaintiff had become barred by limitation before the amending Act of 1929 was passed, the mere institution of the suit after 1929 cannot have the effect of reviving that right. 22 Pat. 133=1943 Pat. 289.

CONSTRUCTION.—Sec. 10 and Art. 134 must be read together. Sec. 10 is in the main designed to meet a suit brought for the purpose of following misapplied trust funds for the benefit of the trust. 20 Bom.L.R. 441; 32 M.L.J. 85. Scope of sec. 10. *See* 49 I.A. 37 =1922 P.C. 212 (P.C.).

CONSTRUCTION—"ASSIGNS" MEANING OF.—The assigns contemplated in sec. 10 are not only assigns from the mahant of a math but also assigns from the transferee or assignee from the mahant. The object of inserting the words "valuable consideration" is to distinguish the case of a transferee who is a mere volunteer and in whose favour no equity could be brought to play and to hit only those transferees who are in possession of the trust property without having paid any consideration for it. 22 Pat. 133=1943 Pat. 289. The words "for the purpose of following in his or their hands such property," in sec. 10 of the Limitation Act, mean for the purpose of recovering the property for the benefit of the trust in respect of which it had been given, so that when property is used for some purpose other than the proper purpose of the trust in question, it may be recovered without any bar of time from the hands of the persons indicated in the section. I.L.R. (1942) Kar. 392=1942 Sind 145.

APPLICABILITY.—Sec. 10 applies only to cases of express trusts and not to constructive trusts. 45 M. 415=32 M.L.J. 119; 1925 P. 68. It excludes from its operation such trusts as the law would imply merely from the existence of particular facts or fiduciary relations. Nor does it apply to purchasers of property with notice of prior agreement to sell. 1929 N. 298. *See also* 1929 L. 753. A trust, as defined by sec. 3 of the Trusts Act, contemplates that the trustee is the legal owner of the trust property, and before there can be a trust, the "trustee" must be the owner, that is, there must be a transfer of the property to the trust before a trust can be created. 1940 Pat. 90. In order to invoke the application of sec. 10 the property must be vested in a trustee or trustees for a specific purpose. A person claiming adversely to the trust on the footing that the trust deed itself was bad cannot contend that the property was held by the trustees for any purpose. Where a person claiming to be an heir of the settlor and to be entitled to the property on the ground that the trust deed was void and that as an heir of the settlor he is entitled along with the other heirs to recover the property from the trustees, sec. 10, does not apply. 41 Bom.L.R. 622=1941 Bom. 307. Sec. 10 is confined to cases where property has become vested in trust for any specific purpose. 47 All. 171=22 A.L.J. 866=1924 A. 884; it does not apply to a principal's suit against an agent. 81 I.C. 505=1925 N. 115. Nor to a suit against assigns for valuble consideration. 16 I.C. 53=23 M.L.J. 260; 89 I.C. 483=1925 A. 822. *See also* 46 I.C. 19= 20 Bom.L.R. 441. The transfer of a portion of the math and the properties appertaining thereto by one mahant in favour of another mahant in settlement of *bona fide* disputes between them to the office of the mahant of the math is a transfer for a valuable consideration. 22 Pat. 133=1943 Pat. 289. Sec. 10 applies to a suit against the legal representatives of a deceased trustee for the recovery of a specific sum of money misappropriated by him. The suit is in essence a suit to follow trust property in the hands of the legal representatives of the trustee. 46 C.W. N. 865. A benamidar is not a trustee. 45 M.

415=1922 M. 57=42 M.L.J. 119. Nor a depository or a banker. 22 I.C. 936; 1 A.L.J. 422. Sec. 10 cannot apply to a wrong doer in possession without title. A wrong doer in possession is expressly excluded from the definition of the word "trustee". I.L.R. (1945) Kar. 40=1945 Sind 57. Sec. 10 has no application to "constructive trusts" which are only obligations in the nature of trusts, but only to trusts properly so called. Where a vendor of immovable property leaves a portion of the sale consideration in the hands of the vendee directing him to pay the same to his minor son when he attains majority, the vendee undertaking to pay interest on the amount retained by him, there is no trust which would attract the operation of sec. 10. 1939 Mad. 722=(1939) 1 M.L.J. 820. Sec. 10 applies to a case of entrustment of money for the specific purpose of investment. I.L.R. (1938) 2 Cal. 81=42 C.W.N. 381=1938 Cal. 336. *See also* 1937 M.W.N. 493. Sec. 10 does not apply to directors of companies. 1923 L. 58 (2); 54 M. 153=60 M.L.J. 280 =1931 M. 58. Nor to a suit by one co-sharer against others for mesne profits. 51 I.C. 393; nor to a suit by a co-sharer against manager of a joint Hindu family governed by Dhayabhaga law. I.L.R. (1940) 1 Cal. 183=44 C. W.N. 93=1940 Cal. 51. Money gifts made to bride on occasion of marriage and afterwards according to custom of Nattukottai Chetty community—Hundis handed over to bride's father-in-law—Amounts collected by him and invested by him in family business —Amount to accumulate and to be payable to bride on demand is trust fund—Doctrine of tracing applies with right to charge. 1937 M.W.N. 493. A co-heir recovering a debt due to the deceased on behalf of all others is not a trustee for the others. 37 A. 233. A suit for declaration against the defendants not as trustees but as rival beneficiaries falls not under sec. 10 but under Art. 120 of the Act. 1944 O.A. (C.C.) 11=1944 O.W.N. 37=A.I. R. 1944 Oudh 139=19 Luck. 515. A suit against a trustee for failure to obtain possession and income of the trust falls under sec. 10. 41 M. 319=42 I.C. 544. But *see* 1922 M. 409. Suit by trustee of temple to recover money from former trustee, which had been taken by him wrongfully from trust funds, is governed by Art. 120, and not by Art. 61 or by sec. 10. 40 L.W. 275=1934 M. 542. Suit for profits by administrators of trust property—Defendant entrusted by plaintiffs with property for safe custody and management. *See* I.L.R. (1942) Nag. 92= 1941 Nag. 181=1941 N.L.J. 184. The words "vested in trust" in sec. 10, if they do not necessarily imply a transfer of ownership in the strict sense, do at any rate imply something more than mere possession and temporary control of property. I.L.R. 1939 B. 154 =41 Bom.L.R. 215=1939 Bom. 126. The words 'for any specific purpose" merely indicate an express trust, *i.e.*, a trust that is not constructive or one arising by implication of law, or such that there is no doubt as to its specified terms nor any uncertainty as to affirming them. 1930 A. 96; 1937 Bom. 433 =39 Bom.L.R. 572; 1938 Mad. 295. Where trust property is leased by trustee in derogation of the trust, sec. 10 does not apply if the lessees are assigns for valuable consideration and are not aware that the property was affected by any possible trust when the lease was executed. 1940 Cal. 228. Where, by an arrangement, a person receives a monthly sum of money which is to enure for the benefit of another during the latter's minority, the money when paid to the former becomes vested in him for a specific purpose within the meaning of sec. 10. 62 C. 393. A gratuitous transferee of trust property is within sec. 10 and therefore there is no limitation of time for following up the property in his hands. 33 I.C. 45=38 M. 1064. *See also* 40 I.C. 50=32 M.L.J. 85; 24 I.C. 369= 26 M.L.J. 537. Under sec. 10 an express trustee cannot prescribe for a title by adverse possession against his beneficiary; the trustee's legal representatives or assignees are in no better position than the trustee himself. But the rule does not apply in the case of a stranger to the trust property independently of the trustee. The section does not prevent such a person from acquiring title by adverse possession. 157 I.C. 181 (2)=1935 M. 483. Agreement for payment of sum out of particular fund—Obligor if a trustee—Suit for recovery of money out of fund—Agreement to pay on demand—Limitation. 44 M.L.J. 685=46 M. 259=1923 M. 667. Suit to set aside sale in contravention of sec. 99 of T. P. Act, sec. 10 does not apply. 101 I.C. 896. *See also* 19 Pat.L.T. 367=1938 Pat. 273. Sec. 10 applies to a suit brought by the reversioners of a lady, whose property was put in charge of a *Sipurdar*, to recover the property from his legal representatives. 101 I. C. 427=1927 Oudh 614. Section applies to suit against heirs of express trustee for ascertainment. 52 B. 184=107 I.C. 705 (2)= 1928 B. 58. It is not necessary that the property followed should be identical property in respect of which a breach of trust has been committed. I.L.R. (1940) Nag. 94= 1938 Nag. 30. Where a testator made a will bequeathing all his property to *A* and also entered into a contract with *A's* father not to revoke the same but later executed a second will by which he revoked the first and bequeathed all his property to *B*, his wife, whom he appointed executrix and it was contended that by virtue of the contract, there was a trust created in favour of *A*. *Held*, that the trust did not fall within sec. 10, as it could not be said that the property was vested in the executrix under the second will for the specific purpose of making them over to *A*. 58 I. A. 279=10 P. 851=1931 P.C. 196=61 M.L. J. 78 (P.C.). *See also* 1938 P.W.N. 186=19 Pat.L.T. 202=1938 P. 600=17 Pat. 350. Once a trust has been declared invalid *ab initio* sec. 10 can have no application at all to a suit for account of rents of property held under trust. 1940 Rang.L.R. 136=1939 Rang. 365. Sec. 10 does not apply to a claim

for an account on the footing of wilful default. Such a claim is liable to be barred by limitation and Art. 120 is the article applicable. 1940 Rang.L.R. 273=1940 Rang. 207 =(1940) 3 F.L.J. 147. Property held by a Mahant of a math for maintaining the math and the office relating thereto is not property which "has become vested in trust for any specific purpose". The endowments are not "conveyed in trust" nor is the head of a math a "trustee" with regard to them save as to specific property proved to have been vested in him for a specific object. So sec. 10 is not applicable to property appertaining to the mahant of an asthan. [44 M. 831 (P.C.), Rel. on] 9 Luck. 394=1934 O. 96. As to temple funds, *see* 38 Bom.L.R. 808=1936 Bom. 412; 1941 P.C. 130 (P.C.). The property of a temple belongs to the idol and does not vest in the manager or dharmakarta though he has a wide discretion in the spending of the funds of the institution. The dharmakarta of a temple is not the trustee of the property of the temple, so as to attract the operation of sec. 10, Limitation Act. He is no more than a manager. Sec. 10 of the Limitation Act as it stood before its amendment in 1929, did not apply to heads of mutts and temples. The amendment of sec. 10 in 1929 does not have the effect of making it applicable to a case where the remedy had become barred before the amendment of sec. 10 in 1929. 56 L.W. 479 (2)=1943 Mad. 691=(1943) 2 M.L. J. 339=I.L.R. (1944) M. 284. In the mofussil Parsis are governed by rules of justice, equity and good conscience. The rule in *Vidya Varuthi's case*. 48 I.A. 302=1922 P. C. 123=41 M.L.J. 346=44 M. 831 (P.C.), cannot be applied to a Parsi charity. Where the vendees acted on behalf of the Anjuman and purchased properties with the express purpose of guarding against a danger to the fire temple. *Held*, that the vendees were express trustees for purpose of sec. 10, and their subsequent conduct in derogation of the trust should be disregarded. 35 Bom.L.R. 1091= 1934 B. 1.

EXPRESS TRUST.—Persons could not by breach of trust continued for a period of 12 years confer a statutory title on themselves in derogation or extinction of the trust. 36 C.L.J. 35=50 C. 49=1923 C. 1. Time would be no bar to an action against the shebaits for recovery of the debutter properties from their hands. 1926 C. 1; 25 A.LL.J. 1047=50 All. 265=1928 A. 134. An administrator in whom no special trust is vested for a specific purpose is not a trustee within the meaning of sec. 10. 2 P.L.J. 642=40 I.C. 860. A guardian, appointed under the Guardians and Wards Act, of the property of a minor, is not an express trustee within the meaning of sec. 10. 39 Bom.L.R. 351=I.L.R. 1937 B. 636= 1937 B. 334. A ward cannot therefore take advantage of sec. 10 to avoid the bar of limitation for a suit against an ex-guardian. I.L.R. (1937) Bom. 636=1937 Bom. 334=39 Bom.L.R. 351. Under sec. 10 as amended, the manager of a Hindu Religious Endowment is in the same position as an express trustee, although it cannot be said that any property is conveyed to a shebait or mutawalli, in the case of a dedication under the Hindu or Mahomedan Law, or vested in him. Whatever property he holds for the idol or the institution, he holds as manager with certain beneficial interests regulated by custom or usage. 157 I.C. 181 (2) =1935 M. 483. As a general rule, the high priest of a temple and a person in like position, is only the manager and custodian of the idol or the institution. In almost every case he is given the right to a part of the usufruct, the mode of enjoyment and the amount of the usufruct depending on usage and custom. The property is not conveyed to or vested in him nor is he a trustee in the English sense of the term, although in view of the obligations and duties resting on him, he is answerable as a trustee in the general sense for maladministration. But a high priest appointed under a decree of Court as a "trustee for all the properties movable and immovable devoted to the service" of the temple God, is an exception to the general rule. A suit against his widow for the recovery of the amount due on certain war bonds vested in him in trust would fall within sec. 10 and will not be barred by any length of time. 21 Pat. 96=44 Bom.L.R. 183=46 C.W.N. 377 =(1942) 1 M.L.J. 8; 22 Pat.L.T. 981=196 I.C. 696=1941 P.C. 130 (P.C.). Sec. 10 applies only to a case of property which has become vested in trust for a specific purpose; it can have no application to a case where property is in the possession of a donee under a voidable transaction of gift. 78 I.A. 21=I. L.R. (1945) Bom. 440=49 C.W.N. 303=47 Bom.L.R. 274=58 L.W. 176=1945 A.L.J. 280=1945 P.C. 54=(1945) 1 M.L.J. 253 (P. C.). For an executor to be considered as holding property in trust for a specific purpose within the meaning of sec. 10, an express trust must be created by the will itself. The position of an express trustee does not arise from the status of executor by itself. A legatee suing an executor is not therefore, entitled to the benefit of this section unless an express trust is created by the will. I.L.R. (1944) Nag. 817=1944 N.L.J. 458=1944 Nag. 377. A suit which is expressly stated to be a "suit for declaration and recovery of Rs. 9426-1-3", the declaration being wholly unnecessary and merely constituting the grounds on which the plaintiff bases his claim to a decree, and which in substance is one for recovery of a sum of money from an estate, of which the defendants are executors and trustees under a will, is not a suit for the purpose of following, in the hands of the defendants, trust property or the proceeds thereof. I.L.R. (1942) Kar. 392=A.I.R. 1942 Sind 145. Sale of property of deceased Mahomedan—Sale proceeds handed over to person for distribution among heirs—If express trust created—Suit for share by one heir—Limitation—Starting point. I.L.R. 1946 M. 423=1945 M.W.N. 671=58 L.W. 555=(1945) 2 M.L.J. 422=1946 M. 116.

TRUSTEE DE SON TORT.—A suit for accounts

Suits on foreign contracts.

11. (1) Suits instituted in British India on contracts entered into in a foreign country are subject to the rules of limitation contained in this Act.

(2) No foreign rule of limitation shall be a defence to a suit instituted in British India on a contract entered into in a foreign country, unless the rule has extinguished the contract and the parties were domiciled in such contry during the period prescribed by such rule.

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in respect of trust property comes under sec. 10 and a trustee *de son tort* stands in the same position as an express trustee. 57 I. C. 805=24 C.W.N. 752; 105 I.C. 721=1927 L. 773 (2); I.L.R. (1940) All. 815=1941 All. 1; but not an executor *de son tort* in whom no special trust is vested for a specific purpose. 1929 L. 753. Trustees *de son tort* would come within the operation of sec. 10, but the existence of a trust must be first established before the section may be applied against them. I.L.R. (1938) 1 Cal. 652=1938 Cal. 673. Sec. 10 does not apply to the case of trustees *de son tort*. The section is intended to apply to express trustees and their representatives which a trustee *de son tort* is not. 13 Luck. 344=1937 Oudh 373. Sec. 10 will not apply to a suit for accounts against a trustee *de son tort*, for it applies to cases of express trust alone. All that the amendment of 1929 did was to make a Hindu shebait or a Mahomedan mutwalli a trustee in whom property may be said to have vested. 1941 All. 1. Where a trustee has been in possession for upwards of 12 years of property under a trust which is void under the law, an action against him by the rightful owner would be barred by limitation under the statute, the reason being that the possession of the trustee is as much adverse to the true owner as that of any trespasser. The property in respect of which the direction in the will creating the charitable trust is void cannot be said to have "vested in trust for a specific purpose" and therefore sec. 10 Limitation Act, can have no application and the executor must be taken to have held the property adversely to the true owner and if he so holds it for the statutory period he would acquire a good title to it. The fact that the house tax receipts were issued by the Municipality in favour of the deceased testator is no proof that the executor was not holding the property adversely to the heir. 47 C.W.N. 46 (2)=1942 A.L.J. 718=56 L.W. 8=A.I.R. 1942 P.C. 64=(1943) 1 M.L.J. 11 (P.C.)=I.L.R. (1942) Kar. (P.C.) 166.

TRUST PROPERTY.—A suit by an alleged trustee for recovery of trust property against person claiming himself to be trustee is governed by Art. 144 of the Act. 46 I.A. 204= 53 I.C. 288=1919 P.C. 62=37 M.L.J. 460 (P. C.). When the guardian gives a discharge for a decree in favour of the minor in consideration of the transfer to him of certain property, he holds the property as a trustee for the minor. 28 I.C. 861. Sec. 10 cannot apply to a suit filed for the purpose of establishing a right under the provisions of sec. 42, Specific Relief Act. Sec. 10 contemplates the following or pursuit of concrete property and not a right. A suit under sec. 42, Specific Relief Act, for a declaration that certain properties are public, religious, trust properties, is not a suit for the purpose of following trust property. Art. 120, and not sec. 10, Limitation Act, applies to such a suit. I.L. R. (1945) Kar. 40=1945 Sind 57. *See also* 1942 Sind 145. Where a father executed a settlement deed by which the son who was given the properties was directed to pay a certain amount to the settlor's daughter. *Held* that there was a trust in favour of the daughters and a suit to enforce the same was not governed by any rule of limitation. 39 L.W. 496=1934 M. 273. A suit against the *karta* for account is not governed by it, as *karta* is not vested with property of the family. 58 I.C. 877=25 C.W.N. 356=1921 C. 571. A suit against a trustee for failure to obtain possession of the corpus and income of the trust property is not within sec. 10 but is governed by the ordinary law of limitation. 42 I.C. 544. *See also* 70 I.C. 87=1922 M. 409. Suit by one executor against legal representatives of deceased co-executor—Sec. 10 does not apply. 1927 B. 424=29 Bom.L.R. 418. Dispute between father and son as to possession of land—Order under sec. 146, Cr. P. Code—Land put in possession of receiver and income deposited in Government treasury—Suit by son after death of father for income so deposited—Art. 120 applies—Whether Government is trustee under sec. 10. 46 L.W. 632=1937 Mad. 787=(1937) 2 M.L.J. 296.

"VESTING".—The word "vesting" means merely properly having control of the property. 1926 M. 109=49 M.L.J. 468. The word "vest", implies that the property becomes in law the property of the trustee. 3 R. 206=1925 R. 289. *See also* I.L R. (1939) Bom. 154=41 Bom.L.R. 215=1939 Bom. 126. To save limitation under sec. 10 it must be shown that the defendants are persons "in whom property has become vested in trust for any specific purpose". Trusts which have not been declared by any specific words but which the law would imply from the existence of particular facts or fiduciary relations are excluded from the operation of the section. One useful test for determining whether any particular trust is within the provisions of the section or not is to see if a suit for the purpose of following the trust property in the hands of the trustee would be to restore it to the trust. I.L.R. (1938) 1 Cal. 652= 1938 Cal. 673. If a fund is handed over to one in order that he should pay it to a temple or utilize it for the temple, it must be held to have vested in him as trustee for that purpose, and the managers of the temple are

PART III.

COMPUTION OF PERIOD OF LIMITATION.

Exclusion of time in legal proceedings.

12. (1) In computing the period of limitation prescribed from any suit, appeal or application, the day from which such period is to be reckoned shall be excluded.

entitled to rely on sec. 10, and to call upon him to account. 38 Bom.L.R. 808=165 I.C. 1001=1936 B. 412. While transfer of proprietary right is not intended, mere transference of management or control is not enough to satisfy the requirements of "vesting" as contemplated by sec. 10; a right to call for a transfer and to possess the property for the purposes of the trust and also power to dispose of it according to the terms of the trust without reference to the owner are the essentials that constitute the "vesting". 61 C. 119=1934 C. 87. A suit for recovery of property from a person in whom it was vested in trust for the upkeep of a shrine, or from a gratuitous transferee from him is governed by sec. 10. 53 I.C. 577=109 P.R. 1919. Trust property—Land assigned by mutual agreement—Suit for its recovery—Limitation. 45 I.C. 325=66 P.R. 1918. Failure of trustee to reduce trust property to possession—Liability for acts on default of predecessors—Failure to account—Limitation. 70 I.C. 87=1922 M. 409; 42 I.C. 544. Sec. 10 controls Art. 134 and gives the clue to its meaning. 1922 L. 271. The words of sec. 10 are wide enough to cover a case by one of two trustees, who claims against the other that the property ought to be held and managed by both. 18 L.W. 907=1924 M. 125. A new trustee succeeds to the office of a former trustee and not to him personally and is not therefore his legal representative under this section. 4 L.W. 369=34 I.C. 945. Whether an executor under a will is a trustee for a specific purpose within the meaning of sec. 10, depends upon the facts of each case. Sec. 10 will apply to an executor under a will who is therein expressly called trustee and is entrusted with the testator's property for certain definite purposes. I.L.R. (1942) Kar. 392=A. I.R. 1942 Sind 145.

A "SPECIFIC PURPOSE" means a purpose which is either actually and specifically defined in the deed of trust or a purpose which from the specified terms can be certainly affirmed. 29 Bom.L.R. 241=1927 B. 398. *See also* 58 I.A. 1=60 M.L.J. 1=8 R. 645 (P. C.)=1931 P.C. 9. The phrase "trust for a specific purpose" in sec. 10 is only a more expanded mode of constituting express trust in English law. 1941 Mad. 811=(1941) 2 M. L.J. 558. Sec. 10 cannot be held to be inapplicable to the property of a temple because it was dedicated generally to the temple and not for any limited purpose. A "specific purpose" is a purpose which is either actually or specifically defined or a purpose which from the specified terms can be certainly affirmed. The conducting of pujas and ceremonies and the upkeep of the temple would be sufficiently specific to satisfy the requirements of sec. 10. 56 L.W. 479 (2)=A.I.R. 1943 Mad. 691=(1943) 2 M.L.J. 339=I.L.R. (1944) Mad. 284. The trustees contemplated by sec. 10 are the same as what are known in English law as express trustees, although the section does not use that particular nomenclature. A trust for a "specific purpose" within the meaning of sec. 10 is a trust for a purpose that is either actually and specifically defined in the terms of the will or the settlement itself, or a purpose which from the specified terms, can be certainly affirmed. Constructive or resulting trusts are as much trusts as express trusts, under the Indian Trusts Act; there is a sharp distinction between trusts created by the act of parties and certain obligations which are not trusts but which are considered to be in the nature of trusts. Sec. 10 of the Limitation Act cannot apply in the case of a person whom the law looks upon as a trustee because he has to discharge certain obligations in the nature of a trust. It only applies to a trustee of a trust in the strict sense of the term. 47 Bom. L.R. 934=1946 B. 131. Where by a family arrangement, a hundi was vested in defendant for payment of debts of plaintiff's husband, and any balance that might remain after payment of his creditors was to be paid to the latter. *Held*, that this arrengement constituted a trust for specific purpose within the meaning of sec. 10. 1936 Mad. 876. The purpose of following the property in the hands of the trustees referred to at the end of sec. 10 must be the purpose of restoring it to the trust which is specified in the earlier part of the section. 61 C. 119=1934 C. 87.

SEC. 12: APPLICABILITY.—*See* (1946) 2 M.L.J. 291. The rules as to computation of periods of limitation laid down in Part III of the Act are not intended by the Legislature to apply only to periods of limitation prescribed by the Schedule but apply also to periods of limitation provided for by other enactments. I.L.R. (1939) All. 647=1939 A. L.J. 522=1939 All. 403 (F.B.). The time for obtaining a copy has to be excluded under sec. 12 even if no copy is necessary. 8 B.R. 330. Sec. 12 allows the time spent in obtaining copy of decree to be excluded, but it does not apply to applications for revision, probably on the ground that there is no period of limitation prescribed in the Act for an application for revision. 1942 O.W.N. 335= 1942 O.A. 241=A.I.R. 1942 Oudh 392. Section is only applicable to suits in British India and not to proceedings in foreign Courts. 8 L. 54=102 I.C. 523 (2)=1927 L. 200. Section does not apply to applications under Land Acquisition Act. 104 I.C. 397= 9 L. 244=1927 L. 858; 54 A. 282=1932 A. 598. Nor to a proceeding under sec. 66 (3) of the Income-tax Act. 1931 A.L.J. 593= 1931 A. 673=53 All. 684. The Commissioner of Income-tax preferring an application for leave to appeal to the Privy Council is enti-

tled to deduct the period taken for obtaining copies of the judgment. 59 C. 251=1932 C. 587; 16 Luck. 638=1941 O.W.N. 352=1941 A.W.R. (C.C.) 106=1941 Oudh 247. *See also* 1939 Lah. 43. In computing the period of limitation for an application for leave to appeal, the time requisite for obtaining a copy of the judgment cannot be exclu ed. I.L.R. (1939) Lah. 156=1939 Lah. 43. But *see* 1941 Oudh 247. Time taken actually in obtaining copies is to be deducted in calculating the period of limitation. 49 I.A. 307=1922 P.C. 352=43 M.L.J. 765=49 C. 999=27 C. W.N. 156 (P.C.). *See also* 87 I.C. 93=1924 B. 185=48 Bom. 292; 13 Pat. 371=15 Pat.L. T. 649=1934 P. 266. Applicant must apply once for all for necessary copies. 18 A.L.J. 208=42 A. 260. But *see* 1938 A.W.R. (B.R.) 140. An appeal presented under sec. 46, Provincial Insolvency Act, will attract sec. 12. 10 A.L.J. 3=34 A. 496. *See also* 1937 A.M. L.J. 101. Sec. 12 is applicable to pauper appeals. 1923 L. 684. The rules under the Letters Patent do not amount to a special or local law. Consequently the time requisite for obtaining a copy of the judgment appealed against cannot be excluded in computing the time for filing an appeal under the Letters Patent. 16 L. 448=1935 L. 328 (F.B.); 5 Pat.L.J. 701=59 I.C. 179=1921 P. 365. Sec. 12 governs appeals under the Letters Patent from an order passed by a Single Judge of the High Court in the exercise of its original jurisdiction, whether ordinary or extraordinary and from the judgments passed by the High Court in its appellate jurisdiction. 16 Lah. 448 (overruled in I.L.R. (1941) Lah. 191=43 P.L.R. 297=1941 Lah. 257 (F.B.). Sec. 12 (2) applies to appeals from decrees or orders on the original side of the Rangoon High Court under cl. 13 of the Letters Patent. 12 R. 525. Only the time requisite for obtaining a copy of the judgment appealed against and of the decree can be excluded. 1923 L. 461. Sec. 12 (3) allows to be excluded only the time requisite for obtaining a copy of the judgment against which the appeal is preferred. Where the rules of the Court require the filing of the judgment of the Court of first instance in a second appeal, the time requisite for obtaining it does not fall under sec. 12. 1923 L. 96; 1923 L. 461. But *see* 4 R. 310=1925 R. 344. *See also* on the point, 100 I.C. 854=1927 L. 192; 1928 A. 416; 1928 L. 755. *See also* 196 I.C. 654 =1941 Pesh. 74. The period till the decree is actually prepared and signed should be excluded for purposes of the limitation if the application for copy is made before the preparation of the decree. 43 P.L.R. 88=1941 Lah. 212. Period between date of judgment and date of signing decree can be deducted. 1939 Rang.L.R. 686. Time spent in obtaining translation of the judgment cannot be excluded under sec. 12. 59 I.C. 965. Where an appeal was filed on the last date of limitation deducting the time taken in obtaining copies of the judgment and the decree, but with the memorandum of appeal a copy of the translation of the decree, unsigned by the lower Court was filed, but no copy of decree was applied for. *Held*, that translation of decree unsigned by the lower Court is not a proper substitute for the decree so as to save limitation. 150 I.C. 781 (1)=1934 L. 304 (2). Where a formal decree has been drawn up in a miscellaneous execution case the time requisite for obtaining a copy of such a decree is to be deducted under sec. 12. 1 P.L. T. 33=54 I.C. 630. Date of delivery of judgment communicated to parties. Limitation begins to run from the date when the delivery of judgment was communicated to the counsel for the parties. 98 I.C. 942=1927 L. 59. *See also* 149 I.C. 127=1934 L. 135; (1941) A.W.R. (Rev.) 353; 45 C.W.N. 498 =I.L.R. (1941) 1 C. 536=1941 Cal. 378. An appeal which would have been in time if presented on 23-2-1937 was actually presented on 16-2-1937, but without the copies of the judgment and the decree which the Court was asked to dispense with. The Court on 19-2-1937 dispensed with the copy of the judgment, but refused to dispense with a copy of the decree. A copy of the decree was applied for on 23-2-1937, obtained on 1-3-1937 and filed on the same date. *Held*, that even assuming the appeal to have been properly filed on 1-3-1937, the appeal was in time, the appellant being entitled to deduct the time requisite for obtaining the copy of the decree. 40 Bom.L.R. 389=1938 Bom. 288. *See also* 1938 Lah. 707. Where application of copies was made to a wrong Court on account of *bona fide* mistake and subsequent application was properly made and appeal filed out of time, the delay could be excused either under sec. 12 or sec. 5, Limitation Act. 1929 O. 348. Appeals filed in time with copies of judgment and subsequently with copies of decrees within period of limitation are not time-barred. 13 R.D. 356.

AWARD.—The period taken for obtaining a copy of the award must be excluded in computing the period of limitation for an application to set aside the award. 46 C. 721=53 I.C. 46=23 C.W.N. 280. *See also* 29 I.C. 860; 142 I.C. 835=1933 R. 38; 140 I.C. 11=1932 M. 588.

COMPUTATION OF TIME.—*See* 37 P.L.R. 235. In computing the period of limitation prescribed for an appeal two periods are to be excluded. They are: (1) the day on which the judgment is pronounced; and (2) the time (*i.e.*) the days requisite for obtaining copy of the decree. These two are distinct and separate in their purpose. It cannot be contended that the day on which an application for copy is made is not a day requisite for obtaining the copy. Therefore it is clear that an appellant is entitled to a deduction of the number of days beginning with the day on which he applies for, to the day on which he obtains the copy, from the number of clear days of limitation prescribed by statute. It may be that in an exceptional case, where the copy is applied for on the same day as the judgment is delivered, one day happens to be excluded twice. I.L. R. (1939) Nag. 185=1939 N.L.J. 173=1939 Nag. 150. *See also* 40 Bom.L.R. 1211=1939 Bom. 46 (Day on which copies are ready

for delivery can be excluded). Under sec. 12, only the time from the date of making the application for copies to the date on which the copies are ready for delivery can be excluded 1923 L. 696. Time for obtaining copy—Days on which copies are applied for and are delivered—Both to be excluded. I.L.R. (1944) Nag. 725=1944 N.L.J. 313=A.I.R. 1944 Nag. 356. As to exclusion of time taken to communicate to appellant that copy is ready, *see* 149 I.C. 127 =1934 L. 135. *See also* 1938 R.D. 78=1938 A.W.R. (B.R.) 63. Application for copy must be before expiry of the period allowed. 58 I.C. 408=32 C.L.J. 127; 61 P.L.R. 1911=9 I.C. 381. Application for copy—Dismissal —Fresh application whether a continuation. 1932 M.W.N. 328. Where the time for obtaining copies of decree and judgment are two distinct periods and not overlapping both periods can be deducted under sec. 12. 48 B. 433=1924 B. 425=26 Bom.L.R. 362. *See also* 65 C.L.J. 415: 37 P.L.R.=1936 L. 120; 75 I.C. 265; 1925 A. 436=47 A. 509=87 I.C. 484; 106 I.C. 57=1928 N. 131. Where a party applies for a copy of the judgment alone and sometime later applies for a copy of the decree, the time required for obtaining the copy of the judgment *plus* the time requisite for obtaining a copy of the decree should be excluded, provided that days on which both copies were being prepared cannot be doubly excluded, from the computation of the period of limitation. It is immaterial whether the period of limitation prescribed in Sch. I to the Limitation Act had expired when a copy of the decree was applied for. 26 N.L.R. 66=1930 N. 113 (F.B.). 39 Bom.L.R. 32=168 I.C. 77 =1937 B. 162 (F.B.); 164 I.C. 1069=1936 Pesh. 179; 165 I.C. 712 (F.B.); 12 Luck. 472; 165 I.C. 578 (2)=1936 O.W.N. 1008=1937 O. 65. The question as to the time requisite for obtaining copies is one of fact. 67 I.C. 476=1922 L. 423; 37 P.L.R. 510=1936 L. 120. The appellant applying for copies on the day on which the judgment is delivered is not entitled to exclude that day twice over. 40 I.C. 425=13 N.L.R. 89; 1930 N. 129=26 N.L.R. 149. *See also* 1922 L. 170 =1921 P. 175; 62 I.C. 649=6 P.L.J. 350 (F. B.). But *see* 1924 L. 599, where it is *held* that the date on which judgment is pronounced has to be excluded and then the time requisite for obtaining copies. In computing the time required for obtaining copies for the purpose of appeal, an extra day cannot be allowed for the delivery of the copies in addition to the day they are ready for delivery. 38 I.C. 464=10 S.L.R. 165. *See also* 142 I.C. 230=1933 Pesh. 22 (Copy despatched by post). Judgment—Deduction of time —When allowed. 103 I.C. 498=1927 L. 717. Time spent by copying agent in getting estimate and putting in application cannot be deducted. 1928 O. 47 (2)=104 I.C. 586. *See also* 35 P.L.R. 713. But *see contra* 17 L. 429 =1936 L. 771 (F.B.)=38 P.L.R. 493; 38 P.L.R. 220=1936 L. 550; time spent by laches of copying department should be deducted. 1936 L. 650=166 I.C. 716. As to delay caused by the ignorance of the procedure in the copyist department, *see* 132 I.C. 777=1931 O. 314. As to effect of copying department not following the prescribed rules, *see* 38 P.L.R. 852=161 I.C. 215=1936 L. 670. A copying agent in dealing with an application presented in accordance with the rules, does not act as a private agent of the applicant, but as an official of the Copying Department, which is entrusted with the duty of preparing and certifying copies. 17 Lah. 429=1936 Lah. 771. Where appeal is filed in time as regards judgment, it is not time-barred, though the decree copy was applied for after expiration of limitation period. 9 L.R. 268 (Rev.)=12 R.D. 603. *See also* 13 R.D. 356. The period occupied by a party appealing against an order, in an attempt to obtain a variation of the order and in making application to the Registrar for something which was connected with the settling of the order, could not be charged against him, and could be deducted by him in computing the period of limitation prescribed for the appeal. 1937 P.C. 107=(1937) 1 M.L.J. 702 (P.C.). Where an application for amendment of decree was rejected, period cannot be allowed to be computed from the date of rejection of the application. 113 I.C. 580=1928 P. 265. The words "period prescribed for a suit" have reference only to the period prescribed at the end in the schedule. 35 C.W.N. 370=58 C. 1148=1931 C. 785.

"TIME REQUISITE".—"Requisite" in sec. 12, Limitation Act means not merely required, but "properly required"; it is for the appellant to show that no part of the delay beyond the prescribed period was due to his default, and that he was not responsible for the time taken by the officials of the Court in preparing and issuing the decree and judgment. Having regard to the fact that some time is bound to be taken up between the passing and the signing of the decree, if tht appellant waits for a reasonable time in applying for copies, he would be entitled to deduct that time in the time requisite under sec.12; but if he waits for an unreasonable time in applying for copies he would not be entitled to exclude that period within the requisite time. 1946 Bom. 437=48 Bom.L.R. 97. The time requisite in sec. 12 is the time beyond the appellant's control occupied in obtaining the copy which accompanies the appeal and not an ideal lesser period which might have been occupied if the application for copy had been filed at some other date. Thus, the Court cannot restrict the time granted by the statute by adding to it a limitation that, where an appellant has got more than one copy of judgment and decree, he ought, if he seeks exclusion of time for obtaining the copy, to use the first copy obtained by him. 57 M. 560=1934 M. 306=66 M.L.J. 687 (F.B.). Where the application for the copy of the judgment sought to be appealed against is filed within the period of limitation, then the time spent in obtaining the copy must be excluded under sec. 12 (3), from the period of limitation for filing the appeal. 1942 O.W. N. (B.R.) 132 (2)=1942 R.D. 198 (2). Day

(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal and an application for a review of judgment, the day on which the judgment complained of was pronoonced, and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed, shall be excluded.

(3) Where a decree is appealed from or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

(4) In computing the period of limatation prescrided for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

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on which copy is notified to be ready should be excluded. 48 L.W. 242=1938 Mad. 823 =(1938) 2 M.L.J. 283; copy stopped for want of correct information—Intervening holidays to be deducted. I.L.R. (1938) Nag. 342= 1936 Nag. 289. The 'time requisite' means time properly required. Though a party gives a wrong suit number, if the office takes time to find out the mistake, the party should not suffer for such delay. The time during which copying is stopped for want of funds should not count, but should be excluded where there was neither want of *bona fides* nor delay in supplying the extra charges. I. L.R. (1940) Nag. 312=1938 N.L.J. 159=1938 Nag. 287. The question whether the time was requisite is always one of fact to be decided in the circumstances of each case and the Court cannot impose upon the statutory right of the appellant a restriction not warranted by the Act. I.L.R. (1937) Bom. 443 =39 Bom.L.R. 32=1937 Bom. 162 (F.B.). Where there were two different applications on two different dates for copies of judgment and decree, the time taken in obtaining the copy of the decree, can be excluded for purposes of computing the period of limitation even though the application for such a copy was filed after expiry of the time allowed for filing appeals, provided that it was in time after taking into calculation the time taken in obtaining the copy of the judgment. 1938 A.W.R. (B.R) 140. *See also* 165 I.C. 712; 1936 Pesh. 179=164 I.C. 1069. Time unnecesarily occupied is not time requisite within the meaning of the section. 54 C. 481=1927 C. 623; 97 I.C. 728; 43 M.L.J. 765=1922 P.C. 352=49 I.A. 307; 52 C. 342 =1925 C. 735; 69 I.C. 999=1927 C. 623; 103 I.C. 235 (2). *See also* 101 I.C. 136=1927 O. 129; 1936 Rang. 201; 17 Lah. 574=38 P.L. R. 1050; 17 Luck. 314. In applying sec. 12 (2) the Court has to consider whether the appellant has exercised reasonable and proper diligence in obtaining a copy of the order appealed against. 38 Bom.L.R. 1281=1937 B. 64. Wrong information supplied to copying department—Delay caused by—Right to exclusion of time. 155 I.C. 588=1935 N. 109. "Requisite" is a strong word. It means properly required. 6 R. 302=55 I.A. 161=54 M.L.J. 696 (P.C.)=1928 P.C. 103. The application for the copies need not be made by the appellants in person. 149 I.C. 1127= 1934 L. 135. *See also* 1936 Lah. 771=17 Lah. 429. An application for a copy, whether made in person or by post, which bears the necessary Court-fee stamp and is addressed to the Proper officer is a valid application, even if it is not accompanied by the full cost of preparing and certifying the copy. Under the rules for the supply of copies, the time necessary for ascertaining the cost of preparing a copy is time 'requisite' for obtaining the copy. 17 Lah. 429=1936 Lah. 771. Where the applicant for copies of the judgment and the decree deposits Rs. 5 along with his application and also pays the further sum demanded without delay, in accordance with the rules prescribed, the whole period from the date of the application to the date of the supply of the copies must be held to have been 'requisite' for obtaining the copies. 17 L. 574=38 P.L.R. 1050. It would not make any difference even if there was a delay of three or four days to deposit the amount called for. 1936 L. 1007. *See also* 167 I.C. 250=39 P.L.R. 374 (Application for copy not accompanied by deposit of fees as required by rules not proper—Time cannot be deducted). Time requisite to obtain a copy of the decree, when the necessity of filing a copy of the decree is dispensed with by the rules, cannot be deducted. 1927 R. 20 =5 Bur.L.J. 187. Under sec. 12 in computing the time requisite for obtaining copies in a case where copies were stopped for want of funds, the applicant is entitled to exclude only the day on which he was informed about the insufficiency of funds, but not the day on which he paid the further advance. I.L.R. (1944) Nag. 725=1944 N.L.J. 313=A.I.R. 1944 Nag. 356. In an application for leave to appeal to Privy Council the time taken in obtaining the copy of the decree can be deducted and not the time taken in obtaining the copy of the judgment. 118 I.C. 212= 1929 S. 206; 152 I.C. 384=1935 A. 99=57 A. 455=1934 A.L.J. 1211. *See also* 1935 A. L.J. 291=1935 A. 258=57 A. 751. The expression "decree appealed from" in sec. 12 (3) in the case of an application for leave to appeal really means "when a decree is sought to be appealed from". 48 M. 939=1925 M. L.J. 418. *See also* 1939 Lah. 378 (Time spent in obtaining a copy of first Court's judgment); 1937 Lah. 691=39 P.L.R. 34 (Time spent in getting copies of grounds of appeal before lower appellate Court). It is not necessary for the applicant to obtain a copy of the judgment for the purpose of making his *application for review*. If however he does make an application for copy, the time taken for obtaining the same may be excluded under sec. 12 (2). 1933 A.L.J. 1631=1934 A. 367

=56 A. 591. *See also* 41 C.W.N. 129, where it was *held* that, in computing the period of limitation for an application for review of judgment on the original side of the High Court, the applicant is entitled to exclude the time between the decree and the filing thereof and also the period required for obtaining a copy of the decree, because of r. 27 of Ch. 16 of the High Court Rules (Calcutta). *For a revision petition* a copy of the judgment of the trial Court is required as a matter of practice, but that is more in the interests of the petitioner himself than an absolute necessity for the validity of the petition. A petitioner must therefore apply for both the copies simultaneously, that is to say, for the copy of the lower appellate Court's judgment and of the trial Court's judgment. If he is unable to get the trial Court's judgment within the period of limitation, he must present his revision petition with the copy of the lower appellate Court's judgment attached to it, and if he satisfies the High Court that he had applied simultaneously, ordinarily time would be given to his petition. Else, time required for trial Court's judgment is not excluded under sec. 12. 35 P.L.R. 274=1934 Pesh. 9. *See also* 1935 L. 341 =158 I.C. 120. Sec. 12 (3) does not apply to an application for execution of a decree. The period of limitation for an execution application therefore runs under Art. 182 of the Limitation Act from the date of the judgment and not from the date on which the decree is signed. 24 Pat. 421. The amended sec. 29 makes sec. 12 applicable to all special and local laws, but the rules of the High Court do not come under that category. Under the Patna High Court Rules, a copy of the judgment or decree is not necessary for filing *a Letters Patent appeal,* and so the time taken for obtaining a copy cannot be deducted in computing the period of limitation for a Letters Patent appeal (*i.e.,* thirty days). 15 Pat. L.T. 301=1934 P. 353. But *see also* 8 B.R. 330. When it is not necessary to file a copy of the decree along with the application, the time between the judgment and the signing of the decree cannot be excluded under this section. 1935 L. 341. Nor can the time spent in obtaining a copy of the decree be excluded, where the copy is not filed together with the application, but has been filed in some other proceeding. 156 I.C. 738= 1935 R. 184.

Applications for leave to appeal *in forma pauperis* come under sec. 12 (2) as also applications for leave to appeal to the Privy Council. Hence the time taken for obtaining a copy of the judgment can be excluded in computing the period of limitation in the case of an application for leave to appeal *in forma pauperis* also. 57 L.W. 165 (1)=1944 M.W.N. 160=A.I.R. 1944 Mad. 430=(1944) 1 M.L.J. 229.

DECREE LATER THAN JUDGMENT.—The "date of decree" for calculating time for appeal is the date of the judgment, but when the decree is drafted later owing to time being granted for extra Court-fee, the time given must be excluded under sec. 12 (2). 25 I.C. 67 =38 B. 656=16 Bom.L.R. 441. Where it is the duty of the Court to draw up a decree or order without reference to the parties, the time between the date of the judgment and the signing of the decree or order has to be excluded in computing the period of limitation for filing an appeal. 1943 O.A. (C.C.) 259=1943 O.W.N. 408=1944 Oudh 154. The rule of exclusion of time between the date of the judgment and the signing of the decree or order as "requisite" time for obtaining copies within sec. 12 (2) of the Limitation Act, has no application where under the order of the Court no decree could be drawn up until stamp duty is paid by the parties or any one of them, and there is delay in such payment. 47 P.L.R. 193=A.I.R. 1945. Lah. 223. The period between the delivery of judgment and the preparation and signing of the decree would be excluded from the period of limitation prescribed for filing the appeal if the application for copy is made before the preparation of the decree. 75 I.C. 265=1 P. L.R. 459=1923 P. 529. *See also* 1939 Rang. L.R. 686; 7 R. 18=1929 R. 116; 56 C. 709 =1929 C. 734; 29 N.L.R. 220=1933 N. 25. But *see also* 1923 P. 140=63 I.C. 278=6 P.L.J. 237; 25 I.C. 67; 10 I.C. 542=15 C.W. N. 787; 20 C.W.N. 967=35 I.C. 348=24 C. L.J. 235; 98 I.C. 1057=1927 N. 1 (F.B.); 1939 Cal. 711=43 C.W.N. 1139. *See also* 42 Bom.L.R 872=1940 Bom. 415; 15 Luck. 376=1940 Oudh 173; 20 Pat.L.T. 316=1939 Pat. 135; 1937 Cal. 732=42 C.W.N. 72. No period between the date of the judgment and the date of the decree can be deducted from the period of limitation as requisite for obtaining copies under sec. 12. 63 I.C. 278= 6 P.L.J. 237=1923 P. 140. To entitle the appellant to exclude time under sec. 12, it is not sufficient to say that there is no decree or order in existence of which a copy could be obtained. Any delay in obtaining a copy of the decree or order, for which delay the appellant is responsible, cannot be deducted in computing the time requisite for obtaining such copy. 61 C. 306=38 C.W.N. 702= 1934 C. 543; 15 Pat L.T. 649=1934 P. 266= 13 P. 371. But *see* 1936 L. 976, where it was *held* that where a decree is not drawn up within the period of limitation prescribed for preferring an appeal against the decree, the suit must be deemed to be pending up to the date on which the decree is actually drawn up, and limitation for preferring an appeal will commence to run only from that date. [13 C. 104 (F B); 1 P.L.J. 573 (F.B.) and 1924 N. 271, Foll.] In the case of an appeal from the Original Side, the time requisite for obtaining a copy of the decree or order, which can be excluded under sec. 12 may include the period prior to an application for a copy of the order, where such application, though not made within twenty days from the date when the order was pronounced, was made before the order was formally drawn up and the delay in the drawing up of the order was not due to the laches of the party. 59 C. 1215 =36 C.W.N. 469=1932 C. 331 (F.B.). The delay in signing a decree cannot entitle an appellant to His Majesty in Council to deduct

13. In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from British India and from the territories beyond British India under the administration of [1][the Central Government or the Crown Representative] shall be excluded.

Exclusion of time of defendant's absence from British India and certain other territories.

LEG. REF.

1 Substituted for "the Government" by the A.O., 1937.

the period between the signing of the judgment and of the decree in computing the period of limitation, except when the appellant has made an application prior to the signing of decree, but if no application is made, the non-signature has no effect. 57 I.C. 312=1 Pat.L.T. 262. *See also* 118 I.C. 212=1929 S. 206; 152 I.C. I.C. 419=11 O. W.N. 1359=10 Luck. 250. The time which elapsed between the delivery of the judgment and the signing of the decree should be excluded in calculating the period of limitation for the appeal. 49 I.C. 664. *See also* 62 I.C. 537=5 S.L.R. 16=1921 S. 42.

HOLIDAYS.—The period during which the Court was closed for the long vacation was time requisite for obtaining copies within sec. 12. 49 I.C. 664. Where immediately after the signing of a decree, the Court is closed, the period during which it is so closed ought to be excluded in computing the period of limitation. 11 I.C. 387=13 C.L. J. 544. *See also* 34 A. 41=12 I.C. 183=8 **A.L.J. 1095; I.L.R. (1938) All. 209=1937** A.L.J. 1279=1938 All. 106; 1941 O.W.N. 1223=1941 O.A. 851; 49 I.C. 664; 63 I.C. 922=12 L.W. 460; 43 M. 640=38 M.L.J. 465; 10 P.L.T. 545=1929 P. 615; 29 I.C. 833 (2)=11 N.L.R. 104. So also where Court closed from the next day after judgment. 146 I.C. 931. The publication of a notification that copies will be granted during the long vacation prevents the vacation from being excluded as the period for granting a copy of the judgment or decree. 36 M.L.J. 122=50 I.C. 518. *See also* **49 I.C. 626=36 M.L.J. 62; 14 R. 276=162** I.C. 853=1936 R. 201. Sundays intervening after the calling for the stamps and the date of the copies being announced as ready must be included in the time requisite for obtaining copies and should be deducted in calculating the time for appeal. 25 M.L.J. 354 =21 I.C. 192; 1933 N. 362. Holidays—Judgment delivered during vacation—Application made long after reopening—Deduction not to be allowed. 11 I.C. 339=(1911) 1 M. W.N. 364. Under cl. (2) of the Rule in General Letter No. 16, whenever there is any holiday or holidays immediately following the day of application for the copy of the decree and the date of notification of the requisite number of stamps and folios such holiday or holidays must always be excluded in computing the period of limitation for appeal. This exclusion is not restricted to the cases where the stamps and folios are supplied on the re-opening day. 58 C. 969=35 C.W.N. 451=1931 C. 731. *See also* 145 I.C. 742= 1933 N. 218 as to the practice in Nagpur. An application for a copy was made in order to file an appeal. But the copying was stopped for want of correct information from the applicant. Holidays having intervened, the applicant supplied it during the holidays. *Held*, that the applicant was entitled to deduct the holidays in computing the time requisite for obtaining the copy. I.L.R. 1938 Nag. 342=1936 N. 289. An applicant for a copy should pay in advance a sum sufficient for the preparation of the copy. If there is a further demand and he supplies it immediately following a holiday, the holidays may be excluded in computing limitation. 1921 N. 141=61 I. C. 889. Where a copy application is made through post, the time occupied by the Post Office in conveying the application and fees to the copying office and in carrying back the copies to the applicant is outside the computation under sec. 12. A tender of copying fees transmitted by money order and reaching the office on a holiday is not a tender at the proper time. 26 I.C. 819=10 N.L.R. 139. *See also* 17 I.C. 624=8 N.L.R. 172. Holidays —Copy of judgment—Time taken—Deduction of—Intervention of vacation. 25 O.C. 71 =9 O.L.J. 436=1922 O. 39. Holidays—Application for copies to be made on the day following the holidays. 60 I.C. 493. *See also* 1938 All. 106=I.L.R. 1938 All. 209=1937 A. L.J. 1279; 1938 Lah. 317=40 P.L.R. 74; 1942 O.W.N. (B.R.) 132 (2)=1942 R.D. 198 (2). Time requisite for obtaining a copy need not be continuous; hence vacation is part of of such time. 20 C.W.N. 1303=1 P.L.J. 485 =35 I.C. 888. Period for preferring appeal expiring during vacation,—copy application filed after re-opening and appeal preferred immediately after obtaining copy—Limitation if saved. 6 R. 743=1929 R. 96 (1); *see also* 8 O.W.N. 191=1931 O. 314.

SEC. 13.—The expression "time during which the defendant has been absent from British India" in sec. 13, must be read as "time during which the defendant or any person from or through whom the defendant derives his liability to be sued has been absent from British India". The definition of "defendant" in sec. 2 (4) must be read into sec. 13. 58 L.W. 181=A.I.R. 1945 Mad. 315 =(1945) 1 M.L.J. 275. Strict proof of the duration of the defendant's absence from British India must be adduced by the plaintiff. 9 I.C. 568 (1)=9 M.L.T. 217. Basra is not a territory under the administration of the Government of India within the meaning of sec. 13. 45 A. 18=20 A.L.J. 786=1923 A. 64. A plaintiff is entitled to deduct the time during which the defendant had been absent in Basra. (*Ibid.*) Secundrabad cantonment is under the administration of the Govern-

Exclusion of time of proceeding *bona fide* in Court without jurisdiction.

14. (1) In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

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ment of India within the meaning of sec. 13, and the period of time during which the defendant has been living in Secunderabad cannot be excluded. 39 Bom.L.R. 263=1937 Bom. 242. *See also* 40 P.L.R. 92=1938 Lah. 225. In a suit against a Native Prince, his residence is immaterial as the Prince could be sued by his agent. 30 Bom.L.R. 1463. Applicability of sec.—Cause of action arising out of British India—"Absence from British India"—Meaning of. *See* 1928 M.W. N. 543=1928 M. 1088; 1941 A.M.L.J. 41. The plaintiff filed a suit on a promissory note in the District Court of Muar in the Federated Malay States and obtained a decree on 21st July, 1930. Various payments were made by the defendant towards discharge of the decree the last being on 12th June, 1938, On 28th February, 1940, the plaintiff sued in the British Indian Court to enforce the foreign judgment. *Held,* that the suit was time-barred under Art. 117 of the Limitation Act and that limitation was not saved by reason of the payments in discharge of the decree of the foreign Court. The provisions of sec. 13 of the Limitation Act are attracted only when the cause of action has arisen in British India. 57 L.W. 855=A.I.R. 1944 Mad. 437=(1944) 1 M.L.J. 440.

SEC. 14: OBJECT.—Sec. 14 should be liberally construed, the principle being that limitation would remain in suspense while the plaintiff was *bona fide* litigating on his rights in a Court of Justice. 44 M.L.J. 179 =1923 M. 347; I.L.R. (1939) Bom. 9=40 Bom.L.R. 1169=1939 Bom 26. A person claiming the benefit of sec. 14 must show that he comes within it and the burden is on the plaintiff to prove that he acted in good faith in instituting the earlier proceedings. I.L.R. (1941) Mad. 347=1941 Mad. 319= (1941) 1 M.L.J. 257 (F.B.). If a claim by a person is fully satisfied either by an agreement or by a decree of a Court, and if that satisfaction is subsequently annulled by another decree of Court, a fresh cause of action arises, apart from the deduction of time under sec. 14. 40 Bom.L.R. 1169=1939 Bom. 26. Secs. 4, 9 to 18 and 2, would apply to a case unless expressly excluded. 33 C.W.N. 227=1929 C. 325=56 C. 805. Secs. 4 and 14 can be applied to the same case. 33 C.W.N. 221=1929 C. 315. Secs. 4 and 14 distinguished. 68 M.L.J. 665; I.L.R. (1937) Nag. 217=1937 N. 215. The operation of sec. 14, Limitation Act, should not be restricted. Its principle should be followed in suitable cases even in proceedings which cannot strictly be called proceedings in a Court of Law. If the conduct of the person claiming its benefits has been *bona fide*, that is, he has established his good faith, if he has been prosecuting with due diligence another civil proceeding, he is entitled to its benefits. If any of these elements is lacking, he cannot take advantage of it. I.L.R. (1945) All. 394=1945 A.L.J. 185=1945 All. 377.

Sec. 14 says nothing about reliefs. It merely provides that the subsequent suit shall be founded upon the same cause of action and prosecuted in good faith. When the cause of action is the same and there is good faith, the fact that a different relief is asked for as against certain defendants in the subsequent or amended plaint will not preclude the operation of sec. 14. 1943 M. W.N. 310=A.I.R. 1943 Mad. 498=(1943) 1 M.L.J. 362=I.L.R. (1944) Mad. 104. Sec. 14 is not meant to cover cases in which the holder of a mortgage decree attempts to proceed against other property without exhausting the property held under the mortgage and the time taken in such proceedings cannot be excluded. 1943 O.W.N. 352=A.I.R. 1943 Oudh 453. Sec. 14 does not require that the earlier proceeding must have been a suit; nor does it require that it must have been initiated by the plaintiff in the later suit seeking advantage from the section. I.L.R. (1941) Kar. 495=A.I.R. 1942 Sind 37. Sec. 14 only applies when time has been spent in litigation in a Court which for want of jurisdiction or other similar cause was unable to give relief. It does not apply when there is no want of jurisdiction and when the competent tribunal refuses to interfere with the order of a lower Court. 23 Pat.L. T. 263=A.I.R. 1942 Pat. 378.

APPLICABILITY AND SCOPE.—Former suit dismissed without plaint being returned for want of jurisdiction—Plaintiff is entitled to claim the benefit of the provision in sec. 14 whether he comes up on the second occasion with the original plaint or with a new plaint. 153 I.C. 155 (2)=1935 P. 82. Sec. 14 does not apply in case of continuance of same proceeding. 36 P.L.R. 215=1934 L. 412. The three requisites for application of sec. 14 are, (1) identity of the cause of action, (2) good faith of the plaintiff, and (3) the absence of jurisdiction or other cause of a like nature in the Court which entertained the prior litigation 1939 Mad. 724 =(1929) 2 M.L.J. 329. It is only when the civil proceeding is prosecuted in a Court which from defect of jurisdiction or other cause of a like nature is unable to entertain

it that sec. 14 can apply. 130 I.C. 157=1931 N. 47=1927 L. 785=104 I.C. 726=28 Punj.L.R. 403. Section applies only to cases where the person who claims exemption was *bona fide* litigating the claim in the prior proceedings. 1925 M.W.N. 241=1925 M. 922. One essential condition for the application of sec. 14 is that the plaintiff in the later suit must have been prosecuting with due diligence another civil proceeding. Where the plaintiff in the later suit was a defendant in the prior suit, he cannot be said to have been prosecuting a suit or civil proceeding at the time. Merely defending a suit is not, and cannot amount to, the prosecution of a suit. I.L.R. (1939) Bom. 173=40 Bom.L.R. 1134=1939 Bom. 1. Sec. 14 does not require that the earlier proceeding must have been a suit; nor does it require that it must have been initiated by the plaintiff in the later suit seeking advantage from the section. I.L.R. (1941) Kar. 495=1942 S. 37. A person initiating proceedings contrary to a clearly expressed provision of law, cannot be regarded as prosecuting in good faith and is not therefore entitled to claim the benefit of sec. 14. 162 I.C. 865=1936 R. 184. So also, where there was a recent change of law and proceedings were taken in ignorance of the same. 1937 A.L.J. 176=1937 R.D. 113=1937 A. 333. It cannot be argued that, since an objection to jurisdiction was taken by the defendants in the earlier suit, the plaintiff cannot be considered to have been prosecuting his suit in good faith in that Court, when such objection was overruled by that Court and upheld only in appeal. 153 I.C. 155 (2)=1935 Pat. 82. *See also* 1940 Mad. 689=(1940) 1 M.L.J. 590; 1939 Mad. 397=49 L.W. 25; 1941 Lah. 256=43 P.L.R. 530. It is not diligence but *bona fides* which should be considered when judging the mistake in selecting the forum. 1941 O.W.N. 713=1941 A.L.J. (Supp.) 92. *See also* 1941 Pesh. 3; (1946) O.A. (C.C.) 10. The establishment of good faith is a prerequisite condition before the benefit of sec. 14 can be allowed. Where the good faith of the party prosecuting his remedy in a different proceeding was open to grave doubt and where the parties to the different proceedings were not identical it was held that benefit of sec. 14, could not be claimed. 1941 A.W.R. (Rev.) 1041=1941 O.A. (Supp.) 850. *See also* 1941 Oudh 161. Sec. 14 will not apply where the prior suit has failed owing to the negligence or laches of the plaintiff. 62 C. 510=39 C.W.N. 606. Sec. 14 is not applicable if, in the prior litigation, the period of the pendency of which is sought to be deducted, the parties and the cause of action were not the same. 1 R. 402=1924 R. 123. *See also* 20 I.C. 513=17 C.L.J. 596; 1925 M.W.N. 361=1925 M. 675; 145 I.C. 630=35 Bom.L.R. 929=1933 B. 450. Section would not apply when the causes of action in the two suits are entirely distinct. 20 I.C. 513=17 C.L.J. 596. (14 B. 365, approved; 5 R. 600=105 I.C. 701); 98 I.C. 1059=1927 A. 181. *See also* 108 I.C. 134=1928 A. 10; 1929 A. 101=112 I.C. 246; 1939 Mad. 124=(1939) 2 M.L.J. 329; 138 I.C. 621=33 P.L.R. 360. For application of section not only cause of action *but also the relief sought* should be the same. 58 L.W. 595=1933 M. 778. **[But see** *contra* 1934 A.L.J. 630=1934 A. 824.] An application for execution of a preliminary mortgage decree is not an application "for the same relief" (within the meaning of sec. 14), as an application for a final decree for sale. Consequently in computing the period of limitation for a final decree under Art. 181 of the Act, the applicant cannot exclude the period spent in the prior execution proceedings. 62 I.A. 80=57 A. 242=1935 P. C. 85=68 M.L.J. 665 (P.C.); 1935 A.L.J. 201=1935 A. 323. *See also* 1943 Mad. 447=57 L.W. 582=(1944) 2 M.L.J. 338. Sec. 14 is not applicable to appeals. 28 I.C. 211=19 C.W.N. 473. The proceedings in a Revenue Court do not fall under sec. 14 so as to extend the period of limitation. 83 P.R. 1914=26 I.C. 441. *See also* 36 I.C. 770=3 O.L.J. 445; 6 N.L.R. 205=1923 N. 306. But *see* 9 I.C. 642 (M.). Under sec. 14 time spent in a proceeding before the Collector to whom a decree is transferred for execution cannot be excluded, as the Collector is not a Court. 1944 N.L.J. 391=A.I.R. 1944 Nag. 313=I.L.R. (1945) Nag. 427. Sec. 14 does not apply to a case where the Zamindar sues for possession of lands on the ground that the Collector, who during his minority managed the estate, treated the lands granted for *Jadha* service as Government property and dealt with them as such. 25 I.C. 878=1 L.W. 662. The expression "prosecuting" referred to in sec. 14 is generally applicable to proceedings by a person as a plaintiff or an applicant, and not to proceedings in which such person is merely resisting, as a defendant or respondent, the claim of another. 147 I.C. 94=1933 S. 379. But *see* 40 Bom.L.R. 1134=1939 Bom. 1, 32 S.L.R. 151=1938 Sind 50. Sec. 14 only applies when time has been spent in litigation in a Court which for want of jurisdiction or other similar cause was unable to give relief. It does not apply when there is no want of jurisdiction and when the competent tribunal refuses to interfere with the order of a lower Court. 1942 P. 378=23 Pat.L.T. 263. In execution of a decree, defendants raised objection under sec. 47, C. P. Code, and the same was allowed and execution petition was held not maintainable. There were appeal and second appeal which both proved infructuous. Plaintiff then filed a suit in respect of the same matter, and claimed deduction of time occupied in the execution proceedings. It was held that the fact that there was an objection raised by the judgment-debtors under sec. 47, C. P. Code, did not operate as a bar to the applicability of sec. 14 of the Limitation Act; nor did it place the plaintiffs in the position of defendants or opposite parties resisting the objection of the defendants in contradistinc-

tion with plaintiffs and applicants under sec. 14, regarding exclusion of time during which another proceeding was being prosecuted with due diligence. 40 C.W.N. 914=1936 C. 400. Execution struck off as fully satisfied — Decree-holder subsequently applying to reopen it on ground of mistake—Application treated by Court as one for review—Review proceedings held not maintainable in revision—Later application by decree-holder under sec. 47, C. P. Code—Exclusion of time taken in review proceedings. 1943 N.L.J. 521=1943 Nag. 335=I.L.R. (1944) Nag. 370. Sec. 14, if controls sec. 48, C. P. Code. *See* 50 C.W.N. 12. Plaintiff defending another suit concerning the same subject-matter—Time occupied when cannot be deducted. 25 Bom.L.R. 863=1924 B. 39. Where in a prior suit the defendant was defending a money suit and nothing that he did would have entitled him to a decree in his favour and there was nothing to restrain him from filing his suit, he was not entitled to exclusion of time under the section. 28 N.L.R. 348. Where a suit is originally filed in the Small Cause Court, and that Court ultimately decides that it has no jurisdiction and returns the plaint for presentation to the proper Court, the plaintiff is entitled to the benefit of sec. 14 for the period from the date of institution of the suit and the date of its return. 155 I.C. 1092=1935 A. 759. *See also* 1937 Nag. 69=I.L.R. 1937 N. 311. The provisions of the Act are not applicable to proceedings under the Prov. Ins. Act. 39 M. 74=27 I.C. 144=29 M.L.J. 451. *See also* 5 L.W. 123=36 I.C. 828; 1943 Mad. 447=(1943) 1 M.L.J. 323. In computing the period of limitation for a suit by a creditor under sec. 53 of the Transfer of Property Act for a declaration that certain alienations made by a debtor are void, the period of limitation being six years from the date of the alienations under Art. 120 of the Limitation Act, the time taken in prior proceedings by the Official Receiver in insolvency to get the alienations annulled under secs. 53 and 54 of the Provincial Insolvency Act against the same debtor, cannot be excluded under sec. 14 of the Limitation Act. Sec. 14 can have no application to the case, because in the first place the plaintiff in the later suit is not the petitioner in the prior proceedings and in the second place the cause of action is also different. (1942) 1 M.L.J. 588=I.L.R. (1942) M. 862=1942 M. 483. Whether sec. 14 of the Limitation Act has any application to an insolvency matter and whether proceedings in insolvency are completely outside the scope of sec. 14. *See* I.L.R. (1942) Mad. 862=55 L.W. 301 =A.I.R. 1942 Mad. 483=(1942) 1 M.L.J. 588. Where a petition by the creditor for adjudication of his debtor as insolvent was dismissed on the ground that facts alleged did not amount to acts of insolvency, the time spent in such proceedings cannot be excluded in computing the period of limitation for a subsequent execution petition by the creditor against the debtor firstly because the reliefs claimed in the insolvency and execution petitions were not the same and secondly because the dismissal of the insolvency petition was not for any defect of jurisdiction or other cause of a like nature. A.I.R. 1944 Lah. 136 (F.B.). A Berar Court is not a Court contemplated by sec. 14. 1923 N. 321. Sec. 14 is only applicable to suits in British India and not to proceedings in a foreign Court. 8 L. 54=102 I.C. 523 (2)=1927 L. 200; 35 B. 139=2 Bom.L.R. 977. Section does not apply where a special act provides a special rule of limitation. 98 I.C. 1050=1927 A. 181. Where a suit to recover unpaid purchase calls from a shareholder was filed out of time, as the official liquidator had taken some proceedings against him in some other Court, it was held not maintainable and sec. 14 did not apply. 52 B. 477=1928 B. 252. Where a suit was withdrawn with permission to bring a fresh suit under O. 23, r. 1, the section is inapplicable and the limitation for the latter runs from the date of the original cause of action. 1928 A. 402 (2); 39 M. 936=29 M.L.J. 569; (29 B. 219; 20 C. 205, Foll.); 1932 A.L.J. 421=1932 A. 377; 37 Bom.L.R. 225=1935 B. 259=1934 A.W.R. 800 (F.B.)=1934 A. 688=1936 A. W.R. 1014=1937 A. 124. Suit under sec. 79, Agra Tenancy Act—Prior proceedings under sec. 145, Cr. P. Code—Limitation not saved. 9 L.R. 11 (Rev.). Applicability of section to application under Madras Agr. Rel. Act, *see* 57 L.W. 582=(1944) 2 M.L. J. 338. Sec. 184, B. T. Act, does not exclude the application of sec. 14, Limitation Act. 33 C.W.N. 227=1929 C. 325. Assuming that by virtue of sec. 29 (2) of the Act, sec. 14 (2) would apply to an application to annul an encumbrance under sec. 167 of the B. T. Act, the time spent in resisting proceedings under sec. 174 (3) of the B. T. Act to set aside the sale cannot be deducted in computing the period of limitation for the application. 46 C.W.N. 706. As to applicability of section to application under U. P. Agr. Rel. Act, *see* 1945 A.L.J. 185=1945 All. 377. The provisions of the section can be availed of in the case of suits governed by the special rule of limitation enacted by sec. 5 of the Repealing (Punjab Loans Limitation) Act II of 1923. I.R. 1932 L. 630=56 C. 805. Where a suit is dismissed for default of prosecution under O. 9, r. 2, and a fresh one is brought under r. 4 of the same order, sec. 14 Limitation Act, is not applicable, as the prior suit failed for plaintiff's negligence in prosecuting it and not because of defect of jurisdiction or other cause of a like nature within the meaning of sec. 14. 25 N.L.R. 99=116 I.C. 509=1929 N. 219. *See also* 62 C. 510=39 C.W.N. 606. And the time covered by restoration proceedings in such a case cannot be excluded, as the cause of action in the restoration proceedings is not the same as that in the subsequent suit, nor can it be said that the restoration proceedings failed for want of jurisdiction. 1929 N. 219. There is no provision in the Limitation Act

(2) In computing the period of limitation prescribed for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

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or in the C. P. Code for allowing further time to refile a plaint. 35 I.C. 595=24 C.L. J. 355. Application for leave to sue as pauper—Order refusing leave—Request for permission to file regular suit on same day and grant of time for payment of Court-fee thereon—Time spent in pauper proceedings—Deductibility. *See* 45 Bom.L.R. 544=1943 Bom. 292.

APPLICABILITY TO APPEALS.—In regard to the admission of appeals, the Court may in its discretion apply sec. 14, though it is not made expressly applicable to appeals. 35 C.L.J. 106=1922 C. 247. *See also* 53 I.C. 955=30 C.L.J. 522; 152 I.C. 939=1935 A. 92; 1936 O.W.N. 325; 30 S.L.R. 301=162 I.C. 257=1936 S. 43. Appeal filed in wrong Court owing to *bona fide* mistake—Due diligence on the part of the party—Sec. 14 must be applied. 49 A. 555=25 A.L.J. 410=1927 A. 719; 38 P.L.R. 311.

ARBITRATION PROCEEDINGS.—Where the dispute between parties in respect of a contract was referred to arbitration of two persons with a provision for an umpire being appointed when necessary and one of the arbitrators after some years withdrew from the arbitration and the proceedings were closed by the remaining arbitrator and the umpire and one of the parties filed a suit to enforce his rights under the contract, on a question as to whether the time spent in the arbitration proceedings could be excluded under sec. 14 of the Limitation Act it was *held* that as the proceedings before the arbitrators were proceedings in a Court within the meaning of sec. 14, Limitation Act, the time spent in such proceedings should be excluded in computing the period of limitation for the suit. It was *held* further that a 'defect' of jurisdiction—even if only temporary—clearly occurred when one of the arbitrators withdrew and even if the defect was curable, there was at least a 'cause of alike nature' to defect of jurisdiction within the meaning of sec. 14 and that the requirements of sec. 14 would be equally satisfied whether such defect as to jurisdiction existed at the beginning or whether it occurred at any later stage. I.L.R. (1943) All. 467 =1938 A.L.J. 69=A.I.R. 1943 All. 162.

EXECUTION PROCEEDINGS.—Sec. 14 (2) applies to execution applications in suitable cases and Art. 182 cannot bar its application. 1932 Lah. 531. The words "any application" in sec. 14 include an application for execution, and a decree-holder is entitled to exclude the time during which he has been prosecuting his execution *bona fide* and with due diligence before a Judge whom he believed *bona fide*, though erroneously, to have jurisdiction. 19 Pat. 354=1940 Pat. 677. An execution proceeding is a civil proceeding within the meaning of sec. 14. 76 C.L.J. 183=A.I.R. 1943 Cal. 460. *See also* 1943 Nag. 335=1943 N.L.J. 521. The time taken in proceedings connected with an execution application which is not in accordance with law cannot be deducted or excluded under sec. 14, in computing the period of limitation for a subsequent execution application. 1937 M.W.N. 355=1937 Mad. 760. *See also* 1936 Cal. 400; 1939 Cal. 791. Where a defeated claimant, instead of instituting a suit, *bona fide* prefers an appeal from the adverse claim order, in accordance with the view of law then prevailing, and succeeds but on second appeal his claim is dismissed on the ground that the remedy of the claimant is by way of suit under O. 21, r. 63, C. P. Code, the time taken in the appeal and second appeal can be excluded in computing the period of limitation for a suit under O. 21, r. 63, C. P. Code, in virtue of sec. 14 (2). 1937 M.W.N. 141=1938 Mad. 41. *See also* (1942) 2 M.L.J. 442=1943 M. 30. Suit under O. 21, r. 63, C. P. Code, filed in Munsiff's Court—Plaint found to be grossly undervalued and returned for presentation to proper Court beyond one year—Presentation in proper time—Exclusion of time spent in first Court—Right to. 24 Pat. 462=1945 Pat. 369=1945 P.W.N. 430. When the High Court has refused to interfere with an order passed in a claim case, the period of limitation provided for by Art. 11-A, Limitation Act, for a suit under O. 21, r. 103, C. P. Code, would run from the date of order in the claim case and not from the date of the High Court's order discharging the rule. The plaintiff would not be entitled in such a case to an extension of time under sec. 14 (1). 23 Pat. 14=A.I.R. 1944 Pat. 225.

DEFECT OF JURISDICTION.—The words "defect of jurisdiction" in sec. 14 mean a defect of jurisdiction peculiar to the Court in which proceedings were taken, and do not cover such mistakes as the presentation and prosecution of an appeal which did not lie at all in any Court. 22 P.R. 1912=11 I.C. 880; 1927 L. 785. Defect of jurisdiction—Order made not without jurisdiction but passed too late—Time occupied cannot be excluded. 79 I.C. 696=1924 P. 40. Time spent in previous litigation cannot be excluded, when the previous suit does not fail from any defect of jurisdiction or other cause of like nature, but fails because it is misconceived. 121 I.C. 70=1930 L. 211. Sec. 14 was intended to protect a *bona fide* plaintiff from the consequences of some mistake made by his advisers in prosecuting his claim. The word 'jurisdiction' in the section should be construed liberally. If the other conditions

mentioned in the section are satisfied, the benefit given by the section cannot be taken away, merely because the course adopted before was not a well-conceived one. Where, in the prior execution proceedings, the minor attacked the validity of the decree on the ground that the guardian had acted collusively and fraudulently and in the later suit he sought to set aside the decree. *Held*, that the prior proceedings were not entirely misconceived and that time taken therein should be excluded. 1933 M. 197=140 I.C. 270= 1932 M.W.N. 1317. *See also* 43 M.L.J. 184 =1922 M. 417 (2); 1943 Mad. 633=(1943) 2 M.L.J. 41.

CL. (2): CAUSES OF A LIKE NATURE.—*See* 1939 A.L.J. 460=1939 All. 590. What is a "defect of a like nature" within the meaning of sec. 14 must depend upon the facts of each case. The expression must mean and connote something which is quite distinct from defect of jurisdiction. Defects as to wrong plaintiffs or wrong defendants are also provided for in the Act. Because the prior suit was dismissed as premature on the ground that the cause of action had not accrued, it cannot be said that sec. 14 will not apply. I.L.R. (1939) Bom. 9=40 Bom.L.R. 1169 =1939 Bom. 26. There is nothing in the terms of sec. 14 to justify the conclusion that the want of jurisdiction or other cause of a like nature referred to in the section must be in existence at the very institution of the suit. Want of jurisdiction or other cause of a like nature may arise at any stage of a suit or proceeding. 1939 A.L.J. 1075= 1940 All. 145. Where the jurisdiction of a Court to entertain a particular suit depends upon leave being granted by that Court, and leave is so granted, the subsequent recalling of the leave brings the case within the words "other cause of a like nature" in sub-sec. (1) of sec. 14. Hence time from the granting of leave till it is recalled should be excluded under sec. 14. 20 Pat.L.T. 893=1939 Pat. 86. "Other cause of a like nature"—First suit dismissed for non-registration of plaintiff's firm—Time taken in prosecuting—Right to deduction of. I.L.R. (1945) Kar. 293=1946 Sind 14. Cause of a like nature —Proceedings infructuous — Misconception as to law—Deduction of time. 44 A. 296= 20 A.L.J. 147=1922 A. 74. If the unsuccessful respondent to an appeal in the High Court applies to the High Court under cl. 18, Letters Patent, there is no defect of jurisdiction or anything analogous to it in the High Court dismissing it, and the period spent in that application cannot be deducted under sec. 14 for computing the time for a subsequent application for review. (3 P. 42, Diss. from.) 152 I.C. 415=1934 R. 158. The words "cause of like nature" include misjoinder of parties and causes of action. 14 I.C. 437=6 L.B.R. 43. *See also* 8 P.R. 1911=9 I.C. 680. *See further* 108 I.C. 134 =1928 A. 10. For purposes of sec. 14 there is no distinction between misjoinder and nonjoinder, though only the latter word alone is used in Expl. III. Both are only variations of the same defect. 1921 S. 13=62 I.C. 507=15 S.L.R. 11. *Res judicata* does not constitute 'other cause of a like nature'. 2 Pat.L.T. 585=1921 P. 225=63 I.C. 536 =6 P.L.J. 593. The failure to give notice under sec. 80, C. P. Code, is not a 'cause of a like nature' with defect of jurisdiction within sec. 14. 5 S.L.R. 181=199 I.C. 866 (Failure to give proper notice to Official Receiver). The words "or other cause of a like nature" denote that the defect must be of such a character as to make it impossible for a Court to entertain the suit or application either in its inception or at all events as to prevent it from deciding it on its merits. If the Court has got to go into the merits before a case can be dismissed the defect will not come within the ambit of these words. Where the relief asked for is found by the Court to have been misconceived either because it is not warranted by the facts mentioned by them or because the facts stated in the plaint or petition do not disclose a good and complete cause of action and the plaint or petition is consequently dismissed or rejected the provisions of sec. 14 of the Limitation Act could not be of any help. A.I.R. 1944 Lah. 136 (F.B.). A plaintiff cannot invoke the aid of sec. 14 to bring his claim within limitation for the simple reason that the proceedings in insolvency failed not for want of jurisdiction or other cause of a like nature within the meaning of sec. 14, but on account of the plaintiff's negligence in not effecting service of notice of the order admitting his petition on the defendant according to law. 112 I.C. 55. A decree was passed on 22nd November, 1922, and the money claimed was payable within one year from that date. In December, 1922, however, one of the parties applied to have the decree set aside under O. 9, r. 13. The same was dismissed in 1923 and an appeal having been preferred the latter was dismissed on 28th July, 1926. An application for execution was filed in January, 1928. *Held*, that sec. 14 was inapplicable to the circumstances of the case. 35 C.W.N. 155=1931 C. 332.

CIVIL PROCEEDINGS—PARTIES.—To obtain the benefit of sec. 14, the proceedings, the time spent in prosecuting which is to be excluded, must be between the contesting parties. 1921 C. 596=60 I.C. 698=33 C.L.J. 366. *See also* 1924 R. 123=1 R. 402; 1925 M. 675. Objection to attachment dismissed —Suit filed in wrong Court *bona fide*—Order returning plaint to proper Court challenged in appeal—Period of appeal—Exclusion of. I.L.R. (1937) N. 291=1937 N. 1. Where a plaint is filed against a person who is in fact dead at the time of presentation of the plaint, the period between the date of the institution of the suit and the date of the application to implead the legal representatives cannot be deducted under sec. 14. 37 L.W. 489=143 I.C. 596=1933 M. 454. 'Civil proceedings' include execution proceedings also. So, where, after the execution of a mortgage decree for sale has proceeded a

long way, it is found that the Court which passed the decree had no jurisdiction to pass the decree in so far as it directed sale of properties situate within a particular territory, and a fresh suit becomes necessary, in computing the period of limitation for the suit, the plaintiff is entitled to deduct not only the period from the date of institution of the former suit to the date of the decree, but also the period during which the decree in the prior suit was *bona fide* sought to be executed. I.L.R. (1937) M. 161=1937 M. 357=(1937) 1 M.L.J. 303. *See also* 1940 Pat. 677=1940 P. 354. The words "civil proceeding" in sec. 14, Limitation Act, are wide enough to include not only an appeal but also an application in revision, and the time taken in prosecuting a civil revision petition can therefore be excluded under sec. 14. But the only period that can be excluded is the actual period of pendency of the revision petition, *i.e.*, the period between the date on which it is filed and the date on which it is disposed of and no more. I.L.R. (1938) All. 192=1937 A.L.J. 1308=1938 A.L.R. 146=1938 All. 78. *See also* 17 I.C. 593; 1938 A.W.R. (B.R.) 228 (Time spent in review). *See* 1943 Nag. 335=1943 N.L.J. 521. "Another civil proceeding" does not mean one in another Court. 62 I.C. 507 =15 S.L.R. 11. *See also* 1923 B. 218. The words "civil proceedings in a Court" cover civil proceedings before arbitrators whom the parties have substituted for the Court of law to be judges of the dispute before them. 56 C. 1048=1929 P.C. 103=115 I.C. 713=56 M.L.J. 614 (P.C.). *See also* 56 C. 639=1930 C. 5. But *see* 1933 N. 130=144 I.C. 948=29 N.L.R. 272 in which 56 C. 1048 (P. C.) is distinguished. A suit against a firm, and a subsequent suit against the surviving partners of the firm and the heirs of a deceased partner are both against the same parties within the meaning of sec. 14. 27 A. L.J. 73=112 I.C. 715.

COMPUTATION OF TIME.—Where a plaint, presented in a wrong Court, is returned to be presented to the proper Court, the plaintiff is entitled to exclude the time between the date of institution in the wrong Court and the date of the return of the plaint. 24 O.C. 137 =61 I.C. 203=1921 O. 100. *See also* 36 M. 482=22 M.L.J. 377; 20 Bom.L.R. 918=43 B. 201; 1928 N. 227; 1930 B. 187=32 Bom. L.R. 58; 138 I.C. 108=1932 A. 377. Plaint ordered to be returned—Endorsement of return and return on later date—Period of exclusion—Computation of. 45 Bom.L.R. 1014=1944 Bom. 37. Where a Court has jurisdiction to try a suit, but holds that it has no jurisdiction and returns the plaint for presentation to the proper Court, the plaintiff who files the suit in the proper Court on such return is entitled under sec. 14 to deduct the period spent in prosecuting the suit in the Court in which it was first presented. I.L.R. (1937) Nag. 311=1937 N. 69. The prior proceeding can be considered to have terminated not on the date when an order for return of plaint was made, but only when in accordance with that order it is actually returned to the plaintiff. 60 C. 1122=1933 C. 914. A plaintiff, though entitled to deduct time of actual pendency in a wrong Court, cannot exclude any extra day on the ground that it is a holiday. 35 I.C. 292=14 A.L.J. 310. *See also* 43 M.L. J. 579=1923 M. 114 (2). The date of institution of a suit is the date on which the plaint is filed in the proper Court excluding for the purpose of reckoning limitation only the periods excluded under this section. 18 I.C. 121=17 C.W.N. 515. Computation of time—Expiry of time during Court's vacation—Institution in wrong Court on re opening day—Representation after return in the proper Court—Exclusion of time. 44 M. 817 =1921 M. 654=41 M.L.J. 84. Suit filed in wrong Court—Direction to file the same in proper Court—Time taken for suit and application for copy cannot be deducted. 46 C.L.J. 452=1928 C. 46. Time taken in proceedings for possession before Revenue Officer cannot be deducted. 101 I.C. 254=1927 L. 186. A plaint presenten in a wrong Court was returned and presented in proper Court. Law of limitation applicable to the suit was that in force on the date on which the plaint was presented to the proper Court. 117 I.C. 900=1929 L. 877 (2).

RETURN FOR WANT OF JURISDICTION.—I.L. R. (1937) Nag. 291=1937 Nag. 1. Time spent in prosecuting an infructuous appeal due to wrong valuation may be deducted in computing the period of limitation. 50 I.C. 645=70 P.R. 1919. No litigant should be made to suffer on account of the laches or delay of the Court or its officers. The time between the date of the order of the return of a plaint for presentation to proper Court and the date when the plaint was ready to be returned is to be deducted for the purposes of limitation and the proceedings are not to be considered at an end for the purposes of sec. 14, Expln. I until the endorsement is made and the plaint is ready for return. The plaintiff is entitled to exclude under sec. 14 (2) the period till the plaint is ready for return. 41 P.L.R. 371=1939 Lah. 47. In order to get the benefit of sec. 14 (2) of the Limitation Act, the applicant need not show that the Court in which the proceeding was taken has actually refused to give relief on the ground of want of jurisdiction. If the Court has in fact no jurisdiction but assumes jurisdiction—either acting from a wrong view or without applying its mind at all to the question—the sub-section can be applied so as to exclude the period spent in the proceeding before such Court. 48 C.W.N. 821. Proceedings before a Court do not terminate when the plaint is ordered to be returned for filing in proper Court, costs being awarded to the defendant, because the decree that is to be prepared requires the presence of the plaint on record and proceedings can only be held as terminated when the decree is signed and complete. Time required for this can be excluded in computing the period of limitation. 1938 Pat. 203. When a Court records an order that a plaint should be returned for

presentation to the proper Court, the proceedings in that Court do not necessarily come to an end on that date. Certain necessary endorsements have to be made on the plaint and hence that Court continues to have seisin of the plaint till it is actually returned to the plaintiff. Hence where a plaint is ordered to be returned for presentation to the proper Court, the proceedings come to an end within the meaning of sec. 14, Expln. I of the Limitation Act, not on the date on which the order is passed but on the date on which the plaint is actually returned to the plaintiff. I.L.R. (1939) All. 709=1939 A.L.J. 460=1939 All. 590. In order that sec. 14 of the Limitation Act may apply, it is not necessary that there should be a formal order of the Court in which the proceedings were prosecuted dismissing the same on the ground that it had no jurisdiction. Sec. 14 does not require any order of the Court which had no jurisdiction recognising the fact. All it requires is that the Court which has to decide the question of limitation must find that the other Court was unable to entertain the proceeding because it had no jurisdiction. 1943 M.W.N. 287=1943 Mad. 457=(1943) 1 M.L.J. 323. A plaintiff who institutes a suit on the very last date of limitation does so at his peril, and the law does not make any provision for extension of time except in cases coming under sec. 14. A plaintiff whose plaint is returned by a Court on the ground that it has no jurisdiction to entertain it can only exclude the period during which it was pending in that Court, *i.e.*, the period between the date of its presentation to that Court and the date of its return by that Court for presentation to the proper Court. He cannot exclude any further period which the Court returning the plaint gives him for such representation. A Court which has no jurisdiction to entertain the suit and which returns it on that ground has no power to grant any time to the plaintiff for presenting it to the proper Court. If the Court wrongly gives any such time by its order returning the plaint, the plaintiff cannot take advantage of that order and claim to deduct that period also under sec. 14 of the Limitation Act. 18 Pat.L.T. 250=1937 Pat. 495. Suit on pro-note instituted in wrong Court —Plaint returned without endorsement required by O. 7, r. 10, C. P. Code—Pro-note not returned with plaint but couple of days later—Time deductible. *See* 1937 Lah. 464. Where a plaint was returned for want of pecuniary jurisdiction and delay is caused owing to change in law, suit must for purposes of limitation be taken to have been instituted on the day of presentation in the wrong Court. 33 I.C. 808=18 P.W.R. 1916. The plaint in a suit on an unregistered mortgage was amended by scoring out the relief to sell the mortgaged property. As it was then found that the valuation of the suit was within the cognizance of the Court of Small Causes, the plaint was returned to be presented to the proper Court and was so presented on the same day. On a question as to whether the plaintiff in such a suit could claim the benefit of sec. 14, it was *held* that the question whether the two proceedings were based upon the same cause of action or different causes of action, could not be decided upon the terms of the reliefs claimed in either proceeding and that there was no justification for holding that the preceeding on the Small Cause side was based upon some cause of action different from that upon which the proceeding on the regular side was founded, and that hence the plaintiff would be entitled to claim the benefit of sec. 14. 1939 A.L.J. 1075=1940 All. 145. Where a plaintiff, who filed his suit at *E*, and whose plaint is returned by the Court at *E* for presentation to proper Court at *A*, presents an appeal against the order returning his plaint in the Court of the District Judge at *E* within the period of limitation, it cannot be said that he was not prosecuting with due diligence his civil proceeding in the Court of appeal at *E*, and the entire period spent by him in prosecuting his case in the Courts at *E* must be excluded under sec. 14. 41 P.L.R. 371=1931 Lah. 47.

DELAY AFTER ORDER OF RETURN.—Where a plaint was actually returned for presentation to the proper Court only three days after the order directing the plaint to be returned was signed. *Held*, that for purposes of sec. 14 the date on which the plaint was actually returned must be taken to be the date on which the order was promulgated. 20 I.C. 183=17 C.W.N. 1043. *See also* 23 Bom.L.R. 1023=1922 B. 160=46 B. 211; 1928 B. 252=52 B. 477. Where a plaint is returned and costs ordered, the proceedings terminate on the day of the return and not on the day when the costs are assessed. 35 I.C. 595=24 C.L.J. 353. For the purposes of limitation, an applicant for re-presentation is entitled to deduct the time spent in the District Munsif's Court after the order of return. 9 I.C. 157=9 M.L.T. 374. Where a plaint is returned for presentation to the proper Court, the suit is within time if it is presented to the proper Court on the same day on which it is actually returned by the wrong Court. 45 B. 443=59 I.C. 743=22 Bom.L.R. 1387=1921 B. 379.

DUE DILIGENCE.—Sec. 14 cannot help a party guilty of negligence, laches, inaction or bad faith. 9 O.W.N. 430=1932 O. 220. Applicant must prove first that he had prosecuted the former proceeding with due diligence and secondly that the former Court had been unable to entertain it from defect of jurisdiction or other cause of a like nature. 41 P.R. 1916=32 I.C. 497. *See also* 20 I.C. 3=159 P.W.R. 1913; 138 I.C. 621=33 P.L.R. 360; 1938 Rang. 318; 1940 A.M.L.J. 120. The fact that a litigant acted on the advice of a pleader will not improve his position if the error made is so patent that it would have been avoided with the exercise of due care. 51 I.C. 590=22 O.C. 39; 8 Bur.L.T. 93=27 I.C. 829. But *see* I.R. 1932 L. 665. A party who proceeds in ignor-

ance of law cannot be said to proceed with due diligence or in good faith. 1924 P. 716; 1933 L. 589=144 I.C. 690=34 P.L.R. 789. But *see* 15 R.D. 7999; 1937 A.L.J. 176=1937 A. 333. Applicability and scope of sec. 14—Prosecuting with due "diligence" — "Same relief"—Insolvency proceedings against judgment-debtor—Court having no jurisdiction—Period of pendency—Exclusion of, for computing limitation for subsequent execution petition. 1943 Mad. 457=(1943) 1 M.L.J. 323. *See also* I.L.R. (1942) M. 862=1942 M. 483=(1942) 1 M.L.J. 588; 1939 Lah. 270.

GOOD FAITH.—An applicant who takes a proceeding contrary to a clearly expressed provision of law cannot be regarded as prosecuting a civil proceeding in "good faith" within the meaning of sec. 14 (2). 41 Bom. L.R. 1190=1940 Bom. 5. Generally negligence on the part of counsel cannot be relied upon by the litigant in order to support a plea that he was prosecuting an application 'in good faith' though in a wrong Court. In a case of gross negligence an applicant is not entitled to the benefit of sec. 14. 1938 Oudh 112=1938 O.W.N. 360. Where plaintiff acted in good faith and neither the Court nor the defendant objected to the cognizance of the suit, he is entitled to the benefit of sec. 14. 40 I.C. 447=15 A.L.J. 573. *See also* 43 C. 660=20 C.W.N. 522=1916 P.C. 96=30 M.L.J. 529 (P.C.); 57 L. W. 155=1944 Mad. 253=(1944) 1 M.L.J. 205; (1943) 2 M.L.J. 375 =1944 M. 47. "Good faith" as used in sec. 14 means 'exercise of due care and attention'. Where the circumstances are such as would justify either view as regards the value of the property, the plaintiff cannot be regarded as having acted dishonestly and without due care and attention, if he has adopted the lower valuation of property and filed his suit in a wrong Court. I.L.R. (1939) Nag. 422=1938 N.L.J. 107=1938 Nag. 300; 62 I.C. 957; 1930 B. 187; 1933 L. 264. Where a revision application against an order allowing a claim under O. 21, R. 58, C. P. Code is preferred and dismissed on the ground that a suit under O. 21, R. 63, C. P. Code, is the proper remedy, and subsequently a suit under O. 21, R. 63 is filed, the time spent in the revision proceedings can be deducted under sec. 14 (1) of the Limitation Act in computing the period of limitation for the suit. In view of the course of decisions in the Madras High Court interfering in revision with orders on claim petitions, it cannot be said that the filing of a revision petition amounts to negligence, and the party must therefore be held to have acted in good faith so as to attract sec. 14 (1), Limitation Act. 1943 M.W.N. 455=A.I.R. 1943 Mad. 633=(1943) 2 M.L.J. 41.

Although a party acting on the advice of his advocate may be presumed to act in good faith, if the advocate himself does not act in good faith, the party cannot rely upon that advice as establishing his own good faith. Whether an advocate has shown due care and attention is a question of fact to be decided on the evidence adduced in any particular case and no absolute rule of law can be deducted. A finding as to good faith or the absence of it is one of fact and cannot be upset in second appeal on the ground that the lower appellate Court has transgressed any rule of law. 1943 M.W.N. 703 =56 L.W. 580=1944 Mad. 47=(1943) 2 M.L.J. 375. Claim suit filed in wrong Court—No objection by opposite party—Discovery of mistake by Court and return of plaint for presentation to proper Court—Time spent in former Court—Exclusion of. 146 I.C. 125=1933 L. 652. Whether a party acted in good faith is a mixed question of law and fact. 36 I.C. 702=19 O.C. 367. *See also* 28 I.C. 347=54 P.W.R. 1915; 1923 N. 241; 138 I.C. 646=1932 L. 531. A Court can grant the indulgence allowed by sec. 14 only where the error is one that might be committed by a reasonable and prudent man, exercising due diligence and acting in good faith. 36 I.C. 702=19 O.C. 367. *See also* 1937 M.W.N. 715; 1940 O.W.N. 818. In order that the Court should arrive at the period which is to be excluded under sec. 14, it must also determine how much must be included, whether by reason of prosecution in bad faith or owing to any other reason. 30 N.L.R. 294=149 I.C. 956 =1934 N. 145. But, where the plaintiff is entitled to exclusion of time under secs. 14 and 15, the Court is not concerned as to how the plaintiff has spent his time till the expiry of the ordinary period of limitation excluding the time allowed under the above sections. 30 N.L.R. 294=149 I.C. 956=1934 N. 145. Where there is nothing to show a deliberate or reckless under-valuation sec. 14 will apply. 25 I.C. 403 (2)=17 O.C. 210. *See also* 18 I.C. 92; 14 I.C. 86. Plaintiff who can institute his suit in more than one Court is not bound to consider the convenience of defendant. If the effect of his choice is to cause inconvenience to the defendant, it does not constitute lack of good faith on the part of the plaintiff in the sense in which that phrase is used in sec. 14. 182 I.C. 632=20 Pat.L.T. 893=1939 Pat. 86. The time taken by the plaintiff in proceedings necessitated for ascertaining the correct value of the suit can be allowed to be deducted under sec. 14, where it is found that the plaintiff acted *bona fide* throughout and did not intentionally under-value the suit. 138 I.C. 349=36 C.W.N. 326=1932 C. 504. What amounts to good faith is to be decided on the facts of each case. 32 I.C. 616=9 S.L.R. 167. *See also* 53 I.C. 892 (2)=1919 P.H.C.C. 409; 10 I.C. 21; 8 L.R. 23 (Rev.); 1929 C. 325=56 C. 805. *See also* 144 I.C. 184=1933 L. 264. Where an appeal was filed in a wrong Court owing to a *bona fide* mistake as to the nature of the suit, the delay was excused. 106 I.C. 812= 1928 L. 136. *See also* 1933 L. 264=144 I. C. 184. Sec. 14 has no application when bad faith is established. Where a person obtained an *ex parte* decree by fraud and subsequently sued the proper person for rent,

limitation is not suspended. 8 P. 851=1930 P. 54. An application for leave to sue as a pauper filed in bad faith was dismissed. The subsequent payment of Court-fees cannot operate retrospectively for the purposes of calculation of limitation. 1929 N. 268. Mere error of judgment is quite different from bad faith. 27 A.L.J. 73=112 I.C. 715. A proceeding contrary to a clearly expressed provision of law is not in good faith. 7 R. 466=1929 R. 297. Suit for possession—Profits not claimed in plaint—Plaintiff obtaining mere decree for possession in prior suit—Unsuccessful attempt to recover profits in restitution—Subsequent suit for profits—Right to deduction of period occupied by restitution proceedings. *Held*, that plaintiff was not entitled to benefit of sec. 14. 41 L.W. 138=1935 M. 731=68 M.L.J. 487.

IGNORANCE OF LAW may afford a good ground for application of sec. 14. 1937 A. L.J. 176=1937 All. 333. Sec. 14 requires both diligence and good faith. As regards good faith ignorance of law is not necessarily an adequate plea. But where the wrong remedy adopted is considered by one of the Courts to be the proper one, that would imply good faith on the part of the party and the benefit of sec. 14 would be available to him. 1940 O.W.N. 818=1940 O.A. 1106. Indulgennce should be granted under sec. 14 only in cases where an error was an error that might be committed by a reasonable and prudent man exercising due diligence and caution. (36 I.C. 702. Foll.). 40 P.L.R. 631=1938 Lah. 704. Where a person in ignorance of the provisions of the Agriculturists Relief Act relating to the special form prescribed by the Act, files a suit in a wrong Court and on its being returned, presents it to the proper Court, the time spent in the wrong Court can be excluded under sec. 14, for the plaintiff should be deemed to have been prosecuting with due diligence and in good faith the proceedings in the wrong Court. 1940 Oudh 412=190 I.C. 93.

PROCEEDING IN REVENUE COURT.—The plaintiff is entitled to a deduction of time from the date of institution of the suit wrongly in the Revenue Court to the date on which the plaint was returned for re-presentation. 9 M.L.T. 315=9 I.C. 642. But *see* 26 I.C. 441 (Punj.); 36 I.C. 770 (Oudh). Where an order was made under sec. 169 (1) (*b*), C. P. Land Rev. Act, to file suit in Civil Court within 6 months, time spent in appeal in Rev. Court cannot be excluded under sec. 14 of this Act. 29 N.L.R. 350=1933 N. 340. Suit for arrears of rent—Plea of occupier, of payment to landlord—Landlord impleaded—Payment found true—Appeal dismissed—Subsequent suit under sec. 37 of Agra Tenancy Act—Time taken up by previous liitgation—Deduction of. 14 L.R. 99 (Rev.)=17 R D. 168.

PROSECUTION OF PROCEEDING.—It cannot be said that a plaintiff is not prosecuting a suit with due diligence in a Court of first instance when the delay is caused by the action of the Court itself. 1922 A. 404. Time during which insolvency proceedings are pending, if can be deducted in computing the period of limitation. 47 B. 244=24 Bom.L.R. 509=1923 B. 33 (2). *See also* 64 I.C. 50=13 Bur.L.T. 197; 1 P. 506=3 Pat. L.T. 709=1922 P. 450. *See* Pro. Ins. Act, V of 1920, sec. 78. But *see* 52 I.C. 934=12 Bur.L.T. 83. Where the mistake of the advocate is *bona fide*, the time spent in the prosecution of a prior proceeding can be excluded. 1933 O. 231=10 O.W.N. 424. A mere routine order registering an application for review does not constitute a *bona fide* prosecution of a civil litigation. 31 I.C. 705=19 C.W.N. 1113. An applicant to file an award could not be allowed to deduct the time spent by him as defendant in setting up the award in bar of a prior suit instituted by the plaintiff. 52 I.C. 561=89 P.R. 1919. *See also* 32 S.L.R. 151=1938 Sind 50; 43 C. W.N. 648=1939 P.C. 128=I.L.R. (1939) K. 211. Prosecution of proceedings—Execution proceedings—Non-joinder of party—Rejection of application. 15 S.L.R. 11=1921 S. 13. An unsuccessful prosecution of an application by one of the defendants to set aside an *ex parte* decree passed against him in the first Court will extend time for an application made by him to the appellate Court for re-hearing the appeal, filed by the other defendants and disposed of, without notice taken out to him. 54 A. 423=140 I.C. 178= 1932 A. 340.

TIME SPENT IN EXECUTION PROCEEDINGS.—Extension of time if allowable. 43 I.C. 6= 33 M.L.J. 463. *See also* 58 I.C. 40=1 P.L. T. 612; 74 I.C. 279=1924 C. 419; 19 Pat.L. T. 250=1938 Pat. 321. Execution application filed in wrong Court but re-filed in right Court after limitation—Mistake not *bona fide*—Decree-holder not entitled to benefit of section. 8 Pat.L.T. 561=1927 P. 256. The period during which an injunction not to execute a decree is in force will be deducted from the period of limitation for execution of the decree. 38 I.C. 85=2 P.L.J. 24. Where the relief sought in the two proceedings were wholly distinct, time cannot be excluded. 50 A. 670=1928 A. 368. While counting limitation for the presentation of an application for the preparation of the final decree, time spent in prosecuting previous application for the execution of the decree cannot be excluded as the two reliefs are different. Sec. 14 (2) will not be applicable. 118 I.C. 670=1929 A. 677.

TIME SPENT IN REVISION.—Time cannot be deducted under sec. 14 in favour of a person occupied in prosecuting a revision petition in the High Court when he had another remedy open to him. 39 M. 62=27 M.L.J. 640; 14 I.C. 259; 1937 M.W.N. 465 (2); 213 I.C. 236=1943 M. 633=(1943) 2 M.L.J. 41; 43 C.W.N. 1051=1938 Cal. 577; 1935 A.M.L.J. 117. *See also* 7 R. 466=1929 R. 297. The High Court does not generally revise orders under O. 21, R. 63, C. P. Code—Question if time spent in revision could be excluded.

Explanation I.—In excluding the time during which a former suit or application was pending, the day on which that suit or application was instituted or made, and the day on which the proceedings therein ended, shall both be counted.

Explanation II.—For the purposes of this section, a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding.

Explanation III.—For the purposes of this section, misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

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32 Bom.L.R. 1186=1930 Bom. 505. The principle that party who proceeds contrary to a clearly expressed provision of law cannot be regarded as prosecuting another civil proceeding in good faith is sound but should not be applied with rigidity. If in the revision proceedings there is no want of diligence and good faith there is no reason why the plaintiff should not have the benefit of sec. 14 because of the negligence of his advocate. (7 R. 466, Dist.) 27 N.L.R. 251=130 I.C. 145=1931 N. 17. The High Court will not interfere with the discretion exercised by the lower appellate Court under sec. 14, when such discretion has not been exercised improperly. 14 Luck. 4=1938 O.W.N. 257=1938 Oudh 100 (S.B.).

"UNABLE TO ENTERTAIN"—MEANING OF.—"Unable to entertain" is not equivalent to "unable to decide". 8 P.R. 1911=9 I.C. 680 (34 P.R. 1898; 28 M. 338; 35 C. 728, Foll.; 22 A. 248, Dist.) The words "unable to entertain it" do not merely mean that the Court has expressed its mind that the suit is defective but must mean that the Court has passed an order terminating the suit or proceeding on the ground that there is a defect of jurisdiction. 57 All. 145=150 I.C. 135=1934 A. L.J. 535=1934 A. 688 (F.B.). *See also* I.L. R. (1939) 2 Cal. 316=43 C.W.N. 1074=1939 Cal. 625. Sec. 14 would apply even if the first Court erroneously decided its inability to entertain the claim for defect of jurisdiction in respect of it. In such a case it is not open to the second Court to say that there was no want of jurisdiction in the first Court. 76 C.L.J. 183=1943 Cal. 460. Where a previous suit or proceeding has been disposed of on the merits, it cannot be said that the Court has been "unable to entertain it," within the meaning of sec. 14. 55 L.W. 644 (2)=1942 M.W.N. 820 (2)=1942 Mad. 713 =(1942) 2 M.L.J. 515. Appellant filed a suit against two sets of defendants on babikhata accounts. A preliminary objection was taken to the plaint in the earlier suit and it was held in the end that the plaint was bad because of misjoinder of parties. The appellant was ordered in that suit to make his election as to which part of the claim he wished to proceed with. Upon this order the appellant stated that he wished to proceed against one set of defendants and he withdrew the part of the claim directed against the respondents in the appeals. His suit against the other set of defendants was decreed. *Held*, that the plaintiff was not entitled to claim the benefit of sec. 14 (1) on account of the previous suit he had withdrawn. 1934 All. 688; 1939 Cal. 625; I.L.R. (1940) Kar. 225=1940 S. 125. A plaintiff who withdraws his suit under O. 23. R. 1, C. P. Code, is not entitled to the benefit of sec. 14 in a subsequent suit founded on the same cause of action. (1934 A.W.R. 806 (F.B.) (Foll.) 1937 All. 124. *See also* 40 Bom.L.R. 377=I.L.R. (1938) Bom. 327=1938 Bom. 281; I.L.R. (1940) Kar. 225.

MISCELLANEOUS.—Where a party was prevented from instituting the suit for setting aside the sale earlier because the property was in *custodia legis* under an order of Court, limitation is saved. 13 L. 70=137 I.C. 820 =1932 Lah. 281. In counting the period for an application for refund of excessive moneys levied in execution of a decree the time taken up by the defendant in prosecution of a suit for the purpose in another Court under an error of law, ought to be deducted under sec. 14, 44 B. 97=55 I.C. 967. Prosecuting one suit for several claims—Deduction of time. 26 P.W.R. 1915=27 I.C. 927. Wrong remedy—Time spent in prosecution of. 52 I.C. 465=9 L.W. 345. *See also* 36 C.W.N. 40=1932 C. 171. The pendency of a suit for possession does not save limitation for a rent suit. 23 I.C. 942=1 L.W. 438. *See also* 39 I.C. 865. Suit by temple trustees for recovery of offerings taken by Archakas—Prior declaratory suit against the same defendants that the right to take collection illegal—Pendency of appeal—Trustees not entitled to deduction of time. 89 I.C. 938=1925 M. 1188. Prior suit by a lessee against his sublessee to recover possession and rent—Recovery of possession—Subsequent suit for compensation — Limitation suspended. 6 R. 691=1929 R. 55. So also where the prior proceeding related to the validity of an award of arbitrators and the subsequent suit was for damages for breach of contract. 56 C. 639=1930 C. 5. Where a suit to set aside a summary order in claim proceedings was finally dismissed by the High Court as it considered that the application was one under sec. 47 and that only an appeal lay, and the applicant filed an appeal accordingly, the claimant was held to be diligently prosecuting his case and hence time taken in suit was excluded. 1930 P. 307. High Court will not interfere in second appeal with a discretion exercised by the lower Court under this section. 131 I.C. 461 (2)=1931 M. 632. Application under O. 21, R. 89, C. P. Code, to set aside sale—Court ordering petition to be dismissed as withdrawn—Sale upheld in appeal

15. (1) In computing the period of limitation prescribed for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made and the day on which it was withdrawn, shall be excluded.

Exclusion of time during which proceedings are suspended.

—Fresh application to set aside sale—Continuance of earlier petition—Extension of time—*Held*, that the Court could not entertain the later application on any general ground of equity based on the principle of sec. 14 of the Lim. Act, because the applicants had, in withdrawing their original application, acted at their own risk. 1934 M. 593=67 M.L.J. 189. A temporary injunction subsequently embodied in the decree passed in the suit restraining the defendant from interfering with the possession of the plaintiff does not prevent him from instituting a suit for possession even though the title of the contending parties is involved in the suit. Therefore, in computing the period of limitation for a subsequent suit by the defendant for possession, he is not entitled to deduct the whole period from the date of the temporary injunction to the date of the dissolution of the permanent injunction by the Privy Council under sec. 15. Nor is he entitled to claim the benefit of sec. 14 of that Act to deduct the period of the pendency of the earlier suit which ended in the Privy Council in his favour. I.L.R. (1945) Kar. (P.C.) 43=49 C.W.N. 6=1944 M.W.N. 711=47 Bom. L.R. 1=1945 P.C. 5=(1944) 2 M.L.J. 358 (P.C.). Administration suit by creditor—Decree-holders creditors made defendants—Objection by latter to maintainability of suit—Dismissal of suit—Execution of decrees—Limitation—Computation — Period of pendency of administration suit—If can be excluded—Injunction. 1943 M.W.N. 728=56 L.W. 658=1944 Mad. 67=(1943) 2 M.L.J. 510=I.L.R. (1944) Mad. 41.

SEC. 14 AND ART. 178.—Scope and applicability of—Application by judgment-debtor under secs. 5 and 30, U. P. Agriculturists' Relief Act, "struck off"—Order affirmed in appeal. 1945 A.L.J. 185=1945 All. 377.

SEC. 15: SCOPE OF.—Sec. 15 speaks only of the computation of periods of limitation with reference to the periods prescribed in the schedule to the Act. 43 M.L.J. 168=45 M. 785=1922 M. 268.

INTERPRETATION — PRESCRIBING A PERIOD OF LIMITATION—MEANING OF.—If the result of a statutory provision is in substance to fix a period within which a person must take appropriate and necessary action if he desires to assert his rights in a Court of law, that provision prescribes a period of limitation. I. L.R. (1939) All. 647=1939 A.L.J. 522=1939 All. 403 (F.B.).

APPLICABILITY.—Sec. 15 relates to injunctions or orders of Court and not to Royal proclamations which prevent the institution of suits by alien enemies. 47 I.C. 122. Sec. 15 (1) contemplates the stay of execution of a decree either by injunction or by order. 64 I.C. 594=1921 C. 606=34 C.L.J. 163. *See also* 1921 C. 594=64 I.C. 849=35 C.L.J. 135; 47 I.C. 907. But *see* 1935 M. 352. To enable the later application to be treated as one in continuation or to revive the former one, there should have been no final disposal or there should have been a wrong dismissal on account of some obstacle which had existed but which had been subsequently removed. 143 I.C. 1=56 M. 490=37 L.W. 607=1933 M. 418=64 M.L.J. 664 (F.B.). In order to make sec. 15 applicable to a case, it must be shown that the suit or execution of the decree had been stayed by an injunction or order. If the decree-holder could not bring himself within the exemptions provided in the Act, he could not escape the bar of limitation by pleading in equity an implied order or a collateral litigation which would render his proceedings futile. 64 M.L.J. 664 (F.B.). It cannot be laid down as a general rule that whenever a person finds an impediment in the way of his successfully asserting his right to relief his cause of action is suspended and the course of time interrupted until such impediment is removed or that a fresh cause of action arises on its removal. Nor is there any general proposition that where the rights of parties have been subjected to adjudication by a competent Civil Court limitation for other suits based on such rights should be computed from the date of their final determination. The Courts have no power, on considerations of hardship or equity to invent new grounds of exemption from the bar of limitation not recognised by the statute. I. L.R. (1942) Mad. 562=55 L.W. 264=1942 Mad. 487=(1942) 1 M.L.J. 472. Where the next friend of a sole plaintiff or sole surviving plaintiff dies and the suit stands stayed or in abeyance under O. 32, R. 10, C. P. Code, the right to apply for a final decree in such a suit is suspended, and the period during which the suit stands stayed ought to be excluded in computing the period of limitation to apply for a final decree. Sec. 15 in terms does not apply, but the principle of the section ought to be applied. I.L.R. (1941) Bom. 435=43 Bom.L.R. 329=1941 Bom. 203. Application for revival of pending execution is not prohibited—Sec. 15 would apply only to an application for execution of a decree and not to an application for revival of a pending execution. 49 A. 276=100 I.C. 692=1927 A. 16 (F.B.). Sec. 15, sub-sec. (2) does not extend the period of six months mentioned in sec. 104-A of the B. T. Act. 45 C. 934=45 I.C. 228. Sec. 48, C. P. Code, contains an unqualified prohibition against execution of decrees more than 12 years old and this is not controlled by sec. 15. 43 M.L.J. 168=44 M. 785; 24 I.C. 195=27 M.L.J. 25. *See also* 1941 Pat.

499; I.L.R. (1939) Bom. 87=40 Bom.L.R. 1278=1939 Bom. 75; 1944 N.L.J. 127=1944 Nag. 155=I.L.R. (1944) Nag. 250. The general provisions of sec. 15 are intended to apply to periods of limitation prescribed in the C. P. Code, and are not confined in their operation to periods prescribed by the Limitation Act or by Sch. I. Sec. 48, C. P. Code, does prescribe a period of limitation. Hence sec. 48 of the Code is not uncontrolled by the provisions of sec. 15. In other words, sec. 48 of the Code does not impose a complete bar to the execution of a decree after the expiry of the period of 12 years irrespective of the provisions of sec. 15. I.L.R. (1939) All. 647=1939 A. L.J. 522=1939 All. 403 (F.B.); 1928 M. 1154; 45 Bom.L.R. 234; 8 O.W.N. 642 =132 I.C. 257=1931 O. 351; 137 I.C. 603 =1932 O. 246 (Position doubted). A mortgagee holding a decree against an estate under the Court of Wards management is not entitled to the benefit of exclusion of the period of management by the Court of Wards, when the decree itself was not transferred to the Collector for execution. 29 I.C. 556. *See also* 24 I.C. 195=27 M.L.J. 25. Sec. 15 will not apply where the execution of the decree is stayed only in respect of a portion of the property sought to be proceeded against leaving it open to the decree-holder to proceed against the remaining or other properties of the judgment-debtor in execution. 46 Bom.L.R. 666=1944 Bom. 303. Whether partial stay order is governed by sec. 15. 1928 M. 627=51 M. 583=55 M.L.J. 156. Sec. 15 contemplates an absolute stay of execution. 1925 P. 597. Where after a decree had been obtained and when no execution application was pending therein, the Judge ordered in a connected suit that the decree-holder might wait for some time for payment, *held* that the order did not suspend limitation and did not operate as a stay of the execution proceeding in the prior suit. 60 I.A. 43=12 P. 195=64 M. L.J. 599=1933 P.C. 52 (P.C.). Though the provisions of sec. 15 could not be attracted to proceedings for restitution, and an application for restitution is not an application for execution and the time during which a party was precluded by the orders of the Court from making the application for restitution could not be excluded under that section, there is no reason why the same principle on which sec. 15 is based should not be extended to an application for restitution as well. I.L.R. (1945) Lah. 8=47 P.L.R. 201 =1945 Lah. 227. There is no reason in principle why an application for a final decree in a suit on the basis of a mortgage should be excluded from the relief allowed by sec. 15. The rule contained in sec. 15 applies to suits and applications for execution stayed under the U. P. Encumbered Estates Act. 1946 A.W.R. (H.C.) 452.

INCONSISTENT DECREES RENDERING EXECUTION OF ONE IMPOSSIBLE.—Sec. 15 does not contemplate the case of one decree being rendered impossible of execution by a subsequent decree inconsistent therewith passed in another suit. A person obtained a decree for possession of a temple in 1926. Before he could execute his decree by an application for execution, a suit was brought by the pujari of the temple who obtained a decree in 1928 declaring the pujari to be the owner of the temple and restraining the decree-holder in the previous suit from taking possesion of the temple. This decree was set aside by the High Court in 1931. The decree-holder in the previous suit made an application for execution in 1933; *held*, that the decree of 1928 did not operate as an injunction or stay of execution within the meaning of sec. 15 and hence the decree of 1926 was time-barred in 1933 when the decree holder made an application for execution. I.L.R. (1939) All. 207=1939 A.L.J. 29=1939 All. 82. After final decrees on two mortgages those decrees were declared null and void in a subsequent suit filed by the defendants in the former suits. On appeal to the High Court this was modified by declaring the decrees void as against the plaintiffs only in the later suit and as against a portion of the property in dispute. On execution being taken out, *held*, that the decree-holders had a fresh cause of action from the date of the appellate decree which should be the date of the decree under Col. 3, Art. 182. In the alternative the modified decree would be within time under Art. 181 as the right to execute accrued after the decrees became capable of execution in virtue of the decree of the High Court. *Held*, that sec. 15 in terms did not apply to the case. I.L.R. (1944) All. 197=1944 O. W.N. (H.C.) 50=1944 A.L.J. 98=1944 All. 88.

INJUNCTION.—Where a decree-holder is prevented by an injunction from executing his decree he must apply for execution within three years from the termination of the injunction period to save his decree from being barred. 56 I.C. 1006=18 A.L.J. 642 =42 A. 564. *See also* 51 I.C. 64=17 P.W. R. 1919; 6 P. 635=102 I.C. 327=1928 P. 86; 64 M.L.J. 664 (F.B.); 56 L.W. 658= (1943) 2 M.L.J. 510. Exclusion of time— Pendency of claim suit. 34 A. 436=14 I. C. 343. The words "injunction or order" in sec. 15 do not include "attachment". 42 M. 637=50 I.C. 380; 40 I.C. 816=21 C.W.N. 1147. An attachment before judgment of a decree and a consequent order prohibiting the execution of the decree amount to an injunction, and the period of its pendency is excluded under sec. 15. 47 M. 641=1924 M. 673=47 M.L.J. 4. *See also* 30 I.C. 587. A party cannot claim to exclude under sec. 15 in his favour the time during which no injunction was in force against him. 26 I. C. 267=27 M.L.J. 734. *See* 1928 P. 86=6 P. 635. An injunction or order which prevents a party from instituting a suit may be either express or implied. A decree which declares that the plaintiff is in possession of the property of the suit as sole owner and orders the defendant never to deprive the plaintiff of his possession, and which orders the defendant not to accept or

recover the rents of the property cannot be held to operate as a stay of a suit for possession by the defendant or as an injunction restraining him from filing a suit for possession of the property, especially when the plaintiff in that suit has never sought an injunction or an order restraining the defendant from going to a Court of law and asserting his rights to possession of the property to which he may have been entitled. Such a decree cannot amount to an order staying the institution of a suit within the meaning of sec. 15 so as to entitle the defendant in the prior suit to a deduction of time under that section. I.L.R. (1939) Bom. 173 =40 Bom.L.R. 1134=1939 Bom. 1.

STAY OF EXECUTION.—An order granting time to the judgment-debtor for the payment of the decree amount is not an order staying execution within sec. 15. 40 A. 198 =44 I.C. 24. *See also* 1927 L. 106=100 I. C. 475; 16 Luck. 495=1941 Oudh 93. So long as there is no legal impediment to the filing of an execution petition earlier, no time can be excluded under sec. 15. (1945) 2 M.L.J. 444. Where the order on an application for execution shows that it had been dismissed on account of the decree-holder's absence, it cannot be treated as an order for stay of execution within the meaning of sec. 15. 131 I.C. 345=1931 L. 125. Where the execution of a decree passed against several judgment-debtors is stayed all of them on receipt of an intimation from a Debt Relief Court to which one of the judgment-debtors alone had applied for settlement of his debt, the decree-holder is entitled to claim the benefit of sec. 15 of the Limitation Act. The question of the validity or propriety of the order for stay against all judgment-debtors is immaterial and so long as it is not set aside in revision, it is binding on the parties. I.L.R. (1944) Nag. 250=1944 N.L.J. 127=A.I.R. 1944 Nag. 155. The proceedings under the Agriculturists Debtors' Relief Act do not extend time for the purpose of limitation. If no stay order is passed under sec. 10 of that Act, sec. 15 of the Limitation Act has no application. A.I.R. 1944 Pesh. 17. Period of stay under sec. 20 of Mad. Agri. Rel. Act —If deductible for computing 12 years rule under sec. 48, C. P. Code. *See* 57 L.W. 602. Where, in an appeal, an order staying the execution of a decree was obtained, the decree-holder was entitled under sec. 15 (1) to exclude the period of stay in computing time for another execution application. 38 B. 153=21 I.C. 713. Adjournment of execution application does not operate as stay of execution. 36 I.C. 939; 7 P. 829=1929 P. 36. An attachment of a decree operates as a stay of execution. 30 I.C. 597. *See also* 47 M. 641=47 M.L.J. 4=1924 M. 673. Mortgage decree against three persons—Stay order on application by one—Fresh application for execution after stay order withdrawn, saved by sec. 15. 20 I.C. 439. The pendency of insolvency proceedings at the instance of the judgment-debtor will not arrest the running of time as against the decree-holder seeking execution unless the proceedings are stayed by the Insolvency Court or Executing Court. 80 P.W.R. 1912 =14 I.C. 335; 21 Pat.L.T. 618=1940 Pat. 149; 1938 P.W.N. 397; 1939 Lah. 270; 47 I.C. 798=1918 P.H.C.C. 357. *See also* 1928 M. 627=55 M.L.J. 156=51 M. 583 (As to whether insolvency operates as stay). An order of adjudication adjudging the defendant an insolvent is not an order staying suit against the defendant because its effect is not to stay proceedings against the insolvent but merely to impose upon the decree-holder the necessity of obtaining leave from the Court; it is when leave is refused that it can be said that there is an injunction and an order staying the proceedings in execution of the decree. I.L.R. (1942) Nag. 306 =1942 N.L.J. 294. Stay of execution—Order permitting execution on security—Deduction of time during which order was in force allowed. 5 P.L.J. 39=53 I.C. 9; 1939 Lah. 270. Where stay is ordered subject to giving security and the security is furnished subsequently, the stay order should be held to be in force from the date of the original order. 1927 M. 391=99 I.C. 632. Decree accepted as security for costs of appeal does not operate as stay of execution. 44 I.C. 570=3 P.L.J. 132. *See also* I.L.R. (1940) Nag. 627=1939 N.L.J. 40=1939 Nag. 81. Where there was nothing to prevent the decree-holder from prosecuting the execution such as an order staying further execution, the decree-holder is not entitled to deduct the time spent in proceedings started by the judgment-debtor. 42 I.C. 811= (1917) P.H.C.C. 58. A partial stay of execution in respect of a particular property against which execution is sought amounts to a stay of execution. 46 I.C. 399. *See also* 1928 M. 627=51 M. 583. Suspension of execution through act of Court—Application not time-barred. *See also* 1927 P. 105=8 Pat.L.T. 189; 53 M.L.J. 520=1927 M. 997=105 I.C. 304; 87 I.C. 205=1925 A. 572. Stay order against one judgment-debtor—Period of stay cannot be excluded as against other judgment-debtors. 1928 M. 627. But *see* 1928 L. 349=9 L. 519; 1927 P. 344=6 P. 105; 1922 P. 549. Application for possession under O. 21, R. 95, C. P. Code, held up by orders of Court—Subsequent application after termination of those proceedings—Party is entitled to deduction of time. 99 I.C. 632=1927 M. 391. *Per* Chatterji, J.—Sec. 15 (1) may well be applied to an application for execution of an instalment rent decree, because the effect of the decree is to prevent execution until the instalments fall due or until the entire decree becomes executable by reason of a stipulation in the decree that in case of default in payment of any instalment or instalments, the entire decree can be executed. Whether sec. 15 (1) will really apply to the case of an instalment decree for rent? 24 Pat. 222 =1945 Pat. 398.

STAY OF SUIT.—Limitation for a suit for rent is not suspended by an ejectment suit. 57 I.C. 992=48 C. 65=1921 C. 525 (1).

(2) In computing the period of limitation prescribed for any suit of which notice has been given in accordance with the requirements of any enactment for the time being in force, the period of such notice shall be excluded.

Exclusion of time during which proceedings to set aside execution sale are pending.

16. In computing the period of limitation prescribed for a suit for possession by a purchaser at a sale in execution of a decree, the time during which a proceeding to set aside the sale has been prosecuted shall be excluded.

Effect of death before right to sue accrues.

17. (1) Where a person, who would, if he were living, have a right to institute a suit or make an application, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application.

Where, pending an appeal from the preliminary decree in a mortgage suit a receiver is appointed, the order of the appellate Court is one in effect staying further proceedings and the period during which it was in force should be excluded in calculating the time for applying for a final decree. 1922 P. 201=3 P.L.J. 565=1 P. 435.

SEC. 15 (2): NOTICE.—When notice to Government is compulsory under sec. 80, C. P. Code, the period of two months should be excluded in computing the period of limitation prescribed for the suit against Government. 38 I.C. 600 (1)=32 P.R. 1917. *See also* I.L.R. (1939) All. 392=1939 A.L.J. 154=1939 All. 277; 22 O.C. 342=54 I.C. 535. Suit against Court of Wards—Time taken up in giving notice to defendant—Time extended by two months. 12 R.D. 452 =1928 A. 625. *See also* 1938 M.W.N. 435 =(1938) 1 M.L.J. 763. The notification of the claim under sec. 17 of the U. P. Court of Wards Act is merely an information to the Collector of the particulars of the claim and sec. 15 (2) would not apply to it. 1931 A.L.J. 949=1931 A. 752 (2). Notice—Single suit against several defendants—Notice under sec. 77 of the Railways Act to one defendant—Effect. 3 Pat.L.T. 643=1922 P. 549. In a suit against several defendants if the plaintiff is entitled to deduct time against one defendant, he is entitled to deduct the period against all defendants. 9 L. 519=1928 L. 349; 1930 A. 742=1930 A. L.J. 1443. But *see* 1928 M. 627=51 M. 583=55 M.L.J. 156.

MISCELLANEOUS.—Agreement not to execute—Running of time. 28 I.C. 381=13 A.L.J. 305. Period of pendency of insolvency proceedings cannot be deducted when the question of limitation arises in a suit by a creditor for sum due. 1923 B. 33 (2) =24 Bom.L.R. 409=47 B. 244. *See* Pro. Ins. Act V of 1920, sec. 78. *See also* I.L.R. (1942) Nag. 306=1941 Nag. 60. Limitation for proving debts ceases to run during insolvency proceedings. Where therefore a creditor sues after ordinary period of limitation is over but before annulment of the adjudication order, the proper course is not to dismiss the suit but to permit him to withdraw suit with liberty to sue again after annulment of adjudication. 1933 R. 75=146 I.C. 124. A sale was effected in 1900 but up to March, 1917, the property was in *custodia legis* under an erroneous order of the Insolvency Court and the plaintiff could not during that period have instituted the suit. The suit was filed in 1919 to set aside the sale. *Held*, that limitation was saved by secs. 14 and 15. 13 L. 70=1932 L. 281. Execution—Limitation, suspension of. 54 I.C. 426=6 O.L.J. 656. An application *prima facie* barred could be deemed to be in continuation of a former application only if the decree-holder shows that he has not been remiss. 35 I.C. 579 (17 C.L.J. 125, Dist.).

Sec. 15 and United Provinces Encumbered Estates Act (1934), secs. 6 and 7—Applicability of sec. 15—Filing of suit on mortgage after mortgagor's application under sec. 4, Encumbered Estates Act, is dismissed under sec. 8 (3). *See* I.L.R. (1943) All. 569 =1943 O.W.N. (H.C.) 180=1943 A.L.J. 258 =A.I.R. 1943 All. 291.

SEC. 16: APPLICABILITY OF SECTION.—Auction-purchaser obtaining symbolical possession, but kept out of actual possession—Suit for possession—Limitation. 26 C.W.N. 364=1921 C. 385 (2). *See also* 21 C.W.N. 304=38 I.C. 547. The word 'proceeding' is comprehensive and includes a suit as well as an application. 21 C.W.N. 304=38 I.C. 547. Auction-purchaser at execution sale obtaining formal delivery—Suit for possession subsequently—Time taken in proceedings to set aside sale—Right to exclude. 24 Pat. 717 =1946 P. 202.

SEC. 17—.The intention of sec. 17 is to limit the time during which an action may be brought, and not to take away the rights of a person who is a possible defendant to an action, and it was not intended to accelerate any right of action against such a person. 63 I.A. 429=1936 P.C. 309=71 M.L.J. 831 (P.C.). *See also* 1938 M. 157=I.L.R. (1938) M. 533=(1938) 1 M.L.J. 146=1937 M.W.N. 1153=46 L.W. 880. Where, therefore, *X* who has a right to recover a certain sum of money from *Y* on his attaining the age of twenty-one dies before attaining that age, the right to sue for the amount does not accrue at the time when *X* dies, and *Y* would be quite entitled to say that no action could be brought against him to recover the amount

(2) Where a person against whom, if he were living, a right to institute a suit or make an application would have accrued dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute or make such suit or application.

(3) Nothing in sub-sections (1) and (2) applies to suits to enforce rights of pre-emption or to suits for the possession of immovable property or of an hereditary office.

Effect of fraud.

18. Where any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded,

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until the date when *X* would have attained twenty-one. Accordingly, sec. 17 not having the effect of accelerating the right against *Y* has no effect as causing time to run from that date. 1936 P.C. 309=71 M.L.J. 831 (P.C.)=63 I.A. 439. There is no legal warrant for placing on the words 'capable of instituting a suit' in sec. 17, the limited interpretation as 'capable of instituting a suit and obtaining a decree'. Sec. 214, Succession Act, is against such interpretation. The definition of legal representative as given in sec. 2 (1), C. P. Code, is clearly not restricted to executors(administrators and heirs, for it includes even an administrator *de son tort*. A residuary legatee under the will ed to executors, administratorss and heirs, obtaining letters of administration, a 'legal representative capable of instituting suit' within the meaning of sec. 17. 172 I.C. 805= 1937 Sind 318. All that sec. 17 contemplates is that if there is no legal representative who is capable of suing, the statue of limitation would not run. The heir-at-law may be a minor in which case limitation would not run by virtue of sec. 6, but as soon as an administrator of the estate is constituted, limitation would begin to run against him, and the fact that there is an heir-at-law who is a minor would not prevent the operation of the law of limitation. The section does not have the effect of preventing the estate from vesting in the heir-at-law where the executor leaves a will though the executor under the will declines to accept office. "Legal representative" would also include an heir. I.L.R. (1938) Mad. 533= 1938 Mad. 157=(1938) 1 M.L.J. 146. The right of an executor to sue begins from the date of the death of the testator. 24 I.C. 852=37 M. 175. The executor of a will capable of probate in British India is a legal representative capable of instituting a suit within sec. 17 (1) from the date of the testator's death and not only from the date when he obtains probate. 20 C.W.N. 833=35 I. C. 323 (P.C.); 34 M.L.J. 223=43 I.C. 113; Limitation will not run where there is no person competent to sue and a trespasser of the temple properties cannot be said to be in adverse possession till some person is appointed as trustee. 18 I.C. 373.

SEC. 18: APPLICABILITY.—Sec. 18 applies to a suit brought to set aside the order of the Magistrate under sec. 145, Cr. P. Code. 9 M.L.T. 91=9 I.C. 285 (2). Only when a party is kept by fraud from knowledge and not from exercising his right. 25 I.C. 884. *See also* 16 C.W.N. 923=13 I.C. 63; 1 Bur. L.J. 226=1923 R. 103; 1928 C. 349=32 C. W.N. 519. Section does not apply to an application by the judgment-debtor to set aside a sale on the ground of fraud by the auction-purchaser. 86 I.C. 745=1925 C. 1227. The view of the Madras High Court is otherwise. *See* 56 M. 734=143 I.C. 388 =38 L.W. 131=1933 M. 626=65 M.L.J. 139. When a person applies under O. 21, R. 90, C. P. Code, to set aside an execution sale beyond 30 days of the sale alleging that he had no knowledge of the sale until within 30 days of the application, the onus is, in the first place, on him to show that he had no knowledge of the sale until within thirty days of the application. It may be that in the circumstances of a particular case, owing to the disparity between the value of the property sold as stated in the proclamation of sale and the real value of the property, it is possible to infer fraud in the service of processes, when the disparity is so great as to shock the conscience. This presumption is, however, rebuttable by credible evidence that the processes were in fact served. If there is evidence to show that the processes were duly and properly served, the Court will not make the presumption in spite of an under-valuation of the property and will not entertain applications beyond 30 days of the sale. 9 Cut.L.T. 84=1944 Pat. 40. Where in an execution sale which was conducted fraudulently by the decree-holder, the property was purchased *bona fide* by a third party and an application to set aside the sale was made by the mortgagee of the property beyond 30 days. *Held*, that sec. 18 did not apply as the section applied only against a person claiming through another otherwise than in good faith and for valuable consideration. 1936 C. 706. Fraud must be by the decree-holder and fraudulent concealment of the proceedings has to be proved. 47 A. 850=1925 A. 778; 85 I.C. 622=6 Pat.L.T. 567; 83 I.C. 747=1924 P. 167. *See also* 108 I.C. 899=1928 A. 354; 1930 Cal. 706. It is well settled that mere understatement of price in the sale proclamation does not amount to fraudulent concealment within the meaning of sec. 18 of the Limitation Act. 49 C.W.N. 731. The section ap-

or where any document necessary to establish such right has been fraudulently concealed from him,

the time limited for instituting a suit or making an application—

(*a*) against the person guilty of the fraud or accessory thereto, or

(*b*) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.

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plies to applications under sec. 174 of the amended B. T. Act. 37 C.W.N. 927=1933 C. 782=60 C. 970. *See also* 8 B. R. 397; 60 C.L.J. 36=1935 C. 89. Sec. 18, only applies to a person having a right to institute a suit or make an application, and does not apply to a person having a right of appeal under sec. 25 of the Bengal Land Revenue Sales Act. Sec. 18, only refers to cases of fraud. When there is no suggestion of fraud but only of a mistake, the section will not apply. Sec. 18, is applicable to proceedings under the Encumbered Estates Act. 1944 O.A. (H.C.) 250=1944 A. W.R. (H.C.) 250=1944 C.W.N. 274=I.L.R. (1944) All. 703=1945 All. 35. Appeal under sec. 25, Bengal Land Revenue Sales Act—Delay in filing—If can be excused under sec. 18, Limitation Act. *See* 8 B.R. 397.

CONSTRUCTION.—The words "against any person" should be understood to follow the words "a suit" in the beginning of the section. 89 P.R. 1911=10 I.C. 114.

EXECUTION SALE.—Where owing to the fraud of the decree-holder or other parties certain irregularities in the conduct of a sale are concealed from the knowledge of the judgment-debtor, the latter is entitled to apply for setting aside the sale in spite of its confirmation and the time for the application is to be computed from the date when the fraud comes to the knowledge of the applicant. 45 A. 316=21 A.L.J. 176=1923 All. 282 (2). *See also* 24 I.C. 249=19 C.W.N. 553; 16 I.C. 436.

ONUS AS TO FRAUD.—The plaintiff who invokes the aid of sec. 18 must establish that there has been fraud, he has been kept from the knowledge of his right to sue or of the title whereon it is founded. Once this is established, the burden is shifted on to the other side to show that the plaintiff had knowledge of the transaction beyond the period of limitation. Mere suggestions of fraud do not amount to such knowledge as is required by the section and the knowledge must be clear and definite knowledge of the facts constituting the particular fraud. 36 P.L.R. 114=1934 L. 878; I.L.R. (1939) 2 Cal. 163=43 C.W.N. 862=1939 1 Cal. 663. In cases falling under sec. 18, where an applicant claims that he has been fraudulently kept out of knowledge of facts, it is for the party who is found to be guilty of fraud to show that the applicant had clear and definite knowledge of the facts constituting the fraud beyond the period of limitation. Proof that some hint or clue reached the applicant which might lead to such knowledge is not enough. 9 Cut.L.T. 37=1943 P. 377. The onus is on the person committing the fraud to prove that the person injured thereby has had clear and definite knowledge of the fact constituting the fraud at a time too remote to allow him to seek the assistance of the Court. 46 I.C. 221 (2)=27 C.L.J. 528. *See also* 17 I.C. 10=14 Bom.L.R. 771; 36 C.W.N. 758=55 C.L.J. 420; 1928 C. 349; 1930 P. 58. It is not enough for him to show that the plaintiff had means available to him for coming to know of the fraud. 36 C.W.N. 758=55 C.L.J. 420=1933 C. 253. Fraud—Suit to set aside decree obtained by fraud—Burden of proof. 41 I.C. 385. *See also* 20 I.C. 538; 47 C.L.J. 351=1928 C. 349. Where there is fraud at the outset in conducting the sale, in an application to set aside sale the onus is on the decree-holder to establish the precise point of time when the judgment-debtor had knowledge of the fact. 1928 P. 228; 1930 P. 58. The party guilty of fraud must show that the continuing effects of fraud have been removed, and then only limitation would operate. 4 Pat.L.T. 306=1923 P. 435. In ordinary cases the initial burden is on the plaintiff who alleges fraud to lead evidence *prima facie*, at any rate establishing the date of his knowledge. But if the defendant's pleadings are evasive and do not raise specifically an issue as to the date of plaintiff's knowledge, the burden of proving the date is on him. 1929 A. 721 (2). It is incumbent on the plaintiff to distinctly allege the particular fraud by which he has been kept from a knowledge of his right of suit against the defendant specifically and with detailed particulars. 101 I.C. 322=1927 A. 437; 99 I.C. 946=44 C.L.J. 565. *See also* 1929 M.W.N. 811=1930 M. 12.

FRAUD, NATURE OF—ILLUSTRATIVE CASES.—Fraud antecedent to an execution sale does not necessarily indicate fraud subsequent to the sale. Fraud antecedent to the sale may have an important bearing on the question whether there was fraud subsequent to the sale sufficient for the purpose of sec. 18. 17 C.W.N. 478=17 I.C. 972 (2). Mere ignorance of a plaintiff of his right to sue would not prevent time from running against him; such ignorance must have been brought about by the fraud of his opponent. 16 I. C. 547. *See also* 1933 C. 253=36 C.W.N. 758 =55 C.L.J. 420. In order to constitute fraud, there must be some abuse of confidential position, some intentional imposition, or some deliberate concealment of facts, a designed fraud by which a party knowing to

19. (1) Where before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed or by some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

Effect of acknowledgment in writing.

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whom the right belongs conceals the facts and circumstances giving that right. 36 C. W.N. 758=55 C.L.J. 420. Fraud—Misstatement of value of property in execution petition not fraudulent concealment. 16 I. C. 464=16 C.W.N. 894. *See also* 41 C.W.N. 993=I.L.R. (1937) 2 Cal. 496; I.L.R. (1939) 2 Cal. 163=43 C.W.N. 862=1939 Cal. 663 =49 C.W.N. 731. For getting benefit of sec. 18 in setting aside an *ex parte* decree fraud in keeping defendant ignorant of the decree must be proved. Mere fraud in getting decree is not sufficient. 57 I.C. 15. The party must also show that he was prevented by fraud from knowledge of his right to institute a suit or make an application. Fraud in any other connection is immaterial. 2 P.W.R. 1919=50 I.C. 610. Fraud—Concealment—Alienation by a sonless male proprietor—Limitation—Burden of proof. 177 P. L.R. 1912=16 I.C. 844. Fraud—Failure to give pre-emptor notice of sale. 11 I.C. 313. *See also* 16 I.C. 804=32 P.R. 1913. A mere omission to inform the pre-emptor or the bare fact of concealing the sale transaction from him cannot amount to a fraud, but where there is an active concealment of the transaction coupled with an intention to deceive the pre-emptor, there would undoubtedly be a fraud within the meaning of sec. 18. 115 I.C. 798=1929 A. 213. *See also* 180 I.C. 525=1938 A.W.R. (H.C.) 847=1939 All. 113. 5 Luck. 492=57 I.A. 251=1931 P.C. 12 (P.C.). (Held no fraud). Silence on the part of a co-sharer coming into possession of property belonging to himself and another who was ignorant of it, amounts to fraud which will save limitation. 36 C.W.N. 758=55 C.L.J. 420. Neglect to settle accounts with the object of concealing his misconduct from the principal is not 'fraud' within this section. 36 I.C. 418=9 Bur.L.T. 130. Mere carelessness or negligence does not substantiate a finding of fraud. 8 Pat. L.T. 28=97 I.C. 798=1926 P. 397. It is doubtful if the section applies to a case in which the fraud was antecedent to the accrual of right. 11 I.C. 295=15 C.W.N. 965. Execution sale and symbolical delivery of possession—Party in possession having notice of the same subsequently—Limitation should be computed, only from the period when his possession was sought to be interfered with. 1929 M.W.N. 811=1930 M. 125. A mere omission by a mortgagor to inform the mortgagee regarding his want of title in the property mortgaged is not active fraud so as to attract sec. 18. The section is directed against cases of active and designed fraud. 7 O.W.N. 1045. Sec. 18 is also applicable to proceedings under U. P. Encumbered Estates Act. 14 Luck. 694=1939 O.W.N. 719 =1939 Oudh 227; 1939 A.L.J. 447=1939 All. 542.

PLEADINGS.—Fraud—Plea of express averment—Necessity for. 16 I.C. 804=32 P.R. 1913.

KNOWLEDGE OF FRAUD.—To bring his case within sec. 18 the plaintiff must allege when the fraud pleaded came to his knowledge. 49 I.A. 312=1 P. 733=41 M.L.J. 718=1922 P.C. 336 (P.C.). Knowledge of fraud—Guardian's knowledge, if binds ward. 37 B. 158=19 I.C. 406. Time for application to set aside sale of immovable property of insolvent by Insolvency Court on ground of fraud runs from the moment fraud becomes known to applicant. 23 I.C. 397. Knowledge of fraud—Auction sale—Judgment-debtor fraudulently kept in ignorance of sale —Effect. 17 L.W. 152=1923 M. 353. *See also* 1928 C. 349 (a case under O. 21, r. 90); I.L.R. (1938) 1 Cal. 512=1938 Cal. 263. Knowledge of fraud—Deed void *ab initio*—Suit to set aside—Limitation. 70 I.C. 525 =26 C.W.N. 479=1921 C. 786.

KNOWLEDGE OF RIGHT.—When the true nature of rights was not discovered by the plaintiff earlier than the time at which his demand for possession was resisted. *Held*, limitation began from the date of resistance. 45 A. 179=50 I.A. 69=1922 P.C. 403=44 M.L.J. 489 (P.C.). *See also* 52 I.C. 958; 43 I.C. 671. A person desiring to invoke the aid of sec. 18 must establish that there has been fraud, and that by means of such fraud he has been kept from the knowledge of his right to sue. 36 C.L.J. 295=49 C. 886= 1922 C. 157. *See also* 80 I.C. 590=1924 N. 94=20 N.L.R. 23; 7 R. 104=1929 R. 62; 1929 A. 721 (2); 42 I.C. 548; 48 I.C. 970 (1); 1933 R. 110=144 I.C. 980. Knowledge of right—Benamdar impleaded defendant—Real owner added after period of limitation —Effect. 26 I.C. 860. In the case of an uncertified adjustment, it is not open to the judgment-debtor to claim an extension of time to apply under O. 21, r. 2, C. P. Code, on the ground of fraud. 16 C.W.N. 923= 13 I.C. 63=16 C.L.J. 174. *See also* 11 L.B. R. 363=1923 R. 103. Sec. 18 does not deal with the exercise of the right, but with knowledge of the right. Where it was alleged that the decree-holders had fraudulently kept the judgment-debtor from exercising his rights under O. 21, r. 2, by giving him assurances, no extension was granted. 11 L. B.R. 363=1923 R. 103. As to knowledge of right, *see also* 34 M.L.J. 193=41 M. 488.

SEC. 19: SCOPE OF.—*See* 40 M. 698; 40 A. 360. For an acknowledgment to save limitation, it must be a conscious acknowledgment of the liability (*i.e.*) made with conscious intention of acknowledging the

liability. A casual reference to a mortgage for some other purpose, cannot obviously be enough for this purpose. 1943 O.W.N. 302 =1943 O.A. (C.C.) 188=1943 Oudh 425. The question whether an apparent acknowledgment contained in a document is a conscious acknowledgment of liability or not is of some difficulty, unless it is clearly and expressly acknowledged that the liability still exists. Where in reply to an application under O. 34, r. 6, C. P. Code, a statement is made that in view of the fact that all mortgaged property has not been sold, the application for personal decree is premature, it does not amount to an acknowledgment in as much as the plea could be coupled consistently with the plea that the application was time-barred. 1943 O.W.N. 352= 1943 O.A. (C.C.) 202=1943 Oudh 453. There must be a clear acknowledgment of liability. 1936 A.L.J. 625=1936 All. 522. The section is not confined to acknowledgments in respect of debts, but applies to cases in which a plea of limitation is raised to bar a claim to movable or immovable property and also to acknowledgments saving the bar of limitation in cases of applications for execution of decrees. 53 A. 963=137 I. C. 243=1932 A. 199. For a case to be brought within the purview of sec. 19 there must be a definite or unequivocal acknowledgment of the debt. 1935 R. 152. The acknowledgment contemplated by sec. 19 is an acknowledgment of liability. Where the party pleads payment of the entire amount on a certain date there is no question of acknowledgment. 28 N.L.R. 348=1933 N. 13. An admission of execution of a promissory note coupled with denial of liability on the ground of having received no consideration does not amount to an acknowledgment. [33 C. 1047 (P.C.), Dist.]. 151 I.C. 376= 36 Bom.L.R. 334=1934 B. 186.

STAMP.—A note by the executant of a promissory note to the effect that he has paid a specified sum "towards the satisfaction" of the promissory note, without actually making any payment, amounts to an acknowledgment of his liability under sec. 19 of the Limitation Act. Sec. 20 of the Act is inapplicable as payment of the amount has not been made. The note is not inadmissible in evidence as an acknowledgment by reason of its not having been stamped under Art. 1 of the Stamp Act, as the dominant intent is to save limitation, and not to supply evidence of the debt, of the existence and amount of which other evidence is subsisting. I.L.R. (1945) Nag. 745=1945 N.L.J. 213=1945 Nag. 181. Where in renewal of an old debt a promissory note and a receipt are executed and the promissory note is found to be inadmissible owing to insufficiency of stamp the receipt can be relied upon as an acknowledgment of liability within the meaning of sec. 19. In such a case the interest on the original loan which was calculated up to the date of the receipt as shown therein may be allowed, but interest from that date up to the institution of the suit cannot be allowed. 18 Luck. 191=1942 O.A. 243=1942 Oudh 388.

REGISTRATION.—An acknowledgment of liability in respect of a charge under sec. 55 (4) (*b*) of the T. P. Act does not of itself create any title or right in the owner which would attract the provisions of sec. 17 (1) of the Registration Act, but it is a mere statement, an admission of an existing fact. As such, registration is unnecessary. I.L.R. (1942) Nag. 541=1942 N.L.J. 412=1942 102.

BEFORE THE EXPIRATION OF THE PERIOD.— [*See* notes under sec. 4, *supra*.] The acknowledgment must be made before the expiration of the period. 6 C. 340; 2 A. 443. Sec. 4 of the Limitation Act can come into operation only after the period of limitation prescribed has already expired, while, under sec. 19, it is necessary that the acknowledgment should be signed before the expiration of the period prescribed. Sec. 19 cannot also include the period extended by sec. 4. 1937 M. 367=(1937) 1 M.L.J. 262. *See also* 1940 N.L.J. 607; 1937 Lah. 162; (1937) 2 M.L.J. 703=1938 Mad. 19=I.L.R. (1938) M. 439. So, where limitation for a suit on a promissory note expires during vacation, an acknowledgment after that date but before re-opening of Court will not avail. (*Ibid.*) *See also* 35 C.W.N. 370=1931 C. 785=58 C. 1148; 36 B. 782. But see *contra* 38 P.L.R. 934=164 I. C. 650; 110 I.C. 76=1928 N. 192; 48 A. 726. Sec. 19 cannot apply to an acknowledgment made after expiry of period of limitation prescribed, but during the period excluded by sec. 52 of the U. P. Court of Wards Act, and so such an acknowledgment cannot extend time. I.L.R. (1938) All. 363=1938 A.L.J. 252=1938 All. 217 (F.B.). Plea of *jus tertii* in a prior suit cannot be relied on in a subsequent suit as it did not constitute an acknowledgment within the meaning of sec. 19. 1933 L. 491=145 I.C. 343=34 P.L.R. 841. The onus lies on the creditor to prove that the acknowledgment was made within time. 53 A. 963=137 I.C. 243=1932 A. 199. A payment within the period of limitation saves limitation provided there is an acknowledgment in writing. It does not matter even if the acknowledgment is made beyond the period of limitation as it is the payment and not the acknowledgment which saves limitation. The acknowledgment is merely a matter of evidence; provided it is signed before the suit is commenced, it is sufficient. 57 B. 453=35 Bom.L.R. 471=1933 B. 252. As to acknowledgment during holidays, *see* 26 B. 782; 52 B. 521=1928 B. 219=30 Bom.L.R. 733. An acknowledgment after limitation period cannot avail. 42 A. 390=58 I.C. 597; 42 A. 575=56 I.C. 986 (F.B.); 1930 L. 985; 1930 O. 287. A series of acknowledgments each within three years of the one next preceding will save limitation. 6 C. 340; 25 B. 586. The word "prescribed" in sec. 19 means prescribed by the Schedules. 1922 N. 250 (26 B. 782). It means prescribed by any law for the time being in force and not merely by the Limitation Act, First Schedule. 80 I.C. 743=1925 A. 68. *See also* 1927 A. 114 =49 A. 67=98 I.C. 1005; 30 Bom.L.R. 733;

32 L.W. 502; (1937) 2 M.L.J. 703=1938 Mad. 19=46 L.W. 559=I.L.R. 1938 Mad. 439. The words in sec. 19 are 'before the expiration of the period prescribed'. This must mean prescribed by the Act in which sec. 19 occurs, that is, the Limitation Act read by itself and without reference to any other enactment. Hence an acknowledgment beyond limitation but within a period which has to be excluded under a local or special Act (*i.e.*) sec. 9 (5) of the United Provinces Encumbered Estates Act, is not an acknowledgment within sec. 19 of the Limitation Act and would not save the suit from the bar of limitation 1946 A.W.R. H. C. 450. But a promise under sec. 25, Contract Act, may be made after the period. 1928 N. 124. An acknowledgment subsequent to the period of twelve years after the execution of a mortgage but within the extra period allowed by sec. 31 will not save limitation. 1929 M. 791=57 M.L.J. 353. *See also* 1930 M.W.N. 930=32 L.W. 502. Though an unconditional acknowledgment has been held to imply a promise to pay, it is not by itself sufficient to constitute a "promise" within the meaning of sec. 25 (3) of the Contract Act. So an acknowledgment made after the expiry of the period of limitation on the original note cannot form the basis of a suit. 1930 P. 604. As to *plea of novation* of contract on settlement of accounts, *see* 130 I.C. 503 (1)=1931 O. 97. Mortgage by conditional sale—Failure of mortgagee to take possession after stipulated period—Unregistered acknowledgment of amount due—Effect of. 145 I.C. 159=1933 L. 174. As to the meaning of the words "before the expiration of the period prescribed for a suit", *see* 1933 L. 47 =34 P.L.R. 252.

APPLICABILITY.—Section applies to execution proceedings. 79 I.C. 897=1925 P. 197. *See also* 20 C.W.N. 272=43 C. 207; 20 C.W.N. 952=1 P.L.J. 214. Also to suits governed by Punjab Loans Limitation Act of 1904. 1929 L. 124. Any admission in writing is a statement. All that sec. 19 requires is an acknowledgment of liability, even though it may be accompanied by a refusal to pay. Hence a statement by the debtor in his application to the Debt Conciliation Board amounts to an acknowledgment. 1944 Nag. 247; 1940 Nag. 214=I.L.R. 1944 Nag. 761. Cases under Orissa Ten. Act—Orissa Ten. Act, secs. 238 and 239—Effect of. 23 Pat. 437=25 P.L.T. 94=1944 P.W.N. 413=1944 Pat. 310. Suit under sec. 72, Dekkhan Agri. Rel. Act. 47 Bom.L.R. 27=I.L.R. 1945 B. 167=1945 B. 200 (F.B.). There is a *distinction between an acknowledgment of a right to an account and an acknowledgment of a debt.* For an acknowledgment of a right to an account there need not be an acknowledgment that a debt or even a specified amount is actually due. Where the parties in effect state that there is a right to a pending account between them and each has got a claim to recover the balance which may be found due on the accounts being looked into by certain arbitrators and each agrees to pay the other the balance so found due, there is a sufficient acknowledgment of a right to an account. 169 I.C. 340=1936 M.W.N. 998= 1937 Mad. 38. An acknowledgment falling under sec. 19, need not necessarily be a stamped acknowledgment falling under Sch. I, Art. 1 of the Stamp Act. The latter must be written with the intention of supplying evidence of the debt; whereas a document containing an admission of liability, such as a letter reciting a settlement of accounts, would save limitation under sec. 19, though not stamped. I.L.R. (1939) Nag. 695=20 N.L.J. 276=1938 Nag. 51. *See also* 1945 Nag. 181. A document used as an acknowledgment under sec. 19 cannot operate to save limitation unless it has been executed before expiry of limitation; also in such a case the suit must be founded on the original cause of action. The document itself cannot be used as the basis of the suit. I.L.R. (1940) Nag. 441=1938 Nag. 180. A subsequent acknowledgment containing clearly a promise to pay the balance due on a promissory note can be the basis of a suit, even though the original promissory note is not admissible in evidence. (1938 Lah. 503, Rel. on). 40 P.L.R. 801= 1938 Lah. 505. Where acknowledgment implies a promise to pay, a suit can be brought on the basis of such acknowledgment considered as an agreement provided consideration is proved. Where a suit is brought on such basis, the plaintiff must be taken to allege a valid agreement and if the defendant does not plead lack of consideration, then consideration must be taken to have been proved. I.L.R. (1938) Lah. 193=40 P. L.R. 533=1938 Lah. 234 (F.B.). Entries in khewat of 1852 showing mortgagees to be in possession and stating mortgage amount— Entries attested by mortgagees and mortgagors—Enries do not save limiation—Limitation Act (1959), sec. 1 (15)—'In the meantime' meaning. 1943 A.L.J. 548=1943 All. 393 (F.B.). "Entries in khewat of 1878 showing mortgagees to be in possession— Mention of mortgage amount and that mortgage was redeemable at Dasehra in Jeth— Entries attested by mortgagors and mortgagees or their representatives—Entries do not save limitation. 1943 A.L.J. 548=1943 All. 393 (F.B.). An application by the debtor under sec. 6 (1) of the C. P. Debt Conciliation Act which includes in the list of claims against him a decretal debt with reference to the number of the decree amounts to an acknowledgment of liability in respect of that debt under sec. 19. I.L.R. (1945) Nag. 494=1946 N.L.J. 368a=1946 N. 344.

CONSTRUCTION.—Sec. 19 must be construed liberally. 86 I.C. 859=1925 L. 529; *see also* 139 I.C. 218=1932 B. 531.

"LIABILITY IN RESPECT OF SUCH PROPERTY OR RIGHT."—An acknowledgment must be one from which an absolute promise to pay can be inferred or an unconditional promise to pay a specific debt or there must be conditional promise and evidence that the condition has been performed. 33 I.A. 165=16 M. L.J. 300=33 C. 1047 (P.C.); 16 M.L.J. 563

=29 M. 519; 49 A. 801=1927 A. 488 (2); 49 A. 726=102 I.C. 111=1927 A. 577. An unconditional acknowledgment implies a promise to pay. 1929 L. 263=10 L. 745; 1929 L. 264=10 L. 748. As to effect of conditional acknowledgment, *see* 1939 Lah. 31; 1937 Pat. 616; 1937 Lah. 827 (Debt need not be expressly specified). It need not necessarily contain a promise to pay, or amount to a promise to pay. The endorsement made by the debtor acknowledging the correctness of an account which showed him a debtor to the extent stated is a clear acknowledgment of the debt, with the ordinary implication of a promise to pay, and is sufficient for the purposes of sec. 19. 174 I.C. 585=1938 Pat. 139. Sec. 19 is not controlled or limited, by the language of the proviso to Column 3 of Art. 183 of the Limitation Act. An admission of liability which amounts to an acknowledment is sufficient to extend the period of limitation although the admission is not made to the decree-holder. I.L.R. (1939) 2 Cal. 523=44 C.W.N. 322=1940 Cal. 210 (1). The acknowledgment must be in respect of the property or right, subject of litigation. 23 O.C. 176; 104 I.C. 572=1928 S. 45=22 S.L.R. 117. There must be a clear acknowledgment of liability in respect of a right. 1936 A.L.J. 625=1936 A. 522. Acknowledgment of present liability only is necessary. 48 M. 693=47 M.L.J. 840=1925 Mad. 261. Whether an acknowledgment is one of an existing liability or not, depends upon the terms of the acknowledgment, and subsequent events or external evidence cannot be relied upon to show that there was an existing liability at the time. 34 Bom.L.R. 953=1932 B. 531. *See also* 1939 A.L.J. 2=1939 All. 179 (letter promising to send money in 2 or 4 days). 15 Luck. 537=1940 O.W.N. 425=1940 Oudh 305; 1938 Rang.L.R. 594=1938 Rang. 401; 8 Cut.L.T. 1; 1938 Rang. 280 (payment on account); I.L.R. (1937) Nag. 374=1937 Nag. 304; 1940 Lah. 106 (Endorsement of payment by debtor on back of the bond. *See also* I.L.R. (1942) Mad. 590=1942 Mad. 353=(1943) 1 M.L.J. 469 (F.B.). 1938 A.M.L.J. 139 (filing of schedule of creditors by an insolvent-debtor in his Insolvency petition); 41 P.L.R. 356=1939 Lah. 31 (List of debts due from a minor's estate filed by guardian). Statement of liabilities initialled by debtor. I.L.R. (1942) Mad. 927 =55 L.W. 398=1942 Mad. 680=(1942) 2 M.L.J. 242. A receipt bearing one anna stamp can serve as proof of acknowledgment, though inadmissible as bond for want of proper stamp. 1929 A. 980, *see also* 13 Luck. 376=1937 Oudh 387=1937 O.W.N. 622. But a defectively or insufficiently stamped promissory note cannot be used in evidence as an acknowledgment of a debt under sec. 19. Nor can it be impounded under sec. 33 of the Stamp Act and then admitted in evidence. Sec. 35 of the Stamp Act prohibits its admission in evidence for any purpose. 63 C. 813=40 C.W.N. 399; But *see* 1938 (2) M.L.J. 846; 1938 N.L.J. 145=1938 N. 294. An express repudiation by a letter. of the plaintiff's claim coupled with a denial of existing liability is not an acknowledgment of liability under sec. 19. 20 I.C. 10=11 A.L.J. 601; 33 C. 1047=33 I.A. 165=16 M.L.J. 300 (P.C.); 42 Mad. 637; 5 Pat.L.T. 551=78 I. C. 919=1924 P. 806; 41 P.R. 1916=32 I. C. 497; 1927 A. 317=100 I.C. 189. Entries as to payment of rent in an account book not signed by defendant or his authorized agent are not acknowledgments. 34 A. 464=10 A. L.J. 1; 1930 A. 124. The question whether any particular endorsement amounts to an acknowledgment depends on the actual words employed. The Court cannot go beyond them. The endorsement itself must contain the acknowledgment either express or implied. I.L.R. (1939) All. 200=1938 A.L.J. 1233=1939 All. 177. An admission by the debtor of the existence of an unsettled account between him and the creditor coupled with an expression of willingness to have it settled with him and a query whether anything would be done implies an admission of liability for the amount that may be found due upon the settlement. A denial of liability for the amount claimed by the creditor based upon certain calculations by him cannot be read as a total denial of liability for any amount, but is only a denial of liability to the extent asserted by the debtor. A letter containing such an admission sent by the debtor in reply to a notice of demand made by the creditor is an acknowledgment sufficient to save limitation. 49 L.W. 106=1939 Mad. 300. An admission of liability coupled with a declaration as regards the arrangement proposed for its satisfaction is sufficient. 47 L.W. 351=1938 Mad. 496=(1938) 1 M.L.J. 450. On a settlement of mutual accounts, an entry as to the amount payable by one to the other is a distinct promise to pay and saves limitation 1929 L. 695; 137 I.C. 840=33 P.L.R. 940=1932 L. 470. A signature written by a third person under the directions of the person whose signature is in question, and in his presence, is a proper signature and is a personal signature for the purposes of sec. 19. 10 I. C. 215. Whether an acknowledment after the period of limitation is sufficient to form the basis of a fresh action, *see* 23 Bom.L.R. 1186=1922 B. 168; 1931 L. 1691=13 L. 240. An acknowledgment must distinctly refer to the liability in dispute; it may be express or may be left to implication which however must be a necessary implication. It need not be addressed to the creditor. 45 B. 934 =61 I.C. 406=1921 B. 291; 24 Bom.L.R. 713 =46 B. 1000=1922 B. 183; 89 I.C. 617=23 A.L.J. 869=1926 A. 75; 91 I.C. 461=1926 C. 686; 104 I.C. 572=22 S.L.R. 117=1928 S. 5; 6 O.W.N. 943; 7 O.W.N. 1195. An acknowledgment need not contain an admission that a precise sum is owing but an acknowlegment that something is or may be due is sufficient. 1933 R. 147=144 I.C. 996; 162 I.C. 306=1936 L. 276. *See also* 41 P.L.R. 557=1939 Lah. 216. The signing by a mortgagee of an entry in the register of sanads granted to him and reciting the mortgage amounts to an acknowledgment within sec. 19. 45 B. 934=1921 Bom. 291; 91 I.C. 461

=1926 C. 686=1943 All. 393=1943 A.L.J. 548. So also a statement setting out the admission of a liability in general terms. 35 B. 302=10 I.C. 888. A stranger purchasing property at a sale in execution does not acknowledge a mortgage on the property by reason of the fact that the sale proclamation and the certificate of sale state that the property is subject to a mortgage. Sale proclamations do not conclude questions of title, 59 M. 312=44 L.W. 887=1936 M. 70. A statement by a decree-holder under O. 21, R. 66, C. P. Code, does not to amount to an acknowledgment. 1931 A.L.J. 862=1932 All. 62. An acknowledgment does not require new consideration nor an actual promise to pay. 50 C.W.N. 974=28 C.W.N. 322=1924 C. 388; 48 M. 693=1925 M. 261=47 M.L.J. 840; 25 M.L.J. 259=21 I.C. 30; 1936 M. 939. But *see* 20 I.C. 501. Loan of money in 1920 =Pledge of shares in 1922 not in writing—If acknowledgment—Payment of interest in 1924— Limitation —If saved. 37 Bom.L.R. 165=1935 Bom.213. An acknowledgment of a barred debt is of no avail to save limitation. 67 I.C. 298; 1933 L. 209=34 P.L.R. 430. But *see* 38 P.L.R. 939=1937 Lah. 162; 132 I.C. 420=1932 A. 38; 54 A. 506=140 I. C. 783=1932 A. 461. The onus of proof lies on the plaintiff to show that his case comes within the period of limitation on account of such acknowledgment. 54 A. 506=1932 A. 461. A deposition made by the defendant in another case which was not signed by him or his duly authorised agent is not a valid acknowledgment. 45 I.C. 99=34 P.R. 1918. *See also* 12 R. 610=1934 R. 282. 'Agent duly authorised'—Judge signing deposition of witness—If an agent of the witness. *See* I.L.R. (1942) Nag. 182=1940 N. 354. Where a sale deed recited that the property was conveyed as part payment towards the principal amount due to the vendee on an earlier mortgage and the executant appeared before the Registrar and admitted execution on a question whether there was thereby an acknowledgment of the mortgage debt. *Held*, that the appearance before the Registrar and acknowledgment of the execution of the sale deed amounted to an admission not only of execution of the deed in question but also of all matters set out in the deed itself. The acknowledgment in writing before the Registrar is an acknowledgment which could be availed of to save limitation. 1938 M.W.N. 113=1938 Mad. 429. *See also* I.L.R. (1939) Kar. 693= 1939 Sind 113 (recital of debt in a reference to arbitration). Legal consequences need not be acknowledged. 42 M. 52=35 M.L.J. 552. An acknowledment by a judgment-debtor of the amount due by him under a mortgage decree falls under sec. 19 and saves limitation for a final decree for sale. 20 I.C. 501=180 P.W.R. 1913. Admission of the existence of relationship of creditor and debtor is necessary for an acknowledgment under sec. 19. 31 M.L.J. 231=40 M. 701. Payments in discharge of a debt evidenced by an unstamped and therefore inadmissible pro-note are payments against or acknowledgments of the original debt and not on account of the pro-note. 34 I.C. 417; 1926 M. 1148=98 I.C. 75. *See also* 63 Cal. 813=40 C.W.N. 399. A promise to remit money due on a particular document is a sufficient acknowledgment. 29 I.C. 36. Acceptance of an award directing the parties to share equally the outstandings and amounts found payable in the accounts of the partnership is not an acknowledgment. 28 I.C. 864. Reference to the mortgage and its transfer as the title under which a party holds is sufficient acknowledgment of the right. 28 I.C. 69=28 M.L.J. 266. A letter admitting dues on settlement of accounts is an acknowledgment. 12 I C 410; 7 P. 238=1928 P. 221; 30 Bom L.R 688; 80 I.C. 355 (1)=1924 M. 619 (1)=46 M.L.J. 468. *See also* 32 Bom.L. R. 1390=128 I.C. 911=1931 B 74. But *see* 23 I.C. 587=19 C.W.N. 170. Plaintiffs were claiming about a lakh and fifty thousand rupees and the officials of the Municipal Committee, who had gone into the matter, admitted an account of Rs. 17,000 odd subjec to counter-claims on behalf of the Committee. *Held*, that such a position implied unsettled outstanding account between the parties and that the acknowledgment extended limitation 17 L. 737=1936 L. 629. Letter agreeing to pay if balance is found due is an acknowledgment. 1930 A. 124. A letter written by a debtor to his creditor agreeing to renew a promissory note which is about to become barred by limtation constitutes an acknowledgment. 40 C.W.N. 130. A reply by a customer to a tradesman to his bill with the words "accounts rendered," that detailed account will be sent, does not amount to an acknowledgment. 36 M. 68=21 M.L.J. 1024. *See also* 22 Pat.L.T. 1057=1942 P. 170. A letter offering to pay as a matter of grace and for the sake of the recommendation of a third person, does not amount to an acknowledgment of any liability. 35 P.L.R. 529=1934 L. 475. Oral evidence is admissible to prove the identity of the debt, or right or the name of the creditor or the person entitled to the right, or the date of an acknowledgment and these need not appear on the face of the writing. Inference from terms of deed permissible. 1930 L. 985; 65 I C. 279=17 N.L. R. 209=1921 Nag. 1; 26 N.L.R. 320. The writing sought to be used as an acknowledgment should in itself import that the person making the acknowledgment is under an existing liability. 65 I.C. 279=17 N.L.R. 209=1921 Nag. 1. A writing by the debtor containing the details of the account of the creditor, stating that a specific amount is due to the creditor on the date of the writing and signed by the debtor is an acknowledgment satisfying the requirements of sec. 19 of the Limitation Act. Where it is further recited that the debtor has handed over to the creditor documents in his favour the value of which is equivalent to the amount of the debt due to the creditor, without any formal assignment, the mere fact that the word *"bhuktan"* is used (meaning satisfied in full) would not make the writing anything other than an acknowledgment. 22 Pat.L.T. 1057 =1942 Pat. 170. Later mortgage replacing earlier one—Admission of liability under ear-

lier mortgage. 1946 A.L.J. 104. Mere admission of *kanom* implies acknowledgment of subsisting *kanom*. 30 L.W. 1045=1930 M. 65=57 M.L.J. 789. An endorsement on a promissory note, "paid Rs. 350 towards this promissory note and endorsed the payment hereon," can be read as an acknowledgment of liability under sec. 19 of the Limitation Act. The use of the words "towards" in itself implies that more remains to be paid, *i.e.*, that the payment is made on account of a larger sum due under the instrument. (1942) 1 M.L.J. 469 (F.B.). *See also* 8 Cut.L.T. 1. There is no rule of law that an admission of a past liability unaccompanied by an allegation of discharge should in all cases be interpreted as an admission of a subsisting liability. The question in each case is, is it a proper inference to draw from the facts and circumstances, that the debtor intended to make an admission that on the date it was made, the debt was existing. 1935 M. 371=68 M.L.J. 73.

A statement made in a criminal Court which did not contain the signature of the party is not a valid acknowledgment. 26 A. L.J. 420=1928 A. 310. Nor an admission of a debt recorded in a deposition by the defendant made in insolvency proceedings and recorded and certified under C. P. Code, O. 18, R. 5 (Rangoon), but not signed by the defendant. The clerk certifying cannot be deemed the agent of the defendant. 12 R. 610=1934 R. 282. An answer given to interrogatories in a previous suit merely stating the existence of an entry in the firm's books credited to the name of a certain person is no acknowledgment of an existing liability. 1929 L. 883. A document undated and unsigned by the mortgagee or his duly authorized agent cannot save limitation under sec. 19 in a suit for redemption of the mortgage. 20 I.C. 62. An entry in he *bahi* of the mortgagee signed by the mortgagor and bearing the name of the former as a scribe cannot be regarded as a valid acknowledgment of the mortgagor's right to redeem. 131 I.C. 349=1931 L. 122. There must be a distinct acknowledgment of an existing liability or jural relation. 15 I. C. 363=5 Bur.L.T. 81. Where on a proper construction, the defendant purported to say 'no doubt there is a contract into which we entered but no money is liable to be paid under the contract because I am prepared to see the contract through'. *Held*, it did not amount to an acknowledgment. 41 L.W. 476 =1935 M. 287. *See also* 155 I.C. 721=39 C. W.N. 139=60 C.L.J. 396=1935 C. 255. Letter stating that accounts settled by creditor are correct is not an acknowledgment. 91 I.C. 494 =1925 M. 1215=49 M.L.J. 306. In his first letter the debtor made a request to the plaintiff creditor to send to him a complete statement of accounts. In the second letter, the debtor acknowledged the receipt of some sort of accounts from the creditor, and demanded further particulars and incidentally admitted the liability to pay interest. In the third letter the debtor again said to the creditor that he should send him particulars of the net amount due and the interest charged thereon specifying the rate at which interest had been charged. The last letter said that the debtor wanted the name of each of his creditors from whom the plaintiff creditor had borrowed money for the debtor with particulars of the account payable to each such creditor so that payment of the debs could be made. A specific request was added when the letter said "please also write the amount of money due to you". Held, that the letters were acknowledgments within the meaning of sec. 19 and saved limitation. 215 I.C. 30=1944 Lah. 65. It is not necessary that the acknowledgment should be addressed to any particular person and it is a sufficient acknowledgment even if it be accompanied by a refusal to pay. 53 I.C. 898=23 C.W.N. 921. An unconditional acknowledgment implies a promise to pay; consequently, if it is unstamped, it will be admissible on payment of the requisite penalty. 119 I.C. 417 (2)=1930 L. 177 (2); 1933 L. 47= 34 P.L.R. 252. *See also* 130 I.C. 570; 1941 Lah. 23; 1941 Rang. 244. Where the debt due on an unstamped pro-note is acknowledged, the acknowledgment is part of the same transaction as the loan by the promissory note and cannot be treated as an independent transaction upon which the plaintiff could frame a cause of action. 1933 A. 280=144 I. C. 130. The endorsement of cancellation on a promissory note at the time of execution of a fresh promissory note for the amount due under the earlier one amounts to a valid acknowledgment of liability, so as to keep alive the original liability. 48 L.W. 498 =1939 Mad. 34=(1938) 2 M.L.J. 846. Unconditional acknowledgment— Whether constitutes a fresh cause of action. 53 A. 963= 137 I.C. 243=1932 A. 199. A suit lies on an unconditional acknowledgment. 33 P.L.R. 517 (2)=1932 L. 400. Striking the balances by the executant of a bond from time to time imports a promise to pay the debt so as to furnish a fresh cause of action. 116 I.C. 464= 1929 L. 421. An acknowledgment by the judgment-debtor of his liability for a portion of money by means of an application for adjustment under O. 21, R. 2, gives a fresh start of limitation in respect of the entire amount. 1930 C. 304. Suit filed in wrong Court—Defendant filng written statement—Acknowledgment by him gives fresh starting point of limitation—Secs. 14 and 19 whether can be read together. 32 Bom.L.R. 58=1930 B. 187. The inclusion of a promissory note executed by a deceased person in the form of valuation filed with a petition for letters of administration by some of the heirs of a deceased Mahomedan is an acknowledgment against those heirs. 1930 M. 218=53 M. 480 =58 M.L.J. 210. If the acknowledgment of the liability is capable of being identified with the liability sought to be enforced in the suit by adducing independent evidence, the acknowledgment should be regarded as a good acknowledgment for the purpose of saving limitation. 1930 A. 368. Acknowledgment in a benami sale-deed is sufficient. 1930 M. 796. A sub-mortgage can amount to a valid acknowledgment that the property was on that date held under mortgage right. 54 B. 625

=32 Bom.L.R. 1096=1930 B. 466 (F.B.). *See also* 180 I.C. 795=1939 Pat. 427; 8 O.W.N. 541=1931 O. 295; 8 O.W.N. 522. Admission of liability in a deed of gift by the debtor in favour of his son is sufficient. 1931 O. 54.

DECREE DEBT AND ORDINARY DEBT.—An acknowledgment to save limitation under sec. 19, must either be a direct acknowledgment of the debt or an acknowledgment of such a kind that an acknowledgment of the debt is inevitably implied. An acknowledgment of a decree debt is obviously not necessarily the same as an admission that if the debt which had ripened into a decree had still been alive at the time of the acknowledgment he would have been liable. 1937 Mad. 826.

ACKNOWLEDGMENT TO WHOM TO BE MADE.—The acknowledgment of a recept as mortgagees to the Government is a sufficient acknowledgment. 37 B. 326=40 I.A. 68=18 I.C. 909=25 M.L.J. 101 (P.C.), affirming 2 I.C. 469=11 Bom.L.R. 318. An acknowledgment to have the effect of saving limitation need not be addressed to the person entitled to the property. 13 I.C. 603=16 C.W.N. 346; 91 I. C. 461=1926 C. 686; 1926 C. 1140=97 I.C. 710=30 C.W.N. 968; 7 O.W.N. 1195=1931 O. 54 (communication not necessary). 13 Luck. 334=1937 O.W.N. 719=1937 Oudh 391 (letter by judgment-debtor to third person to ask decree-holder for time to pay). An acknowledgment, duly signed, although it is addressed to a dead person will operate as a valid acknowledgment of a debt to save limitation under sec. 19. 1938 Pat. 180; 53 I.C. 898=23 C.W.N. 921. There is a distinction between addressing the acknowledgment of liability and acknowledging liability to a person. In order to bring his case within limitation the person who attempts to enforce his right must show that the acknowledgment of liability was in his favour though it need not have been addressed to him. 38 P.L.R. 855= 1936 L. 659. So when an acknowledgment of liability is made in favour of only one of the obligees having equal shares, the others are not enitled to the benefit of sec. 19. The obligee having the benefit of sec. 19 is entitled to recover his share only and not the whole amount; 1936 Lah. 659. An acknowledgment in a deed of assignment executed by the obligor in favour of a third person is enough to save limitation. 49 I.C. 868. *See also* 1928 C. 850; 1939 N.L.J. 109=1939 Nag. 113 (Entry in list of documents filed in Court.)

There is no reason for construing the word "signed" in sec. 19 of the Limitation Act as meaning "signed in full". Initials are equivalent to signature. The object of the Act is to regard as sufficient what the writer intends to be equivalent to his signature, the form being immaterial so long as it verifies the acknowledgment. 41 L.W. 744 =1935 M. 555=68 M.L.J. 623. *See also* 1941 O. 376=16 Luck. 727.

SIGNED, MEANING OF.—"Signed" includes initialling. 1942 Mad. 680=(1942) 2 M.L.J. 242=55 L.W. 398. "Signed"—Meaning of—Initials insufficient. 96 I.C. 700=51 M.L.J. 414=1026 M. 827. It is not necessary that the debtor's name should be written by himself. It is sufficient if it is written by a person acting with authority to write his name and to acknowledge the debt in question. It does not make any difference whether the debtor is literate or illiterate. If the debtor's name is introduced into the document of acknowledgment in such a way as to show that the acknowledgment was intended to be his own, the name, whether written or printed, would constitute his signature under sec. 19. Where a letter of acknowledgment is written by a third party at the instance of and on the instructions given by the debtor, and the debtor causes the letter to be posted to the address of the creditor, such letter constitutes a valid acknowledgment of liability under sec. 19. 18 Pat. 715=20 Pat.L.T. 927=1940 Pat. 6.

ACKNOWLEDGMENT BY WHOM TO BE MADE—AUTHORITY TO ACKNOWLEDGE.—Sec. 19, does not require that the person making an acknowledgment should have an interest in the property, in respect of which the acknowledgment was made, at the time when the acknowledgment was given. It is not necessary that the debt or liability must be of the person making the acknowledgment. An acknowledgment made by a person who is aftewards sought to be charged with the liability is valid and saves limitation. 45 Bom. L.R. 831=1943 Bom. 461. An acknowledgment of liability by a Hindu woman in possession for her interest, of the estate of her husband or father, will not extend the period of limitation as against the reversioners. 35 A. 227=40 I.A. 74=25 M.L.J. 131 (P.C.), affirming 32 A. 33. An acknowledgment by principal debtor does not save limitation against the surety unless it is shown that the latter allowed himself to be represented by the person who made the acknowledgment. 132 I.C. 590=1931 L. 691; 8 O.W.N. 544= 1931 O. 310; 44 C.W.N. 322=1940 Cal. 210 (1)=I.L.R. (1939) 2 C. 523. But sec. 19 or 21 do not contemplate that the authority to be given to the agent must in every case be an express authority. 133 I.C. 155=1931 A. 398. An agent who had general authority to settle the purchase price of the goods could plainly also arrange to prevent the time from becoming a bar to it. 24 C.W.N. 153=55 I.C. 543=1919 P.C. 120 (P.C.); 100 I.C. 784 =4 O.W.N. 275=1927 O. 613. Also a letter by a general agent written at the instructions of the debtor and signed by the agent. 1929 O. 479. Where the letters forming part of the correspondence between the parties in connection with the payment of a loan were written by persons who were not only general agents of the debtor but one of them was the assistant manager and the other the manager of the estate, the Court can presume them to be persons who were duly authorised to make acknowledgments on behalf of the debtor. 162 I.C. 362=1936 O. 280. When the acknowledgment is written by an agent duly authorized in that behalf, if he affixes thereto the name of his principal in any position, even by impressing it with a rubber stamp, such affixation of the name of the prin-

cipal must be held to be a signing of document within the meaning of sec. 19. 13 R. 522=1935 R. 160. As to effect of acknowledgment by *agent of mortgagee, see* 1933 L. 345=34 P.L.R. 862=14 L. 587. *See also* 12 Luck. 531=1937 Oudh 26 (Acknowledgment by officer of Court of Wards binds minor ward.) *See also* I.L.R. 1938 All. 363=1938 A. 217. (Collector in charge of Court of Wards. *See also* 41 Bom.L.R. 391=1939 Bom. 237); 16 Luck. 701=1941 Oudh 254 Letter by Pleader acknowledging liability). An acknowledgment by the *mukhtar-i-am* of a person not specially empowered to make such acknowledgment is not valid. 44 A. 546 (2)=20 A.L.J. 359=1922 A. 230; 1936 O. W.N. 957=1936 O. 332. An acknowledgment of liability by a guardian *ad litem* of a minor, who is also the lawful guardian under the personal law of the minor, is effective against the minor, whether or not such acknowledgment is for his benefit. (1939) 2 Cal. 1 33=69 C.L.J. 543=43 C.W.N. 604=1939 Cal. 399. *See also* 41 Bom.L.R. 391=1939 Bom. 237. An acknowledgment of a debt due by a firm under dissolution made by a receiver of that firm is valid to save limitation if he is authorized by the order appointing him. 48 I.C. 179=35 M.L.J. 571. A *receiver* may be an agent authorized to make an acknowledgment within sec. 19, Expl. II. 35 M.L.J. 571; 1937 Mad 764=(1937) 2 M.L.J. 627. But not the *Official Assignee.* 58 B. 505=35 Bom.L.R. 12=1933 B. 91. Nor is the person appointed under secs. 37 and 43, Provincial Insolvency Act, to receive the property of the insolvent, on annulment of his adjudication. 1935 R. 152. Admissions of liability by a partner in his insolvency schedule does not bind the other partners but it binds the Official Assignee. 36 I.C. 389. In the absence of express evidence of authority, an acknowledgment of a partnership debt by an ex-partner, after the dissolution of partnership does not bind any ex-partner. 18 M.L.T. 273=30 I.C. 675. Acknowledgment by *partner* after dissolution binds the firm if the creditor had no notice of the dissolution. 1929 L. 266=118 I.C. 529. *See also* 18 L. 171=39 P.L.R. 21=1937 L. 507. (Acknowledgment by mortgagee after sale of equity of redemption); I.L.R. 1940 M. 872=1940 M. 470=(1940) 1 M.L.J. 766 (F.B.); 1937 Mad. 826. Sec. 19 does not allow a mortgagor, after he has created a second mortgage and thus ceased to represent the *entirety* of the equity of redemption, to compromise the position of his own second mortgagee in point of limitation by an acknowledgment given behind his back in favour of the first mortgagee. 1946 A.L.J. 104=222 I.C. 632. Acknowledgments made by a mortgagor after he had parted with all his interest in the mortgaged property to a purchaser do not bind the purchaser. I.L.R. (1942) Lah. 686=47 C.W. N. 43=55 L.W. 854=1942 A.L.J. 648=1943 M.W.N. 1=1942 O.W.N. 604=1942 P.C. 67 =(1942) 2 M.L.J. 559 (P.C.). Where a subsequent mortgagee who is impleaded in a suit on the prior mortgage produces the mortgage in his favour and its genuineness is admitted by the plaintiff, the prior mortgagee, and it is recorded and signed, it amounts to an acknowledgment of liability within the meaning of sec. 19. 1942 A.L.J. 766=1943 O. 164. Direct evidence that one of several partners or co-contractors had authority to acknowledge liability is not necessary, but such authority can be inferred from surrounding circumstances such as the position of other co-contractors or partners. Where the endorsement was made with the implied consent of the other partners, *held*, that he had authority and it saved limitation. 1935 L. 559. Acknowledgment by surviving partner— If binds heirs of deceased partner. 37 Bom. L.R. 516=1935 B. 357. A partner of a money-lending business which is being wound up, has no authority to give an acknowledgment for a subsisting debt so as to bind the firm. 8 L.B.R. 363=36 I.C. 225. An acknowledgment by one of two mortgagees of the title of mortgagor would not save the mortgagor's right to redeem from being barred by limitation where the mortgage was a joint mortgage. 34 A. 371=14 I.C. 132. *See also* 5 Lah.L.J. 117=1921 L. 201; 151 I.C. 385 (1)=1934 L. 293 (1). An acknowledgment of liability by one of several mortgagors will ordinarily give a fresh start of limitation against the mortgagor who acknowledges the same. It is only when he makes the acknowledgment on behalf of the others also under circumstances which would make him an agent of the other co-mortgagors under sec. 21, that limitation would be saved against the others as well. 18 Pat. 434=184 I.C. 597=20 Pat.L.T. 619=1939 Pat. 451. An acknowledgment by the mortgagor of a prior mortgage in a later mortgage executed by him is sufficient to save limitation as against intermediate mortgagees who hold mortgages executed before the acknowledgment. To confine the word "acknowledgment" in sec. 19 to an acknowledgment made prior to a transfer or mortgage would be to add to or alter the language of the section. 1941 P.W.N. 667= 1942 Pat. 166. A letter written by the debtor (mortgagor) to a third person, in which he agrees to give him a lien over certain properties "now with the creditor mortgagor as collateral security" (the title deeds having been deposited with the creditor as equitable mortgage previously), is an acknowledgment of the existence of the *equitable mortgage* which would save limitation under sec. 19. The fact that the letter is not registered does not make it inadmissible in evidence, because it is relied on only as evidence, of a collateral fact, namely an acknowledgment by the debtor-mortgagor. A compulsorily registrable document, though unregistered and inadmissible in evidence of a transaction affecting immovable property, may be admitted as evidence of a collateral fact or for any collateral purpose. 48 L.W. 292=1938 Mad. 865=(1938) 2 M.L.J. 534. Acknowledgment in favour of prior mortgagee after subsequent mortgage—Subsequent mortgagee is not bound. I.L.R. (1944) Nag. 383=1944 N.L.

J. 229=A I R. 1944 Nag. 163 (F.B.). An acknowledgment of liability by some only of the heirs of a mortgagor against whom a decree for sale on the basis of a mortgage has been passed does not operate to save limitation as against the other heirs of the mortgagor. (41 A. 111 and 1927 A. 209, Overr.; 26 A.L.J. 723, Appr.) I.L.R. (1937) A. 272 =1936 A.L.J. 1140=1936 A. 820 (F.B.). *See* 1929 M. 419=56 M.L.J. 630; (1940) 2 M.L.J. 326=52 L.W. 364; 19 Pat. 938=1940 P.W.N. 608=1941 P. 147; for the *effect of an acknowledgment by one of the co-heirs.* An acknowledgment by a *judgment-debtor* may save limitation against the auction-purchaser. 44 I.C. 533=22 C.W.N. 278. An auction-purchaser derives his title through the judgment-debtor and as such would be bound by an acknowledgment of the latter made after the attachment of his properties but before the actual auction sale. I.L.R. (1945) All. 120=1945 O.W.N. (H.C.) 28= 1945 A.L.J. 58=1945 All. 224. Court of Wards has power to give an acknowledgment so as to give a new period of limitation. 34 I.C. 205=43 C. 211; 1936 O.W.N. 967=12 Luck. 531=1937 O. 26. Admission by prior mortgagee in his suit of genuineness of puisne mortgage. *See* 1943 Oudh 164. Acknowledgment by manager of joint Hindu family after his adjudication keeps the debt alive against coparceners. *See* I.L.R. (1943) Mad. 53= =1942 M. 721=(1942) 2 M.L.J. 233. An acknowledgment in writing by some of several judgment-debtors within three years from the date of the last execution application saves limitation against all. 22 I.C. 709; 27 L.W. 820=1928 M. 173=54 M.L.J. 150. But *see* 16 C.W.N. 493=13 I.C. 702; 25 M. 220; 32 M. 421; 27 A. 575. An acknowledgment of a debt made within limitation by the manager of a joint Hindu family binds other members of the family. 36 A. 264=23 I.C. 429; 1941 M. 772=(1941) 2 M.L.J. 311; 41 C.L.J. 535=1925 C. 1153; 86 I.C. 693=1925 O. 394. But *see* 1923 L. 135; 10 L.W. 466 =54 I.C. 318. *See also* 31 I.C. 30=19 C.W. N. 860; 26 I.C. 511; 1924 M. 96; 32 I.C. 997. An acknowledgment necessarily imports the acknowledgment of an existing debt. Where no such existing debt is referred to in a *khata.* it is meant to be a new transaction, especially when it does not show in itself that it is passed for any balance found due on settlement of accounts. The recital in the *khata* of the receipt of an amount in cash and the liability to repay the amount necessarily indicates a promise to pay that amount. Such a document cannot be treated as a mere acknewledgment of a past debt, but as a fresh promise to pay the amount purported to be received in cash. 45 Bom.L.R. 837=1943 Bom. 447. Where the members of a Hindu trading family which has incurred a debt have separated, an acknowledgment signed by some members of that firm only cannot save limitation as regards the other members in the absence of proof by the creditor that the acknowledgment was made on behalf of and with the authority of those other members as well. 1937 M.W.N. 1312. Mortgage by Mahomedan—Death of mortgagor—Acknowledgment by some co-heirs—Effect of—Claim barred as against some heirs—If barred as a whole. *See* 23 Pat.L.T. 431=1942 Pat. 73 =20 P. 770. A Mahomedan mother cannot make a valid acknowledgment on behalf of her minor son. 61 P.L.R. 1917=42 I.C. 17. A guardian cannot renew or acknowledge a debt unless it is for the benefit of the minor or unless the document appointing him guardian expressly gives him such power. 43 I.C. 865 =6 L.W. 640 *See also* 41 M. 561=34 M.L. J. 381; 108 I.C. 529=1928 M. 226; I.L.R. (1939) 2 Cal. 33=1939 Cal. 399; 1939 Bom. 237; 57 L W. 612=1945 M. 149=(1945) 1 N. L J. 3. A mere acknowledgment of payment by one of the trustees who did not really receive the money, cannot bind the institution. 15 I.C. 186=1912 M.W.N. 181. *See also* 43 C.W.N. 943. An executing Court which merely records an admission or plea of the judgment-debtor that a certain sum of money was paid towards the decree under execution is not "an agent duly authorised" of the judgment-debtor for purposes of sec. 19. 174 I. C. 28=1937 M.W.N. 355=1937 Mad. 760. In case of a document signed by an agent he must have been authorised to sign for the purpose which sec. 19, contemplates, that is to say he must have been authorised to sign on behalf of the person sought to be made liable. This authorisation need not be available, for the purpose of acknowledging direct; it can be implied. Where a Judge signs the deposition of a witness, he is in no sense his agent. The fact that it is a party whose deposition it is that is signed and not that of a witness does not make any difference. His voluntarily going into the box does not authorise the Judge to sign the deposition containing an acknowledgment. 1940 N.L.J. 445=1940 Nag. 354. In a case of a promissory note executed by four persons, one of them made a part-payment within 3 years of the execution and endorsed it on the same. Within 3 years of the date of the said part-payment and endorsement, another executant made a second part-payment and endorsement; within three years thereafter all the executants made part-payments and endorsements. *Held,* that, by reason of the endorsements, all the promisors must be deemed to have authorised and ratified the prior endorsement under this section. 1928 M. 173=27 L.W. 820. A mortgage was executed by two persons in favour of the father of the plaintiff. The plaintiff was then a minor living jointly with his father. The father died in 1912 and in 1913 the mortgagors executed a second mortgage in favour of another including in that mortgage the whole of the amount due under the earlier mortgage. In 1928 the plaintiff sued to recover the amount and claimed that he was entitled to do so within three years of his attaining majority. *Held,* that time began to run from the date of the execution of the mortgage, but the mortgage of 1913 contained an acknowledgment and therefore saved limitation. *Held, further,* that the plaintiff being a minor at the time from which limitation has to be

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but, subject to the provisions of the Indian Evidence Act, 1872 oral evidence of its contents shall not be received.

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reckoned, the suit filed within three years of the plaintiff attaining majority was competent. 54 All. 1019=1933 A. 100=1932 A.L. J. 1012. An acknowledgment made by one of three directors of a company in the course of businness saves limitation and proof of authorisation by other directors is not necessary. 33 C.W.N. 833=1929 C. 155. An acknowledgment made by the vendee after a claim for pre-emption has been brought is binding on the pre-emptor. 54 A. 1023=1932 A.L.J. 878=1932 A. 700. An acknowledgment made by one of the heirs of the mortgagee who have divided the mortgaged property among themselves without the consent of the mortgagor is binding on him or his heir so far as regards the property in his possession though it may not be binding on the the co-heirs of the mortgagee. 32 Bom.L.R. 1096=1930 B. 466 (F. B.). A President of a Committee who is authorized to purchase goods has equal authority to acknowledge. Such authority need not be express. 37 L.W. 429=1933 M. 332. Compromise—Agreement with regard to properties beyond the scope of suit—Agreement to deliver possession in right of ownership—If acknowledgment of right to possession as owner and saves limitation for suit for possession. *See* 46 Bom.L.R. 931=1945 B. 143.

EFFECT OF ACKNOWLEDGMENT.—An acknowledgment of liability only extends the period of limitation and does not confer title and is not a "thing done" within sec. 6 of the General Clauses Act. 35 A. 227=40 I.A. 74 =25 M.L.J. 131 (P.C.); *see allso* 57 L.W. 493 =(1944) 2 M.L.J. 225; 198 I.C. 516. In the absence of anything to the contrary when a debtor makes an acknowledgment of his liability to pay a debt it would ordinarily mean that he was admitting a subsisting liability to pay. I.L.R. (1945) All. 120=1945 O.W.N. (H.C.) 28=1945 A.L.J. 58=1945 All. 224. Where a letter amounting to an acknowledgment of a debt contains a statement that payment in regard to it would be made in eight or nine days, limitation can be saved only up to the date of the letter of acknowledgment and not up to the further period of eight or nine days mentioned in it. I.L.R. (1945) All. 35=1944 O.W.N. (H.C.) 286= 1944 A.L.J. 447 (1). An unequivocal acknowledgment of a debt involves an implied promise to pay it. If a man unequvoaally acknowledges that a debt is due from him, he should be taken impliedly to promise to pay it. He may couple his acknowledgment with some expression which shows that he is not promising to pay. But if there is no qualification the acknowledgment of the debt should be held to involve an implied promise to pay. Where an agreement contains an acknowledgment of a debt due from the defendant to the plaintiff, and also provides for a contingent security as to that debt, such acknowledgment involves a promise to pay that amount; and the agreement therefore constitutes a fresh cause of action for a suit. 45 Bom.L.R. 957 =A.I.R. 1944 Bom. 90. *See also* (1944) 2 M.L.J. 225. An acknowledgment of liability cannot form the basis of a fresh cause of action. 106 I.C. 619=1927 M. 1200; 8 O.W.N. 1210=7 Luck. 313=1932 O. 49; 1933 A.L. J. 1530=56 All. 281=1934 A. 76; (1929 A.L. J. 1779, Not foll.). But *see* 10 L. 748=115 I. C. 853=1929 Lah. 264 (an unconditional acknowledgment can form the basis of a suit). 130 I.C. 570. An acknowledgment of liability by a Hindu widow will not bind the reversioners who do not claim through her. 86 I.C. 353=1925 C. 862. An acknowledgment invalid under Act XIV of 1859 but valid under subsequent Limitation Acts is valid within sec. 19. 34 A. 109=12 I.C. 604. Where there is a promise to pay on a condition, that condition, in order that the promise may operate as an acknowledgment, must be fulfilled. Where there was a conditional promise to pay if the arbitrator found the sum to be due, and the arbitration proceedings proved abortive. *Held*, the condition was not fulfilled and that there was no acknowledgment which was sufficient to save limitation. 1934 L. 973 (2). Where there is a liability to account and it is admitted in part, the admission has complete power to save the entire right. t 22 C.W.N. 104=43 I.C. 893. *See also* 17 L. 737=165 I. C. 723=1936 L. 629. Where a later mortgagee is directed to pay off an earlier mortgage and authorised to take back the earlier mortgage and keep it with him as evidence and the mortgage deed in favour of the later mortgagee provides that the lien possessed by the earlier mortgagee is to be acquired by the later mortgagee, and the latter pays off the amount of principal and interest due to the earlier mortgagee he acquires a right of subrogation under sec. 92 of the Transfer of Property Act there being an express right of subrogation created by contract in writing and registered. The payment of interest and principal by the later mortgagee and endorsement thereof by him would operate to save limitation under sec. 20 in respect of a suit by him on the earlier mortgage paid off by him as against intermediate mortgagees. 1941 P.W.N. 667=1942 Pat. 166. "Acknowledgment"—Statement of liabilities initialled by debtor—Sufficiency to save limitation. (1942) 2 M.L.J. 242. I.L.R. 1942 M. 927=1942 M. 680. If a balance be struck or an acknowledgment be made in favour of a minor, the period of limitation is to be computed from the date when the plaintiff becomes a major. 52 I.C. 115=37 P.L.R. 1919. A valid acknowledgment of a judgment-debt in a written petition by a judgment-debtor to the executing Court gives a fresh starting point. 80 P.W.R. 1912=14 I.C. 335. Statement in a plaint admitting mortgage in plain-

tiff's favour—Defendant's right to redeem. 82 P.W.R. 1911=11 I.C. 377 (1). An acknowledgment does not revive a right which has become barred at the date of acknowledgment. 43 I.C. 50=33 M.L.J. 753. An admission of a barred debt is not an "acknowledgment of the debt". 24 C. 507. *See also* 5 P.L.J. 371=1 P.L.T. 190. A time-barred debt may be revived by an express contract to that effect and a simple acknowledgment is not sufficient for that purpose. Where, in acknowledging the debt, the debtor expressed his willingness to renew the debt, *held*, that there was no fresh contract. 37 C.W.N. 326=1933 C. 658=60 C. 714. Where a series of debts entered in accounts are acknowledged with the endorsement as correct at the end of the account, the acknowledgment would not imply a promise to pay but would give a fresh period of limitation to such of the items as were not barred at the time of acknowledgments. 8 P. 706=1929 P. 258. (2) If a payment is made by way of an acknowledgment on foot of general debt, a new cause of action springs from it and limitation begins to run afresh. 38 I.C. 85=2 P.L.J. 24. The liability to pay being admitted, the creditor can pursue his clam, in any way recognised by law. 1928 M. 713 (F. B.). The validity of an acknowledgment set up by a plaintiff as saving limitation in his favour must be decided with reference to the law in force when the suit is brought and not with reference to that in force when the acknowledgment was made. 34 Bom.L.R. 953=1932 B. 531. Under sec. 19 the perod has to be commuted from the date of signing the letter of acknowledgment. 106 I.C. 619=1927 M. 1200. The effect of a promissory note for the amount secured by an equitable mortgage is merely to extend the period of limitation in respect of the personal liability of the mortgagors. 105 I.C. 765=1928 S. 17=22 S. L.R. 222. Separate remedies in respect of same transaction—Acknowledgment in respect of one—If saves limitation as regards the other—Acknowledgment—If saves limitation for suit to enforce vendor's lien for unpaid purchase money. *See* 1942 Mad. 167=(1941) 2 M.L.J. 460. Although an acknowledgment may imply a promise for extending limitation, it is, without a promise, insufficient to create a contract and cannot be enforced as such. Being neither a contract, grant nor disposition of property nor analogous to any of them, it is not a document contemplated by sec. 92 of the Evidence Act. So the prohibition regarding the admissibility of oral evidence is not applicable to an acknowledgment. 26 N.L.R. 320=1930 N. 298. Where an acknowledgment is proved to have been made by inadvertence or mistake, it cannot be treated as implying a promise to pay even though it may be ostensibly unconditional. 1933 A.L.J. 170=1933 A. 175=144 I.C. 1005.

FORM OF ACKNOWLEDGMENT.—So long as the intention of the debtor is unequivocally conveyed in the acknowledgment, it is not necessary for him to use any particular formula of words. I.L.R. 1937 N. 360=1937 N. 165. It is immaterial in what connection and for what purpose and in what form the acknowledgment is made. 183 I.C. 225=41 Bom.L.R. 391=1939 Bom. 237. Before sec. 19 can apply, there must be words which clearly indicate an acknowledgment of liability of the particular debt. It is not for the Court to overstrain the meaning of the words used; there is no warrant for holding that unless the words used amount to a total repudiation of liability they should be read as an acknowledgment. 54 L.W. 718=1941 Mad. 892=(1941) 2 M.L.J. 460. Receipt in Collector's books may amount to acknowledgment. 37 B. 326=40 I.A. 68=25 M.L.J. 101 (P.C.) (Affirming 2 I.C. 469=11 Bom.L.R. 318). An admission in a *plan* filed with a plaint, but *unsigned*, does not amount to an acknowledgment. 86 I.C. 859=1925 L. 529. The mere fact that in some other case the defendant merely admitted the execution of the document is not an acknowledgment of liability. 45 A. 679=1924 A. 70. But the defendant's admission in his written statement of the plaintiff's allegation that defendant had mortgaged property to third person is sufficient acknowledgment and could be relied upon by the mortgagee of the defendant. 6 O.W.N. 943=1930 O. 67. *See also* 1933 A. 352=144 I.C. 903. Where in an application filed under O. 21, r. 2, C. P. Code and signed by the judgment-debtor, certain payments made towards the decree are referred to, and both parties pray "that the payment of . . . . be recorded in part satisfaction", such an application saves limitation for execution under sec. 19. The words "in part satisfaction" amount to an acknowledgment of liability by the judgment-debtor under sec. 19 and save limitation. 220 I.C. 378=11 Cut.L.T. 11=1945 Pat. 280. The acknowledgment contained in the *dakhalnama* executed by defendant's predecessor is a mere description of the property purchased and not an acknowledgment of liability within sec. 19. 38 A. 540=36 I. C. 452. But *see* 1932 A.L.J. 1010=1933 A. 99. An *admission by a pleader* in a petition made in course of his business is binding as an acknowledgment so as to give fresh starting point irrespective of whether the pleader represents majors, or guardians for minors 133 I.C. 155=1931 A. 398. An acknowledgment in a statement made and signed before a Judge in a suit is sufficient within sec. 19. 35 A. 437=20 I.C. 27. An acknowledgment of liability signed by a debtor on the *khata* of his creditor before the limitation period has expired implies a promise to pay and a suit can be based thereon. 1922 P. 183=63 I.C. 923=23 Bom.L.R. 606=46 B. 24. An acknowledgment contained in a communication addressed to a third party does not require registration. 1932 P.C. 55=59 I.A. 130=11 P. 272=62 M.L.J. 296 (P.C.). Reference in a promissory note to a debt due under a mortgage executed some years previously as an extra or additional debt amounts to an acknowledgment of that debt. 38 B. 177=16 Bom.L.R. 20=23 I.C. 353. The inclusion by an insolvent debtor of a debt in his sche-

dule which is signed by him is an acknowledgment. 35 B. 383=13 Bom.L.R. 123. *See also* 14 I.C. 1; 1933 M. 104=140 I.C. 774=63 M.L.J. 785; 143 I.C. 681=1933 M. 565 (1); 117 I.C. 570=1928 R. 326=1928 R. 327. A *hatchitta* is an acknowledgment within sec. 19. 53 I.C. 854=46 C. 746=1929 R. 156. *See also* 24 Bom.L.R. 713=46 B. 1000=1922 B. 356. A payment by a cheque and hundi which were dishonoured on presentation does not constitute an acknowledgment within sec. 19. 46 C. 168=27 C.L.J. 392. Where liability to pay interest on a previous mortgage has been admitted in subsequent bonds it means an acknowledgmnt of liability. 2 L.L.J. 549. *"Ruqqa"* which is an admission of indebtedness is not an express or implied agreement to pay upon which to base a suit. 76 P.R. 1915=31 I.C. 209 (2). An application signed by the widow of the deceased mortgagor distinctly admitting the mortgage constitutes an acknowledgment under sec. 19. 75 P.R. 1911=10 I.C. 147. *See also* 1941 P.W.N. 667. *Deposition* containing an admission may amount to an acknowledgment for the purpose of sec. 19 if it is signed by the deponent. 194 P.W.R. 1911=10 I.C. 142; 26 A.L.J. 420 =1928 A. 310. *See also* I.L.R. (1942) Nag. 182=1940 Nag. 354. Where a judgment-debtor became insolvent and the schedule of assets and liabilities filed by him contained an acknowledgment of liability as regards the suit claim, but the schedule contained a date that had been struck out, which, if taken into account, would bar the later execution application, *held,* that for purposes of sec. 19 (2) the writing containing the acknowledgment should be taken to be undated and evidence may be given as to its correct date. 140 I.C. 774=63 M.L.J. 785. As to *practice of Natukottai Chetties* who do not sign their letters at the foot but begin by saying that the sender is such and such a firm, *see* 6 L.W. 790=43 I.C. 20. *See also* 26 I.C. 911=27 M.L. J. 631; 1927 C. 495=31 C.W.N. 619. Where, on a promissory note, an endorsement written out by the plaintiff is signed by the defendant, it is sufficient ackowledgment of liability. 27 I.C. 747=17 M.L.T. 80. Recitals in reference to arbitration—Reference proving infructuous—Recitals operate as acknowledgment. 104 I.C. 572=1928 S. 45. Trespasser—Admission as to ownership—Suit for ejectment—Saving of limitation. 60 C. 404= 1933 C. 414. Effect of acknowledgment—Acknowledgment during minority of creditor —Effect—Extension of period—Suit by legal representative of minor. *See* (1945) 1 M.L. J. 3=1945 M. 149.

IMPLIED ACKNOWLEDGMENT.—An acknowledgment within the meaning of sec. 19 may be either express or implied, and each case must be decided on its merits. Where an executant of a promissory note pays a certain sum of money to the promisee and endorses that paymennt on the back of the note on a subsequent date, the endorsement is an acknowledgment within the meaning of the section. 1937 Rang.L.R. 421=1938 Rang. 84. Where a debtor pays a certain sum of money to his creditor, there may be an implied acknowledgment of the liability to the extent of the amount paid. It cannot however be said that the remaining liability shown by evidence *aliunde* should be deemed to have also been acknowledged. 55 A. 632=1933 A.L.J. 930 =1933 A. 453 (2). No admission amounting to an acknowledgment under this section can be inferred from the rubkari of proceedings under Regulation XVII of 1806. 63 I.C. 490. Implied acknowledgment—Account debiting a particular sum, effect of. 1921 A. 335 (2)=59 I.C. 941=413 A. 216. Payment should be made as interest. Mere appropriation by creditor for interest will not constitute acknowledgment. 55 A. 632=1933 A.L. J. 930=1933 A. 453 (2). Implied acknowledgment—What is. 39 A. 357=15 A.L.J. 305. *See also* 131 P.R. 1919=53 I.C. 425; 58 I.C. 787=1 L. 357. An acknowledgment that interest is due implies that some principal also is outstanding. 1937 M.W.N. 1312. Letter calling for a copy of the accounts showing what amount was due would clearly be an acknowledgment. 101 I.C. 544=1927 L. 832. A letter from the railway company informing the consignee that the balance of the sale proceeds of the property was payable to him on condition that he should accept it in full satisfaction of his claim, cannot be taken as an acknowledgment of any liability for the price of the goods or compensation for any wrongful detention or compensation for non-delivery and would not give a fresh starting point of limitation for a suit for compensation for non-delivery. 1933 A. 348=144 I.C. 1029. Mere statement by a person that a decree was passed against him does not amount to acknowledgment of existing liability. 21 L.W. 593=1925 M. 675. *See also* 1923 M. 634=17 L.W. 674. Where the document merely stated that a certain amount had been paid in cash in lieu of a decree debt and it further provided that nothing remained by the writer in respect of the decree, *held,* that it could not be said to be a sufficient acknowledgment regarding the executant's liability to deliver possession of certain plots of land under the decree. 134 I.C. 1022=8 O.W.N. 1117=1932 O. 154. When a document is presented for registration, the executants not only admit the fact of its execution but admit the contents of the document, namely their liability on it. Hence if a person admitted before the Sub-Registrar execution of a mortgage bond which recited that old accounts had been looked into and the sum arrived at had remained due, his acknowledgment of liability was implied. 1933 M. 713=65 M.L.J. 380. The inclusion of a decree debt in the insolvency petition which has to be signed by the insolvent amounts to an acknowledgment within the meaning of sec. 19. So also the mention of the decree debt in a statement made by the insolvent in an examination for ascertaining his assets and liabilities without any further mention of any payment towards its discharge amounts to an implied admission. that the liability under the decree was then subsisting. 38 L.W. 204=1933 M. 565 (1).

An admission of a past liability unaccompanied by an allegation of discharge should not in all cases be interpreted as an admission of a subsisting liability. 42 M.L.J. 268=45 M. 443=1922 M. 104. A sum sent by a debtor by insured post with directions to credit it in his accounts amounts to acknowledgment. 36 I.C. 593=4 L.W. 148. Where an endorsement of payment is made on a promissory note without any money being paid, the endorsement will be sufficient as an acknowledgment to save limitation. 28 I.C. 15=17 M. L.J. 139; 1937 Rang. 503 (Endorsement on policy of life assurance referring to assignment of policy in consideration of loan advanced on pro-note is an acknowledgment of liability under the pro-note). An endorsement of payment on the back of the bond in the handwriting of the debtor is good to save limitation. 48 I.C. 724. A bare signature by a debtor on the back of a promssory note executed by him is not an acknowledgment of liability for such a signature, unless an intention is proved, cannot be construed to admit a liability to pay. 152 I.C. 501=1934 R. 287. Where, in respect of liability under an earlier promissory note, a fresh note was executed and there was an endorsement on the earlier note to the effect that "in lieu of the earlier promissory note a second note was executed and the former thereby became void" and the latter note being insufficiently stamped was incapable of being sued on and the plaintiff thereupon sued on the earlier note, *held*, that the endorsement on the earlier note was a valid acknowledgment so as to save limitation. 1931 A.L.J. 522=1931 A. 560. *See also* 9 O.W.N. 1024=1933 O. 80. The acknowledgment must relate to the liability in dispute and not to any liability. 55 I.C. 822=13 S L.R. 183. An acknowledgment of liability in respect of the amount due as principal does not involve an admission to pay interest. (*Ibid.*) Though a writing owing to some defect does not fulfil the requirements of sec. 20, it may nevertheless, as an acknowledgment of liability, operate to save the claim under sec. 19. 1935 M. 245 =68 M.L.J. 63; 43 L.W. 665=1936 M. 616. In a case where two remedies flow either by operation of law or by agreement between the parties out of one and the same transaction, and the remedies are distinct anything done to save one of the remedies from the bar of limitation cannot operate by itself to save the other also. Where a vendee of immovable property executes a promissory note to the vendor for the balance of the sale price due to the vendor, acknowledgments of liability evidenced by endorsements made on the promissory note cannot be treated as acknowledgments of liability in respect of the vendor's lien for the portion of the purchase-money which is due, so as to save limitation for a suit to enforce a claim on the lien as against the immovable properties. 1942 M. 167=54 L W. 591=(1941) 2 M.L.J. 939.

ENDORSEMENT OF PAYMENT—IF ACKNOWLEDGMENT.—A mere endorsement of payment without further specification does not operate as an acknowledgment within the meaning of sec. 19. 24 Pat. 96=1945 Pat. 271=1945. P.W.N. 264; *see also* (1942) 2 M.L.J. 610= 1943 M. 133; 224 I.C. 65=1941 P. 404; 1942 O. 508=18 Luck. 241; 56 L.W. 633=(1943) 2 M.L.J. 456=1944 M. 57; I.L.R. (1942) Mad. 405=1942 Mad. 146=(1941) 2 M.L.J. 848. A mere endorsement of payment on a promissory note cannot be held to be an acknowledgment of liability within the meaning of sec. 19. If the endorsement acknowledges a liablity to pay the debt, then it would fall under sec. 19; but a mere endorsement stating that a particular sum of money has been paid merely acknowledges the fact of payment and not a liability for any debt. 1942 Pat. 395. An endorsement by a debtor which is merely an endorsement that "Rs. 75 was paid on 13th October, 1935, in the hand of *M*", is not effective to save limitation under sec. 19. There is in terms no acknowledgment of any liability, nor any promise to pay the unpaid balance. 215 I.C. 12=45 Bom.L.R. 1014= 1944 Bom. 37. An acknowledgment of liability may be express but it may equally well be made impliedly so long as the implication is clear that the debtor did intend to acknowledge his liability. But a mere endorsement of payment without any further words showing that there was any acknowledgment of liability in regard to the balance due, would not operate as an acknowledgment. 1944 L. 88=45 P.L.R. 407. *See also* 1942 Oudh 508 =18 Luck. 241. Bare statements of payments endorsed on a promissory note cannot serve as acknowledgments of the debt under the promissory note. If limitation is to be saved under sec. 19, Limitation Act, one must be able to read into an endorsement not merely that a payment has been made but that a further sum is admitted to be due. 1942 M. W.N. 685=55 L.W. 808=1943 Mad. 133= (1942) 2 M.L.J. 610. *See also* 1944 Lah. 88.

RECEIPT.—Where a receipt acknowledges not only the consideration of the promissory note of even date but further acknowledges that an earlier promissory note (in respect of the liability under which the new pronote is executed) was executed for a particular sum which was advanced at that time and for which a receipt was given, it must be taken to have the effect of acknowledging the liability under the earlier loan. 1943 O.W.N. 483=1943 A.W.R. (C.C.) 187.

Where there is no other loan except that evidenced by a series of renewed promissory notes, the renewed promissory notes will operate as acknowledgments of liability in respect of the loan so as to save limitation for a suit thereon under sec 19 (1). 49 C.W.N. 37=1945 Cal. 268.

ORAL ACKNOWLEDGMENT.—An oral acknowledgment of a debt would not extend the period of limitation under sec. 19. 93 P.R. 1911=11 I.C. 445; 75 I.C. 440=1923 N. 332.

EVIDENCE.—Direct evidence of a specific authority to make acknowledgments can be inferred from circumstances. 41 M. 427= 34 M.L.J. 373 (F B.). *See also* 65 I.C. 279 =17 N.L.R. 209=1921 N. 1; 1936 O. 280= 1936 O.W.N. 489; 45 C.W.N. 209; 1937 All.

Explanation I.—For the purposes of this section an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come, or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right.

640=I.L.R. (1937) A. 732. **It is settled law** that the identity of the debt acknowledged in writing may be proved by parol evidence. 34 I.C. 417. But *see* 17 L. 737=1936 L. 629; 45 C.W.N. 208; 53 L.W. 102=1941 Mad. 409 =(1941) 1 M.L.J. 173. A recital in a second mortgage as to the existence of a prior mortgage in favour of another can be relied on by that other person as an acknowledgment of liability. 140 I.C. 177=1933 L. 33. In a suit for money, an admission that accounts must be taken and settled does not amount to an acknowledgment. 36 M. 68=21 M.L. J. 1024. But *see* 1924 M. 619 (1)=80 I.C. 355 (1)=46 M.L.J. 468. Person acknowledging need not be liable personally at the time of making acknowledgment so as to be bound by the acknowledgment. 1925 M. 134. If a promissory note is insufficiently stamped, it is inadmissible in evidence not only as a promissory note but also as an acknowledgment. 16 N.L.J. 241=1933 N. 391. But see *contra* 1934 A. 951=4 A.W.R. 657. Where the promissory notes are inadmissible in evidence on the ground of insufficiency of the stamps, receipts which do not purport to acknowledge liability for an earlier debt but merely state that money had been taken under promissory notes of even date by the executant, cannot amount to an acknowledgment of any earlier debts of which the plaintiff can take advantage. 57 All. 434=152 I.C. 370=1934 A.L. J. 1185=1935 A. 129.

EXECUTION PROCEEDINGS.—An uncertified payment is no step-in-aid to save limitation. But in the execution application itself, the decree-holder may apply to certify the payment and then it would save limitation. 20 C.W.N. 272=43 C. 207. *See also* 35 C.W. N. 1192=1931 C. 719 (F.B.); 22 Pat.L.T. 416. Effect of acknowledgment of right in execution proceedings. 20 C.W.N. 952=1 P. L.J. 214.

MORTGAGOR AND MORTGAGEE.—An acknowledgment by a mortgagor in favour of the first mortgagee is effective against a second mortgagee whose title originated before the acknowledgment was given. 51 I.C. 829= 17 A.L.J. 763. *See also* 8 O.W.N. 1160=7 Luck. 270=1932 O. 1; 1941 P.W.N. 667= 1942 P. 166. But see *contra* 164 I.C. 725 =58 All. 912=1936 A.W.R. 516=1936 A.L. J. 586=1936 A. 636. When a mortgagor has sold a portion of the mortgaged property but remains personally or in respect of the unsold portion liable on the mortgage, an acknowledgment of the mortgage by him subsequent to the alienation is effective both against the mortgagor and his alienee. 55 M. 758=1932 M. 516=63 M.L.J. 111. An acknowledgment made by a mortgagor after the sale of the equity of redemption by him is sufficient for extension of time under sec. 19. 18 L. 171=39 P.L.R. 21=1937 L. 507. *See also* 26 Pat.L.T. 328=21 P. 339=1942 P. 363. The acknowledgment by one mortgagee does not bind other co-mortgagees. 10 I.C. 238=8 A.L.J. 605. *See also* 62 I.C. 833=40 M.L.J. 126; 38 I.C. 240=32 M.L.J. 263; 20 Pat. 770=1942 P. 73; 1941 Pat. 147. An admission by a mortgagor of his liability carries with it an admission of all the remedies to which the mortgagee might be entitled under it. 6 O.L.J. 248=51 I.C. 985. Acknowledgment containing admission of right to redeem is enough. 1929 A. 209. The mere recital in the judgment of a settlement Court that the person admitted in his examination that he did not get the mutation of names effected, because he held possession as mortgagee in the absence of the deposition, did not amount to an acknowledgment. 1929 A. 332=119 I.C. 565. A mortgage was executed by plaintiff's ancestors to defendant's ancestors in 1834. In 1864, the mortgagee admitted that he held the lands on mortgage in a kabuliyat to the inamdar. In a suit of 1877 by the daughter of the mortgagee, the mortgage was again admitted. The present suit for redemption was brought in 1924. *Held*, that the acknowledgments operated to save limitation and that the suit was not barred. 34 Bom.L.R. 953=1932 B. 531. If any acknowledgment of liability within the meaning of sec. 19 is made within six years of the payment of interest and also within six years of the date of the institution of the suit on the basis of a personal covenant contained in a mortgage, the claim for a personal decree must succeed. 12 Luck. 185=1936 O.W.N. 489=1936 O. 280.

SEC. 19, EXPL. 1.—Expl. 1 to sec. 19 is very wide in its scope. Under it, admissions, however indirect, and even if accompanied by a refusal to pay, constitute sufficient acknowledgments. In answer to a letter by the creditor to the debtor stating the amount due to him, the debtor's secretary sent a letter by post reciting that he had been directed to intimate to the creditor by the debtor that all the arrears of accounts would be paid in a particular month. *Held*, a sufficient acknowledgment. 11 O.W.N. 880=1935 O. 170. A reply by a mortgagor to a notice of demand by the mortgagee, stating that under a usufructuary mortgage executed by him to a third person, he had directed the latter to pay off the debt, that the mortgagee was mistaken in demanding payment from the mortgagor, constitutes a sufficient acknowledgment to save limitation under sec. 19. 44 L. W. 362=1936 M. 943=(1937) 1 M.L.J. 24. According to Expl. 1 to sec. 19, it is not necessary that the writing itself should specify the exact nature of the property or right in

Explanation II.—For the purposes of this section, "signed" means signed either personally or by an agent duly authorized in this behalf.

Explanation III.—For the purposes of this section, an application for the execution of a decree or order is an application in respect of a right.

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respect of which liability is ackowledged and there is no bar to extrinsic evidence being admitted for the purpose. 16 L. 258=1934 L. 835. An application made by the judgment-debtor alleging that the matter had been settled, that in consequence of a part payment the decree-holder had agreed in his letter not to take out execution before the end of the next year and praying that the original letter of the decree-holder may be placed on the record is in substance an admission by him that he still owes something to the decree-holder for which he has obtained a respite; it amounts to an acknowledgment of liability giving a fresh starting point of limitation. 55 A. 393=1933 A. 364.

SECS. 19 AND 20.—Secs. 19 and 20 are independent of each other. There may be an acknowledgment of liability, which comes within sec. 19, unaccompanied by any part-payment; or there might be an acknowledgment of liability coupled with a part payment which fulfils the requirements of sec. 20, in which case, the debt is saved from limitation both under sec. 19 and sec. 20; but if there is a part payment which does not comply with the terms of sec. 20, that cannot prevent the endorsement from operating as an acknowledgment within sec. 19. 41 Bom.L.R. 455=1939 B. 252. Secs. 19 and 20 of the Limitation Act are quite independent of each other. A document may be an acknowledgment within sec. 19 although that does not evidence part-payment within sec. 20. Whether in any particular case the document relied on amounts to an acknowledgment must depend on the language of the document. I.L.R. (1942) Bom. 512=44 Bom.L.R. 426=1942 Bom. 218. In sec. 19 the acknowledgment is to be made by the party against whom the right is claimed. In sec. 20 however no such restriction is found. The reason for this distinction apparently is, that acknowledgment is a mere admission of right, whereas payment is more than a mere admission of right. The effect of an acknowledgmnet in sec. 19 is more restricted and in general, it only affects the person giving it. But payment under sec. 20 affects not only the person making the payment, but also other persons who are liable. 1938 Cal. 129=66 C.L.J. 104=42 C.W.N. 18. *See also* I.L.R. (1942) M. 308=54 L.W. 579=1942 M. 200=(1941) 2 M.L.J. 913. There is a fundamental difference between secs. 19 and 20. Under sec. 20 all that is necessary is that an acknowledgment of the payment should appear in the handwriting of, or be signed by, the person making the pavment. But that is not enough under sec. 19. 1940 N.L.J. 445=1940 Nag. 354. Where there is a bond or note under which a considerable sum is due and the debtor makes towards that bond a payment which is clearly less than the balance due, accompanying the payment with an endorsement to the effect that it is towards the debt in the bond or towards the note, it is legitimate to read the words of that endorsement together with the substance of the document upon which the indorsement is made and infer from the circumstances the fact that the writing of this endorsement is an acknowledgment of the subsistance of the debt after the payment endorsed, although such a payment, being an open payment or unappropriated payment cannot avail the creditor under sec. 20 of the Limitation Act as a payment towards interest as such or towards principal saving limitation. I.L.R. (1942) M. 405=1942 M. 146=54 L. W. 624=(1941) 2 M.L.J. 848. Party confining his case in the trial Court to sec. 20—Appeal—New case under sec. 19 if can be raised. *See* 13 Luck. 334=1937 Oudh 391. There is a fundamental difference in the theory of acknowledgment according to the law in India as compared with the Law in England. In England the acknowledgments or part-payments to be effective must amount to a fresh promise to pay. Under Indian law no promise to pay either express or implied is required. The English authorities cannot therefore afford any guidance. The difference in language used in secs. 19 and 20 is not merely accidental. 7 Luck. 270=8 O.W.N. 1160=1932 O. 1. Money spent on the obsequies of the father of the minor cannot be deemed to be necessaries supplied to the minor within the meaning of sec. 68 of the Contract Act and as such an acknowledgment by the mother as the guardian of a debt borrowed for the above purpose is not binding on the minor. 10 O.W.N. 188=1933 O. 132. Sec. 20 does not require, unlike sec. 19, that interest or part of the principal should be paid by the party against whom the debt or legacy is claimed or by the person through whom he derives title or liability, but enacts simply that a fresh period of limitation shall be computed where interest or part of the principal has been paid by the person liable to pay or by the debtor. The suit is saved in its integrity against all the persons who might have been sued within the precribed period. A payment and endorsement by a mortgagor who has parted with the mortgaged property but is personally liable to pay on his covenant would therefore save limitation against the prior purchaser of the equity of redemption. I.L.R. (1942) M. 308=1942 M. 200=(1941) 2 M.L.J. 913. *See also* 42 C. W.N. 18=1938 Cal. 129.

SECS. 19 AND 21.—The wife could not be deemed to be "an agent duly authorised in this behalf" and an acknowledgment made by her could not save limitation. 56 M. 964=1933 M. 686=65 M.L.J. 355.

[1][20. (1) Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy, or by his duly authorized agent, a fresh period of limitation shall be computed from the time when the payment was made.]

Effect of payment on account of debt or of interest on legacy.

LEG. REF.

1 Substituted by Act XVI of 1942.

SEC. 20: SCOPE OF SECTION—(AS AMENDED IN 1942)—SCOPE—IF RETROSPECTIVE. —Where a debt has become barred by limitation long before Act (XVI of 1942), amending sec. 20, Limitation Act, came into operation, the amendment cannot be relied upon to operate retrospectively so as to revive the barred debt. 1945 M.W.N. 713=58 L.W. 618=(1945) 2 M.L.J. 405=1946 M. 72. Where a suit is filed before the amendment of sec. 20, Limitation Act by the Amending Act XVI of 1942, the amendment will not apply to it. 1943 O.W.N. (H. C.) 244=1943 A.L.W. 401. *See also* 1945 P.W.N. 178=1946 P. 59. The provisions of the Limitation Act applicable to suits are those which exist on the date of suit; sec. 20, as amended in 1942, must govern a suit instituted after the Amendment Act, though it may be on a handnote executed before, in 1934. 24 Pat. 391=1946 P. 60. Where under sec. 20, before its amendment in 1942, a payment was ineffectual to extend the time and the debt in question became unenforceable long before the Amending Act of 1942 came into force, the amendment cannot operate retrospectively so as to revive the barred debt. 57 L.W. 280 =A.I.R. 1944 Mad. 398 (2)=(1944) 1 M. L.J. 347. It is well-settled that the law of limitation which governs an an action is the law which prevails on the date when the suit is instituted, though the cause of action might accrue before the change in the law. Sec. 20, of the Limitation Act (as amended by the Amending Act XVI of 1942) therefore applies to a suit instituted in 1943 on a handnote executed long before that date, namely, in 1934. 24 Pat. 249=A.I.R. 1945 Pat. 368. In the absence of anything to the contrary, if a claim is within limitation according to the old Limitation Act on the date when the new Act or Amendment comes into force (in this case Amending Act XVI of 1942) and a proceeding is commenced after the coming into force of the new Act or Amendment it is the new Act or Amendment which would govern all decisions on the point of limitation. If, however, the right to sue or the right to apply had already been barred by the provisions of the Limitation Act then in force then unless there was something in the later Act or Amendment which could be deemed to apply retrospectively to revive claims which had already become barred, the new Act or Amendment could not be availed of for the purpose of saving limitation. I.L.R. (1945) A. 896=1946 A. 58= 1945 A.W.R. (H.C.) 246. Where after a suit on a promissory note had been decided and a revision under sec. 25, Provincial Small Cause Courts Act, is pendng, the new amended sec. 20 of the Limitation Act comes into force, the plaintiff applicant cannot take advantage of it in respect of his case. 1942 O. W.N. 582=1942 O.A. 498=A.L.R. 1942 Oudh 508=18 Luck. 241. The amendment to sec. 20 by Act I of 1927 has made it less stringent; either there should be an endorsement in the handwriting of the person making the payment, though unsigned, or the writing should be signed by him though not in his handwriting. 1935 M. 245=68 M.L.J. 63. *See also* 1942 Pat. 47. Under the present law all that is necessary is that the endorsement should have been signed by the person making the payment. It is quite unnecessary that the whole endorsement should have been written by the person making the payment. 181 I.C. 393=1939 Rang. 112. A payment under sec. 20 in order to save limitation must be a conscious act. 37 I.C. 756=32 M.L.J. 317. *See also* 152 I.C. 501=1934 R. 287. Under the English Law there is a distinction between secured and unsecured debts as regards the saving of limitation by payments. But sec. 20 contemplates debts of all kinds. Part-payment of principal or interest saves from limitation a debt whether secured or unsecured, under the Indian Law. 66 C.L.J. 104 =42 C.W.N. 18=1938 Cal. 129. Sec. 20 has no concern with a suit on an instalment bond which is governed by Art. 75 according to which the *terminus quo* is not the date of the payment but the date of non-payment in accordance with the stipulation of the contract. 58 C. 615=130 I.C. 571=1931 C. 157. It cannot be said that sec. 20, is inapplicable to cases falling under Art. 75. Where the 1st instalment due under an instalment bond with a default clause was about to be barred by limitation a payment was made towards it and endorsements were made which implied that the creditor was not then to sue for the whole amount, including the instalments not yet due, but was to hold his hand and allow the remaining instalments to become payable on their due dates; in a suit to recover only the balance of the 1st instalment as also the other instalments fallen due but not the entire amount it was *held*, that there was an express waiver—a waiver so clearly implied that there could be no doubt about it—and that after such a waiver the creditor was entitled to wait until there had been a further default or defaults in respect of which he was not prepared to sit idle and in respect of which he might either sue for the whole amount or for the recovery only of the amounts already accrued due and in such a case there could be no difficulty about the application of sec. 20, Limi-

tation Act, to the amount which was outstanding out of the first insalment, for under the general law there was nothing whiich prevented the application of sec. 20 to a payment made on account of an instalment which had fallen due under an instalment bond. I.L.R. (1943) All. 210=1943 A.L.J. 28=1943 All. 172. Decree directing payment by instalments—Absence of default clause making whole amount payable on default—Irregular payment of instalments—If part payment under sec. 20—Limitation for execution: 1943 Bom. 260. A statement of payment made in writing by the payer after the expiry of the original period of limitation is a sufficient compliance with sec. 20 if the payment itself was made within that period. 19 N.L.R. 6=1923 N. 117. *See also* 1929 M. 432; I.L.R. (1937) 2 Cal. 137=1937 Cal. 284. The material date under sec. 20 is the date of payment and not the date upon which the payment is endorsed. 24 Pat.L.T. 21= 8 Cut.L.T. 1=1942 Pat. 395. A cheque proved to be signed by a debtor and given by him in payment, which has been accepted by the creditor and duly honoured by the bank drawn on, would amount to an acknowledgment of payment within the meaning of the proviso to sec. 20. 1941 Rang. 344. Endorsement of payment on promissory note—Evidence to prove or disprove such payment —Admissibility. 4 A.W.R. 1342=1935 A. 58. *See also* 34 I.A. 27=29 A. 184 (P.C.) =17 M.L.J. 103; 1937 C. 284; 198 I.C. 564. Sec. 20 of the Act does not apply to payment of interest made beyond the period of limitation and such payment cannot operate to extend the period of limitation. 37 Bom. L.R. 165=1935 B. 213. The written statement is merely evidence of the fact and date of payment, and it is fact of payment that extends the period and it is the date of payment from which it is extended. (*Ibid.*) *See also* 1937 Cal. 284=I.L.R. (1937) 2 Cal. 137. A part payment of principal, appearing in the handwriting of the person making it is not required to be expressly stated as being such. 18 A.L.J. 1131=1921 A. 335 (2)=43 All. 216. *See also* 13 L. 448=1932 L. 212; 131 I.C. 867=1931 A. 375; 1937 S. 95 (section construed). But where, without there being a bare naked payment, the debtor expressly states in a letter that the payment is in full discharge, though as a matter of fact something more is found due, far from its amounting to an admission of right, there is an unequivocal denial of it. Such a payment will not have the effect under sec. 20 of removing the statutory bar. 41 L.W. 747=1935 M. 371=68 M.L.J. 73. Payment of part of debt "without prejudice" does not prevent extension of time under this section. 17 L. 737=1936 L. 629. A written satement filed in a suit which recites payment cannot be called in aid under sec. 20 for the purpose of that suit itself. 39 C.W. N. 139=1935 C. 255. Cl. (2) applies to a suit for recovery of mortgage-money by the mortgagee under sec. 68 of the T. P. Act. 8 8 O.L.J. 660=1922 O. 102. In the case of a decree debt part-payment and certification must be made before the application for execution is barred by limitation. 64 I.C. 72. =1921 C. 643. Payment of interest after the expiration of limitation but during vacation time does not save limitation. 55 C. 1210= 1929 C. 68. *See also* 1946 O.W.N. 224. Uncertified payment, if furnishes starting point. 1936 N. 281. Payment of interest by the lessee to one of the mortgagees enures in favour of all the mortgagees so as to save limitation. 110 I.C. 561 (2)=1928 A. 387. Where there is no other loan except that evidenced by a promissory note, payments of interest made by the borrower and endorsed on the back of the note are sufficient to save limitation for a suit on the original loan under sec. 20 (1). 49 C.W.N. 37=1945 Cal. 268. Applicability of section to Dekkhan Agriculturists' Relief Act, sec. 3 (*w*)—Suit under. 44 Bom.L.R. 138=1942 Bom. 131.

MEANING OF WORDS.—"Before the expiration of the prescribed period"—Meaning of. *See* 47 L.W. 726=1938 Mad. 683; 1940 Nag. 401; 1946 O.W.N. 224; 1938 A.W.R. (H.C.) 572=I.L.R. 1938 A. 861=1938 A. 606. Under sec. 20 it does not matter in the least when the endorsement on the document was made, so long as the payment itself was made within the period of limitation, and the date to be looked at is not the date on which the endorsement is written, but the date on which the payment is made. 181 I.C. 765=11 R.R. 485=1939 Rang. 118. *See also* 8 Cut.L.T. 1.

The expression "person liable to pay" does not mean the whole entire body of persons liable to pay and includes one of several debtors. 90 I.C. 774=1926 C. 150; 42 C.W.N. 18=1938 Cal. 129; *see also* 52 L.W. 453= (1940) 2 M.L.J. 726; 1938 Mad. 774=(1938) 2 M.L.J. 33=I.L.R. (1938) M. 968. (Joint Hindu family); 1940 Mad. 954=(1940) 2 M. L.J. 369 ("Person duly authorized" in joint Hindu family); 47 L.W. 517=1938 Mad. 579 =(1938) 1 M.L.J. 624 (Vendee of mortgaged property authorized to pay the debt). *See also* 51 L.W. 453=1941 M. 6=(1940) 2 M.L.J. 726; 1938 Rang.L.R. 591=1938 Rang. 280; Attachment and sale of movables of judgment debtor in execution—Sale officer paying sale proceeds to decree-holder— If agent of judgment-debtor — Limitation, if saved. 11 Cut.L.T. 54. Where the paternal grandmother of a Hindu minor executes a promissory note as his *de facto* guardian for a sum due by the minor's deceased father on a previous obligation, any payment made by her within time would be one "by the person liable to pay the debt". The question whether the *de facto* guardian was a duly authorised agent of the minor does not arise in such a case. The payment saves limitation for a suit against the minor on the promissory note. 56 L.W. 691=1943 M. W.N. 807=(1943) 2 M.L.J. 556=1944 M. 152. A part-payment can avail not merely against the person making the payment or those deriving title under him subsequent to such payment, but even against other persons

liable in respect of the same debt. 58 M. 418 =1935 M. 101=68 M.L.J. 470, *contra*. The expression "the person liable to pay the debt" is not the same thing as "a person liable to pay the debt" where there is joint liability. Where there are joint contractors, sec. 21 (2) makes it clear that the payment of interest by one of them does not extend the period of limitation against the other 15 P.L.T. 113=1934 P. 224. "The person making the payment" in sec. 20 means the person who in substance, though perhaps not in form, makes the payment. 53 C. 163=1926 C. 510. 'Debt' includes money payable under a decree which includes both final and preliminary. 49 A. 147=1927 A. 159; 1930 R. 64. As to meaning of the expression "Step-in-aid", *see* 1932 A.L.J. 1035 and notes under Art. 182, *infra*. "Writing signed by person making payment"—Meaning of. 152 I.C. 501=1934 R. 287.

A payment by cheque made by the debtor in favour of the creditor is a payment which satisfies the conditions of sec. 20. 58 L.W. 406=1945 M.W.N. 488=1945 Mad. 515= (1945) 2 M.L.J. 202.

PAYMENT OF "INTEREST"—MEANING OF —CASES BEFORE AMENDMENT ACT OF 1942.— "Interest" in sec. 20 means interest or any part of the interest due. 35 A. 378=11 A.L.J. 477. Under sec. 20, the debtor must also make it clear that the payment is towards interest as such or in part payment of he principal. This rule only applies where the manner of appropriation depe ds upon the ins'ructions of the debtor and failing them, on the choice of the creditor. But where there is no option to any party at all, *e.g.*, under sec. 13 (*f*) of the Dekkhan Agriculturists' Relief Act, under that provision of law the payment by a debtor must first be appropriated to interest, and the residue, if any, has to be credited towards the principal in spite of any agreement to the contrary. A payment by an agriculturist-debtor must therefore be taken to be a payment towards interest as such and would save limitation under sec. 20 of the Limitation Act, though he does not indicate so in the endorsement of payment. 45 Bom.L.R. 178=1943 Bom. 115. Payment of interest "as such" by the debtor clearly implies an appropriation of the payment to interest by the debtor himself and excludes the creditor's right of appropriation. The mere fact that a payment is made towards principal and interest where both are due and the sum paid does not exceed the one or the other, cannot involve the implication that any part of the payment was intended by the debtor to go towards interest. Such a payment is a payment generally on account or an open payment and cannot be regarded as a payment towards interest as such within the meaning of sec. 20 of the Limitation Act. 57 L.W. 280=1944 Mad. 398 (2)=(1944) 1 M. L.J. 347. The addition of the interest due to the principal amount by consent of the debtor. is payment for interest. 11 I.C. 552=13 Bom.L.R. 482. *See also* 30 I.C. 777 (1)=1915 M.W.N. 755; 29 I.C. 422=4 L.W. 553. A payment for interest by a judgment-debtor for loan bearing no interest will not extend limitation. 35 I.C. 177 =22 C.W.N. 325. Under sec. 20 the payment of interest must have been made *as such* either by express declaration, or under circumstances from which such an intention on the part of the debtor may be inferred. 20 I.C. 857=19 C.W.N. 237; *also* 19 I.C. 825; 72 I.C. 492=1924 P. 169; 31 I.C. 101; 46 I.C. 532. *See also* 44 M. 544=1921 M. 102=40 M.L.J. 218; 43 I.C. 812=27 C.L.J. 141; 99 I.C. 694=1927 M. 284; 51 M. 549 =1928 M. 509; 40 L.W. 595=1934 M. 656; 1936 M. 848=(1937) 2 M.L J. 54; 18 Pat. 253=1939 Pat. 389; 14 Luck. 588=1939 Oudh 141; 15 Luck. 524=1940 Oudh 179; 16 P. 27=1937 Pat. 410; 41 Bom.L.R. 455 =1939 Bom. 252; 1937 Pat. 583; 42 P.L. R. 638=1940 Lah. 442. Where interest is not paid as such, that is, the debtor does not clearly mention that the payment by him was to be appropriated towards interest ,it cannot be considered to have been paid by him towards principal. 1935 A.L. J. 23=1935 A. 47. It cannot be inferred that he paid interest as such from the fact that at the time of the payment interest in excess of the amount paid is due. 1935 A. L.J. 23=1935 A. 47. The effect of the proviso inserted to sub-sec. (1) of sec. 20 by the Amending Act of 1927 was to remove the distinction between the two kinds of payments as to all payments made after the 1st day of January, 1928. Though as to payments made before that date the words "as such" in the 1st part of the sub-section have some significance, because they make it clear that in the case of a payment towards interest which is not required to be evidenced by writing it should be clear that the payment was in fact towards interest and not left as a matter of doubt, those words are not material and have no significance as to payments made after that date. 16 Pat. 294=18 Pat.L.T. 563=1938 Pat. 183. After the 1st of January, 1928, it is a matter of indifference whether the payment is of interest or principal or both. So where a debtor makes a payment and acknowledges it in his own handwriting that it is in respect of the debt, but does not specify whether it is towards principal or interest, the acknowledgment gives a fresh period of limitation under sec. 20 of the Limitation Act. If the acknowledgment is merely of a payment without identifying the debt, it would not be sufficient. Under the amended section it is unnecessary to prove that the payment was towards interest. I.L.R. (1939) Nag. 235=1939 N.L.J. 205=182 I.C. 572=1939 Nag. 156. *See also* 16 Pat. 294=1938 Pat. 183. A payment intended to be made towards principal is effective to start a fresh period of limitation and it does not matter that the creditor afterwards changed his mind and chose to regard the payment as one towards interest. 1935 A.L.J. 304= 1935 A. 58. Where the payment is evi-

denced by a writing which is signed by the person making the payment, it makes no difference whether the payment is held to be for interest or for principal or for both. 58 M. 418=1935 M. 101=68 M.L.J. 470. The carrying forward of a balance including certain items of interest does not amount to payment of interest within the meaning of sec. 20. The effect of a payment of interest must be to lessen the defendant's liability on that account. 152 I.C. 319=1934 N. 219. Payment of interest saves limitation even though a part of the principal is paid at the same time. 1923 M.W.N. 564 (1)=1924 M. 123. A purchaser of mortgaged property at a Court auction, is a person "liable to pay the mortgage debt" within sec. 20 and therefore if he pays into Court a sum equal to the amount due for costs and an excess equal to the amount of interest, the excess must be regarded as payment on account of interest as such. 44 M. 544=40 M.L.J. 218. An intention to pay interest as such ought not to be inferred merely from the creditor's appropriating payments in accordance with his legal power. But if the method of appropriation is determined at the outset by express contract between the parties, specific appropriation is not necessary. 19 I.C. 849=9 N.L.R. 78. The mere appropriation by the creditor of the payments to interest is not such an indication. 19 I.C. 825; 1927 M. 110=98 I.C. 281. *See also* 1929 M. 811. But when the debtor consents to such appropriation, it is to be assumed to be a payment on account of interest as such within the meaning of sec. 20. 16 P. 27=18 P.L.T. 309. A mere payment generally towards "the decree amount, costs, etc.," without any appropriation by the debtor does not save limitation under sec. 20. *See also* 1929 O. 479; 1930 O. 287; 1946 P. 404 (Effect of mere open payment). But under certain circumstances, it may be *presumed* to have been made for *interest*, and limitation extended under this section. (22 L.W. 827; 44 M. 544; 1926 L. 329, F.); 1934 M. 45=68 M.L.J. 40; 1937 A.M.L.J. 118. Where it had been agreed between the parties that interest would be paid first and that anything paid by the debtor would go first towards interest, and the payments made were appropriated towards interest from time to time, it must be held that any payment made was towards interest as such and was sufficient to save limitation. 1937 P. 583. Where mortgagor was director and auditor of a Bank, and Bank credited sums which became due to him from time to time by the Bank towards interest due on the mortgage, and when it was being done with his knowledge and acquiescence, *held*, it could save limitation. 1936 M. 946. Where, in a suit to recover arrears of maintenance, the plaintiff relied on certain payments to save limitation. *Held*, that as it was not proved that those payments had been made as *interest*, they did not operate to save the suit from the bar of limitation. 146 I.C. 1033 =1934 P. 244. The holder of a decree payable by instalments can, after applying for execution, extend the period of limitation by entering the payment of interest towards the overdue instalments. 60 I.C. 935 =14 S.L.R. 198. If either the creditor or the debtor by himself goes on adding interest to principal in his own books, even though the same may be in pursuance of the original agreement, there would not be each time it is done a fresh payment by the judgment-debtor to the creditor so as to extend the period of limitation under sec. 20 of the Limitation Act. In order to amount to payment of interest under that section addition of interest to principal must be the result of an agreement between the parties on the date of such payment. 52 All. 480= 123 I.C. 820=1930 A. 467. On this section *see* the effect of the Amending Act of 1942. "Interest as such"—"Person liable to pay the debt"—Mortgage decree—Subsequent payment by mortgagor towards principal, interest and costs of decree and endorsement in copy of decree—Mortgagor parting with entire mortgaged properties before payment—Personal liability not enforceable at time of payment—Payment—If saves limitation for execution. 21 Pat. 330=1942 Pat. 363.

APPROPRIATION.—*See* 16 Luck. 113=1941 Oudh 56. A plaintiff wishing to avail of sec. 20 has in the case of an 'open' payment, to prove that he appropriated the sum towards the principal debt before the expiry of the period of limitation for a suit on the document in question. Though the writing evidencing the payment may come into existence at any time, the creditor's act of appropriation of the payment to the principal debt, is a very different matter. The language of sec. 20 cannot be regarded as satisfied unless within the prescribed period the creditor has in the exercise of his right done something which treats the payment as made on account of principal. To evidence a definite appropriation to the principal debt made by the creditor within the prescribed period, the manner in which the payment has been dealt with by the creditor in his own books of account will ordinarily be sufficient. But if it be true that until after the expiry of the prescribed period the creditor has treated the sum as paid on account of interest or has not done anything to treat it as paid on account of principal, then under the amended sec. 20, Limitation Act, part payment of principal has not been established. 67 I.A. 160=I.L.R. (1940) L. 470= 44 C.W.N. 625=42 Bom.L.R. 640=1940 A. L.J. 639=1940 P.C. 63=(1940) 1 M.L.J. 895 (P.C.). *See also* 224 I.C. 65=1946 P. 404. A payment made by a debtor without any appropriation as between principal and interest would not amount to a payment of interest as such within the meaning of sec. 20. 45 P.L.R. 407. Although it is open to a creditor to treat a payment by his debtor as a payment towards interest or as pay-

ment towards principal, provided he makes the appropriation within the period of limitation, he obviously cannot be allowed to appropriate it towards principal during the course of the suit when he has in fact appropriated and notified the defendant that he has appropriated it to interest. There is a definite distinction for the purpose of saving limitation between an appropriation by a creditor to principal and an appropriation by a creditor to interest. An appropriation by a creditor to principal will save limitation if the appropriation is made within the prescribed period, even though the appropriation is not notified until after the prescribed period. But an appropriation to interest will not save limitation if made by the creditor alone, because the words "payment of interest as such" in sec. 20, Limitation Act, are a clear indication that the intention of the debtor making the payment is what counts; and if the debtor has not indicated any intention that his payment should go towards interest, it is not open to the creditor to make up his mind for him. 45 Bom.L.R. 1014=A.I.R. 1944 Bom. 37 *See also* 1942 Pat. 395; 1945 Pat. 271; 1945 P.W.N. 178; 1943 All. 289=I.L.R. (1943) All. 598. Under sec. 20 the following propositions dealing with various aspects of part payments by the debtor can be laid down:—(1) If it is claimed that the debtor has made a payment towards interest, this can only save limitation if it is shown that interest was paid by the debtor, as such, that is to say, the intention of the debtor must be shown to have been that the payment should go towards interest. (*a*) It is, however, not necessary that this intention should have been made clear at the time of the payment; (*b*) It may be proved not only by statements made by the debtor at the time of payment but in any other manner as may clearly appear from the circumstances. (2) If the debtor at the time of payment specifies that the payment was towards principal, this would obviously save limitation. (3) If, however, the debtor makes an "open payment", that is a payment without appropriation by him (debtor) either towards interest or in part payment of the principal, the creditor may appropriate it towards principal or interest. (*a*) If the creditor appropriates it towards interest, limitation will not be saved because the payment is not made as such; (*b*) If, however, the creditor appropriates the payment towards part payment of the principal, limitation will be saved provided the appropriation is made before expiry of limitation. Such appropriation need not be made at once but it must be made before the limitation has expired; (*c*) If the appropriation is once made by the creditor towards interest, he cannot transfer it subsequently towards principal. (4) If the payment made is a sum larger than the amount due at the time of payment as interest, a part of it will necessarily be presumed to have been made towards the principal and, therefore, this payment will save limitation. (5) If the debt due does not bear interest, the payment again must necessarily be in part payment of the principal and, therefore, limitation will be extended under sec. 20. 42 P.L.R. 635=1940 Lah. 513; 1940 A.L.J. 332=1940 All. 338; 15 Luck. 573=1940 O.W.N. 647=1940 Oudh 340; 1938 Lah. 347; 1937 Lah. 820; 1941 A.M.L.J. 106; 1938 Rang.L.R. 591=1938 Rang. 280; 8 Cut.L.T. 1; 1940 Lah. 106=42 P.L.R. 103. Where money is paid by a debtor to his creditor without specifying whether the payment is towards interest or towards principal, leaving it to the option of the creditor to appropriate it as he likes, and the creditor appropriates it wholly towards interest due, there is neither a payment of interest as such nor a part payment of the principal which would save limitation under sec. 20. If the debtor is shown to have consented to such appropriation or to have been aware of it, it may be treated as a payment of interest as such. 178 I.C. 844=40 Bom. L.R. 968=1938 Bom. 467. Under sec. 20, payment must necessarily be made by the debtor or his duly authorised agent. Where a creditor who is in possession of jewels pledged with him as security for a debt, gets them sold, and appropriates the sums realised towards the debt, it cannot be said that they are payments made by the debtor for interest as such or towards the principal. 40 L.W. 270=67 M.L.J. 258=1934 M. 549. Receipt of the rent and produce of lands may be deemed payment for the purpose of sub-sec. (2). 35 C.L.J. 58=1922 C. 114; 1924 P. 169. No actual money need be paid. 47 L.W. 517=1938 Mad. 579=(1938) 1 M.L.J. 624; 1937 Pat. 410=16 P. 27; 1939 Bom. 252=41 Bom.L.R. 455. A creditor has the right to appropriate a payment made by the debtor without instructions towards the principal, if he so likes, but if the creditor wants to save limitation the appropriation must have been made within the period of limitation and the fact that the appropriation has so been made within the period of limitation can appear from the account books of the creditor. I.L.R. (1941) All. 291=1941 O.W.N. 293=1941 A.L.J. 50=1941 All. 132. Under sec. 20 payments towards interest must be made as such. 87 I.C. 746=1925 C. 1030; 90 I.C. 774=1926 C. 150; 28 Bom.L.R. 569=1926 B. 423. *See also* 55 A. 632=1933 A. 453 (2)=40 L.W. 595=1934 M. 656. Where payments are made by a debtor, but there is nothing to show, if it is for principal or interest, the Court is entitled to find on evidence for what purpose the payments were made. 1926 C. 150=90 I.C. 774. Payment of interest must be proved to be actually made; creditor's admission of receipt is not of much weight in saving limitation. 51 M. 549=1928 M. 509; 7 R. 522=1929 R. 339; 1931 S. 28. Debtor denying payment —Presumption that payment was towards principal and interest. 22 L.W. 827=1926 M. 183 (1). *See also* 14 I.C. 580=1912 M. W.N. 754=9 Cut.L.T. 14. Payment may be inferred to be towards interest from the

usual course of dealings. 46 I.C. 532. *See also* 44 C. 567=35 I.C. 638 (2)=22 C.W.N. 190; 51 I.C. 240=9 Cut.L.T. 14. As to admissibility of oral evidence to prove payment of interest as such, *see* I.L.R. (1927) All. 732=1937 A.L.J. 792=1937 All. 640. A payment not expressly made towards interest will be considered as payment towards principal under this section. 44 C. 567=22 C.W.N. 190. *See also* 46 I.C. 532; 52 A. 459=1930 A. 392. A debtor made a payment to a creditor to whom he owed 2 debts. Mere appropriation of the payment by the creditor to one of the debts cannot in the absence of evidence to show debtor's intention save limitation. 10 L. 750=1929 L. 288.

MODE OF PAYMENT.—As to mode of payment, *see* 44 B. 500=22 Bom.L.R. 385. Where payment is made in respect of the principal and interest due under a decree, sec. 20 comes into play and an application for execution of the decree made within three years from the date of the payment is within time. 32 S.L.R. 415=47 L.W. 606 =42 C.W.N. 509=1938 A.L.J. 150=1938 O.W.N. 310=172 I.C. 999 (P.C.). It is unnecessary under sec. 20 that money should actually pass as a settlement of account may be as effectual as a real payment. A transaction whereby the parties agree that an amount previously due by the creditor to the debtor shall be treated as amount paid by the latter to the former, is in substance identical with a transaction where the debtor receives actual payment and pays the amount back to the creditor and gives a fresh period of limitation from such date. 174 I.C. 585 =1938 Pat. 139. Mere entering of a fictitious payment could not amount to payment. What the statute required was a payment or at least something which was tantamount to a payment. 168 I.C. 152=1937 A.L.J. 166 =1937 A.W.R. 138=1937 All. 260. Part payment and acknowledgment—Distinction between—Settlement of accounts—Accounts stated, effect of. 36 C.L.J. 228=1923 C. 71. Payment by labour saves limitation. 35 I. C. 480=3 L.W. 552. Rendering service may be equivalent to payment of interest. 33 I.C. 134. If a cheque is delivered to a payee by way of payment and is received as such by him, it operates as a payment. 1925 C. 937=29 C.W.N. 496=87 I.C. 508; 1930 A. 392=52 A. 459; I.R. 1931 S. 29=129 I.C. 909=1931 S. 28, Foll, 42 C. 1043; 1937 S. 95. Land held under mortgage, not registered—Receipt of produce not payment of interest. 21 I.C. 281=9 N.L.R. 140; 36 C. L.J. 228=1923 C. 71. It is not necessary that payment of debt should be actually made in money. Any arrangement by which a discharge is effected has the same effect. 36 I.C. 77; 1923 C. 71=36 C.L.J. 228; (1938) 1 M.L.J. 624=1938 Mad. 571; 42 C.W.N. 548=1938 Cal. 538=I.L.R. (1932) 2 C. 320 (Payment by cheque is good to save limitation). *See also* 1929 M. 432. Taking of the profits by the plaintiff amounts to payment of interest under sec. 20. 25 I.C. 933 =7 L.B.R. 138. *See also* 21 I.C. 281=9 N. L.R. 140. But *see* 144 I.C. 641=1933 L. 741. Where a mortgagee with possession was not in fact given possession, but however collected some rents, it was held that it was not effective to save limitation. The section requires a payment or at least something which tantamounts to a payment. 1937 A.L.J. 166=1937 A. 260. *See also* 199 I. C. 710; 198 I.C. 816=(1941) 1 M.L.J. 116. Where a surety undertook to be responsible for part of a debt and creditor accepted the same and made a fictitious entry of payment in his accounts, it would not amount to 'payment' as contemplated by this section. (*Ibid.*) Where the defendants undertook to pay certain decretal debt and made certain payments and did not deny their liability. *Held,* that such payments were sufficient to extend the period of limitation. 1937 C. 226=172 I.C. 121.

PART PAYMENT OF PRINCIPAL.—Part payment of principal portion of decretal amount gives fresh starting point. 45 I.C. 903=46 C. 22; 14 L. 580=1933 L. 341; 1933 A. 363=55 A. 280. *See also* 44 B. 392=56 I.C. 429. Where on one side of the page of the account book is noted the advance of the capital amount and on the other side exactly opposite are noted the payments alleged, the only possible way to interpret such entries is that the amounts are debited against entries on the other side. 1941 A.M.L.J. 106. Where a claim is for principal and interest but the decree does not bear interest, any payment by judgment-debtor should be taken as payment towards principal and therefore it should be in the handwriting of the judgment-debtor or his agent duly authorized. 38 I.C. 293. [After the amendment by the Act of 1927, payment whether for interest or principal must be in writing signed.] Endorsement regarding part payment of debt must be by the person making payment. 108 I.C. 727 (1) =1928 L. 157 (1)=49 C.L.J. 37=1929 C. 432; 30 Bom.L.R. 500=1928 B. 417=52 B. 356. A cheque signed by a debtor and given in part payment of a debt would save limitation provided the cheque is duly honoured. 42 C. 1043=19 C.W.N. 724; 1933 L. 741= 144 I.C. 641. *See also* 1938 Cal. 538=I.L.R. (1938) 2 C. 320. If the cheque has been accepted by creditor before expiry of limitation, for saving limitation it is immaterial that the cheque has actually been cashed after period of limitation. 14 L. 580=1933 L. 341. *See also* 1937 S. 95. The proviso to sec. 20 is applicable to payments of instalments fixed by and payable under a bond; payment of each instalment is to be regarded as a part-payment of the principal amount due on the bond. 35 P.R. 1913=16 I.C. 961. Alleged part-payments made within three years but certified to the Court under O. 21, R. 2 more than 3 years after the date of the first application would extend the period of limitation. 29 M.L.J. 669=31 I.C. 318. *See also* 1936 Nag. 281; 42 C.W.N. 509 (P.C.). It is true that the payment has to be made

within the prescribed period but the Act does not provide that the acknowledgment is to be made within that period. It is the payment and not the acknowledgment which extends the period of limitation. The acknowledgment is merely a matter of evidence and provided it is signed before the suit is commenced, it is sufficient. (17 M. 92, Rel. on). 1937 C. 284=I.L.R. (1937) 2 C. 137=1938 Mad. 601=(1938) 1 M.L.J. 620. Burden of proving that a payment made by defendant saves limitation under sec. 20 rests on the plaintiff. 22 I.C. 959; 35 P.L.R. 529=1934 L. 475. Agent transgressing his authority cannot give the creditor the benefit of sec. 20. 1925 M. 703=48 M.L.J. 506. Suit on basis of "Sarkhat"—No mention of interest either therein or in endorsements of payments—Payments, if must be regarded as payments of principal. 1935 A.L.J. 657=1935 A. 605 (F.B.). As to applicability of sec. 20 to suit under sec. 3 (*w*) of the Dekkhan Agri. Rel. Act, *see* 45 Bom.L.R. 1065.

PAYMENT BY WHOM—AUTHORITY TO PAY. —Sec. 20 does not limit the extended period to the person who really makes payment, and the payment of interest by one of the debtors will give an extended period of limitation to the debt in respect of which the payment is made. If the debt is one, and indivisible, payment by one will interrupt limitation against all he debtors unless they can come within the exception laid down in sec. 21. But if the debt is susceptible of division and though seemingly one consists really of several distinct debts, each one of which is payable by one of the obligors separately and not by the rest, sec. 20 will keep alive that debt or rather the portion of the debt which has got to be discharged by the person who has made payment of interest. It cannot affect the separate shares of the other debtors unless on the principle of agency, express or implied, the payment can be said to be a payment on their behalf also. 1937 Cal. 191. The authority referred to in sec. 20 is an authority to make the payments, authority to make endorsement unnecessary. 1927 M. 959=53 M.L.J. 555. A payment of interest (in respect of a mortgage debt) saves time not only against persons paying but also against the subsequent purchasers of the equity of redemption or subsequent mortgagees. 41 A. 111=47 I.C. 845; 44 C. L.J. 475=98 I.C. 381=1927 C. 193. *See also* 140 I.C. 145=1933 P. 1=12 P. 73. The burden lies upon the plaintiff to prove that payment of interest was made either by the debtor or by his duly authorised agent. 23 I.C. 863. *See also* 54 I.C. 802. As to payment by authorized agent *see* 3 L.L.J. 250; (1940) 2 M.L.J. 369=1940 M. 954; (1940) 2 M.L.J. 726=1941 M. 6. Under sec. 20 the authority of the agent may even be implied from the facts and circumstances of the loan. The section does not require any formal authorisation. 73 C.L.J. 356=1941 Cal. 643. *See also* 1941 A.M.L.J. 63. Leach, C.J., and King, J. (Patanjali Sastri, J., dissenting) —Where a mortgagee undertakes as a part of the consideration for the mortgage to discharge a debt due by the mortgagor, he cannot be deemed to have authority to make a payment of interest or a part payment of principal, for purposes of sec. 20. Whether there is authority to make a part payment is a question of fact. Of course, if the person who is to make the payment is left a discretion in the matter, his principal will have to suffer the consequences of a payment to account, if the conditions of sec. 20 for the saving of limitation are also complied with. Where the mortgagee is directed to pay in full the debt due by the mortgagor, it cannot be said that there is any discretion left to the mortgagee in the matter. His duty is to discharge the debt in full and he has no authority to do anything else. If he makes only a part-payment that will not bind the mortgagor and cannot save limitation for a suit against the mortgagor. I.L.R. (1941) Mad. 191 =1941 Mad. 67 (2)=(1941) 1 M.L.J. 77 (F. B.). But *see* 1941 P.W.N. 667=1942 P. 166 *contra*. A vendee had no authority to keep a debt alive by making a part-payment when he was asked to pay it by the sale-deed. 1922 M. 401; 54 C. 179. Where one member after partition was allowed to manage the properties on behalf of all, an acknowledgment by him after partition is not binding on the others unless it can be proved that he was their authorized agent under sec. 21. 3 L.W. 231=33 I.C. 986. Joint Hindu family—Payment by a karta binds other members. 52 I.C. 436=31 C.L.J. 7; 6 P. 811=1928 P. 156; *see also* 22 Pat.L.T. 1054=1941 P. 208; even where other minor members are executants of a document with another person as guardian when such guardianship is invalid. 44 L.W. 467=1936 M. 871. *See also* 48 L. W. 268=1938 Mad. 853=(1938) 2 M.L.J. 501. A payment through a messenger made by a manager saves limitation. 50 I.C. 862 =23 C.W.N. 336; 1926 C. 510=53 C. 163= 94 I.C. 657. Payment by mortgagor after parting with equity of redemption saves limitation also as against purchaser. *See* 22 I.C. 510; *see also* I.L.R. (1942) Mad. 308= 1942 Mad. 200=(1940) 2 M.L.J. 913. The purchaser of the equity of redemption is a person liable to pay the debt and can make a payment to save limitation. 54 C. 179=98 I.C. 204=1926 C. 1218. A purchaser of the equity of redemption in a mortgaged property is a person liable to pay the mortgage debt within the meaning of sec. 20, and a second mortgagee is a person liable to pay the first mortgagee. Where a purchaser of the mortgaged property at a sale by the Official Receiver in the insolvency of the mortgagor makes a payment to the first mortgagee towards interest, falling within sec. 20, and endorses the same on that mortgage deed, such payment starts a new period of limitation which affects a second mortgagee whose charge was created before the payment. 56 L.W. 75=1943 M.W.N. 64=A.I.R. 1943 Mad. 395=(1943) 1 M.L.J. 135. Payment to one partner of a debt due to the firm is a valid discharge of the debt only when the payment is a money payment. 9 I. C. 116=13 C.L.J. 234. *See also* 41

M. 427=34 M.L.J. 573=23 M.L.J. 261; *also* 37 M. 146=25 M.L.J. 501; 28 I.C. 845. If a mortgagor makes a payment to the sub-mortgagee it saves limitation also as against the sub-mortgagor. 44 I.C. 213=3 P.R. 1918. Payment by one of the mortgagees saving time against all. *See also* 1927 A. 209=99 I.C. 424; 1936 Pat. 361; 1938 Cal. 129=42 C.W.N. 18; 1938 Pat. 383. A Hindu widow can keep her husband's debt alive by making payments under sec. 20. 1928 M. 972 [35 A. 227 (P.C.), Dist.]. Agent duly authorized to make payment—Judge, if an agent. 44 M. 971=41 M.L.J. 423=1921 M. 704. Payment of money by the Court to the decree-holder cannot extend limitation in favour of decree-holder. 87 I.C. 989=1925 M. 703==48 M.L.J. 506. (44 M. 971, Dist.) Payment by the agent through a servant is payment by the agent on behalf of the principal. 54 I.C. 318=1919 M.W.N. 797;1921 O. 29=61 I.C. 918=8 O.L.J. 115. A receiver in a partition or administration suit authorized to pay interest on debts can, by his payment, keep alive the debts. 26 I.C. 393=16 M.L.T. 489. The Official Receiver is not an agent of the insolvent and cannot acknowledge debt on behalf of insolvent. The words 'duly authorised' in sec. 20 of the Limitation Act mean authorised by the debtor. 1937 A.M.L.J. 101. Where in execution of a decree the movable property of the judgment-debtor is attached by a *Chagla Kanungo* under a warrant issued by the Court, and the *Chakla Kanungo* sells the property and pays the sale proceeds to the decree-holder, such payment does not save limitation under sec. 20, Limitation Act. The warrant officer cannot be regarded as an agent of the judgment-debtor duly authorised to make such payment to the decree-holder. 11 Cut.L.T. 54=1946 P. 131. A mortgagee authorized to pay off a debt due by the mortgagor is not his "duly authorized agent". 23 I.C. 810=26 M.L.J. 509. Payment by parties and privies operates as good payment. 17 I.C. 619=24 M.L.J. 66. Where a father and his son form together a joint Hindu family and a debt is contracted by the father, the son is in the lifetime of the father neither a debtor nor, in the absence of any evidence, an agent of the father for the purposes of sec. 20. 47 I.C. 655=5 O.L.J. 419. *See* now sub-sec. (3), Cl. (*b*) to sec. 21. But *see* 6 P. 811=1928 P. 156, *contra*. Where a Hindu executes a promissory note and keeps it alive, and becomes a convert to Islam along with his eldest son and dies, and subsequently his younger sons make payments and endorse the same, the payments are by persons liable to pay the debt and under sec. 20 limitation is saved not only against them but also against the eldest son though the latter has become a Mahomedan. His conversion to Islam cannot operate to rid him of his liability for the debt due under the promissory note of his father. I.L.R. (1939) Mad. 140=1939 Mad. 69=(1939) 1 M.L.J. 68. Payment by co-mortgagor, if binding on the other mortgagors. 45 I.C. 613=5 O.L.J. 73; 163 I.C. 808=1936 P. 361. *See also* 1941 Rang. 37. Payment by one co-contractor will not save limitation against the others under sec. 21. 74 C.L.J. 327=1942 C. 251; 1942 C. 28=1942 C. 25. Payment by even a *de facto* guardian for the benefit of a minor to avoid law suits, extends period of limitation against the minor. 40 I.C. 809. Burmese married couple of the cultivating class working on land together, work it as partners to all intents. When one is temporarily incapacitated there is a natural presumption that the wife has ostensible authority to act for both on the *quasi* partnership and is an agent within sec. 20. 12 I.C. 23=4 Bur.L.T. 217. Where payment of interest is made by one defendant on behalf of another, limitation as against the latter will be saved only on strict proof by plaintiff, that the former had authority to make such payment on his behalf. 11 I.C. 858=4 Bur.L.T. 191. Payment by one of several co-heirs making payments towards a debt saves limitation. In this case payment for interest by the mother who was one of the persons liable to pay the debt was held to save limitation as against her co-heirs also. 1929 M. 419=56 M.L.J. 630. But *see contra*, 1937 C. 191 (Case of Muhammadan mother and debt due on hand note). A Burmese Buddhist husband is not necessarily the agent of his wife. It may be that no formal authorization is required under sec. 20 but it must be shown that there was at least implied authority. 1939 Rang. 287. Payment of interest by one of two mortgagors keeps alive the mortgage and not only the personal liability of the person who actually pays interest. 119 I.C. 437=1929 A. 380. But *see* 1929 M. 881=57 M.L.J. 588. Where it is agreed between a third person and the promisor that the former would discharge the latter's debt evidenced by a promissory note and it is clear from the promisor's evidence that he left it to the third person to do so, an implied authority from the promisor to the third person to pay the interest on his behalf as it became due is established so as to save limitation under sec. 20. 34 C.W.N. 145=1929 P.C. 297 (P.C.)=57 I.A. 1. Payment by mortgagor—Prior assignment of mortgaged property to third person—Effect of payment against third person. *See* 60 C. 87=36 C.W.N. 1138=1933 C. 325.

PAYMENT BY PRINCIPAL—EFFECT OF, AGAINST SURETY.—Payment of interest by principal debtor does not save limitation against surety. 44 C. 978=21 C.W.N. 482=39 I.C. 705; 1931 O. 310=8 O.W.N. 544; 44 C.W.N. 985=1940 Cal. 401=I.L.R. (1940) 2 Cal. 362; 20 N.L.J. 140=1924 N. 411; 28 B. 248; 120 I.C. 576=1930 M. 112 (2); 152 I. C. 464=40 L.W. 479=1934 M. 639. But *see also* 21 M.L.J. 455; 53 I.C. 586; 20 N.L.J. 140=1924 N. 411. (Conflict of ruling, *see* cases *infra*.). *See also* 9 I.C. 8=21 M.L.J. 455 (28 B. 248, Foll.); 10 R. 398=139 I.C. 38=1932 R. 88. A fresh start is given to limitation against the surety under sec. 20 by the payment of interest by the principal debtor. 53 I.C. 586

=105 P.R. 1919. But *see* 44 C. 978, *also* 44 I.C. 213=3 P.R. 1918; 10 R. 398=139 I.C. I.C. 138=1932 R. 88 *contra.*

PAYMENT BY SURETY—CLAIM BARRED AS AGAINST PRINCIPAL DEBTOR—DECREE AGAINST SURETY.—Though the liabilities of the principal debtor and the surety arise out of the same transaction the liabilities of the two persons are distinct for the purpose of application of sec. 20. Consequently, even if a suit is barred by limitation as against the principal debtor, if the surety has made certain payments and endorsements on the bond on which the suit is based, thus preventing limitation running as against him, the plaintiff is entitled to a decree though as against the surety only. 10 R. 398=1932 R. 88. *See* also 191 I.C. 608.

WRITING.— Handwriting — Part-payment of principal of the debt—Joint account—Written by one debtor but signed by both is good and saves limitation. 28 Bom.L.R. 354 =1923 B. 369. The actual signature of the debtor is not necessary provided that the acknowledgment required by sec. 20 is in the handwriting of the person making the payment. But the acknowledgment must appear on its face to be on account of the debt. 196 I.C. 392. Mere signature insufficient without entry in handwriting. 41 B. 166=36 I. C. 359=18 Bom.L.R. 973. An endorsement of a part-payment of the principal bearing no signature or any mark of the payer will not extend limitation under sec. 20. 28 C.L.J. 222=44 I.C. 516=23 C.W.N. 930. A part-payment of the principal of a debt must in order to be operative under sec. 20 not only be in the handwriting of the debtor or his agent but it is also necessary that the writing should show that the part-payment was a payment towards the debt in question. It is not enough that the amount paid by the debtor is placed to his credit generally. 6 L.W. 790=43 I.C. 20. *See also* 1929 C. 479=56 C. 442; 163 I.C. 915=1935 P. 386; 1939 Rang. 118 (Payment by daughter of person liable—Endorsement by them necessary). A part-payment of the principal of a debt must be in the handwriting of the person making the payment but this rule does not apply to payment of interest. 1914 M.W.N. 910=26 I.C. 507 (1)=16 M.L.T. 505. Endorsement of part-payment by the manager of a joint family saves limitation. 6 P. 811=1928 P. 156. [*See also* sec. 21, sub-sec. (3), Cl. (*b*).] Limitation under sec. 20 cannot be extended unless the payment towards the principal is in the handwriting of the debtor. 62 I.C. 297=17 N.L.R. 40=1921 N. 46. *See also* 1922 P. 446; 151 I.C. 426=1934 R. 227. Where the person making part-payment is unable to write himself and therefore gets another person to make the endorsement for him and, on his behalf, the provisions of sec. 20 are sufficiently complied with. 62 I.C. 644=2 P.L.T. 355=1921 P. 476. Under sec 20 it is sufficient for an illiterate person paying the money to affix a mark below an endorsement written by another person. 12 I.C. 23=4 Bur.L.T. 217; 36 C.W.N. 188= 1932 C. 440=137 I.C. 788 (2). In the case of a person who knows how to write, the payment must appear in that person's own handwriting and he cannot be allowed to adopt by mere signing any writing made by somebody else as in the case of an illiterate man. 1930 R. 64. Under sec. 20 when an agent makes a payment, it is he who should endorse the entry of payment and the debtor's handwriting is not required. 1 P.L.T. 17=54 I.C. 802. Part-payment of a decree amount must be in the handwriting of the debtor to save limitation for an application for execution. 48 I.C. 728=4 P.L.J. 365. Under sec. 20 the person making a payment should be the person signing the writing. 35 I.C. 375=1 P.L.J. 474. Money order coupon in handwriting of debtor is sufficient acknowledgment. 1930 A. 123=124 I.C. 2.

SEC. 20 (1).—The first part of proviso to sec. 20 (1) as amended by Act I of 1927 is inapplicable to a case where the aelleged payment of interest was made before 1st January, 1928. 1929 O. 479=6 O.W.N. 776. The amendment has been made in favour of the creditor who is not able to prove the writing of the debtor not only relating to the fact of the payment but also to the acknowledgment of the fact of payment. 14 L. 580=1933 L. 341. On this proviso, *see also* 1932 A.L.J. 1035=1933 A. 49. Sec. 20 (1) does not say anything at all about the origin of the money with which the part payment is made. It is quite sufficient if a part-payment is made and it is made by a person who is authorised to make it. Where two debtors are equally liable jointly and severally on a promissory note and when both of them are pressed for payment one of them makes the payment with the consent of the other, the payment saves limitation against both. 40 L.W. 590=1934 M. 623=67 M.L.J. 908. As to effect of the proviso, *see* 16 P. 294=1938 P. 183. The proviso does not require that the writing itself must indicate that payment was made towards principal or interest. 44 L.W. 339 =1936 M. 848=(1937) 2 M.L.J. 54. Nor does it require payment itself to be made in any form, and a promissory note may be given by way of payment. 1936 M. 848. Where the debtor is illiterate it is necessary for him to sign the writing under which the payment is made. The word "sign" in sec. 20 includes in view of the definition given in sec. 3 (52), General Clauses Act "making a mark". An endorsement by another person at the direction of the debtor making the payment is not sufficient for purposes of sec. 20 in the absence of a mark by the debtor himself under the endorsement. 207 I.C. 61=16 R. Pesh. 2=1943 Pesh. 36. Where the question is as to whether a payment under a bond is towards principal or interest for the purposes of sec. 20, no question of admissibility of oral evidence to prove it can arise because oral evidence is expressly ruled out, the law requiring evidence in writing in the acknowledgment referred to. 1944 A.L.W. 207=1944 O.A. (C.C.) 110= 1944 O.W.N. 154=20 Luck. 43.

[1][Provided that, save in the case of a payment of interest made before the first day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.]

Effect of receipt of produce of mortgaged land.

(2) Where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment for the purpose of sub-section (1).

Explanation.—Debt includes money payable under a decree or order of Court.

21. (1) The expression "agent duly authorized in this behalf," in sections

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[1] Substituted by Act I of 1927.

SEC. 20 (1) PROVISO.—The proviso to sec. 20 (1) inserted by the Amending Act of 1927, applies to sub-sec. (1) and does not apply to sub-sec. (2) of sec. 20. It cannot be said that the proviso applies to the whole section. 21 P.L.T. 770=1940 Pat. 512. Where the fact of payment appears in the handwriting of the debtor there is no reason why the said writing should not be taken as an acknowledgment of payment also. There is nothing in the proviso to sec. 20 which precludes the same document from being treated as evidence of the fact of payment as well as an acknowledgment of the payment. I.L.R. (1938) 2 Cal. 320=42 C.W.N. 548=1938 Cal. 538.

DECREE DEBT—UNCERTIFIED PAYMENT.—Uncertified payment cannot save limitation. 30 I.C. 51=9 S.L.R. 27. *See also* 1933 M. 674; 1936 N. 281. Part-payment by judgment-debtor certified beyond limitation, when saves limitation. 101 I.C. 796=1927 S. 268 (1). A payment under sec. 23 must be of such a nature that it could be an answer to a suit brought by the plaintiff to recover the amount. 30 I.C. 51=9 S.L.R. 27 [19 M. 340; 25 B. 496; 25 C. 852 (P.C.), Foll.].

CL. (2).—For the applicability of sec. 20 (2) the receipt of rents and profits must be by a person in the capacity of a mortgagee only. Where a person is in possession as a vendee of mortgaged property, the receipt of rents and profits by him cannot be said to be only in the capacity of a mortgagee, even though he claims to be subrogated to the rights of the mortgagee by payment of the mortgage. I.L.R. (1943) Nag. 764=1943 N.L.J. 611=1944 Nag. 37. Sub-sec. (2) to sec. 20, contemplates only the case of mortgages and does not apply to cases of charges. 1943 O W.N. 85=A.I.R. 1943 Oudh 211=18 Luck. 637. Where a usufructuary mortgagee remains in possession after a final decree on the mortgage has been passed, receipts by him of the profits must be treated as receipts by way of interest and each receipt starts a fresh period of limitation for an application for execution of the decree. Sec. 20 (2) would clearly apply even when a decree has been passed in favour of the mortgagee. I.L.R. 1941 M. 963=1941 Mad. 737 =(1941) 2 M.L.J. 248. *See also* 1940 M. 461=(1940) 1 M.L.J. 134. Mortgagee in possession after preliminary decree under invalid sale—Receipt of rents and profits saves limitation for application for final decree. I.L.R. (1941) M. 739=1941 M. 475 =(1941) 1 M.L.J. 388. For the applicability of sec. 20 (2) the receipt of rents and profits must be by a person *in the capacity of a mortgagee.* Where that person is also the owner of the property, the receipt of rents and profits by him cannot be said to be in the capacity of a mortgagee. Where a prior mortgagee in execution of a final decree on his mortgage purchases the mortgaged property and obtains delivery of possession of the same, the receipt of rents and profits by him cannot be regarded to be a receipt by him as mortgagee within the meaning of sec. 20 (2), so as to save limitation for a fresh suit by him on his mortgage on dispossession by the purchaser of the same property in execution of a decree on a subsequent mortgage held by a person who was not impleaded in the suit on the prior mortgage. 45 L.W. 684=1937 Mad. 642=(1937) 2 M.L.J. 170. *See also* 51 L. W. 191=1940 Mad. 461=(1940) 1 M.L.J. 134. Where a mortgagor is left in possession of part of the mortgaged property as tenant of the mortgagee, the receipt of rent and profit by the mortgagee should be considered as payments of interest as such within the meaning of sub-sec. (1) of sec. 20 of the Limitation Act. I.L.R. (1938) All. 218=1938 A.L.J. 18=1938 All. 188; 72 I. C. 492=1924 P. 169. The enjoyment of the usufruct of the property by a person in possession under a void mortgage is not as mortgagee but as a trespasser and such enjoyment of the usufruct by him year after year cannot give a fresh start of limitation for a suit on the mortgage. 19 Pat. 507=21 Pat.L.T. 219=1940 Pat. 494.

SEC. 20, ARTS. 62 AND 97 AND CONTRACT ACT, (1872), SEC. 65.—In a suit under sec. 65, Contract Act, to recover the consideration paid for a void mortgage the payments made towards the mortgage cannot save limitation because they were acknowledgments of liability under the void contract and not acknowledgment of liability under sec. 65 of the Contract Act. The article applicable to such a suit is Art. 62 of the Limitation Act and the period of three years begins to run from he date when the money was received. Art. 97 would not apply. I.L.R. (1943) All. 604=1943 A.L.J. 250=1943 All. 294.

SEC. 21: SCOPE AND EFFECT 49.—Sec. 21 shows that for the purposes of that section the payment made by a guardian must be

Agent of person under disability.

19 and 20, shall, in the case of a person under disability, include his lawful guardian, committee or manager, or an agent duly authorized by such guardian, committee or manager to sign the acknowledgment or make the payment.

Acknowledgment or payment by one of several joint contractors, etc.

(2) Nothing in the said sections renders one of several joint contractors, partners, executors or mortgagees chargeable by reason only of a written acknowledgment signed or of a payment made by, or by the agent of, any other or others of them.

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held to be a payment by an agent duly authorised on his behalf. The Legislature does not enact that for the purposes of Limitation Act the guardian shall be treated as an agent of his ward. 22 Pat. 114=9 B.R. 260=1944 Pat. 218. "Agent duly authorised" in sec. 21 does not include a *de facto* guardian. For purposes of secs. 19 and 20 what is required is a lawful guardian, which a *de facto* guaddian is not, and not merely a person who under certain circumstances may have power to alienate the property of a minor. I.L.R. (1943) Bom. 486=45 Bom. L.R. 740=1943 Bom. 381. On the death of the father of a minor, his mother is not only the natural but also the legal guardian under Hindu Law and being such, she is also a lawful guardian within the meaning of sec. 21 and can as such acknowledge debts. 10 O.W.N. 188=1933 O. 132. *See also* 1939 M.L.R. 88 (Civ.): 35 P.L.R. 661=1934 L. 55. The brother under the Hindu Law is not a lawful guardian within sec. 21 during the life-time of the mother. 42 I.C. 472=45 C. 630. Where a person executed a mortgage bond and registered it for himself and on behalf of a minor as guardian and made an endorsement of some payment on the document when the minor had not attained majority, his acknowledgment was proper as he was certainly a person authorised within the meaning of sec. 21. 38 L.W. 439=1933 M. 713=65 M.L.J. 380. A person lawfully acting as guardian though not appointed for the purpose, is a lawful guardian when acting for the benefit of the minor. 19 I.C. 362=24 M.L.J. 428. An admission amounting to an acknowledgment within the meaning of sec. 19 made by the *guardian of a minor* appointed by the Court is binding on the minor. 13 P.L.T. 509=1932 P. 337. But in order that such an acknowledgment may be effective, the person so appointed must have acted as a *de facto* and not as a *de jure* guardian in making the acknowledgment. 1932 M.W.N. 1193. *See also* 1938 M.W.N. 671=1938 M. 836=(1938) 1 M.L.J. 251: I.L.R. (1943) B. 486=1943 B. 381 (*De facto* guardian of Mohamadan minor); 1940 Rang.L.R. 603=1941 R. 37. The authority contemplated by sec. 21 need not be special authority given for the purposes of making payment of the particular loan. 1933 C. 826. A *de facto* guardian of a Hindu minor is not an agent duly authorised to acknowledge a debt on behalf of a minor within the meaning of sec. 21 as a *de facto* guardian cannot be considered to be a lawful guardian under sec. 21; and an acknowledgment by him is not valid and cannot keep the debt alive against the minor. I.L.R. (1939) Mad. 65=48 L.W. 268=1938 Mad. 853=(1938) 2 M.L.J. 501. It is well-established law that in respect of a minor's interest in a joint Hindu family property the manager of the family alone can bind the minor within certain limits and no guardian of property can be appointed or recognised. Where a minor has a separate guardian for his person and for his property, it cannot be said that an acknowledgment by the guardian of his person, *e.g.*, his mother falls within sec. 21 of the Limitation Act. The section clearly contemplates the guardian of the minor's property making acknowledgments on his behalf; and in the case of a minor in a joint family it is only the manager of the family who can bind the minor by a valid acknowledgment. 55 L.W. 529=1942 Mad. 663=(1942) 2 M.L.J. 281. Joint mortgagors—Payments of interest by one—Effect. 55 I.C. 763; 1943 Bom. 381=45 Bom.L.R. 740. Where the debt is kept alive by part payment and the liability of the debtors is several, then it should be proved that the payers represented the other persons. 32 I.C. 608; 165 I.C. 828=1936 R. 504 (Joint promissory note). But the payment of interest by a debtor does not save limitation against his co-debtors whose agent the payer was not. 59 C. 1128=36 C. W.N. 487=1932 C. 620. Sec. 21 (2) applies to payments made by one of the joint executants of a promissory note. 1937 R. 195; 1936 Rang. 504; I.L.R. 1935 All. 258=1939 A. 230. Sec. 21 (2) is not exhaustive and the test is whether the person keeping the debt alive had express or implied authority on behalf of others. 32 I.C. 608. The conduct of the parties might show that one joint promisor has implied authority to make an acknowledgment on behalf of the other. 25 I.C. 927 (1)=1914 M.W.N. 792. Payment of interest by one *of the heirs* on a debt due by the deceased person does not save limitation as against the other heirs. 9 L.B.R. 78=40 I.C. 858. *See also* 14 I.C. 128. Where a debt is due by two brothers and, on a partition between them, it is allotted to one of them, payment of interest by such brother will not save limitation as against the other brother unless there is an implied or express authority conferred by the partition arrangement to make such payment of interest. (1929 P.C. 297, Dist.) 1933 C. 826; 45 L. W. 767=1937 Mad. 586. In the case of a going *partnership concern*, there is a presumption that each partner is entitled to

sign an acknowledgment on behalf of the firm in the ordinary course of business. 33 P.L.R. 584=1932 L. 456; 34 Bom.L.R. 623 =1932 B. 316; 32 Bom.L.R. 201=1930 B. 236; 1939 Lah. 397=41 P.L.R. 90; 1937 A. M.L.J. 115. The acknowledgment by one *partner* must be shown to be impliedly authorised by others; when it was made in the usual course of business, it will save limitation. 56 C. 556=1929 C. 714. Part payment by one partner after dissolution, if saves limitation. 1925 M.W.N. 707=1926 M. 114=50 M.L.J. 67. Acknowledgment of liability by one partner after cessation of business does not bind other partner. 7 L. 403=99 I.C. 563. *See also* 1928 M. 972; 50 All. 982=1928 A. 491. The expression "joint contractors" in sec. 21 (2) must be taken to include co-mortgagors. An acknowledgment or payment by one co-mortgagor is not therefore effective as against the other co-mortgagors for the purposes of secs. 19 and 20. I.L.R. (1943) Bom. 486= 45 Bom.L.R. 740=1943 Bom. 381. *See also* 1942 Cal. 251=I.L.R. (1941) 2 Cal. 576. *See* 26 A.L.J. 723=1928 A. 387; 1939 Rang. 287 (Principal and Surety). An acknowledgment not stating amount of liability acknowledged by *guardian* is not proper. 1928 C. 850. An *admission by a pleader* in a petition made in course of his business is binding as an acknowledgment so as to give a fresh starting point irrespective of whether the pleader represents majors, or a guardian for minors. 133 I.C. 155=1931 A. 398. The word "chargeable" in sec. 21 (2) *prima facie* means every kind of chargeability possible by reason of secs. 19 and 20, that is, every kind of chargeability under the original contract, and is not limited to personal liability only in the case of a mortgage. 30 L.W. 677=1929 M. 881=57 M.L.J. 588. In the case of a pronote executed by a Hindu undivided father and son, a payment by the father alone cannot save limitation against the son in the absence of proof that the loan was contracted for the benefit of the entire family. Mere proof that the father was the manager of the family cannot save limitation. [25 Mad. 220 (F.B.), Rel. on.] 195 I.C. 52=1941 Pat. 208. *See also* 1944 M. 33=(1943) 2 M.L.J. 610. Where a Hindu widow acting as the *de facto* guardian of the minor son of her deceased husband's brother, who is the sole surviving coparcener in a Hindu family, has executed a mortgage, purporting to act on his behalf but without legal authority to do so, an acknowledgment or payment by her will not save limiattion as against the minor as it cannot be said that she is acting as his agent under sec. 21 (3). I.L.R. (1943) Bom. 486=45 Bom.L.R. 740=1943 Bom. 381. A payment made after petition by a member of a Hindu family of interest due on a promissory note executed by the managing member when the family was joint will not start a fresh period of limitation against the other members of the family, the payment having been duly acknowledged by the person who made it. While the family remains joint only the manager or his duly authorised agent can extend the period of limitation against family. After partition there is no manager, and therefore no one can extend the period of limitation in respect of a family debt so as to affect the erstwhile members. 1941 M.W.N. 1012=54 L.W. 596=1941 Mad. 925 =(1941) 2 M.L.J. 883 (F.B.). Sec. 20 does not contemplate the interruption of limitation where payment is made by one judgment-debtor independently of the other judgment-debtors. Sec. 21 (2) does not lend any support to the view that payment by one of the judgment-debtors should have the effect of interrupting the running of limitation as against the other. Sub-sec. (2) of sec. 21 is merely explanatory, it does not lay down exceptions to the general principle embodied in sec. 20. I.L.R. (1939) All. 258=1939 A.L.J. 66=1939 A. 230. Where a manager and other members of a Hindu undivided family are liable to pay a debt and a payment is made by the manager, it may be possible to infer from the circumstances that the payment was made by the managing member on behalf of the other members as well on the principle of implied agency and that in that connexion the very fact of his being a managing member would itself be a factor of importance. 58 M. 418 =1935 M. 101=68 M.L.J. 470. *See also* 42 C.W.N. 18=1938 C. 129; 70 C.L.J. 201=44 C.W.N. 299=1940 Cal. 137. But it would be different after partition when there cannot be any manager. 45 L.W. 767=1937 M. 586. *See also* I.L.R. (1938) M. 968=1938 M. 774=(1938) 2 M.L.J. 33. On the death of the parents neither by Hindu Law nor by custom is the grandfather recognised as the lawful guardian of the minor and endorsement of payments by the paternal grandmother cannot bind the minor and save limitation. I.L.R. (1940) Mad. 358=1940 Mad. 33=(1939) 2 M.L.J. 884 (F.B.). An acknowledgmen by a Hindu widow or her agent of a liability is binding against the reversioners to the estate of her husband under sec. 21 (3). (1945) P.W.N. 225=1946 P. 120. The term "joint contractors" in sec. 21 (2) also includes joint mortgagors. Sec. 21 (2) must be read in conjunction with secs. 19 and 20. Payment of interest as such by one of two joint mortgagors who is not an agent of the other does not itself serve to keep alive the debt as against the other who has not authorized the payment. The claim against the other is barred personally as well as against the share of the property pledged by him. 1939 Rang 287; 46 L.W. 688=1938 Mad. 111; 1936 Rang. 504; 1940 R.L.R. 603=1941 R. 37. *See also* 1943 Bom. 381=45 Bom.L.R. 740. Payment of interest made by some of the descendants of a deceased mortgagor binds also the other descendants even though these latter were divided from the family before the payment was made. Sec. 21 (2) cannot save them because the categories mentioned in the section are not merely illustrative, and it does not cover

[1][(3) For the purposes of the said sections—

(*a*) an acknowledgment signed, or a payment made, in respect of any liability, by, or by the duly authorized agent of, any widow or other limited owner of property who is governed by the Hindu Law, shall be a valid acknowledgmen or payment as the case may be, as against a reversioner succeeding to such liability; and

(*b*) where a liability has been incurred by, or on behalf of, a Hindu undivided family as such, an acknowledgment or payment made by, or by the duly authorised agent of, the manager of the family for the time being shall be deemed to have been made on behalf of the whole family.]

Effect of substituting or adding new plaintiff or defendant.

22. (1) Where, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party.

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to an assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.

LEG. REF.

1 Inserted by Act I of 1927, follows the ruling in 1928 M. 972.

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cases relating to *co-heirs* and other persons who derive their liability not from direct contract with the promisee. 1930 M. 738.

SEC. 21 (3).—Sub-sec. (3) of sec. 21, as amended by Act I of 1927, protects only those acknowledgments or payments which have been made by or by the duly authorised agent of the manager of the joint family for the time being and would not cover a case where the status of the joint family had been changed prior to the date of such acknowledgment or payment. If, however, there has been a severance of joint status between the members of the family, sub-sec. (3) of sec. 21 would not in terms apply, and even though the debt or liability had been incurred by or on behalf of the joint family by its manager for the time being, the person who was the manager of the family at the date when the said debt or liability had been incurred by him on behalf of the joint family would not have the power to acknowledge the debt or make the payment as to extend the period of limitation, as he would have ceased to be the manager of the family by the time he came to make the acknowledgment or payment. 47 Bom.L.R. 470=1945 Bom. 511. Sec. 21 (2) has no application to a case of a joint Hindu family in which the father makes a payment on behalf of the family. For such a case express provision has been made in cl. (3) (*b*) of sec. 21. Where a father makes a payment, in order to stay the hands of the decree-holder in executing the decree and time was given to pay in consideration of the payment made, such payment is as manager of the joint family and saves time against father and sons. 1938 A.L.J. 973=1938 All. 638. *See also* 1940 Cal. 137. Under the law of limitation as it stood prior to the enactment of cl. (3) of sec. 21, a widow having a life estate was not competent to give an acknowledgment which would bind the reversioners. 1936 A.L.J. 1373=1936 All. 858. Scope and effect of—Hindu limited owner—Power to acknowledge debt—If includes power to pay barred debt. 16 P. 45=1937 P. 40=17 Pat.L.T. 780; 1937 Nag. 327; 1937 Mad. 586.

SEC. 22: SCOPE OF.—Sec. 22 (1) contemplates cases in which a suit is defective by reason of the right persons not having been made parties, but not cases in which the suit was originally properly instituted but has become defective owing to a devolution of interest. 20 C.W.N. 833=18 Bom.L.R. 642 =43 I.A. 113=1916 P.C. 202 (P.C.). Joinder after limitation of a party not necessary. 1923 L. 438 (1). *See also* 1922 N. 213; 62 I.C. 536=6 P.L.J. 463=1923 P. 88.

APPLICABILITY.—Sec. 22 does not apply to cases where *pro forma* defendants are made plaintiffs. 14 I.C. 566=84 P.R. 1912; 139 I.C. 535=13 Pat.L.T. 392=1932 P. 304. Nor where in a suit by the manager of a joint Hindu family the other members of the family are brought on record by amendment of the plaint. (12 B. 158, Foll.) 36 Bom.L.R. 327=58 B. 348=1934 B. 178. This principle applies even where the suit is not by the manager, but only by a member. 1937 L. 193. If a party is added after limitation the suit is not necessarily barred by time against him. But if a party who is not a necessary party to the suit applies to be impleaded as a party after the period of limitation and is added as a party, he cannot turn round and plead that the suit is barred by limitation. 1942 A.L.J. 766=1943 Oudh 164=18 Luck. 601. Where a suit is originally brought against the defendants as members of a joint undivided family and subsequently the plaintiff was allowed to amend his plaint by adding an alternative claim against them as partners, there is no change in the "persona" of the parties but only a change in the basis on which the same parties were sought to be held liable and with reference to them, they cannot be decm-

ed to be newly added under sec. 22. 33 Bom. L.R. 1385=1931 B. 590. In a suit on a promissory note signed by a person on his own behalf and as guardian of a minor only relief against the assets of the minor in the guardian's hands was asked for. But subsequently an amendment claiming relief against the guardian personally was allowed. *Held*, that the effect of the amendment was not to add a new person as defendant but to alter the ground on which a person already a defendant was to be held liable. Consequently once the amendment was allowed, sec. 22 did not apply. 154 I.C. 582 =1935 M. 160. Sec. 22 (1) will not apply where a defendant who was made such by the plaintiff at the time of the institution of the suit is transferred in that suit as co-plaintiff. 90 I.C. 82=1926 P. 28. The section applies even to cases where a person is added as a party at the instance of the Court under O. 1, R. 10. 17 S.L.R. 324=1925 S. 181=79 I.C. 914; 6 R. 29 (P.C.). An amendment of a plaint which does not seek to bring in a new party, but only varies the ground on which the relief was originally sought or asks for a different or additional relief, without changing the cause of action, does not bring the case within sec. 22 (1). It is equally clear that where a party is already on the record either as a plaintiff or as a defendant, an amendment which merely alters the capacity in which he has been impleaded to one of a different character does not involve an addition of parties so as to attract the provisions of sec. 22. Consequently an amendment of a plaint by which a suit is converted into a representative action under O. 1, R. 8, C. P. Code, does not involve the addition of fresh parties. Such an amendment does not introduce fresh parties and when made after the period of limitation, would not make the suit barred by limitation 1943 M.W.N. 304=56 L.W. 583=1943 Mad. 531=(1943) 2 M.L.J. 1. The effect of striking off a person's name from the array of the defendants, even if it is made under a mistake, is that the suit so far as he is concerned comes to an end. If his name is added at a later date a new suit must be regarded as having been brought against him and if such is not brought within time it is barred by limitation. 199 I.C. 196=1942 P. 270. Sec. 22 governs suits and not applications for substitution of legal representative. 49 I.C. 34=15 N.L.R. 21; 1923 P. 88; 58 C. 55= 1931 C. 385. Nor to applications under O. 21, R. 10. Nor to execution proceedings. 62 I.C. 30=6 P.L.J. 358=1921 P. 180. The section will not apply when a suit is brought by an agent on behalf of a firm of partners, merely because it is barred when the other members of the partnership are impleaded as co-plaintiffs. 28 I.C. 210=2 L.W. 239. Section applies to cases where a new plaintiff has been introduced and is not applicable in cases where there is only an amendment with regard to the description of the plaintiff. 32 C.W.N. 396=1928 C. 485. *See also* 109 I.C. 785=1928 N. 319. Nor to cases where defendant has been wrongly described in plaint, but amended afterwards. 162 I.C. 280=1936 L. 147. But it would be otherwise if it amounts to something more than mere misdescription. 1936 L. 485. As to whether section applies in cases of mere transposition of parties. *see* 3 Luck. 241=1927 O. 484; 1931 A.L.J. 863=1931 A. 725. Sec. 22 does not apply when a defendant is made a plaintiff. 28 I.C. 45=28 M.L.J. 147. *See also* 21 I.C. 421=25 M.L.J. 452; 66 I.C. 873=1921 S. 59; 1922 S. 13. Defendant adjudicated insolvent pending mortgage suit—Official Receiver added as a party. Only a continuation of old proceedings. 53 M.L.J. 142=1927 M. 693. Suit against wrong legal representative—Proper person added after time—Validity . 33 P.L.R. 253=1932 L. 314. *See also* 1942 M. 609=(1941) 1 M.L.J. 580.

"WHEN HE WAS SO MADE A PARTY"—INTERPRETATION—CRUCIAL DATE.—Under sec. 22 (1) it is the date of the application to add a new plaintiff or defendant which is material and not the date on which the party is briught on the record. That is the way in which the words "when he was so made a party" in the section ought to be interpreted. I.L.R. (1944) Nag. 768=1944 N.L.J. 510=1945 Nag. 57.

ADDITION OF PARTIES.—Sec. 22 refers only to the parties subsequently added; the suit canno fail as against the original defendants, merely because the plaintiffs may have lost their remedy as against the newly added dedendants unless such a result follows from the nature of the suit. 33 Bom.L.R. 1385= 1931 B. 590. Against a party subsequently added, limitation is to be calculated from the date when he has been brought on the record. 12 I.C. 586=13 Bom.L.R. 1014; 50 M. 372 =1927 M. 468=52 M.L.J. 199. *See also* 55 I.A. 7=6 R. 29=1927 P.C. 252=54 M.L.J. 88 (P.C.). Where an application is made to join certain persons as parties, they become parties to the suit from the time when the application is presented and not when the Court passes its order joining them as parties. 1930 S. 259. Section is not applicable in the case of transferees *pendente lite*. 1930 A. 597; *see also* 7 Cut.L.T. 49=1942 P. 185 (2). If a party is added to a pending suit after lapse of the period of limitation fixed for the suit, the bar of limitation would not be saved. 85 I.C. 961=1925 M. 917; 75 I. C. 781=1932 Lah. 438 (1). If one of the several legal representatives of a creditor is added as a plaintiff after the expiry of the time prescribed for the institution of the suit, a suit instituted by one of the legal representatives for the recovery of the whole amount or of his share is maintainable. 1932 L. 652. Under O. 30, R. 2, C. P. Code, once partners have been declared the persons whose names have been declared are to be regarded as parties to the suit. There is however nothing to prevent a party from making a further declaration the effect of which might afterwards fall to be considered by the Court. But if it is made after the period of limitation, it will have no effect and the Court would regard the suit as being one by the

parties whose names were originally declared. 60 C. 1217=37 C.W.N. 1105=1934 C. 253. Addition of parties—Partnership—Suit for dissolution. 50 C. 549=1924 C. 74. When a partner sues only one of his partners for accounts of partnership and the other partners are added after the perod of limitation has elapsed, the suit must be dismissed. 143 I. C. 900=1933 S. 121. A principal cannot be added out of time in the place of his benamidar who is sued within time. 18 I.C. 392. *See also* 26 I.C. 860. Where a party is added to the suit not in order to validate the suit but to settle the dispute finally, the original defendants cannot claim limitation from the date the new party is added to the suit. 1930 A. 436. In a suit to enforce rights of trust, by persons interested in the trust, addition of more representaives out of time does not bar the suit. 9 L.W. 377=50 I.C. 353. Suit by deity represented by two out of three shebaits—Subsequent addition of third shebait —Date of institution of suit. *See* 49 C.W. N. 37=1945 C. 268. The date of institution of a suit as against a newly added party must be the date on which he was added as a party. 38 I.C. 169=5 L.W. 222. Where a plaintiff is added in consequence of the assignment of the rights of the original plaintiff his right to a decree is not affected by sec. 22. 40 M. 722=32 M.L.J. 407. In a suit for possession of property after declaring that a certain alienation was invalid, the alienee defendant pleaded that he held a portion of the property on behalf of an idol, he having transferred it to the idol. The idol was thereafter impleaded, but only after the period of limitation had expired. *Held*, sec. 22, applied to the case and that the suit as against the idol was barred by limitation. 15 Pat.L.T. 596. If a mortgagee sues the mortgagor for sale and then after the expiry of twelve years from the date of the mortgage impleads a puisne mortgagee, his suit as against that mortgagee is barred by sec. 22. 1932 M.W.N. 330. Where in a suit on a mortgage against some only of the heirs of the mortgagor the other heirs are also added after the period of limitation it cannot be said that the suit is barred as against the latter because the suit as filed was properly instituted and the estate was sufficiently represented by those against whom the suit was originally brought. In a suit on a mortgage though all the heirs of a deceased mortgagor are proper parties it cannot be said that in all cases where they are not joined, the Court cannot grant any relief to the plaintiff. 1943 O.W.N. 105=A.I.R. 1943 Oudh 218=19 Luck. 133. Bond in favour of *A*— On *A's* death suit on it by father in his personal right as *A's* heir—Subsequent application for substitution of *A's* minor son as plaintiff after limitation—Suit is governed by sec. 22. 39 P.L.R. 585=1937 L. 369. *See also* 1940 Lah. 262. The joinder of a person already represented in the suit as a party to it is not a joinder within the meaning of sec. 22. 56 I.C. 38 (2). The joinder of parties after time involves a bar only if the joinder was necessary to the suit. 35 I.C. 551=10 S.L.R. 38. The substitution of the Official Assignee in a suit brought by a person who has been adjudicated as an insolvent amounts to an addition of a new plaintiff. 28 Bom.L.R. 554 =1926 Bom. 366. Suit in time—Joinder of persons subsequently—Cause of action against such persons accruing during pendency of suit—Effect of. 23 Pat.L.T. 412= 1942 Pat. 185 (2).

AMENDMENT.—Amendment of a plaint with reference to a non essential particular made after time without adding a new plaintiff or defendant is not affected by sec. 22. 19 O. C. 221=36 I.C. 941. Suit on behalf of minor plaintiff—Subsequent discovery that the plaintiff was a major at the date of suit—No question of limitation arises by reason of such amendment. 100 I.C. 469=1927 C. 477. So also in a suit by a Chairman of a District Board, the amendment of the cause title so as to make District Board itself the plaintiff. 32 C.W.N. 396=1928 C. 485. So also in a suit against manager of a Hindu idol an amendment so as to implead idol as party. 6 O.W.N. 1036. Where in a suit instituted within time agains the Government as responsible for the administration of the railways, the plaint described the Government as the Secretary of State for India, and the plaint was subsequently amended after the period of limitation had elapsed altering the description to the Governor-General in Council as required by sec. 79, C. P. Code, as amended. *Held*, that as the claim had always been against the same Government it could not be anything more than a matter of misdescription and that the suit was, therefore, not barred by limitation. 46 C.W.N. 18.

HEIRS ADDED AS PARTIES.—Effect of. 39 B. 729=31 I.C. 180=17 Bom.L.R. 685.

NECESSARY PARTY.—Where in a suit, some persons against whom the suit is barred are added as defendants, sec. 22 does not bar the whole suit, if the added parties are *pro forma* defendants against whom no relief is claimed. 45 B. 1009=61 I.C. 590=23 Bom.L.R. 405=1921 Bom. 152. Necessary party—Suit for pre-emption—Impleading one of the vendees after limitation—Effect. 1924 L. 230. If a necessary party without whose presence on the record the suit cannot be adjudicated upon has been omitted and is added after the period of limitation, the suit is barred against all the defendants. 57 I.C. 52; 1937 Rang. 124. *See also* 26 C.W.N. 488=1922 C. 149; 1937 R. 124. Co-executor added late. 1921 M. 528=40 M.L. J. 532=63 I.C. 104. An alienee *pendente lite* is not a necessary party to the suit. 38 M. 535=26 M.L.J. 449; 17 Pat. 588=1939 P. 138; 47 L.W. 665=1938 Mad. 687. In mortgage suits, the puisne mortgagee is a proper but not a necessary party. A necessary party is a proper party but a proper party is not always a necessary party. 1922 P. 326; 1923 P. 651. Sec. 22 does apply to a case even where a person is not a necessary party but only a proper party to a suit and such a person cannot be added as a party after limitation period. 1929 C. 188 =33 C.W.N. 248. If a plaintiff sues to

recover the joint property of two or more persons, and at the time of trial omits to join all proper and necessary parties and if the rights of those who ought to be added as parties to the suit are barred by limitation, the suit must be dismissed for want of proper or defective joinder of parties. 36 I.C. 77. The principle applies to cases where several persons jointly seek to recover the assets of a deceased person. 36 I.C. 77. When a suit can be, and is, constituted without joining certain persons as parties, and they are subsequently added as parties for the benefit of the defendants to ensure them against further litigation, the provisions of sec. 22 do not apply. 38 C.W.N. 409=1934 C. 187. *See also* 17 Pat. 588 =1939 P. 138; 1938 Mad. 687. Defendant claimed in his written statement that certain persons in whose possession lands of the deceased were should be added as parties. Neither trial Court nor plaintiff chose to add them. The case was remanded, in appeal, and they were added. *Held*, that the addition should be deemed to have been made when written statement was filed. 1937 R. 175.

NEW DEFENDANT.—Where the real purchaser was joined as a party to the application after period of limitation, *held* that the addition of party after the period of limitation did not entail the dismissal of the application as against the newly added real purchaser. 1923 A. 462. New defendant—Clerical mistake—Misdescription of defendant—Amendment. 32 I.C. 872. If parties are effectively represented through those whose actions bind them, so that a decree passed against them is binding on such parties, a specific mention of the name of one such party subsequently made in the title of the suit cannot be regarded as an addition of a new defendant for the purposes of limitation. Rule applied to the case of members of a joint Hindu family subsequently impleaded as parties to a suit in which they were effectively represented by the manager. 1931 A.L.J. 421=1931 A. 585.

NEW PLAINTIFF.—The effect of striking off a person's name from the array of the defendants, even if it is made under a mistake, is that the suit so far as he is concerned comes to an end. If his name is added at a later date, a new suit must be regarded as having been brought against him, and if it is not within time it is barred by limitation. 1942 Pat. 270. Where in a suit by the manager of a joint Hindu family junior members are added as parties after the expiry of the period of limitation, they are merely formal parties and the suit is not barred. 33 A. 272=38 I.A. 45=21 M.L. J. 378 (P.C.). *See also* 1929 L. 505; 1937 L. 193; 22 I.C. 798=19 C.L.J. 5. New plaintiff—Suit amended as on behalf of company. 33 I.C. 357 (2)=30 M.L.J. 57. Hindu joint family—Suit in names of members with word "firm" affixed—Amendment after limitation by deleting word "firm". No bar of limitation. 1939 Pat. 40. Suit for redemption—Defendant impleaded in personal capacity—Amendment after limitation for permission to sue him as representing unincorporated association—If addition of fresh party—Suit barred. 1940 Mad. 639. Suit in private capacity—Amendment of suit as managing director—Effect. 25 I.C. 945 =16 M.L.T. 251. Party not signing or verifying pleading. Wrong description of party. Effect. 17 I.C. 580=25 M.I.J. 174.

SUBSTITUTION OF PARTIES.—A person originally impleaded as a *pro forma* defendant but subsequently made a plaintiff is not a new party to whom the provisions of sec. 22 apply. 19 C.W.N. 1269=30 I.C. 34; 105 I. C. 473=1927 O. 484; since the object of sec. 22 (2) is to provide for cases of this nature. 14 Pat.L.T. 252=1933 P. 239. *See also* 10 Luck. 203=1934 O. 462; 40 L.W. 900= 1935 M. 95. But the provisions of sec. 22, cl. (2) can be availed of only in cases where the plaintiff and the defendant have a joint cause of action and not when their causes of action are different. 156 I.C. 455=1935 M. 240=69 M.L.J. 30. The general rule enacted in sec. 22 is subject to certain exceptions contained in cl. (2), one of the exceptions being that the rule of limitation enacted in the main part does not apply where there has been a transposition of the parties already on the record. I.L.R. (1937) Mad. 970=46 L.W. 375=1937 Mad. 843=(1937) 2 M.L.J. 728. Amendments made in the plaint by the leave of the Judge cannot amount to an addition or substitution of party within sec. 22. 28 I.C. 818=19 C.W.N. 1193. In a suit against a firm, correction of the description of the proper representative of the firm is neither substitution nor addition of a new party. 109 I.C. 785=1928 N. 319. The essential difference between an alteration that comes under the head of mere *misdescription* and an alteration that comes under the head of *substitution* is that in the case of a misdescription there is the same person or legal entity throughout; merely the name of the person is to be altered, but when one person, be it a legal or other person, is to be substituted for another, then the alteration cannot fairly come under the head of misdescription. It is a case of substitution, and sec. 22 applies. Therefore an amendment of a plaint which seeks to substitute one legal entity for another after the period of limitation has passed cannot be allowed. I.L.R. (1939) Kar. 275=1939 Sind 172. *See also* 1940 M. 639.

SUIT AGAINST WRONG DEFENDANT.—Where the mistake in the name of the defendant is a clerical mistake the suit is within time and such amendment is also within time. 32 I.C. 872; 162 I.C. 280=1936 L. 147. Where a wrong person sues on a pro-note and after the perior of limitation the right person is substituted, the suit so far as the right person is concerned, shall be deemed to be instituted on the date of the substitution, and if it is barred on that date, it shall be dismissed. 1940 N.L.J. 333=1940 Nag. 274. Where in the same suit first one legal representative and then another is impleaded, the

23. In the case of a continuing breach of contract and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues.

Continuing breaches and wrongs.

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estate which is the object of the suit has been represented throughout, and there is no change of party in the real sense of the word, so as to invoke the operation of sec. 22. 53 L.W. 501=1941 Mad. 609=(1941) 1 M.L.J. 580.

SUIT AGAINST DEAD PERSON.—A plaintiff cannot claim the benefit of the institution of a suit against a dead person for the purposes of extending the period of limitation against his heirs. 47 I.C. 894=5 O.L.J. 546; 143 I.C. 596=1933 M. 454=37 L.W. 489 and cases referred to therein. Same principle applies to a suit on a foreign judgment against foreign firms which had become dissolved at the time of suit, and amendment is afterwards sought to implead individual partners thereof. 38 P.L.R. 827=163 I.C. 734=1936 L. 485.

SEC. 23: APPLICABILITY.—Suit for declaration of a public right of way as the obstruction is a continuing wrong. 26 C.W.N. 587=1921 C. 405; 146 I.C. 408=1934 P. 34. An obstruction which prevents someone from exercising a right of way falls within the scope of the term 'continuing wrong' and a fresh period of limitation begins to run under sec. 23, Limitation Act at every moment of the time during which the wrong continues. 1941 A.L.J. 706=1942 A. 77. The word 'wrong' in sec. 23 seems to have been used in a restricted sense, and to imply something in the nature of a tort. 1944 O.W.N. 37=A.I.R. 1944 Oudh 139=19 Luck. 515. There is nothing in sec. 23 upon which a distinction can be made between the case of an encroachment upon private land and that of an encroachment upon public land. Whether the wrong is a continuing one or not must depend upon the nature of the wrong and not upon the nature of the land over which it is committed. If in the one case limitation may run, there is no reason why it should not also run in the case of a precisely similar act committed upon public land. 22 Pat.L.T. 1001=1942 Pat. 188. *See also* 19 Pat. 208=1940 P.W.N. 829=1940 Pat. 449. Sec. 23 is not applicable to a suit by a Union Board for possession of land claiming it as part of a public road vested in it. 45 C.W.N. 802=73 C.L.J. 608=1942 Cal. 151. Dispossession is a trespass and in one sense a contniuance of possession thereafter is a continuance of the original wrong, but that is not the meaning of sec. 23. The Limitation Act must be read as a whole and due regard paid to its different provisions. It must be clearly construed in such a manner that there is no conflict between sec. 23 and Arts. 142 and 144. Complete usurpation of possession and occupation and consequent dispossession of the owner of the land is a wrong which is complete from the moment of the dispossession. It is not a continuing trespass of the character contemplated by sec. 23 of the Act. 1939 Nag. 145. Dissolution of marriage—Suit for—Divorce—Cause of action. 8 O.L.J. 650=1922 O. 109 (2). *See also* 41 P.L.R. 867=1939 Lah. 454 (Suit for dissolution of Mohamedan marriage on ground of impotency). Suit for restitution of conjugal rights against his wife. 38 Bom.L.R. 502=164 I.C. 628=1936 B. 289. Every act of trespass gives a fresh starting point for limitation. 25 I.C. 185=12 A.L.J. 1150. The mere fact that a party has not availed himself of the earlier cause of action, will not prevent him from availing himself of a later one. 11 P. 112=12 Pat.L.T. 755=1931 P. 285. Where damages are claimed for personal injury which is caused by throwing sulphuric acid on the face, there is no continuing wrong for purposes of limitation nor does time run only from the time any specific injury is caused. 25 Bom.L.R. 1333=84 I.C. 796=1924 B. 290. Section inapplicable to a suit to recover damages for wrongful attachment before judgment of defendant's goods. 1930 M. 635=31 L.W. 675=53 M. 621=59 M.L.J. 859. Also to a declaratory suit under sec. 42, Specific Relief Act. 31 Bom.L.R. 124=54 B. 4=1930 B. 61. *See also* 1937 O.W.N. 207 (Order of Settlement Court recording defendant as under-proprietor. Suit to set aside). Where a Magistrate attached a disputed property under sec. 146, Cr.P. Code, when plaintiff was in lawful possession and plaintiff sued for declaration of title and for recovery of possession, it was held that the case should be treated as one of continuing wrong within sec. 23. 31 I.C. 242=20 C.W.N. 481. *See also* 12 P. 261=14 Pat.L.T. 113=1933 P. 224; 175 I.C. 256=1938 Pat. 212; I.L.R. (1941) Mad. 544=1941 M. 498=(1941) 1 M.L.J. 322. Where plaintiff has a right to use land on which some sheds have been erected, as a passage, and the sheds are obstructing the same, there is a continuing wrong, and a suit for declaration of plaintiff's right and for removal of the sheds is governed by this section. 156 I.C. 390=1935 C. 405. *See also* 1940 P.W.N. 394=19 P. 844=1940 P. 561 (Erection of hut on occupancy holding—Suit for ejectment). Continuing wrong—Obstruction to waterflow—Right of way. 29 I.C. 385=21 C.L.J. 640; 1935 M. 668=69 M.L.J. 42. Right of access to highway from plaintiff's property. 1937 L. 94. *See also* 22 Pat.L.T. 46=19 P. 208=1940 P. 449. As to encroachment by projection of eves, *see* I.L.R. 1944 N. 753=1945 N. 78. Continuing wrong—Interference with right of worship—Recurring time-limit. 66 I.A. 313=12 P. 681=65 M.L.J. 163=1933 P.C. 193 (P.C.). Suit for compensation for

24. In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results.

Suit for compensation for act not actionable without special damage.

a continuing obstruction—Plaintiff prevented from removing obstruction by threat of violence—Limitation runs from the last day to which wrong continued. 1925 N. 189. So also in a suit for injunction against plaintiff's right to unobstructed use of light and air. 162 I.C. 303=1936 L. 334. Where the property in dispute has throughout been in possession of a temple, each denial of title of the temple to the property in dispute is a fresh invasion of its right and affords a fresh cause of action to establish its title to the property in dispute. (8 L. 22, Foll.). 146 I.C. 136=1933 L. 920. Causing nuisance is a continuous wrong independent of contract and therefore a fresh period of limitation begins at every moment during which the wrong continues. 60 I.C. 529. Erecting *chhappars* on land belonging to another is not a continuing injury within sec. 23. 3 Lah.L.J. 128=60 I.C. 20=1921 Lah. 242. *See also* 1941 Pat. 181=19 P. 852. So also the exclusive occupation of a building meant for common purposes as distinct from a building meant for religious purposes is not a continuing wrong. 135 I.C. 681=33 P.L.R. 180=1932 L. 220. *See also* 40 P.L.R. 319=1938 Lah. 369 (Adverse possession of mosque by Sikhs—Refusal to allow Mussalman to pray is no continuing wrong). Continuing wrong—If includes discharging rain water on the plaintiff's roof. 56 I.C. 1003 =2 Lah.L.J. 463. In a suit for compensation under Land Acquisition (Mines) Act, the cause of action is the refusal of the public authority to follow the prescribed procedure for ascertaining such compensation if awarded, and it is not a continuing cause of action. 15 P. 510=1936 P. 513. *See also* 19 N.L.J. 101 (Application for reduction of rent on ground of deterioration of land due to construction of canal). The obstruction of a stream, whether having continuous flow or not, is a continuing wrong under sec. 23 and a suit for its removal is not governed by sec. 26. 43 I.C. 235=3 P. L.J. 51. The right of proprietors of a village to irrigate from a *kuhl* is a recurring right to which sec. 23 applies. 13 Lah.L. T. 22. *See also* 46 L.W. 862=1938 M. 180. An omission by directors to come to any conclusion whatsoever on an important piece of business duly proposed for the decision of the Board is a breach of a duty which continues as long as the decision is deferred and the starting point of limitation is governed by the third part of the time clauses in Art. 115. 1933 S. 103=143 I.C. 713. Vendee undertaking to clear prior mortgage —Non-performance on date of sale is a breach of covenant—Breach is not a continuous one. 87 I.C. 804 (2)=1925 A. 488; 9 A.L.J. 554 =34 All. 429. The building of a house on his holding by a tenant contrary to the terms of his tenancy is a continuing wrong. Limitation, therefore, does not run against the landlord from the moment the first operation of the building is commenced, but commences definitely when it is finally erected. 1939 Pat. 149. Surety for judgment-debtor undertaking to produce him on each date of hearing—Failure to produce him on certain date—Execution proceedings terminating after several subsequent hearings—Execution against surety. *Held*, that sec. 23 had no application as it was not a case of continuous breach of the surety bond and that the right to apply for execution against the surety accrued when the surety failed to produce the judgment-debtor on a certain date and that counting the period from that date, the application was clearly time barred. 37 P.L.R. 72=1935 L. 174 (2). *See also* 171 I.C. 509=1937 Lah. 94 (Lessee from municipality erecting building on public street and preventing plaintiff's access to highway is continuing wrong); 1941 P.L.R. 1=1940 Rang. 276; (wrongful seizure in execution of stranger's property). An obstruction which prevents some one from exercising a right of way falls within the scope of the term 'continuing wrong' under sec. 23, at every moment of the time during which the wrong continues. 1941 A.L.J. 706=1942 All. 77.

SECS. 23 AND 28.—A distinction has to be made between the continuance of a legal injury and the continuance of its injurious effects. There is no perpetual right of suit under sec. 23, on the ground that an encroachment is a continuing wrong, when the trespass itself gives rise to rights extinguishing any right of suit under sec. 28 of the Limitation Act. When the wrong amounts to dispossession of the plaintiff, then, even though it may be a continuing wrong, the plaintiff cannot recover possession after the expiry of 12 years, because under sec. 28 of the Limitation Act the plaintiff himself would have got no right left which he can enforce by suit. 22 P.L.T. 1001=1942 Pat. 188. In considering whether the particular act complained of constitutes a continuing wrong within the meaning of sec. 23 for which the cause of action arises *de die in diem*, it is necessary to keep in mind the distinction between an 'injury' and the "effects of that injury". Where the injury complained of is complete on a certain date there is no "continuing wrong" even though the damage caused by that injury might continue. In such cases the cause of action to the person injured arises once and for all, at the time when the injury is inflicted. If however the act is such that the injury itself is continuous, then there is a "continuing wrong" and the case is governed by sec. 23. 191 I.C. 42=I.L.R. (1941) Lah. 22=1940 Lah. 359 (F.B.).

SEC. 24.—Sec. 24 does not give, as the date

Illustration.

A owns the surface of a field. *B* owns the sub-soil. *B* digs coal thereout without causing any immediate apparent injury to the surface, but at last the surface subsides. The period of limitation in the case of a suit by *A* against *B* runs from the time of the subsidence:

Computation of time mentioned in instruments.

25. All instruments shall, for the purposes of this Act, be deemed to be made with reference to the Gregorian calendar.

Illustrations.

(*a*) *A* Hindu makes a promissory note bearing a Native date only, and payable four months after date. The period of limitation applicable to a suit on the note runs from the expiration of four months after date computed according to the Gregorian calendar.

(*b*) *A* Hiudu makes a bond, bearing a Native date only, for the repaymet of money within one year. The period of limitation applicable to a suit on the bond runs from the expiration of one year after date computed according to the Gregorian calendar.

PART IV.

ACQUISITION OF OWNERSHIP BY POSSESSION.

Acquisition of right to easements.

26. (1) Where the access and use of light or air to and for any building have been peaceably enjoyed therewith as an easement, and as of right without interruption, and for twenty years, and

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from which the time begins to run, the date on which the plaintiff becomes aware of the loss, but mentions the date on which the loss actually resulted. 164 I.C. 410=1936 R. 310. The word 'act' in sec. 24 will include omission. 24 A.L.J. 550=1926 A. 605. "Injury" in sec. 24 includes legal injury. 54 B. 226=32 Bom.L.R. 232=1930 B. 572. There is no reason for holding that sec. 24 is only applicable to suits based on torts. 24 A.L.J. 550. Sec. 24 of the Limitation Act applies only to suits based on torts and does not apply to a case of negligence which constitutes a breach of contract. 1938 Rang. L.R. 457=1938 Rang. 258 (F.B.). Suit for damages for breach of contract—Mere breach of covenant by omission to pay—Suit will come within the language of sec. 24. 24 A. L.J. 550. Bodily injury—First suit for damages—Second suit for further injury consequential on the first injury. 58 I.C. 749=5 P.L.J. 359. The effect of sec. 24 is not to extend or restrict any period of limitation but to modify the date or time from which the cause of action arises. In a suit for compensation for any misfeasance or malfeasance independent of contract and not otherwise provided for, the limitation will be 2 years not from the date of malfeasance or misfeasance but from the time when the injury results. 8 P. 776=1929 P. 245.

SEC. 25: SCOPE OF.—Sec. 25 is absolute and there is no saving of cases in which it appears on the face of the contract that lunar months were intended by the parties. 1927 M. 917=53 M.L.J. 447. *See also* 8 O. W.N. 834=1931 O. 357. Instalment bond—Date in Hindi. 29 I.C. 980=13 A.L.J. 486. Calculation of time must be according to Gregorian calendar. 47 A. 66=22 A.L.J. 902=1925 A. 138. Computation should be according to the Gregorian calendar unless specially otherwise mentioned. 102 I.C. 588 =1927 N. 259. A promissory note bore both the English date, 16th November, 1924 and the Malayalam date, Thulam 30, 1110, corresponding to 15th November, 1934. In a suit on the promissory note filed on 16th November, 1937. *Held*, that sec. 25 of the Limitation Act creates no presumption as to the date of a document but merely provides that periods of limitation shall be worked out according to the Gregorian calendar. The question as to the date of the promissory note is one of fact to be decided by evidence and probabilities according to sec. 90 of the Evidence Act. 53 L.W. 449 (1)=1941 Mad. 587=(1941) 1 M.L.J. 502.

SECS. 26 AND 27: [*See also* Easements Act, secs. 15 and 16].—Object of section is to make easy the establishment of rights of easement; it is remedial and not prohibitory or exhaustive as to the modes of acquiring easements. 53 C. 1016=91 I.C. 712= 1926 C. 507. Sec. 26 is concerned only with the acquisition of the easement and not with the extent of the right or with the remedy (in Bengal). 12 I.C. 60=39 C. 59. *See also* 35 C.W.N. 963=59 C. 260=1932 C. 249. Secs. 26 and 27 do not apply to cases where easements are acquired under the Easements Act. 31 I.C. 528=29 M.L.J. 685. In view of the words "other easement" in sec. 26 of the Easements Act, it must be held that the section is not exhaustive, and other easements not specifically mentioned in the section can be acquired: *e.g.*, the right of storing manure on land belonging to another, being a right which is beneficial to the enjoyment of the property of the persons enjoying that right over the land of another, can be acquired in the same way as other similar right by prescription, if the user has continued for the prescribed period. Where the right claimed and enjoyed is only over a small portion of a larger area, it cannot be said that there would be total destruction of the subject-matter of the easement. 1946 Lah. (Rul.) 338=224 I.C. 286. The effect of the last paragraph of sec. 26 (1) is that a right to an easement is not perfected until it is brought in question in some

suit, but when it is established in a suit, it becomes absolute and indefeasible. But the decision will not be binding on a mortgagee whose mortgage was of a date prior to the suit and who was not impleaded in the suit. 23 Pat. 115=1944 Pat. 261. In the case of a claim of easement for use of water for irrigation or rights of an analogous nature, proof of absolute continuous user is not necessary. The right can be established by proof of periodical user, so long as the full period is covered, and the user has existed openly and uninterruptedly. Apart from sec. 26 of the Limitation Act, a right of prescription may also be claimed and established on the basis of immemorial user justifying a presumption of grant or agreement. In order to establish immemorial user so as to justify any presumption of easement by lost grant, no particular period has been prescribed and can, therefore, be said to be essential, but where such right is based on a claim of continuous or uninter rupted user alone, proof of enjoyment for any period not exceeding 20 years—because that period is mentioned in sec. 26 of the Limitation Act—will ordinarily be considered insufficient. It is the value of the evidence in the aggregate which is to be seen in order to determine finally whether the plaintiffs have established generally their claim of a right of irrigation by proof of enjoyment for such a minimum period as would establish a case of acquisition of easement by lost grant. 1946 C. 444. It is only when a person claims an easement under the provisions of sec. 26 that he must show that the period of 20 years' enjoyment of the right extended up to a time within two years of the suit. An easement by prescription or long user can, however, be aequired otherwise than by the aid of that section, for instance, a person can show that he has enjoyed a right of easement from time immemorial in such a way as to lead to the presumption of a grant of such right. In such a case, it would not be necessary for him to show that he enjoyed the right till within two years of the suit. 45 C.W.N. 486. The question, even as regards an easement right classed under the statutory prescription is not one of limitation but whether the enjoyment necessary to acquire the prescriptive right has been peaceable and as an easement without interruption for 20 years, within 2 years before suit. (*Ibid.*) Unless a suit falls under sec. 26 or 28, there is no bar of limitation to a defence. 59 I.C. 118=22 Bom.L.R. 1082=45 Bom. 45=1921 Bom. 257. *See also* 1926 N. 99. Sec. 26 does not govern a claim to take water from a iank where that claim is based on lost grant. It applies only to cases of easements claimed by prescription. 1926 C. 291 (2). In cases of easements acquired by prescription, the English Law presumes a grant and its accidental loss due to lapse of time. In India, such a presumption is not necessary as the right depends on positive enactments, *e.g.*, sec. 26. 1931 L. 395=12 L. 741. A customary right of way is not an easement in the legal sense of that term, and even if it were an easement, it is not necessary for the party claiming it to rely on sec. 26 if the existence of the right could be otherwise established. A right based on custom is established by proof of the custom and it is not necessary that there should be evidence from which a lost grant may be presumed. 36 C.L.J. 280=1923 C. 200. Suit for declaration of right of way—Affirmative proof of 'actual user'—'Enjoyment' — 'Actual exercise'. 26 C.W.N. 121. A customary right of way for all the villagers is not a case of acquisition by prescription and is not governed by sec. 26. 65 I.C. 509. A person may be said to be in 'enjoyment' of a right of way during a period of time, though he does not actually "use" the way every moment. Cessation of user for a time is not an invariable indication of abeyance of enjoyment of a right. 51 I.C. 372=29 C.L.J. 421. Obstruction to ancient lights when amounts to actionable nuisance. 31 C.W.N. 419= 1927 C. 345. Obstruction to easement—Lower Court ordering injunction and restoration of *status quo*—Interference. 35 C.W.N. 963=59 C. 260=1932 C. 249. The permission to take water through another person's property is an easement within the meaning of sec. 26. 100 I.C. 498=1927 L. 216. In the case of joint property, every co-sharer has a right to use it, consistently with the rights of the other co-sharers until partition. Where therefore one of the owners of a jont wall erects a wall on the top of the joint wall and keeps ventilators in the wall so erected, he does so consistently with the rights of the co-owner and hence cannot acquire a right of easement in respect of the ventilators against the co-owner. 41 P.L.R. 267=1939 Lah. 28.

MEANING OF WORDS.—"Interruption", "Peaceable" in sec. 26. 1931 L. 395=12 L. 741.

AS OF RIGHT.—The term "as of right" is not synonymous with "rightfully" but signifies enjoyment by a person in the assertion of a right. It is enjoyment had, not secretly or by stealth or tacit sufference or by leave or favour or by permission asked from time to time on each occasion or even on many occasions of using it, but an enjoyment had openly, notoriously without particular leave at any time by a person claiming to use it without danger of being treated as a trespasser as a matter of right. 1931 L. 395; 1936 S. 61; 1938 Pat. 423; 167 I.C. 454=38 P.L.R. 1146=1936 Lah. 905. *See also* 10 Cut.L.T. 78 (Applicability of section to customary right). Where the grant is in the nature of a licence and not of an easement, right of user by prescription cannot be acquired. 152 I.C. 141=1934 Pesh. 96; 1936 L. 905. The words "as of right" in sec. 26 mean *nec vi nec clam, nec precario*. Twenty years' enjoyment of a right to light and air after a partition, which however did not reserve such a right, is enjoyment "as of right". 35 C.W.N. 963. *See also* 1936 Sind 61. When a right of way has been used peaceably and openly without

interruption for twenty years, its user as of right may be legally inferred. 29 Punj.L. R. 567=111 I.C. 196. When sec. 26 talks of the enjoyment of a right by a person, what it really means is that there must be an exercise of that right by that person. Where for over twenty years the sweepers employed by the Municipal Committee have passed in exercise of statutory duty over the sites of a person in order to reach a latrine standing on another person's site, and to remove the nightsoil therefrom the owner of latrine cannot claim a right of way by way of easement in respect of this user by the sweepers of the Municipality because the activities of the sweepers are directed wholly by the Municipality and over them the owner of the latrine himself has no control. Such user cannot be accounted an enjoyment by the owner of the latrine of the right he claims, as an easement and as of right. 1939 Rang. 34. Where in a suit for establishing an easement to surface water on Government land there was interruption of the user more than two years prior to the suit, the right is defeated by sec. 26. 7 R. 487=1929 R. 300. In a suit for easement to carry water in a channel across the defendant's land for irrigation, the mere failure to exercise the right for 2 years prior to suit does not extinguish the right. Nor does the mere fact that the plaintiffs irrigated one of their fields from another well affect their easement right. 118 I.C. 521=1929 A. 497. Para. 1 of sub-sec. (1) is controlled by para. 2. A title to easement is not complete merely upon the effluxion of the period mentioned. Until the right is brought in question in some suit the right is inchoate only. And in order to establish the right when brought into question, the enjoyment relied on must be for 20 years up to within 2 years of the institution of the suit. 56 C. 927=1929 C. 542. Whether the user has been peaceable and open and whether the enjoyment has been as of right are pure questions of fact. (*Ibid.*) A mere right to fish not excluding the rightful owner is a profit *a prendre* and falls within S. 2 (5) of the Limitation Act and may be acquired by 20 years' uninterrupted enjoyment under sec. 26. 148 I.C. 431= 1934 P. 420. The right of fishing on another's water either by himself or by hired men on payment of a fee per head of men employed is not such a right as can be acquired by prescription. 37 C.W.N. 18=1933 C. 539. It is a little difficult to see how a *changing and fluctuating population of a locality* can be considered to occupy the status of a dominent tenement. It is true that certain classes of rights have been held to have been acquired by prescription, such as a right of way, or the right to bury dead bodies, and in all such cases a presumption has been made that the custom in question had a lawful origin in a dedication. Where however a well which has been used by the people of a mohalla was constructed in living memory and property in it has been changing hands by sale, it cannot be said that *qua* the user of the well an ancient custom has been established for which it was necessary to trace the legal origin to a dedication and hence no right by prescription, as contemplated by sec. 26 can be said to have been acquired. 41 P.L.R. 536=1939 Lah. 191 (1939 Lah. 12 is not good law).

REQUIREMENTS.—Where an easement is enjoyed peaceably and uninterruptedly for 20 years, the requirements of sec. 26 are fulfilled and the right becomes absolute. 26 I.C. 781; 37 I.C. 788=4 P.R. 1917. Open and uninterrupted enjoyment without dominant owner's permission is enough. 41 C.L. J. 379=1925 C. 788. *See also* 85 I.C. 81 =1925 N. 270; 56 I.C. 728=1 L. 206. User as of right implies user against the will of the owner. 37 I.C. 788=4 P.R. 1917. There is a distinction between the enjoyment of a right and actual user. Sec. 26 contemplates enjoyment of the right claimed as easement for twenty years to be carried to a period within two years of the suit. The section does not speak of actual user. 40 C.W.N. 222. An easement of the supply of water from a natural stream may be acquired by twenty years user under the provisions of sec. 26. 57 P.R. 1918=46 I. C. 441. A person who has throughout claimed ownership of soil cannot set up an easement of way. 1939 Rang. 34. A lessee of land, who owns a building thereon, can acquire by prescription a right to light and air against another lessee under the same landlord in respect of the adjacent plot. In such cases there is no question of unity of ownership as regards the two tenements and the principle that the possession of the tenant is really the possession of the landlord cannot affect the situation. 43 C.W.N. 636. Right of way—Non-user for twe years prior to suit. 26 I.C. 485. Obstruction— Filling up channel—When amounts to. 25 I.C. 386. Easement—Discharge of surplus water—Right to compel. 22 I.C. 514=19 C.L.J. 45.

ACQUISITION OF EASEMENT AGAINST TRANSFEREE FROM CROWN—PERIOD REQUISITE.— An easement against a transferee of the servient tenement from the Crown can be acquired by an enjoyment as of right without interruption for a period of 20 years, and to make up this period the period during which the land had been in the hands of the Government can be tacked on. The word 'belongs' in sec. 26 (2) should be given its plain meaning and should not be interpreted by a forced construction as equivalent to "has belonged". 44 P.L.R. 116= 1942 Lah. 124.

ONUS.—Under sec. 26 the onus is on the plaintiff to prove that the user was as of right. 9 I.C. 66 (8 C.W.N. 359, Foll.). *See also* 18 I.C. 211. No presumption as to continuous enjoyment for 20 years from the fact of mere prior possession for a long period. 155 I.C. 966=16 Pat.L.T. 192= 1935 P. 188. A right of fishing is an easement under sec. 26. 12 I.C. 305=14 C.L. J. 572; 39 C. 53=11 I.C. 180=15 C.W.N. 972. *See also* 37 C.W.N. 18=1933 C. 539.

where any way or water-course, or the use of any water, or any other easement (whether affirmative or negative) has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right without interruption, and for twenty years,

the right to such access and use of light or air, way, water-course, use of water or other easement shall be absolute and indefeasible.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

(2) Where the property over which a right is claimed under sub-section (1) belongs to [1][the Crown] that sub-section shall be read as if for the words "twenty years" the words "sixty years" were substituted.

Explanation.—Nothing is an interruption within the meaning of this section, unless where there is an actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorizing the same to be made.

Illustrations.

(*a*) A suit is brought in 1911 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right, without interruption from 1st January, 1890 to 1st January, 1910. The plaintiff is entitled to judgment.

(*b*) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff, on one occassion during the twenty years, had asked his leave to enjoy she right. The suit shall be dismissed.

Exclusion in favour of reversioner of servient tenement.

27. Where any land or water upon, over or from which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the period of twenty years in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land or water.

Illustration.

A sues for a declaration that he is entitled to a right of way over *B*'s land. *A* proves that he has enjoyed the right for twety-five years; but *B* shows that during ten of these years *C*, a Hindu widow, had a life interest in the land, that on *C*'s death *B* became entitled to the land,

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LEG. REF.

1 Substituted for "Government" by A.O., 1937.

A right of fishery is an interest in land and falls under Art. 144 of the Act. It is not necessary for the plaintiff to prove user for 20 years' under sec. 26. 3 Pat.L.T. 53=1922 P. 9. A ferry is not an easement within sec. 26. 9 I.C. 846. Ferry—Right to maintain—Easement—Right of easement. 5 P.L. J. 500=57 I.C. 516. Right of way—User by public—Presumption. 108 P.R. 1916=35 I.C. 458; 1922 U.B.R. 23=70 I.C. 915. Easement—Discharge of surplus water—Right to. 35 I.C. 394=10 Bur.L.T. 38; 12 I.C. 27=4 Bur.L.T. 223. The plea that the defendants had been using a particular Kul from time immemorial does not amount to setting up a plea of easement. 1923 L. 605. User of intermittent nature—Absence of assertion of rights—Acquisition of right. 1922 L. 59. Sec. 26 allows an easement irrespective of the capacity or incapacity of the servient owner to make a grant. The period of two years within which under the section a suit must be brought, if the section is to be availed of, should not, however, be confused with the period of one year mentioned in the explanation to the section. The explanation only defines the interruption contemplated by the section. 19 Pat. L.T. 511=1938 Pat. 423. *See also* 40 C.W. N. 222 (Discontinuous easement—Right to go on another's land to repair one's own wall). User for 19 years, 6 months—Effect. 46 I.C. 17=48 P.R. 1918.

In order to establish the acquisition of a right of fishery in a public tidal and navigable river as an easement by prescription, it is necessary to prove that the user was in assertion of a right other and higher than the general right of the public to fish in such river. 49 C.W.N. 539=1946 C. 12.

SEC. 27.—Sec. 27 does not apply to a donee or transferee from a Hindu widow in

and that within two years after *C's* death he contested *A's* claim to the right. The suit must be dismissed, as *A*, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

Extinguishment of right to property.

28. At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

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virtue of her powers as representing the estate. 41 I.C. 47.

SEC. 28: SCOPE OF SECTION.—This section only extinguishes a right, if the remedy by suit is barred. It does not say that even a defence will be barred. 1926 N. 99=89 I.C. 752. A suit for possession referred to in sec. 28, is a suit for which the period of limitation is prescribed by the schedule to the Limitation Act and not by the Oudh Rent Act. Further the section refers to a suit by a person who is capable of instituting a suit and is not one suffering under any disability. 1943 O.W.N. 99=1943 Oudh 296. The rule of limitation is a rule of procedure, and does not either create or extinguish rights, except in the case of acquisition of title to immovable property by prescription under sec. 28. Sec. 28, however, extinguishes only the right to immovable property if the claim is not enforced within the perid of limitation, but it does not affect the right to movable property. I.L.R. (1939) Bom. 685=41 Bom.L.R. 1002 =1939 Bom. 494. Although a right to assessment on land may for certain purposes be regarded as immovable property, it is impossible to hold that a suit to recover assessment is a suit for possession of property within the meaning of sec. 28. A right to recover assessment is a mere right of action, and cannot be lost by failure to bring a suit for possession of such property for 12 years. I.L.R. (1942) Bom. 326=44 Bom.L.R. 288 =1942 B. 174. If the owner whose property is encroached upon suffers his right to be barred by the law of limitation the practical effect is the extinction of his title in favour of the party in possession. Consequently where the executor holds the property adversely to the heir for upwards of 12 years on behalf of the charity for which it was dedicated, the title to it, acquired by prescription, becomes vested in the charity and that of the heir if he had any, becomes extinguished by operation of sec. 28. 47 C.W.N. 46 (2)=1942 A.L.J. 718=56 L.W. 8=1942 P.C. 64=(1943) 1 M.L.J. 11 (P.C.). Once a right to property has been extinguished under sec. 28, there can be no question of that right being revived or perfected by any action on the part of the person who lost that right. So where a person has allowed his right of pre-emption to become barred by time, anything subsequently done by him, on agreement with the vendee or reference to arbitration or even a decree obtained on the basis of the award, is of no avail and he cannot set up his time-barred right as a bar to another seeking to pre-empt the property. 9 Luck. 475=1934 O. 303. *See also* 14 P. 424=16 P.L.T. 183=1935 P. 164. Extinguishment of title of the true owner—Rule as to person in whom such title vests thereafter. *See* 45 Bom.L.R. 491=1943 B. 265. Twelve years' adverse possession of land by a wrongdoer not only bars the remedy of the real owner and extinguishes his title, but confers a title on the person in possession. That goes to the length of saying that the title of the real owner who had been dispossessed cannot even revive if, at a later date, he re-acquires possession. Sec. 28, Limitation Act, not only deprives the real owner of his right in the property but transfers it to the person who has successfully set up his adverse possession under the statute. Where a person remains in uninterrupted and unexplained possession and there is no indication of the capacity in which he was in possession then *prima facie* his possession must be presumed to be possession with an intention to claim the full rights of a proprietor. 1941 A.W.R. (Rev.) 1072= 1941 O.A. (Supp.) 870=1941 A.L.J. 676= 1942 All. 42. Sec. 28 presupposes that a person has, by force of limitation, lost his remedy by a suit for possession, and it is only in regard to such person that the section declares that his right to the property is extinguished. It cannot apply to persons who are in possession. 37 Bom.L.R. 471= 59 B. 502=1935 B. 326. *See also* 40 P.L.R. 319=1938 Lah. 369. The institution of a suit for possession within 12 years of dispossession is sufficient to bar the operation of sec. 28 although possession is actually obtained under the decree passed in the suit after that period. 46 C.W.N. 551. Sec. 28 does not apply to a suit for setting aside an order rejecting a claim; and the claimant's right to the property is not extinguished by his failure to get the order set aside within one year of the date of the order by a regular suit. When the execution proceedings including the attachment come to an end subsequent to the claim order, the claimant is not precluded from suing for a declaration of his title to the property after the lapse of a year from the date of the adverse claim order. 165 I.C. 84=40 C.W.N. 146. Suit for damages for malicious prosecution — Revision preferred against order of acquittal—Dismissal of revision— Limitation for suit runs from date of acquittal and not from date of dismissal of revision. 1935 O.W.N. 619=1935 O. 392. A person who obtains possession of property over which he has a charge should have that charge satisfied before he is made to part with possession irrespective of the fact that his remedy to enforce the charge may be barred by limitation. 144 I.C. 716=1933 N. 190. Limitation Act should be constru-

ed strictly. Limitation is not extinction and the bar created by limitation does not discharge a debt save in the particular circumstances mentioned in sec. 28. 40 I.C. 358 =5 L.W. 593. Sec. 28 is limited to suits for for possession and does not apply in respect of suits for debts. In respect of debts the Act simply bars the remedy but does not extinguish the debts. 44 C. 425=21 C.W.N. 177; 1930 A. 416. Neither Sch. I nor sec. 28 applies to defences. 1 P.R. 1916=32 I.C. 485. Sec. 28 applies to the right in a tenancy in the Central Provinces. 1927 N. 352. *See also* I.L.R. (1940) Nag. 348=1940 N.L.J. 121=1940 Nag. 49 (F. B.); 109 I.C. 403=1928 N. 281; 30 N.L.R. 208=148 I.C. 733=1934 N. 61. A right of property which is vested in one person is not transferred by the mere lapse of time to the person actually in possession. 45 A. 419 =50 I.A. 202=1923 P.C. 118=45 M.L.J. 623 (P.C.). Where a person pleads title by prescription he must prove possession for the full statutory period. Possession for a shorter period does not shift the onus on to the original owner to show that possession became adverse within the statutory period. 39 M. 617=43 I.A. 192=1916 P. C. 21=31 M.L.J. 324 (P.C.). Right to cut wood from trees—Adverse possession. 40 A. 461=44 I.C. 980=16 A.L.J. 345. It is open to a tenant encroaching upon the adjoining land of his landlord which is not included in his lease to indicate that he intends to hold the encroached land for his own exclusive benefit and not to hold it as he held the land given to him on his lease. 1939 Pat. 587. A title acquired under sec. 28 through adverse possession by a widow, who claims and holds a widow's estate, enures to the estate of her deceased husband and it descends upon her death accordingly. Where a Hindu widow became a convert to Mahomedanism, married a Mahomedan and continued to hold the properties of her former Hindu husband, *held*, that the effect of the remarriage was to cause a forfeiture of her rights in the estate of her first husband, that her possession thereafter was unlawful, but that the remarriage could not enlarge her estate into an absolute one. The effect of continued possession for over twelve years was only to perfect her title to a widow's estate which enured to the estate of her Hindu husband and devolved on his next heirs. 7 Luck. 320 =1933 O. 92. Applicability of section to suit for restitution of conjugal rights. 34 A. 412=9 A.L.J. 784. Right to maintenance—Extinction. 1924 C. 364. There is no extinction of ownership where no one is in possession. 45 B. 1020=62 I.C. 101=23 Bom.L.R. 416=1921 Bom. 368. *See also* 1929 O. 402. When a verandah is standing on part of a public street for more than thirty years, the Municipality cannot issue notice for its removal as the owner of verandahs gets title to the site under it by virtue of sec. 28. 58 I.C. 326=22 Bom.L.R. 951. *See also* 24 C.W.N. 1011=47 C. 1108; 30 I. C. 13. When section does not operate to extinguish right, *see* 1924 C. 364. A prescriptive title is not based on original right or morality but solely on expediency. 46 I.C. 964. *See also* 36 I.C. 11=25 C.L.J. 537. Title by prescription—Guardian of minor—Alienee from guardian, right of. 41 M. 102 =33 M.L.J. 309. *See also* 12 I.C. 695=21 M.L.J. 1041. Service inam can be acquired by adverse possession. 34 I.C. 898=3 L.W. 590. Where a transferee of trust property has not acted in good faith but has paid valuable consideration he acquires good title after the lapse of the period necessary for extinguishing under sec. 28 the right of the beneficiary to follow the property in his hands. 38 M. 1064. *See also* 26 M.L.J. 537 =24 I.C. 369. A person acquiring indefeasible title to any property by adverse possession is entitled to sue to recover possession of the same if lost afterwards. 58 I.C. 380; 46 I.C. 569. Although a right to assessment on land may for certain purposes be regarded as immovable property, it is impossible to hold that a suit to recover assessment is a suit for possession of property within the meaning of sec. 28. A right to recover assessment is a mere right of action, and cannot be lost by failure to bring a suit for possession of such property for 12 years. 44 Bom.L.R. 288=I.L.R. 1942 B. 326=1942 B. 174. *See also* 41 Bom.L.R. 1002=I.L.R. (1939) B. 685=1939 B. 494. On this section, *see also* 30 Bom.L.R. 1095=1928 B. 383. The expression "the right to such property" in sec. 28 includes the right to joint possession also. A person whose right to recover joint possession is extinguished under Art. 47, cannot therefore elude the operation of Art. 47 by framing his suit as one for damages of his share of the produce, as the right to claim damages is not separate from the right to claim possession or joint possession. 26 N.L.R. 160=1930 N. 142. Order under sec. 145 (6), Cr. P. Code—Successful party deprived of possession by stranger after 3 years—Subsequent suit by unsuccessful party not maintainable. 16 Pat.L.T. 183=14 P. 424=1935 P. 164; but it would be otherwise if it was before 3 years. 1935 Pat. 164. A case of exclusive right to fishing would seem to fall within the definition of interest in immovable property under Art. 144 and adverse possession of such a right for more than twelve years would, by operation of sec. 28, extinguish the right of the lawful owner to that extent. 35 C.W.N. 1256=59 C. 344=1922 C. 300. Fishery rights in navigable river in Bengal—Adverse possession against Government for over 60 years—Right of Government extinguished under this section—Evidence of adverse possession. 61 I. A. 78=61 C. 262=1934 P.C. 23=38 C.W.N. 285=66 M.L.J. 134 (P.C.). A mortgagee of melwaram interest in certain land leased back that interest to the mortgagors under a lease for a term of years. The tenancy terminated, but the mortgagee as landlord did not sue within twelve years for recovery of possession, but after 12 years, he brought a suit for his mortgage money and for profits for 3

PART V.

SAVINGS AND REPEALS.

Savings,

29. [1][(1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872.

LEG. REF.

[1] Substituted by Act X of 1922, sec. 3.

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years prior to suit. It was found that the mortgagor lessee had not been paying any rent to the mortgagee. *Held,* that by the operation of sec. 28 read with Art. 139 all the rights of the mortgagee as landlord had become extinguished and that the suit was barred. Art. 131 could not be applied to the case. 41 L.W. 398=1935 M. 377. *See also* 42 C.W.N. 758. Sec. 28 is confined to suits for possession and does not apply to a suit by a mortgagee for recovery of money due to him by sale of the mortgaged property. In cases to which that section does not apply the remedy by a suit may be barred but the right is not extinguished. 1930 A. 416=122 I.C. 411. *See also* 1935 O.W.N. 40=10 Luck. 539=1935 O. 139. Mortgage decree—Mortgagee purchasing property in another sale—Mortgage decree barred by limitation—Security not extinguished—Suit for possession by purchaser from mortgagor—Right of mortgagee to use mortgage as shield. 144 I.C. 736=1933 N. 241. Usufructuary mortgage—Adverse possession of trespasser for more than 12 years—Right of mortgagor if lost. 1935 A.L.J. 496 =1935 A. 542. Sec. 28 does not apply to persons who, being in actual possession which has never been disturbed, have had no occasion to sue for recovery of it, as a party in possession cannot be prejudicially affected by the law of limitation. 1930 A.L.J. 1416= 1930 A. 858; 1931 L. 668=32 P.L.R. 479. A suit for possession of the office of mutawalli is an action of a personal character and is not "a suit for possession of any property". Where the action for possession of the office is statute barred, right to a particular wakf property is not necessarily extinguished under sec. 28, which is limited to suits for "possession of property". 1930 A. 866=129 I.C. 375. In proceedings under sec. 145, Cr. P. Code, there was a dispute about crops and possession of the crops was delivered to one of the parties, but not the fields. The parties to a suit, instituted after three years from the date of the order in those proceedings, were not all of them paries to the said proceedings. It was also not proved that the area of the fields in dispute in the suit was the subject-matter of the prior dispute. *Held,* the suit was not barred under Art. 47 and sec. 28. 152 I.C. 180=11 O.W.N. 1165=1934 O. 449. *See also* 1937 A.L.J. 225=1937 A. 300. Punjab Limitation Act, 1920, sec. 2 —Invalid sale—Vendee's possesion—Suit to recover possession by heirs of vendors—Bar. 1931 L. 439.

SEC. 28 AND ART. 44.—Art. 44 must be read with sec. 28 and if an ex-minor fails to sue within the period prescribed by Art. 44 to set aside an alienation made by his guardian and obtain possession of the property alienated, then by the operation of sec. 28, his right to that property becomes extinguished. 43 Mys. H.C.R. 194=16 Mys.L.J. 427.

SEC. 29: SCOPE OF SECTION.—The amendment of sec. 29 by Act X of 1922 does not restrict the scope of the section but extends it. 91 I.C. 563=1926 N. 236. The enactment of sec. 29 of the present Limitation Act in its present form was rendered necessary not because the word "prescribed" in Part III of the Act did not mean prescribed by any law for the time being in force but because certain Courts had held that the application of the general provisions of the Limitation Act laid down in Part III to special and local Acts did "affect or alter" the periods of limitation prescribed by those Acts and the Legislature disapproved of those decisions. I.L.R. (1939) All. 647=1939 A.L.J. 522=1939 All. 403 (F.B.). *See also* I.L.R. (1941) A. 356=1941 All. 207. As to effect of amendment, *see* 36 C.W.N. 833=1933 C. 90. The amendment of sec. 29 in 1922 has extended and not restricted the scope of the section. Under the new sec. 29 some of the provisions of the Limitation Act are made applicable without being expressly included unless they are expressly excluded by the special or local law. The rest of the provisions remain as before applicable only when they are expressly included. The expression 'the remaining provisions of the Act shall not apply' in the amended sec. 29 simply means that they are not to apply *proprio vigore* that is merely by virtue of the Limitation Act itself and that if they are to apply, the grounds for applying them must be found in the special or local Act itself. I.L.R. (1941) All. 356=1941 A.L.J. 267=1941 All. 207. *See also* 1939 All. 403; 44 Bom.L.R. 138=1942 Bom. 131.

If a special or local law is a complete code in the matter of 'limitation' or if the phraseology of the sections enumerated in sec. 29 (2) makes those sections inapplicable to proceedings under such law the application of those sections to the special or local law must be deemed to have been expressly excluded by the legislature. 1942 A.L.W. 635= 1942 A.L.J. 592=1942 All. 429 (F.B.)=I.L. R. (1943) All. 84.

All that sec. 29 (2), lays down is that where a special or local law prescribes a special period of limitation the excluded provisions of the Limitation Act shall not apply. In sec. 25-A, newly introduced into Madras Act (IV of 1938), though a right of appeal is given no period of limitation different from the period prescribed by the first schedule to the Limitation Act is indicated. Therefore the provisions of sec. 29 (2) of the Limitation Act have no application so as to exclude

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the first schedule, the provisions of section 3 shall apply, as if such period were prescribed therefor in that schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law—

(*a*) the provisions contained in section 4, sections 9 to 18, and section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and

(*b*) the remaining provisions of this Act shall not apply.]

[1][(3)] Nothing in this Act shall apply to suits under the Indian Divorce Act.

[1][(4)] Sections 26 and 27 and the definition of "easement" in S. 2 shall not apply to cases arising in territories to which the Indian Easements Act, 1882, may for the time being extend.

LEG. REF.

[1] The original sub-secs. (2) and (3) were re-numbered (3) and (4) by Act X of 1922,

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the provisions of sec. 5 of the Limitation Act from being applied to appeals under the special law. 59 L.W. 202=1946 M. 351=(1946) 1 M.L.J. 271.

LOCAL LAW.—(as) Bombay Regulation V of 1827. *See* 37 B. 231=19 I.C. 387=15 Bom.L.R. 178. Order passed under sec. 169, C. P. Land Revenue Act. 6 N.L.J. 205=1923 N. 306. U. P. Land Revenue Act, sec. 111. 43 I.C. 473=4 O.L.J. 553. **Sec. 18 of** the Limitation Act does not apply to a proceeding under sec. 174 of the Bengal Tenancy Act. 18 C.L.J. 533=18 C.W.N. 31.

SPECIAL LAW.—The statutory rules framed by the High Court under Cl. 27 of the Letters Patent under the authority delegated to it by His Majesty who, in turn, was acting under the powers conferred on him by Act of Parliament are a "special law" within the meaning of sec. 29. I.L.R. (1941) Lah. 191 =43 P.L.R. 297=1941 Lah. 257 (F.B.). *See also* 1934 Pat. 353. Provincial Insolvency Act, secs. 46 and 47—Appeals under—Applicability. 41 M. 169=33 M.L.J. 566. *See also* 39 M. 593; 34 A. 496; 89 P.R. 1918=46 I.C. 588. By reason of the express terms of sec. 29 (2) (*a*) of the Act, sec. 4 of that Act applies to an application under sec. 68 of the Provincial Insolvency Act; so that if the last day of limitation for that application happens to be a Sunday, it may be presented on the next day. 5 R. 384, Diss.; 34 A. 503 Rel.) 9 R. 150=1931 R. 209. *See also* 1933 M.W.N. 1049. Sec. 5 of the Limitation Act is inapplicable to appeals from special Magistrates under sec. 39 of Ordinance II of 1932. The provision as to limitation contained in sec. 39 (2) of the Ordinance is a specific provision the consequences of which are provided for as a matter of limitation by sec. 29 of the Limitation Act. 60 C. 571=1933 C. 124=37 C.W.N. 195. Registration Act, sec. 77—Suit to compel registration—Time expired, when Court closed. *See* 23 I.C. 23=26 M.L.J. 397. *See also* 24 C.W.N. 4=53 I.C. 705 (F.B); 54 I.C. 228=24 C.W.N. 29. Sec. 29 is applicable to proceedings under Income-tax Act. 117 I.C. 881=1929 L. 170; but not to applications under Sec. 23 of Oudh Rent Act. 15 R. D. 6. Sec. 29 does not apply to an application under sec. 18 of the Land Acquisition Act. Time cannot be extended on account of an earlier infructuous application for copy. (9 L. 244, Rel. on.) 54 A. 282=1932 A. 598; 44 Bom.L.R. 138 (Dekkan Agri. Rel. Act—Special or Local Law). *See also* 14 Rang. 728 =1936 R. 501; (conflict between Art. 159 and Rr. 100 and 101, Rangoon Small Cause Court Rules). *See also* 1941 Lah. 257. An express exclusion means an exclusion by express words, that is, by express reference to the section and not exclusion as a result of a logical process of reasoning. 122 I.C. 390 =1930 S. 93=24 S.L.R. 344. There is no conflict between sec. 29 (2) (*b*), Limitation Act and sec. 185 (2), Bengal Tenancy Act. There is an express reference in sec. 29 (2) to sec. 3, which itself refers to secs. 4 to 25 and consequently secs. 4, 9 to 18 and 22 are specifically made applicable so far as not expressly excluded; and the only reasonable way in which Cl. (*b*) can be read is that the remaining provisions of the Act if they are to apply are to be specifically applied. They will not be applied by force of the Limitation Act itself. 1930 P. 301=9 P. 747. The rules made by High Court under its Letters Patent or by virtue of the Civil Procedure Code will not amount to a special or local law. High Court rules approximate closely to bye-laws which can be altered at will. They are subordinate and domestic enactments; they must be *intra vires* of the power from which they are derived and any other power *pari materia*. 8 R. 380=1930 R. 228 (F.B.). Rules of the Patna High Court, Ch. 7, R. 2—Letters Patent Appeal—Time spent for obtaining copy of judgment or decree cannot be deducted. 15 Pat.L.T. 301=1934 P. 353. Code of Civil Procedure should not be taken to be a special law. 8 O.W.N. 642=1931 O. 351; 11 O. W.N. 1103=1934 O. 465=10 Luck. 208. Sec. 29 applies even to the Crown. Therefore a suit by the Secretary of State against the Municipality for damages for injury caused to a police sowar's horse which put its foot

30 and 31. [*Provision for suits for which the period prescribed is shorter than that prescribed by the Indian Limitation Act,* 1877. *Provision for suits by certain mortgagees in territories mentioned in the second schedule.*] *Rep. by the Repealing and Amending Act, (XIII of* 1930), *S.* 3 *and Sch. II.*

32. [*Repeals.*] *Rep. by the Second Repealing and Amending Act (XVII of* 1914), *S.* 3 *and Sch. II.*

THE FIRST SCHEDULE.

(*See* section 3.)

FIRST DIVISION: SUITS.

Description of suit	Period of limitation.	Time from which period begins to run.
	Part I.—Thirty days.	
1. To contest an award of the Board of Revenue under the Waste Lands (Claims) Act 1863.	Thirty days ..	When notice of the award is delivered to the plaintiff.
	Part. II—Ninety days	
2. For compensation for doing or or contting to do an act alleged to	Ninety days ..	When the act or omission takes place.

into a manhole belonging to the Municipality which had been left open in breach of a statutory duty cannot be instituted without giving notice as contemplated by sec. 167, Bombay District Municipal Act and the suit must be brought within six months from the date of the injury caused to the horse. 131 I.C. 181=1931 S. 55. The Limitation Act does not purport to revive claims which are declared as extinguished by lapse of time. It also does not purport to effect the period of limitation provided by an English statute nor does an English statute come within the meaning of a local or special law referred to in sec. 29. 25 S.L.R. 222=1931 S. 124. The exception in sec. 29 (3) regarding matrimonial matter refers only to suits under the Divorce Act. 49 C.W.N. 570=1945 Cal. 484.

SCH. I: SCOPE.—The first schedule provides periods of limitation for the institution of suits and not for putting in defences. 1 P.R. 1916=32 I.C. 485. Periods of limitation provided in this schedule are to be computed subject to the provsions contained in the body of the Act. 2 C. 336. The articles are to be so construed as to make them harmonious and consistent. 31 C. 681 (F.B.); 26 M. 780=13 M.L.J. 412. If there be two articles which may cover the case the more particular and specific of the two ought to be regarded as one governing the case. 26 B. 430; 26 C. 564=3 C.W.N. 464 (F.B.); 40 L.W. 760=1935 M. 1; 26 A. 482=1 A.L.J. 195; 127 I.C. 889=1930 N. 300; 130 I.C. 157=1931 N. 47; 41 Bom.L.R. 1223=1940 B. 20. If two articles are wide enough to include the the same cause of action and neither of them can be said to apply more specifically than the other, that which keep alive rather than that which bars the right to sue should generally, apart from other equitable considerations, be preferred. 127 I.C. 889=1930 N. 300. The nature of the cause of action rather than the form of the suit determines the applicability of the particular article. 20 N.L.R. 80=80 I.C. 769=1924 N. 125. *See also* 1934 L. 725; 27 B. 363 and 35 C. 298 on the point. The plaintiff can so frame his suit as to make a certain article favourable to him applicable, though the same suit, if framed, otherwise, would have come under a less favourable article. 1932 A.L.J. 317=1932 A. 358. The language of the third column of Sch. I should be so interpreted as to carry out the true intention of the legislaure, that is to say, by dating the cause of action from a date when the remedy is available to the party. 62 C. 66=1935 C. 333. The law of limitation applicable to a suit is the law in force at the time of the institution of the suit. But this general rule is subject to the proviso that neither the right to the property in question has been extinguished nor the right to sue in respect of it barred before the latter law came into force. Once a right to property has been extinguished, or right of suit barred, it cannot be revived by subsequent Limitation Acts in the absence of express words so providing. I.L.R. (1941) Bom. 260=43 Bom.L.R. 194=1941 B. 178.

ART. 2.: ESSENTIALS FOR APPLICABILITY. —Art. 2 has no application to suits for recovery of statutory compensation, but is confined to suits for compensation in the sense of damages for acts which (are not legalised wrongs but) are and remain torts. A suit for statutory compensation arising out of (or rather implied in) restrictions authorised by the Mines Acquisition Act is governed not by Art. 2 but by Art. 120. 15 P. 510=1936 P. 513. The expression "in pursuance of any enactment" in Art. 2 must be interpreted as meaning acting *bona fide* in conformity with an enactment, and not merely pretending to

Description of suit.	Period of limitation.	Time from which period begins to run.
be in pursuanee of any enactment in force for the time being in British India.		
	Part III—Six Months.	
3. Under the Specific Relief Act, 1877, section 9, to recover possession of immovable property.	Six months	When the dispossession occurs.
4. [1][* * * *	* *	* * *]

LEG. REF.

[1] Repealed by Act XX of 1937.

act or acting under colour of such an enactment. Art. 2 should not be applied as if it were proved against the averment of the plaintiff, and there should be an enquiry as to whether the defendant had, in fact, acted in good faith or not. 1935 A.L.J. 459=1935 A. 538 (F.B.)=57 A. 935. *See also* 4 L. 428 =1924 L. 169; 8 B. 421; 22 B. 289; 15 C. 259; 36 A. 555=12 A.L.J. 952; 3 R. 268= 1925 R. 311; 1931 A.L.J. 858=1932 A. 16. The words "alleged to be in pursuance of any enactment" in Art. 2 must be reasonably construed and the person who seeks to take advantage of the shorter period of limitation must show that he had reasonable grounds for justifying his action under the particular enactment which he then relied upon and not simply that he arbitrarily asserted or thought so. He must, in short, have assumed to act in the honest exercise of a supposed statutory power. 39 P.L.R. 915=1937 L. 748. Where police officers exceeded their lawful authority and caused needless hurt when acting *bona fide* in exercise of what they understood to be their duty under Criminal Procedure Code. *Held,* that Art. 2 governed the case and the suit for compensation brought more than 90 days after injury was barred. 1936 C. 653. *See also* 1942 M. 539=(1942) 2 M.L.J. 14. (Suit for damages against Police officers for wrongful restraint). Where in a suit for compensation the defendant pleads bar of limitation under Art. 2, there must be an inquiry as regards good faith before a decision can be come to as to whether Art. 2 applies or not, and if in the inquiry the defendant fails to prove good faith, he is not entitled to protection under Art. 2. The case is even stronger if it becomes evident that the defendant knowingly acted contrary to the provisions of the enactment of which he seeks to take advantage and Art. 2 has no application to such a case. 32 S.L.R. 106=1937 Sind 281. A suit for damages by a civil servant for wrongful dismissal is not governed by Art. 2. It cannot be possibly said that his dismissal is "an act done in pursuance of any enactment in force." The suit is one in reality for breach of contract. 159 I.C. 1107= 1937 L. 226. Suit for malicious prosecution against Municipality—Art. 2 does not apply to improper manner of doing an act out of malice and carelessness. 21 I.C. 426=16 O. C. 211; 1937 B. 491=39 Bom.L.R. 881. *See also* 77 C.L.J. 93 (claim for compensation for malicious prosecution and illegal arrest). It does not apply to suits for damages for libel against a Police Inspector for libellous statements contained in his report made under sec. 202, Cr. P. Code. 1937 A.L.J. 20=1937 A. 90=I.L.R. (1937) A. 390. A suit for damages against the officer of the Court for selling property when decretal amount was rendered falls under Art. 2. 41 A. 219=48 I.C. 815. A suit for the refund of money legally collected by a Municipality but wrongfully refused to be refunded is governed by Art. 120 and not by Art. 2. 36 A. 555=12 A.L.J. 952. *See also* 1939 L. 583; 152 I.C. 680=1935 L. 47 (1). What amounts to continuing cause of action. 98 I.C. 679=1927 N. 85. Suit to recover damages from a Municipal Committees on the ground that it had been negligent in the repairing of a drain outside the plaintiff's house and had thereby caused the fall of a wall and of the roof, is governed by Art. 2 and Art. 31 has no application. 31 Punj.L.R. 159=122 I.C. 111. A sale of goods by the railway company without the formality provided by sec. 55 of the Railways Act is wrongful and a suit for damages for such a wrongful sale is one for conversion and is governed by Art. 48 and not by Art. 2. 151 I.C. 995=1934 P. 507=13 P. 752. Where the canal authorities cut the bank of a canal to avoid accident to the adjoining railway and not to the canal and plaintiff's adjacent mills were damaged, it was held that Art. 2 was not applicable. 1927 P.C. 72=31 C.W.N. 835 (P.C.). [Reversing 4 L. 432=1924 L. 192].

ARTS. 2 AND 36.—Suit for compensation for act done in pursuance of Cattle Trespass Act —Art. 2 and not Art. 36 applies. 39 P.L.R. 915=1937 L. 748. No doubt Art. 2 of the Limitation Act makes no reference whatsoever to *bona fides* and *mala fides.* But the protection of the Article cannot be claimed by a defendant where it is shown and found that the act complained of was a wilful and malicious act which the defendant could not have committted in the honest belief that he was justified in doing it under any enactment; and a suit in respect of such an act may be filed within the time limited by Art. 36. 1942 A.L.W. 63. *See also* 1937 Sind 281; 1945 L. 324=47 P.L.R. 302 (F.B.) (claim for compensation for damage caused by failure of local body to maintenance water system).

Description of suit.	Period of limitation.	Time from which period begins to run.
	[1][*Part VI.—One year.*]	
5. Under the summary procedure refered to in section 128 (2) (*f*) of the Code of Civil Praceduie, 1908, [1][where the provision of such summary proedure does not exclude the ordinary procedure in such suits and under Order XXXVII of the said Code.]	[2][One year] ...	When the debt or liquidated demand becomes payable or when the property becomes recoverable.
	[3][* * * *]	
6. Upon a Statute, Act Regulation or Bye-law, for a penalty or forfeiture.	One year ...	When the penalty or forfeiture is incurred.
7. For the wages of a household servant, artisan or labourer. [5][* * * *]	[4][One year] ..	When the wages accrue due.
8. For the price of food or drink sold by the keeper of a hotel, tavern or lodging house.	[4][One year] .	When the food or drink is delivered.
9. For the price of lodging.	[4][One year] ..	When the price becomes payable.

LEG. REF.

1 Inserted by Act XXX of 1925.

2 Substituted by *ibid* for "six months."

3 The heading "Part IV—One year" was omitted by *ibid*.

4 Substituted by Act XI of 1923, sec. 2 and Sch. I for "Dacto".

5 The words "not provided for by this Schedule, article 4" have been omitted by Act XXXIV of 1939.

ART. 3.—*See* 13 I.C. 641.

ART. 5.—*See* 41 Bom.L.R. 518=1939 B. 342. Art. 5 does not apply to suits on promissory notes filed under O. 37, C. P. Code 1925 C. 78=52 C. 954=29 C.W.N. 589; 98 I.C. 78=1927 Sind 90.

ART. 7.—Art. 7 is applicable only to domestic servants. 1928 M. 27=27 L.W. 30=106 I.C. 229. The term 'household servant' as used in Art. 7 must be read *ejusdem generis* with the words 'artisan or labourer' which follow it. It cannot apply to a person who is employed for the purpose of collecting rents of houses and as a male companion in his employer's journey abroad. 8 Luck. 119=1933 O. 393. A *biswarthar* in Oudh is not such a servant. 1924 O. 189=26 O.C. 327=10 O. L.J. 348; nor a weighman in a shop. 48 A. 164=90 I.C. 120=23 A.L.J. 1059=1926 A. 172; nor a salesman in a shop. 1935 R. 235; nor a fencing teacher. 8 M.H.C.R. 87; nor one who was to clean a temple. 7 M. 99; nor a village barber. 1941 N.L.J. 102=1941 N. 132; nor a contractor. 7 M. 100; 10 B. 196; nor a wet nurse. 17 I.C. 658=10 A.L.J. 395; nor a cook employed in a hotel. 1937 M. 340=(1937) 1 M.L.J. 329. But *see* 28 I.C. 956 (Mad.); nor a motor car driver. 62 C. L.J. 562=1936 C. 808. *See* however 5 Bom. 477. As to a motor driver who is provided with boarding and lodging by the employer, *see* 38 P.L.R. 296=1936 L. 661. Art. 7 does not apply to a suit by a *shahna* for the amount of wages due to him in respect of watching the crops attached in execution of a decree, as he is not a labourer within the meaning of that aticle. Such a suit is governed by Art. 102. 1935 A.L.J. 78=1935 A. 102. Art. 7 applies to a case where a household servant, artisan or labourer is hired on wages per day, per week or per month and does not apply to the remunera ion of a skilled person like goldsmith. Suit by a goldsmith for recovering the price of his labour in making ornaments falls under Art. 56 and not under Art. 7. I.L.R. (1938) N. 592=1938 N. 286. It is open to a master instead of paying the salary then and there to give credit in his account books and treat him as his creditor. Then Art. 7 does not apply and the ordinary rule of limitation applies. 1928 M. 27=27 L.W. 30. The word 'artisan' in Art. 7 means a mechanic or workman who has acquired some manual skill and does not mean person undertaking higher class of work. 50 I.C. 37=12 S.L.R. 140. So a suit by a mechanical engineer would be governed by Art. 102 and not by Art. 7. 50 I.C. 37. A village carpenter is an 'artisan' and a suit for wages by him is governed by Art. 7 and not by Art. 102 or Art. 56. 152 I.C. 885=1934 N. 260. A motor car driver is an artisan within the meaning of Art. 7. 5 R. 477=1927 R. 279; 62 C.L.J. 562=1936 C. 808; 1936 L. 661=38 P.L.R. 296.

ARTS. 8 AND 9.—If Arts. 8 and 9 apply to a claim for boarding charges. 91 I.C. 839=1926 C. 530. Consumable commodities sold in a restaurant would certainly come under Art. 8, but the mere fact that a proprietor of a store has a restraurant department does not make all articles of food which he may have sold in a different department lose their character of "goods" and with it the benefit of the Art. 52 of the Act. Food and drink the price of which would come under Art. 8 must be meals or articles of food which are either consumed on the premises or are sent

Description of suit.	period of limitation.	Time from which period begins to run.
10 To enforce a right of pre-emption, whether the right is founded on law, or general usage, or on special contract.	[1][One year] ..	When the purchaser takes under the sale sought to be impeached, physical possession of the whole of the property sold or where the subject of the sale does not admit of physical possession, when the instrument of sale is registered.
11. By a person, against whom any of the following orders has been made to establish the right which he claims to the property comprised in the order: (1) Order under the Code of Civil Procedure, 1908, on a claim preferred to, or an objection made to the attachment of, property attached in execution of a decree; (2) Order under section 28 of the Presidency Small Cause Courts Act, 1882.	[1][One year] ..	The date of the order.

LEG. REF.

[1] Substituted by Act XI of 1923, sec. 2 and Sch. I for "Ditto".

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out or taken away by the customer which are intended for, or capable of, immediate consumption in the state in which they are sent out, that is to say, without cooking. If from the restaurant is sent out, for instance, a case of beer, that would scarcely be drink in that sense of the word. It would be goods; and the same rule applies to article in tins which do not require immediate consumption. 1939 Rang.L.R. 626=1940 R. 17.

ART. 10: APPLICABILITY.—A suit for pre-emption in respect of a pure and simple lease is governed by Art. 120 and not by Art. 10. 1921 A. 154=19 A.L.J. 442=62 I.C. 884. *See also* 15 C. 184. So also in regard to a subsequent transferee from original vendee. 31 P.R. 1913=18 I.C. 70 (F.B.), overruling 25 P.R. 1903 and 106 P.R. 1907. *See also* 17 P.R. 1915=28 I.C. 695. So also where physical possession is not with the vendor but with the plaintiff who had executed a sale to the former with a covenant to pre-empt. 1921 M. 554=40 M.L.J. 443=62 I.C. 27. So also in the case of a tenant becoming owner under a foreclosure decree. 1927 O. 212=102 I.C. 22 (2). Where the document was executed as a deed of gift but it appeared that the parties really effected a sale and the person who sued for pre-emption was shown to have been aware of the passing of consideration, held, that he should sue within the time prescribed by Art. 10 and that sec. 18 did not save limitation. 128 I.C. 257=5 Luck. 492 (P.C.)=1931 P.C. 12=57 I.A. 251. *See also* 1928 N. 89 (1). But if the fraud was not known to the plaintiff, limitation will commence under sec. 18, only from the time when that fraud first become known to him. 36 P. L.R. 114=1934 L. 878; I.L.R. (1937) L. 202 =1937 L. 97. A sale of an undivided share of a joint holding does not admit of physical possession and is, therefore, governed by the second part of Art. 10 of the Limitation Act and the *terminus-a-quo* is the date of the registration of the instrument of sale. Where a deed of sale of a share in an undivided holding which was executed and registered, purported to sell occupancy rights but subsequently another deed reciting the sale of proprietary rights in the same land was executed and registered, and this deed recited that the mention of occupancy rights in the earlier deed was made under a misconception, that the parties had intended to sell proprietary rights and that the object of the later deed was to correct the misdescription and to substitute therefor the sale of proprietary rights, the limitation for pre-emption runs from the date of registration of the second deed. The reason why Art. 10, lays down that the *terminus-a-quo* is the date of the registration of the deed of sale (in cases where the subject of the sale does not admit of physical possession) is that the date of registration is the date on which the public must be presumed to know that the transfer has taken place. The registration of the earlier deed which conveyed the sale of occupancy rights cannot be presumed to inform any one interested that a sale of proprietary rights has taken place. The necessary publicity could only be given by the registration of the later deed of sale of proprietary rights. From the point of view of publicity and notoriety, it is wholly immaterial that the later deed is not the actual deed of conveyance but merely a deed correcting a misdescription of the nature of the transaction mentioned in the earlier deed. 200 I.C. 81=44 P.L.R. 99=A.I. R. 1942 Lah. 118.

STARTING POINT— PHYSICAL POSSESSION.—Limitation against the pre-emptor begins from the date of the physical possession of the purchaser and not from the date of symbolical possession. 1 Pat.L.T. 578=4 P.L.J. 277; 1927 L. 784. A fractional share of a zamindari situated in several Rathas is not capable of being physically taken possession of. 50 I.C. 80 (1)=17 A.L.J. 269. *See also*

Description of suit.	period of limitation.	Time from which period begins to run.
11-A. By a person against whom an order has been made under the Code of Civil Procedure 1908, upon an application by the holder of a decree for the possession of immovable property or by the purchaser of such property sold in execution of a decree complaining of resistance or obstruction to the delivery of possession thereof, or upon an application by any person dispossessed of such property in the delivery of possession thereof to the decree-holder or purchaser, to establish the right which he claims to the present possession of the property comprised in the order.	[1][One year] ..	The date of the order.

LEG. REF.

[1] Substituted by Act XI of 1923, sec. 2 and Sch. I, for "Ditto.".

109 I.C. 382=1928 L. 705; 5 O.W.N. 674=1928 O. 375; nor property in the possession of tenant. 73 I.C. 903 (1)=1924 L. 302. *See also* 148 P.W.R. 1913=20 I.C. 475 (portion only in the possession of tenants); nor share in joint undivided property. 1923 L. 75; 1930 A. 255 (2)=28 I.A. 248; nor share in a divided zamindari *mahal*. 4 A. 24 (F.B.); 24 A. 17 (P.C.)=1930 A.L.J. 375. [As to property in a divided *mahal*, *see* 21 M.L.J. 454=9 I.C. 309]; nor a share in the *shamilat*, 68 I.R. 1918=47 I.C. 359; nor property in possession of mortgagee or lessee. 52 I.C. 940=16 N.L.R. 37 (F.B); 32 P.L.R. 743=1932 L. 98. *See also* 15 I.C. 890=8 N.L.R. 68; 28 I.C. 208=2 O.L.J. 109; nor an equity of redemption in respect of usufructuarily mortgaged property. 45 M.L.J. 389=1924 M. 57. Physical possession is always possible in cases of houses and shops. 89 I.C. 444=23 A.L.J. 885=1926 A. 70 (1). Whether the property admits of physical possession or not must be determined with reference to the date of the sale. 1927 L. 784=26 Punj.L.R. 780; 1924 L. 302=73 I.C. 903. The physical possession contemplated by Art. 10, does not consist of formal statements by third parties but of physical control visible to other people, which gives notice of a change. Where a sale-deed contained a statement that "the immovable property as above has been sold for the above amount and the possession has also been delivered. It is as follows, Excluding the standing crop which is in the field, the possession has been delivered of the black soil," it was *held* that the statement cannot be regarded as evidence which warranted in law the conclusion that transfer of physical possession within the meaning of Art. 10, took place at the time of sale. Ganapat Ishnaji *v.* Chandrabhagabi. 1942 N.L.J. 567=A.I.R. 1943 Nag. 90=I.L.R. (1943) Nag. 209. In cases of sale of properties situated within the jurisdiction of two registration offies, time begins to run from the date of first registration and not from the date of the entry regarding registration made in the other office sometime later. 23 A.L.J. 104=1925 A. 324=48 A. 12. Where in case of a mortgage by conditional sale maturing into a decree absolute, there is delivery of possession after 5 years, time runs from the date of the original transfer, *i.e.*, the date of the mortgage and not the date of the delivery of possession. 39 A. 544=40 I. C. 461. But *see* 3 A. 175; 1 A. 311 (F.B.). In case of a sale required to be sanctioned by the Deputy Commissioner under the Land Alienation Act, time begins to run from the date of sale and not from the date of such sanction. 79 P.R. 1913=19 I.C. 239. Where by private arrangement, possession is taken by vendee before sale, time begins to run only from the date of sale. 80 P.R. 1918=48 I.C. 102. In a suit for possession by a purchaser of a share in land, the defendant cannot plead by way of defence his right of pre-emption which has become barred by limitation under Art. 10. The right of pre-emption is an inchoate right and in order to be completed it must be exercised. If that right is not still enforceable, it cannot be a ground of valid defence. 42 C.W.N. 1028. Where a purchaser under a sale deed in respect of which the cause of action for the suit for pre-emption has arisen subsequently transfers the property to another, the original cause of action for pre-emption is not thereby affected, for the subsequent transferee must take the transfer only subject to the right of pre-emption. Though such a transferee is impleaded in the suit more than a year after the date of the transfer to him, the suit filed within a year of the original sale is not barred by limitation. I.L.R. (1939) All. 220=1939 A.L.J. 35=1939 A. 158. For purposes of Art. 10, limitation in every case whether the sale deed is compulsorily registrable or not begins from the date when the sale deed is registered under S. 60, Registration Act. 218 I.C. 367=A.I.R. 1945 Pesh. 9.

ARTS. 11 AND 11-A: SCOPE AND APLICA-

TION.—*See* as to the scope of the articles, 18 B. 260; 40 M. 733; 22 B. 875; 40 C.W.N. 146; 19 N. L. J. 308. Articles apply to suits under C.P. Code. O. 21, R. 63 and R. 103. *See* 1935 M. 670; 69 M.L.J. 120; 36 I.C. 211; 2 P. 372; 59 I.C. 772; 11 L. 369=31 P.L R. 752=1929 L. 865; 130 I.C. 200=1930 A.L.J. 1322; 42 C.W.N. 1051=I.L. R. (1938) 1 Cal. 685=68 C.L.J. 261=1938 C. 577; 1941 M. 77=(1940) 2 M.L.J. 402. Claim orders in cases of attachment before judgment are not covered by Art. 11. 44 M. 902=1921 M. 163=41 M.L.J. 252 (F.B.). Suit though not barred by Art. 11 may be barred by some other provision of the Act. 50 I.C. 6 (Punj.); 23 C. 302. The objector himself must sue to set aside the order under O. 21, R. 63. 6 L.W. 281 =41 I.C. 684 (1). A suit for declaration that the property is liable to attachment and for setting aside an order allowing objection is governed by Art. 11. 18 I.C. 519; 50 I. C. 6 (Punj.); 1930 A.L.J. 1322; 138 I.C. 412=1932 L. 516; 1935 N. 171. Art. 11 is not applicable to suit by strangers to the proceedings in which order is passed. 57 I.C. 52; 53 I.C. 260; 36 I.C. 3. *See also* 1940 L. 497; 138 I.C. 412=1932 L. 516 (Article not applicable to suit by creditors other than the decree-holder, who had not attached the property). Order for symbolical delivery need not be set aside within one year by strangers in actual possession of the land. 24 I.C. 771=1 L.W. 31 (*see* on appeal 30 M.L.J. 404=31 I.C. 615). Symbolical possession in prior suit—Khas possession denied by tenant—Suit for khas possession filed one year after is barred by Art. 11-A. 106 I.C. 371=1927 C. 916. The words 'a person against whom' in Art. 11-A include a decree-holder. 15 C. 521; 19 A. L.J. 53. Where therefore a decree-holder brings a suit for declaration of his title against a third person in whose favour an order under O. 21, Rr. 98, 99 or 101, has been made, his suit is governed by Art. 11-A. 44 A. 607=1922 A. 403 (2)=20 A.L.J. 578; 66 C.L.J. 537=I.L.R. (1938) 1 Cal. 685= 1938 C. 384; 31 Bom.L.R. 765=53 B. 668 =1929 B. 37=1929 A. 610. *See also* 130 I.C. 200=1930 A.L.J. 1322 (a similar suit under O. 21, r. 63 governed by Art. 11); 52 L.W. 354=1941 M. 77=(1940) 2 M.L.J. 402; 40 C.W.N. 146. So also suit by auction-purchaser to establish his right to possession, after dismissal of his application to be placed in actual possession under O. 21, r. 99. 24 C.W.N. 1001=58 I.C. 21 (P.C.); 1930 M. W.N. 1051; *See also* 60 I.C. 905=16 A.L. J. 53=1921 All. 92. But where such application was dismissed on the ground that the sons of the judgment-debtor were in possession in their own right, the suit is not governed by Art. 11-A. 46 A. 693=22 A.L.J. 626=1924 A. 495. Article applicable to claim to property attached before judgment. *See* 41 M.L.J. 252=70 I.C. 439=1921 M. 163=44 M. 902 (F.B.); 79 I.C. 917=1925 M. 49; 1929 N. 128. But *see* 152 I.C. 297= 1934 P. 580. House attached in execution—Mortgage proclaimed to be a burden on mortgagee's objection—Suit by decree-holder to declare mortgage null and void comes within Art. 11. 100 I.C. 763=1927 A. 420. O. 21, r. 63 would be attracted even to applications filed by mortgagees in the course of the settlement of the sale proclamation, though the applications might not be expressly headed as being under O. 21, r. 58, C.P. Code; Art. 11, Limitation Act, would apply to such a case and a suit by the mortgagee would be barred by limitation, if filed more than one year after the order on the mortgagee's application. 57 L.W. 352 (2)= 1944 M.W.N. 384=1944 Mad. 417=(1944) 1 M.L.J. 438. *See also* 1943 B. 12. The articles apply to adverse orders against minors, only where they are properly represented. 26 B. 730; 40 A. 325; 43 I.C. 395 at 396 (Nag.). *See also* 32 B. 404=10 Bom.L.R. 350; 27 C. 242; 80 I.C. 992= 1925 M. 379. Where there is no application, the articles do not apply. 132 I.C. 844= 1931 L. 686. Where a claim under O. 21, R. 58 is rejected by the Court, which declines jurisdiction on the ground that the claimant has no *locus standi*, the order of the Court is one under the C.P. Code within the meaning of Art. 11, and a suit based on such rejection would be barred after one year. But when the matter is one to which O. 21, r. 58, does not apply, it is not within the mischief of Art. 11, although the applicant by mistake purports to apply under O. 21, R. 58. 150 I.C. 40=1935 P. 31. Applicability of article to suit under S. 73, C P. Code. 1937 M.W.N. 480. Claim petition—Dismissal after sale as not tenable—Suit within one year—Failure to institute—Effect of. *See* 44 Bom.L.R. 543=1.L.R. (1943) B. 636=1942 B. 263. Order dismissing claim for default—if "against" claimant—Suit within one year—If necessary. *See* 8 Cut.L.T. 93. Claim —Dismissal—Suit beyond one year for declaration of title—Attachment withdrawn after dismissal of claim—Effect—Suit—If barred. *See* 24 Pat. 462=1945 P. 369. Suit by unsuccessful claimant whose claim was preferred and rejected, before passing of decree. *See* 49 C.W.N. 111=1945 C. 449.

WHETHER INVESTIGATION IS NECESSARY TO MAKE THE ARTICLES APPLICABLE.—The article is more comprehensive than the preceding articles and applies to orders passed without investigation. 45 C. 785=23 C.W. N. 375; 38 I.C. 937=31 M.L.J. 247; 41 M. 985=35 M.L.J. 335 (F.B.); 57 Bom. 213; 19 N.L.R. 34=1923 N. 187; 1923 N. 69 (1); 58 I.C. 37=5 P.L.J. 652 (41 I. C. 468 *contra*). But see *contra* 40 A. 325= 44 I.C. 1005; 50 I.C. 649; 3 L. 7=1922 L. 108; 16 P.R. 1918=44 I.C. 528. In the following cases, Art. 11-A was held to apply only where the order is made on in-

vestigation. 35 C.L.J. 537=26 C.W.N. 853; 31 I.C. 444; 41 I.C. 640. Where a claim is neither investigated *nor dismissed,* on account of delay, Art. 11 does not apply to suits by claimant. 45 M. 827=1923 M. 76=43 M.L.J. 467. An order dismissing an application for default is not an order passed upon investigation. 26 C.W.N. 853=1922 C. 229; 26 I.C. 943=18 C.W.N. 77. *See also* 3 A. 504; 1937 N. 170; 31 M. 5; 1922 C. 164, *contra*. Claim—Withdrawal stating that suit will be filed——Dismissal—Suit—If to be filed within one year. *See* 41 L.W. 500=1935 M. 328. *See also* 41 L.W. 578=156 I.C. 880=1935 M. 544. Dismissal of an application for want of prosecution on the ground that objector did not produce evidence is dismissal on the merits to which article is applicable. 20 I.C. 369; 19 A. 253 (F.B.); 40 A. 325. Where an objection is dismissed under O. 21, R. 58 as being made after unnecessary delay, the order rejecting the claim is an order made against the claimant under O. 21, R. 63, and a suit to establish the applicant's claim falls under Art. 11. 57 B. 213=35 Bom.L.R. 147=1933 B. 190; 39 C.W.N. 457=61 C.L.J. 5; 1935 C. 500. An order simply directing a sale after notifying the claim is one against the claimant to which Art. 11 applies. 4 M. 985=33 M.L.J. 335 (F.B.). Where the order was "Petition not pressed as the decree-holder has to file a separate suit for the purpose," *held,* that the petition was not disposed of, and that plaintiff was not limited to the period of one year prescribed by Art. 11-A. 1933 M.W.N. 924.

SUITS NOT GOVERNED BY ARTICLE.—Art. 11 does not apply as against a person who was not a party to the proceedings in which the order sought to be set aside was made. 42 P.L.R. 601=1940 L. 497. Suit to recover property released from attachment before judgment under O. 38, R. 8 is not governed by Art. 11 or 13. 41 M. 23=39 I.C. 863. Arts. 11 and 13 do not apply to orders on claims by Official Receiver to property attached. 45 M. 70=1922 M. 189=41 M.L.J. 334. Proclamation of sale under certificate under Public Demands Recovery Act—Objections to—Rejection—Suit by objector for declaration of title and possession—Limitation is governed by Art. 11. 17 P. 446=1939 P. 109. Art. 11 (1) does not apply unless there has been an attachment in the manner prescribed by the C.P. Code. In cases where the property has been or is sought to be sold under a mortgage decree, there can be no attachment within the meaning of O. 21, R. 58, and a suit to contest an order passed on an objection to such a sale need not be filed within one year. 33 P.L.R. 1033=1933 L. 75. The executing Court will have no jurisdiction to investigate a claim or objection under O. 21, R. 58, when once the sale takes place. So dismissal for default of a such claim after the sale, being without jurisdiction, will not be governed by this Act. 65 C.L.J. 353=41 C.W.N. 845=1937 C. 390. Where an attachment effected in execution of a decree was held irregular and the property was released, and the claimant's objection on the basis of a gift deed in his favour was formally accepted, a suit filed more than one year after that, to declare the gift deed fraudulent, is in time being governed by Adt. 120. 1933 L. 449=34 P.L.R. 443. An application under O. 21, R. 100 dismissed for want of cause of action, on the ground that the applicant continues to be in possession of the disputed plots of land—Art. 11-A does not constrain the applicast to bring a suit within one year. 38 C.L.J. 150=1924 C. 97. Nor does article apply to a suit by such applicant on subsequent dispossession. 1924 C. 97; 50 C. 311=84 I.C. 876=1923 C. 601. Where, after dismissal of a claim to attached property, the execution proceedings were dismissed for default of the decree-holder and the attachment ceased under O. 21, R. 57, the claimant need not thereafter sue within a year after the adverse order under Art. 11. 51 C. 548=39 C.L.J. 418=1924 C. 744. *See also* 41 B. 64=36 I. C. 627. But *see* 56 I. C. 481=38 M. L. J. 397; 1937 N. 170=19 N. L. J. 308. Adjudication between decree-holder and claimant—Subsequent suit by claimant against judgment-debtor—Judgment-debtor could set up his title in defence and this article is inapplicable. 1929 P. 604. The mere attachment in the case of execution of a mortgage decree gives no cause of action for a suit by reversioners and the article is inapplicable. 10 L. 543=1929 L. 90 (2). Certain ancestral land was attached in execution of a money decree against the father. The sons objected to the attachment under O. 21, R. 58, and the objection was dismissed in January, 1922, and their suit for a declaration under O. 21, R. 63 was also dismissed. A fresh suit was filed by them in 1924 after their father's death for possession of the attached land which was sold in execution of the decree and purchased by the decree-holder. *Held,* that the suit was not barred by limitation, as the cause of action for the suit being the alienation effected in execution proceedings after the sons' objection had been dismissed, and a suit for possession not being competent in the lifetime of the father. 139 I.C. 522=33 P.L.R. 882=1932 L. 460. An application by an auction-purchaser under O. 21, r. 97 was allowed as to one item of property as being unopposed and dismissed as to another item, because the auction-purchaser adduced no evidence. *Held,* that the order was not one made in default but one made on investigation and a suit to set aside such an order was governed by Art. 11-A. 155 I.C. 702=39 C.W.N. 164=1935 C. 267. *See also* I.L.R. (1938) 1 Cal. 685 =1938 Cal. 384. Where in execution of a

Description of suit.	Period of limitation.	Time from which period begins to run.
12. To set aside any of the following sales :—	[1][One year]	When the sale is confirmed, or would otherwise have become final and conclusive had no such suit been brought.

LEG. REF.

[1] Substituted by Act XI of 1923, S. 2 and Sch. I for "Ditto."

mortgage decree the auction-purchaser obtained a decree and an order for symbolical delivery against the 1st defendant and he subsequently brought a suit against the 2nd defendant for actual possession, the previous order in execution not having been a final order cannot be considered to be passed under r. 103 of O. 21. There is, therefore, no obligation upon him to bring a suit for possession within one year from the date of that order and a suit brought later cannot therefore be deemed to be barred by R. 103. 1930 M.W.N. 1051. Art. 11-A does not apply where what is sought to be set aside is the original decree and not the order in execution proceedings. 51 B. 158=101 I.C. 40 =1927 B. 184. Terms of Art. 11-A go to show that it applies only to cases where a person who has been actually dispossessed of the property and who made an application under O. 21, R. 100, and whose application was dismissed, then brings a suit. Where the plaintiff was actually dispossessed long after the date of the order dismissing his application under O. 21, R. 100, limitation for a suit to establish his title and recover possession is that provided under Art. 142 and not Art. 11-A. 1929 P. 553=117 I.C. 634. Art. 11-A is correlated to and must be read with O. 21, R. 103 of the Code, and the article applies only when the suit as brought is one by a decreeholder or auction purchaser as such, and cannot apply if the plaintiff falls back on his original title as owner of the property in suit treating the defendant as holding permissively. 114 I.C. 725= 1929 A. 610. Art. 11-A does not bar suits for recovery of possession of immovable property after proceedings under Chapter VII of the Presidency Small Cause Courts Act have failed. 1929 M. 69=29 L.W. 537.

STARTING POINT OF LIMITATION.—Time runs from the date of the order and not the date of attachment and sale of property. 40 M. 733 =31 M.L.J. 394. Time runs only from the date of the appellate order in case of a Letters Patent appeal. 39 M. 1196=28 I.C. 367. But time taken in an unsuccessful revision petition to the High Court cannot be deducted. 8 Bur.L.J. 93=27 I.C. 829. There is much to be said in favour of the view that under Art. 11, the starting point should be taken to be the date of the final order, whether that order was passed on an appeal from that order or whether it was passed in a civil revision petition from that order. 1943 M.W.N. 455=A.I R. 1943 Mad. 633 =(1943) 2 M.L.J. 41.

ART. 11-A.—[*See also* under ART. 11, *supra*.] Art. 11-A does not contemplate computation of the period of limitation from the date of any order passed in revision. There is a clear distinction between an appeal and an application for revision. Whereas the right of appeal is a substantive right created by statute, interference by the High Court by way of revision is entirely discretionary and when the High Court rejects a petition for revision, it is not as if the order of dismissal is the only subsisting order in the case. It only amounts to the High Court abstaining from exercising its jurisdiction and allowing the order of the Subordinate Court to stand. 1931 N. 17= 130 I.C. 145.

Before Art. 11-A applies, there must have been an act of dispossession by the decreeholder or auction-purchaser. An order for delivery of possession of land in the actual possession of tenants made in favour of the decree-holder purchaser under O. 21, R. 96, C.P. Code, does not amount to dispossession within the meaning of that article. 44 C. W.N. 251=70 C.L.J. 111=1940 C. 16. Art. 11-A, applies only to suits by a person who has been dispossessed of property in the delivery of possession in execution of a decree. Where a person had not been dispossessed of the property when the order under O. 21, R. 99, C. P. Code, was passed against him and the application which was presented by him under O. 21, R. 99, C.P. Code, was held to be incompetent, the suit is not covered by the terms of Art. 11-A. 1940 L. 349.

ART. 12: SCOPE AND APPLICATION.—Article applicable to suits to set aside a sale voidable on any ground. 49 I.A. 312=1 P. 733=44 M.L.J. 718=1922 P.C. 336 (P.C.); 14 I. C. 780=14 Bom.L.R. 254; 32 M.L.J. 525 =32 I.C. 611; 1941 P. 490. Article does not apply where the sale is void *ab initio* and is a nullity. 35 I.C. 404 (C.); 42 C.L. J. 69=1925 C. 1148; 12 M. 168 (F.B.). *See also* 29 C. 73 (F.B.); 44 C. 241; 26 A. L.J. 716=50 All. 686=1928 A. 363.

ART. 12 has no application when the transaction in question is a nullity as in such a case it is unnecessary to set it aside. I.L.R. (1943) Bom. 400=45 Bom.L.R. 553=A.I. R. 1943 Bom. 288. Article inapplicable to

Description of suit.	Period of limitation.	Time from which period begins to run.
(*a*) sale in execution of a decree of a Civil Court; (*b*) sale in pursuance of a decree or order of a Collector or other officer of revenue;		

suits for declaration that a sale was fraudulent and cannot affect the rights of plaintiff. 24 I.C. 695. *See also* I.L.R. (1943) Bom. 400=45 Bom.L.R. 553=1943 Bom. 288; 14 P.L.J. 441; 11 B. 119; 9 M. 457 6 A. 406; I.L.R. (1941) 1 Cal. 339=45 C.W.N. 277 =1941 Cal. 333; 34 C. 241; 23 P.L.T. 364; 1942 P. 386; 14 P.L.T. 441=1933 P. 473. The suit need not be expressly to set aside the sale. It is enough if the relief sought cannot be had without setting aside the sale. 25 C. 179=24 I.A. 170 (P.C.); 10 B. 214; 27 B. 577. Art. 12 does not apply to void sales. It applies only to cases where the plaintiff was a party to the proceedings in which the sale was held. 1941 O.W.N. 1328 =1941 O.A. 1013=17 Luck. 456=1942 O. 120. The language of Art. 12 (*a*) is wide and there is no reason to restrict the application of the expression "in execution of a decree" to cases of simple money decrees. The article applies to the case of sales on the basis of mortgage decrees also. 196 I.C. 457=1941 O.W.N. 1077=1942 Oudh 33. Thus a suit for possession of property sold in execution of a decree is governed by Art. 12. 1 L. 27=55 I.C. 833. *See also* 46 Bom. 914=24 Bom.L.R. 423=1923 B. 462. Art. 12 of the Limitation Act has no application to a suit in which the plaintiff does not want a sale to be set aside but merely asks for a declaration that, notwithstanding the sale in question, the interest which he has in the property sold is not affected by the sale in question or the confirmation thereof. 23 Pat. L.T. 364=A.I.R. 1942 Pat. 386. Art. 12 is not applicable to a suit by an unsuccessful claimant in execution proceedings, for a declaration of his lien on the property, arising out of a hypothecation in his favour by the judgment-debtor. The suit is not one for setting aside the sale nor is it necessary for the plaintiff so to do as he was not a party to it. 34 P.L.R. 468=1933 L. 10; 45 C.W. N. 277=I.L.R. (1941) 1 C. 339=1941 C. 333. Sale in execution of mortgage decree against father of Hindu joint family—Sons cannot claim to redeem without setting aside the sale within one year. 1 P.L.J. 180=34 I.C. 288. *See also* 1929 P. 323. Article applicable to suit by minor to set aside sale. 30 P.W.R. 1918=43 I.C. 712. The rule is not affected by the fact that after decree, the plaintiff became *sui juris* at the time of execution proceedings, notice of which was served not on him but on the guardian *ad litem*. 39 M. 1031=32 I.C. 391. A minor not represented by a proper guardian is not a party to the proceeding and Art. 12 is inapplicable. 1922 L. 447; 38 M. 1076=28 M.L.J. 525; 12 B. 18; 8 C. 656=9 I.A. 27; 11 O.C. 346. The Article applicable in such cases is Art. 144. 48 I.C. 399=113 P.R. 1918. Article is inapplicable to strangers to suit or proceedings. 71 I.C. 822= 1924 L. 396; 67 I.C. 894; 15 P.R. 1912= 11 I.C. 76; 11 B. 130; 9 C.L.R. 18; 5 A. 614. Suit to set aside sale in execution of a decree against third party is not governed by this Art. 36 I.C. 3=10 Bur.L.T. 225. Also suit to set aside a sale of property not belonging to the judgment-debtor, but to a stranger. 26 A. 346. Also a suit to recover property which is sold subject to plaintiff's rights. 7 W.R. 252. Also a suit for land taken in excess of that included in the decree. 19 A. 308. A sale under S. 118 of Madras Estates Land Act is not held in pursuance of an order or a decree of the Collector or other officer of Revenue. Therefore Art. 12 cannot apply to such a case. 1927 M.W.N. 174. A suit to set aside a sale under the Bengal Public Demands Recovery Act is governed by Art. 12. 31 C. W.N. 299=1927 C. 315. *See also* I.L.R. (1940) M. 123=1939 M.W.N. 918=1939 M. 867 (Execution sale under decree on void mortgage by Hindu father—Suit by sons for possession impeaching mortgage decree and sale).

STARTING POINT.—In the case of a sale that requires confirmation, time begins to run from the date of the confirmation, and in other cases from the date on which the sale becomes otherwise final. 10 I.C. 87=13 C. L.J. 339. *See also* 16 I.A. 195=23 C. 775 (P.C.); 32 I.C. 391=39 M. 1031; 12 C. 49; 17 C. 347 (P.C.).

ART. 12 (*b*).—A suit to set aside a revenue sale under the Madras Estates Land Act more than one year after the expiry of 30 days after the sale does not lie as it is barred by Art. 12 (*b*). 45 M.L.J. 840=1924 M. 278. *See* 1927 M.W.N. 174; 52 M.L. J. 390=1927 M. 488. Notice under S. 112, Madras Estates Land Act—Suit to contest—Dismissal—Application for sale by landholder beyond the period fixed under S. 115 (2)—Sale by order of Collector—If void—Suit for declaration of illegality and for possession —Limitation—"Act" of officer—Meaning of. 50 L.W. 445=1943 Mad. 501=(1943) 1 M. L.J. 386. *See also* on the point 61 M.L.J. 203=134 I.C. 184=1931 M. 724.

Description of suit.	Period of limitation.	Time from which period begins to run.
(*c*) sale for arrears of Government revenue, or for any demand recoverable as such arrears; (*d*) sale of a patni taluq sold for current arrears of rent. *Explanation*—In this article "patni" includes any intermediate tenure saleable for current arrears of rent.		
13. To alter or set aside a decision or order of a Civil Court in any proceeding other than a suit.	[1][One year] ..	The date of the final decision or order in the case by a Court competent to determine it finally.
14. To set aside any act or order of an officer of Government in his official capacity not herein otherwise expressly provided for.	[1][One year] ..	The date of the act or order.

LEG. REF.

[1]Substituted by Act XI of 1923, S. 2 and Sch. I, for "Ditto".

CL. (*c*).—Sale for Government revenue. *See* 38 M. 356=25 M.L.J. 393. *See also* 8 C. 329; 34 C. 241; 6 M. 148; I.L.R. (1937) 1 C. 437=40 C.W.N. 1359=1936 C. 715. (Suit under Assam Land and Revenue Regulation).

CL. (*d*).—Applicability to sale under Bengal Patni Regulation, 1819. 46 C.L.J. 51 =1927 C. 733. A suit to recover property released from attachment under O. 38, R. 8 is not governed by this article, as the existence of the order releasing the attachment before judgment does not bar the suit. 41 M 23=39 I.C. 863. *See also* 3 A. 40. On this article, *see also* 6 P.L.J. 85=60 I.C. 849=1921 P. 1.

ART. 13.—In a subsequent suit against an order in proceedings under Chap. VII of the Presidency Small Cause Courts Act, there is no necessity to alter or set aside any such decision or order and Art. 13 has no application. 1929 M. 69=56 M.L.J. 199. So also in a suit for declaration of title to certain property after an order of the Insolvency Court under sub-S. (3) of S. 14 of the Provincial Insolvency Act for sale of the interest of the insolvent in it, leaving the question of title to be decided by a competent Civil Court. 36 C.W.N. 621=1933 C. 263. *See also* on the article. 41 M. 23; 45 M. 70, cited under Arts. 11 and 11-A.

ART. 14: APPLICABILITY.—If it is necessary for a plaintiff to get rid of an order which stands in his way before he can obtain a certain relief, although he may sue merely for a declaratory decree, still the suit should be deemed to be one to set aside an order falling within the ambit of Art. 14. 15 L. 389=1934 L. 384 (F.B.). *See also* (1943) 1 M.L.J. 386. Art. 14 has no application when it is not necessary for the plaintiff to set aside the act or order in order to obtain the relief which he claims. 49 C.W.N. 117=1946 C. 480. "Official capacity"—Meaning of. 39 Bom.L.R. 288. *See also* 1943 Mad. 501=(1943) 1 M.L.J. 386. The article would apply if the suit involves the setting aside of an order, though there is no direct prayer to that effect. 25 B. 337=10 M.L.J. 368 (P.C.); 24 A. 467. Art. 13 applies only to orders and proceedings to which by law a particular effect is given. An order to come under Art. 14 must be an order of at least a *quasi*-judicial character and not a mere executive order. 104 I.C. 781=1927 M. 1167. *See also* 165 I.C. 739=1936 L. 692. Under Art. 14, the question is not merely one of form but of substance. 30 Bom.L.R. 431=1928 B. 180; 1939 C. 749. An order made without jurisdiction is a nullity and need not be set aside, and Art. 14 has no application to an order of that kind. 39 C.L.J. 454=83 I.C. 446=1924 C. 913. *See also* 29 B. 480; 30 M. 280; 1924 N. 142; 20 P.L.T. 136=1938 P.W.N. 631= 1938 P. 524. Thus the article does not apply where relief is asked for on the ground that order is *ultra vires*. 48 B. 61=1924 B. 273; 36 B. 225=15 I.C. 517; 39 B. 494=29 I. C. 490; 36 C. 726; 17 I.C. 881=17 C.W.N. 55; 30 M. 280; 42 M. 673=37 M.L.J. 71= 51 I.C. 366; 98 I.C. 22=1927 N. 10; 1927 N. 159=100 I.C. 4=22 N.L.R. 147. The words "act" or "order" in Art. 14 do not mean an act or order which is a nullity. An order made by an officer of Government in his official capacity, purporting to act under the law, which is of a *quasi*-judicial character and within his power would fall under Art. 14. A suit to set aside an order of the Assistant Collector of Customs imposing penalty under S. 167 (17) of the Sea Customs Act is governed by Art. 14. 42 Bom.L.R. 532= 1940 Bom. 294. *See also* 57 M. 501=1934 M. 147=66 M.L.J. 715. (Resumption of certain villages by Government treated as a nullity); 5 P.L.J. 321=56 I.C. 507; 24 I. C. 813 (2)=7 S.L.R. 169; nor where the

officer was not acting in his official capacity. 45 B. 920=61 I.C. 347=1921 B. 381. *See also* I.L.R. 1939 B. 123=1939 B. 56; 40 Bom.L.R. 1288. (Suit under S. 36 Proviso (3) of Bombay Hereditary Officers Act). "Act" meaning of. *See* (1943) 1 M.L.J. 386. As to whether the article applies to suit for declaring illegality of resumption of service inam on the ground of non-performance of service, *see* 27 L.W. 101=1928 M. 282. *See also* I.L.R. (1939) B. 564=1939 B. 425=41 Bom.L.R. 939.

SUITS GOVERNED BY ARTICLE.—A suit under S. 12, Redemption of Mortgages Act (XI of 1913), instituted by a person aggrieved by an order passed by the Collector under Ss. 6 to 10 or 11 of the Act to establish his right in respect of the mortgage is governed by Art. 14; it makes no difference that the suit is one for a mere declaration and no relief to set aside the order of the Collector has been expressly asked for in the plaint. (4 L. 346=1923 L. 648, Overr. and 1925 L. 385, Appr.) 15 L. 389=1934 L. 384 (F.B.). *See also* 165 I.C. 739=1936 L. 692; 40 P.L.R. 245 =1938 L. 512. Suit to set aside order of Collector forfeiting land for failure to pay arrears of Government revenue. 44 B. 451 =57 I.C. 587; 15 B. 424. A claim for relief inconsistent with an order of enfranchisement of inam is governed by Art. 14 if the order of enfranchisement is *intra vires, i.e.*, the inam was granted or continued by Government, and in any case in which it is shown that the inam was not granted or continued by Government, Art. 142 or 144 would apply. 123 I.C. 341=1930 M. 710; 39 BomL.R. 288=I.L.R. (1937) Bom. 464=1937 Bom. 307. A suit by a Zemindar against the Government for a declaration that an enfranchisement by the Government of a service inam in his Zemindari is not valid and binding on him, is generally governed by Art. 120, but if the Zemindar was a consenting party to such enfranchisement proceedings and did not object to the same, Art. 14 might apply. 58 M. 141=68 M.L.J. 409. *See also* 1936 O.A. 1943 (cc) 71=3 O. 68. (Suit for declaration involving setting aside of order). Where, however, the Zemindar has not appeared before the Inam Commissioner or taken any part in the proceedings, and sues on the footing that the proceedings are *ultra vires*, it is not necessary to set aside the proceedings and Art. 14 will not apply. 58 M. 141=1936 M. 316=68 M.L.J. 409; 165 I. C. 739=1936 L. 692. In such a case Art. 120 applies and the cause of action arises only when he is injuriously affected by the enfranchisement, *i.e.*, when inamdar definitely refuses to perform the services for which the inam was originally granted. 58 M. 141; 31 I.C. 267=1915 M.W.N. 915 (in 37 M.L.J. 71 resumption treated as a nullity which need not be set aside.) Suit for amendment or cancellation of settlement entries. 1922 N. 76; 57 I.C. 319. But *see* 14 I.C. 50, *contra*. Suit for cancellation or modification of rent fixed by a Settlement Officer. 28 C. 676; 29 C. 367. Suit under S. 11 of Punjab Act (II of 1913) which is a suit to set aside the summary order of the Collector. 6 L. 206=88 I.C. 945=1925 L. 385. Order of Collector regulating supply of water to lands is not within the Article. 104 I.C. 781=1927 M. 1167. Order of commissioner under S. 178 of Bombay District Municipal Act is governed by Art. 14. 51 B. 105=28 Bom.L.R. 1465=1927 B. 55. *See also* 1940 B. 188=42 Bom.L.R. 223 (Order of Bench of Magistrates under Bombay Municipal Boroughs Act). Also an order of a manager under the Sind Encumbered Estates Act, S. 7 (2) (*c*) in his official capacity. 1930 S. 150. As to suit under Madras Estates Land Act, *see* 1943 Mad. 501=(1943) 1 M.L.J. 386. Revenue sale—Order of cancellation—Suit by purchaser for possession—Limitation applicable—Order of cancellation, if nullity and can be ignored—Art. 113—Applicability. 1944 Sind 44=I.L.R. (1943) Kar. 404.

SUITS NOT GOVERNED BY THIS ARTICLE.—Art. 14 does not apply to an order of enhanced assessment, which is a nullity or in excess of authority; in such a case it is not incumbent on the plaintiff to file a suit to have the order set aside. Consequently, a suit to recover payments made under protest filed more than one year after the order to recover such assessment was made is not barred by limitation. 36 Bom.L.R. 761=1934 B. 434. *See also* 39 Bom.L.R. 288. Suit in ejectment by a proprietor to whom Bakasht lands were allotted in collectorate partition not governed by Art. 14. 53 I.A. 176=5 P. 735=1926 P.C. 60 (P.C.). *See also* 183 I.C. 853= 1939 L. 135 (Suit to set aside mutation order and for possession). Where the suit for declaration of title was brought in the Civil Court more than one year after the order of the Deputy Collector, which was one passed apparently under S. 57 of the Estates Partition Act, *held*, that the suit not being to set aside the order of the Collector was not barred by Art. 14. 1931 C. 29=52 C.L.J. 247. *See also* 171 I.C. 267=1937 Pesh. 94. A suit denying a right of way as affirmed by an order of a Mamlatdar under Mamlatdar's Courts Act, is a suit respecting possession of immovable property and as between Arts. 14 and 47, Art. 47 applies to such suit. 33 Bom.L.R. 517=1931 B. 256. Where the suit was for declaration, against the Secretary of State, that the order by the Collector disposing of the suit lands in favour of the second defendant was null and void, and for possession as against the grantee, *held*, the relief regarding possession could not be awarded in this suit; that it was really a suit for declaration and injunction and governed by Art. 120, and not by Art. 144 or 14.

Description of suit.	Period of limitation.	Time from which period begins to run.
15. Against Government to set aside any attachment, lease or transfer of immovable property by the revenue-authorities for arrears of Government revenue.	[1][One year] ..	When the attachment, lease or transfer is made.
16. Against Goverement to recover money paid under protest in satisfaction of a claim made by the revenue-authorities on account of arrears of revenue or on account of demands recoverable as such arrears.	[1][One year] ..	When the payment is made.
17. Against Government for compensation for land acquired for public purposes.	[1][One year] ..	The date of determining the amount of the compensation.
18. Like suit for compensation when the acquisition is not completed.	[1][One year] ..	The date of the refusal to complete.
19. For compensation for false imprisonment.	[1][One year] ..	When the imprisonment ends.
20 By executors, administrators or representatives under Legal Representatives' Suits Act, 1855	[1]One year] ..	The date of the death of the person wronged.

LEG. REF.

[1] Substituted by Act XI of 1923, S. 2 and Sch. I, for "Ditto."

1931 B. 369=55 B. 447=33 Bom.L.R. 772. Certain allowance was payable by Government to defendants. In December, 1917, the Commissioner had directed payment of that allowance to the 1st defendant. A suit to recover the plaintiff's share of that allowance brought more than one year from the date of that order was held to be not barred by Art. 14, as the plaintiff's claim was entirely independent of the order of Government. 33 Bom.L.R. 783=1931 B. 473.

ART. 16.—Art. 16 requires for its application that the demand, if not for arrears of revenue, should be "recoverable as such arrears'." Rents "settled" by the Settlement Officer under S. 104 of the Bengal Tenancy Act are not arrears of revenue and unless it can be shown that by some enactment they have been made to come under that description or have been made recoverable as arrears of revenue, Art. 16 cannot be applied to them. The fact that the claim to such rents comes within the Bengal Public Demands Recovery Act would not bring that article into operation. 64 I.A. 281=I.L.R. (1937) 2 Cal. 769=1937 P.C. 244=(1937) 2 M.L.J. 834 (P.C.). Suit for recovery of water-cess alleged to have been illegally levied and paid under protest is governed by Art. 16. 46 M. 488=1923 M. 652=45 M.L.J. 12; 70 I.C. 884 (M.); 44 M.L.J. 645=1923 M. 665. *See also* 18 I. C. 699=1913 M.W.N. 75 (it would be different if proceedings are taken under the Revenue Recovery Act). The article is also applicable to a suit for the recovery of penal assessment illegally levied for an alleged wrongful taking of water. 1925 M. 474. A suit to recover the amounts paid as village service cess by the plaintiff under protest is governed by Art. 16. 61 M.L.J. 754 =1931 M. 525.

ART. 17.—Where there is no determination of the amount of compensation, as where the Collector refuses to award any compensation, the article has no application. 34 C. 470; 22 B. 802; 27 M. 535. Land acquisition—Money paid to person apparently entitled—Suit by person having interest in land for money so paid, governed by Art. 120 and not by this Article or Art. 62. 1935 P. 42.

ART. 19.—Suit for damages for false imprisonment or malicious prosecution is governed by one year's rule under Arts. 19 and 23. 40 C. 898=23 I.C. 25=18 C.W.N. 185. *See also* 30 C. 872 (P.C.)=30 I.A. 154.

ART. 20.—Applicability—Suit by Mahomedan co-heir for share of sale proceeds of deceased's property from person engaged to distribute same—Limitation—Starting point. *See* (1945) 2 M.L.J. 422=I.L.R. (1946) M. 423=1946 M. 116.

ART. 22.—*See* 22 Bom.L.R. 1333=1924 B. 290. Art. 22 does not apply to claims by workmen under the Workmen's Compensation Act. 58 B. 128=35 Bom.L.R. 1142=1934

Description of suit.	Period of limitation	Time from which period begins to run.
21. By executors, administrators or representatives under the Indian Fatal Accidents Act, 1855.	[1][One year] ..	The date of the death of the person killed.
22. For compensation for any other injury to the person.	[1][One year] ..	When the injury is committed.
23. For compensation for a malicious prosecution.	[1][One year]	When the plaintiff is acquitted, or the prosecution is otherwise terminated
24. For compensation for libel ..	[1][One year] ..	When the libel is published

LEG. REF.

[1] Substituted by Act XI of 1923, S. 2 and Sch. I, for "Ditto."

B. 28. 'Injury' in Art. 22 has a wider connotation than physical hurt. Assault even though it causes no hurt is an offence to the human body and wrongful obstruction to a person from entering a temple is an injury to the person and a claim for damages regarding the same is governed by Art. 22. 138 I.C. 84=1932 M. 432. The proper article applicable to a *suit for damages for enticing away the plaintiff's wife* is Art. 120 and not Art. 22. Injuries to person in Art. 22 mean physical injuries to the plaintiff and this is not a case of injury to the person of the plaintiff. 58 A. 903=1936 A. 454.

ART. 23.—*See* 40 C. 898=18 C.W.N. 185. Proceedings under the Bengal Disorderly Houses Act not a prosecution but only a libel. 20 I.C. 768=18 C.L.J. 352. Art. 2 applies only where the defendant did an act honestly believing that he was empowered to do it by some enactment. Otherwise the suit for compensation for wrongful act will fall under Art. 23. 3 R. 268=1925 R. 311. Time runs from the time the plaintiff is acquitted, or prosecution is otherwise terminated. 17 M.L.J. 60. Time runs from date of discharge. Revision petition does not suspend period. 24 Bom.L.R. 507=1922 B. 209; 23 M. 24. It is doubtful if the same rule will apply in case of appeal preferred by Government against acquittal. 20 C. 41. The word "prosecution" in Art. 23 is used in the general and not in the technical sense. It is used in a wider sense than a trial and will include criminal proceedings by way of appeal or revision before a District Magistrate, a Sessions Court or a High Court. A prosecution is terminated when it is brought to an end or is concluded. If the suit is filed within one year from that date, although more than one year after the order of discharge by the Magistrate, the plaintiff's claim is within limitation. 221 I.C. 666= I.L.R. (1946) N. 358=1946 N. 46. In the case of an acquittal on appeal, or on revision, the date of the order of the appellate Court is the starting point of limitation. 7 A. 205 (F.B.); 57 I.C. 635 (M.). *See also* I.L.R. (1938) All. 89=1937 A.L.J. 1281 =1938 All. 49; (1938) 1 M.L.J. 344=1938 M. 349=I.L.R. (1938) Mad. 675 (F.B.). A claim for compensation for malicious prosecution is governed by Art. 23 which is the more specific article and not by Art. 2. A claim for compensation for illegal arrest, however, falls within the scope of the latter article. 77 C.L.J. 93=A.I.R. 1944 Cal. 4. Limitation for a suit for malicious prosecution begins to run when the proceedings are terminated by acquittal or otherwise and the proceedings cannot be said to terminate when they are pending in any appellate or revisional Court or by way of reference. 1942 O.W.N. 446=1942 Oudh 489. "When the plaintiff was acquitted or the prosecution otherwise terminated"—Meaning—Prosecution of plaintiff and another—Discharge of plaintiff and framing of charge against the other—Enquiry against the latter terminating sometime later—Date of discharge for purposes of limitation for a suit by the plaintiff. 1945 M.W.N. 280=58 L.W. 238 =A.I.R. 1945 Mad. 288=(1945) 1 M.L.J. 287. Prosecution terminates by order of discharge by Magistrate—But if matter is taken up in revision by higher authority, prosecution terminates when proceedings in revision come to an end. 52 A. 553=1930 A. 326. *See also* 39 Bom.L.R. 881=1937 B. 491.

ART. 24.—Each publication of a libel gives a fresh cause of action for suit. Where the President of a Union Bench sends a report to a Magistrate in connection with an application for transfer of a case pending before the Bench, a suit for damages for libellous matter contained in that report may be brought within one year of the publication of the report to the Magistrate. 40 C.W.N. 500. A suit for damages against the defendant for making a false accusation against the plaintiff to the police, when no prosecution was instituted, is a suit for compensation for libel or slander, and the limitation applicable to such a suit is that prescribed by Art. 24 or Art. 25 and not by Art. 36. 1937 Lah. 709.

Description of suit.	Period of limitation.	Time from which period begins to run.
25. For compensation for slander.	[1][One year] ..	When the words are spoken, or if the words are not actionable in themselves, when the special damage complained of results
26. For compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter	[1][One year] ..	When the loss occurs.
27. For compensation for inducing a person to break a contract with the plaintiff.	[1][One year] ..	The date of the breach.
28. For compensation for an illegal, irregular or excessive distress	[1][One year] ..	The date of the distress.
29 For compensation for wrongful seizure of movable property under legal process.	[1][One year] ..	The date of the seizure.

LEG. REF.

[1] Substituted by Act XI of 1923, S. 2 and Sch. I, for "Ditto."

ART. 27.—Suit for compensation for inducing breach of contract is governed by Art. 27 of Limitation Act. 1926 P.C. 88=31 C.W. N. 174 (P.C.).

ART. 28.—*See* 26 A. 482. Art. 28 is a specific article dealing precisely with a claim to compensation for illegal distress or distraint. Distress has the same meaning as distraint. The illegal distress contemplated might be the result of various causes. The seizure of the property might be illegal either because the party in possession was not liable or because the property on account of its character was itself exempt from seizure. Again the person effecting seizure or the officer authorising the distraint might have no power or jurisdiction to effect the seizure, or the distraint itself might not be in conformity with the provisons of the statute under which the act was purported to be done. Seizure invalid due to want of jurisdiction is an illegal distraint covered by Art. 28, and there is no ground for applying Art. 36, which is a very wide and general article. Art. 28, being an express and specific article, must prevail over the general provisions. I. L.R. (1939) Bom. 721=41 Bom.L.R. 1223 =1940 B. 20.

ART. 29: SCOPE AND APPLICATION OF THE ARTICLE.—39 P.L.R. 948=1938 L. 196; 1937 Rang. 523. Distinction between Arts. 11 and 29. *See* 9 I.C. 773. The words "under legal process" in Art. 29 cannot be interpreted as meaning according to law and there is no justification for holding that any process taken according to law is legal process. By "legal process" is meant procedure by some sort of Court. The Collector acting under S. 154 of the Bombay Land Revenue Code is not acting as a Court, but is really acting as a creditor. Art. 29 applies to a seizure under a process issued by a Court, and does not apply to a seizure by the Collector under S. 154 of the Bombay Land Revenue Code. 203 I.C. 611=44 Bom.L.R. 668=A.I.R. 1942 Bom. 300. Art. 29 only governs cases where there has been an attachment which is found to have been wrongful, because the Court had no jurisdiction or because the attachment was obtained on insufficient grounds and in which there are no additional factors such as misappropriation or theft or conversion of the attached property. Where a sewing machine, which is the sole means by which a tailor earns his livelihood, is attached before judgment and entrusted to sureties, and the attachment is afterwards raised on the application of the tailor who objects to the attachment on the ground of the machine being not liable to attachment under S. 60, C.P. Code, being the tool of an artisan, a suit by the tailor for return of the machine in the condition in which it was attached and removed from his possession, or for damages, it being found that certain vital parts of the machine have been removed from the machine while in possession of the sureties, falls for purposes of limitation, not under Art. 29, but under Art. 48 or Art. 49. (1946) 1 M.L.J. 241. The crux of Art. 29 is in the words "wrongful seizure." If the seizure is not wrongful, there can be no cause of action. The seizure may be wrongful either because the property does not belong to the judgment-debtor or the Court has no jurisdiction to attach the property. It is because the process is illegal that the seizure becomes wrongful so as to give a cause of action for the suit. The sale of the property after the wrongful seizure does not give a new cause of action. 130 I. C. 157=1931 N. 47. Where in execution of a decree against the judgment-debtor, the decree-holder wrongfully attaches pro-

Description of suit.	Period of limitation.	Time from which period begins to run.
30. Against a carrier for compensation for losing or injuring goods	One year	When the loss or injury occurs

LEG. REF.

Substituted by Act XI of 1923, S. 2 and Sch. I, for "Ditto."

perty belonging to a stranger, the suit by that stranger for compensation for wrongful seizure is governed by Art. 29. 1941 P.L.R. 1=1940 Rang. 276 (F.B.). This article applies only where an attachment is illegal *ab initio*. 22 A.L.J. 977=81 I.C. 1038=1925 A. 131. Where a seizure is under a writ of Court, it is not wrongful unless it is shown that the Court issuing it had no jurisdiction or the writ was executed against a person not a party to the decree. 64 I.C. 513=35 C.L.J. 480. *See also* 28 I.C. 463=42 C. 85 (arrest of ship). There should be wrongful seizure of movable property under legal process. *See* 23 M.L.J. 519; 23 M. 621. Where the plaintiff's claim is for recovery of the amount of money he has voluntarily paid to the Official Liquidator to save his property which had been wrongfully attached by the atter and for damages, Art. 62 and not Art. 29 applies. 9 Luck. 577=11 O.W.N. 398=1934 O. 158 (2). There can be wrongful seizure only where the property is in possession of the person. No doubt, constructive possession also will do, but when there is no right to possession, there cannot be wrongful seizure and Art. 29 has no application. 123 I.C. 362 (1)=1930 M. 349 (1). Attachment of debt effected by prohibitory order does not come within this article as there is no actual seizure. 38 M. 972=26 M.L.J. 166 (F.B.); and as debt is not movable property. 23 M.L.J. 519=16 I.C. 914. A suit to recover money wrongly paid under an order of Court is not governed by the article. 38 A. 676=35 I.C. 86; 11 M. 345; nor a suit to recover money rateably distributed in execution of a decree subsequently reversed. 38 A. 676=35 I.C. 86. *See also* 13 M. 437; 21 C. 142 (P.C.): 26 M.L.J. 166. (There is no wrongful seizure in such cases). Wrongful attachment of movables by prohibitory order—Suit for compensation, *see* 31 M.L.J. 257=35 I. C. 98. Standing crops are not movable property within Art. 29. 25 M.L.J. 447=21 I.C. 213; 31 I.C. 796 (M.); 17 C.W.N. 308=18 I.C. 253; 18 N.L.R. 96=1922 N. 212. Suit for value of crops wrongfully attached, cut and removed is not governed by Art. 29. 105 I.C. 763=1928 C. 106. On this point, *see also* 31 M. 431=18 M.L.J. 590; 23 M.L.J. 620=17 I.C. 185; 32 C. 459; 36 C. 141. What constitutes seizure under legal process, *see* 11 M. 345; 38 M. 972; 21 C. 142. Where a certain amount deposited in Court by the receiver appointed under O. 40, R. 1, C.P. Code, is attached and paid to a person a suit to recover back such amount is not governed by Art. 29, as the attachment is neither seizure within the meaning of Art. 29, nor wrongful. 1938 L. 493. Suit to recover damages for wrongful attachment before judgment of goods falls under Art. 29 and not Art. 36 or 49 and the starting point of limitation is the date of the seizure of the goods. Suit filed by third party aggrieved—No difference. 1930 M. 635. In a suit for damages for the unlawful attachment and seizure of certain properties, the date from which time begins to run is not the date of the attachment, but the date of the seizure, and hence it is immaterial whether the attachment is or is not a continuing wrong. 1934 R. 329. A cause of action is not suspended while the plaintiff is seeking to prove in other proceedings the facts upon which his cause of action depends. In a suit for damages for wrongful attachment, the time taken in getting the seizure declared illegal either on appeal or by other means cannot be deducted. 13 R. 43=1934 R. 329. Suit for damages on account of sale, of goods attached before judgment, at a low price and for injury to trade and reputation caused by such attachment is governed by Article. 38 M.L.J. 324=55 I.C. 786. Art. 29 governs also a suit for value of property wrongfully attached and sold in execution. 9 I.C. 773=4 Bur.L.T. 45; 9 I.C. 774; 14 I.C. 182 (M.); 23 M. 621; 4 M.L.J. 271.

ARTS. 29 AND 83.—Art. 29 applies only to seizure and not to any suit arising out of what happens later at the time of the sale. Where the suit is brought on an undertaking given by the defendants in a suit under O. 21, R. 63 that they would indemnify the plaintiff if he succeeds in the suit, it is Art. 83 that applies to such suit. 1938 L. 196.

ART. 30: LOSS OR INJURY TO GOODS.—Loss of goods may arise from non-delivery as well as misdelivery. 2 P. 442=1 P.L.R. 169=1923 P. 285. (2 L. 133; 41 M. 871; 43 M. 617; 43 B. 386, Ref. to). But *see* 19 I.C. 477= 122 P.W.R. 1913 (there must be actual losing of goods by the carrier himself). Short delivery is loss of the portion not delivered. 4 P.L.T. 331=1923 P. 298. Suit by consignor against a Railway Company for compensation for loss of goods, owing to the loss caused by negligence of or theft by company's servants, is governed by this article. 38 I.C. 502=20 C.W.N. 696. Carrier includes carrier by sea. 26 B. 562. Port Trust Board not a carrier within this article 10 I.C. 972=4 S.L.R. 236. A suit for compensation for non-delivery of goods by a

Description of suit.	Period of limitation.	Time from which period begins to run.
31 Against a carrier for compensation for non-delivery of, or delay in delivering, goods.	[1][One year]	When the goods ought be delivered.

LEG. REF.

[1]Substituted by Act XI of 1923, S. 2 and Sch. I for "Ditto".

Railway is governed by Art. 31 and not by Art. 30. 1927 P. 335=8 P.L.T. 767; 5 P. 106.

STARTING POINT OF LIMITATION.—In a suit against a carrier for compensation for injuring goods, time does not run from tre date of the plaintiff's knowledge. Time begins to run from the date when the injury was actually caused and the burden of proving when the injury was caused rests upon the carrier. 1941 C. 304. The article refers to losing or injuring goods by the carrier and not by the consignee and time begins to run from the time when the carrier lost or injured the goods and not from the time when the consignee suffered loss. 19 I.C. 477; 45 A. 43=20 A.L.J. 792=1923 All. 22 (2). *See also* 12 P. 67=13 P.L.T. 695=1933 P. 45; 1935 A.L.J. 398=1935 A. 407=157 I. C. 46; 1937 R. 523. Mere non-delivery is not proof of such loss. 7 B. 478; 12 C. 477. Where a railway company has not proved that the goods were lost more than one year before the suit, a suit brought within one year from the date of refusal to deliver is not barred either by Art. 30 or 31. 17 I. C. 419=23 M.L.J. 511. The onus is on the railway company, in a suit for short delivery, to prove when the loss or injury to the goods actually occurred and that more than one year has elapsed from that date. Where the company had on the other hand throughout taken up the position that no loss had in fact occurred, Art. 30 is out of the question. 12 P. 67=13 P.L.T. 695. *See also* 1941 C. 304. Where a portion of goods was missing and plaintiff's offer to take delivery of the remainder was refused, a suit for damages filed within one year of the date when the plaintiff sought to obtain delivery is within time. 47 A. 549=23 A.L.J. 398 =1925 All. 588.

ARTS. 30 AND 115.—The law relating to common carriers in India is contained in the Carriers Act and the definition of "common carrier" in S. 2 of that Act excludes the Government from that category. Art. 30 which applies to "carriers" does not, therefore, apply to a suit against the Government relating to carriage by railway. Art. 115 is the appropriate article. I.L.R. (1941) 2 Cal. 160. *See also* 1938 C. 298=I.L.R. (1937) 2 Cal. 614.

ART. 31.—*See also* under Art. 30.

APPLICATION OF THE ARTICLE.—Article applies to suits against State Railways also as the word used is "carrier" and not "common carrier" which does not include Government for the purpose of the Carriers Act, 1865. 1933 A. 348=144 I.C. 1029. *See also* 1933 A. 466=1933 A.L.J. 796. A suit against a carrier for compensation for non-delivery of goods is governed by Art. 31 whether the suit is laid in contract or tort and Art. 48 would not apply even if an allegation of conversion of goods is made. 6 L. 301=88 I.C. 974=1925 L. 478; 5 P. 106=1927 O. 478; 1927 P. 335=8 P.L.T. 767; 1928 C. 371; 3 Luck. 102=1927 O. 478. *See also* as to the applicability of the article in preference to Arts. 48, 49 and 115, 4 P. 482=1925 P. 611=89 I.C. 672; 90 I.C. 135=1926 N. 57; 87 I.C. 763=1925 A. 785; 33 A. 544=10 I.C. 122; 39 M. 1=29 M.L.J. 342; 31 I. C. 474=11 N.L.R. 174; 51 I.C. 570=13 S. L.R. 1; 24 I.C. 676 (Art. 49 would apply where there is proof that the goods are still in the possession and custody of the carrier). Suit for price of goods lost by capsizing of boat falls under this article. 1928 C. 306. Suit by consignee for damages for the loss of goods in transit—Art. 31 held applicable. 46 M.L.J. 302=1924 M. 567. Article is not limited to suits by consignees. Suit by consignor also is governed by Art. 31. 52 C. 372=29 C.W.N. 277; 1925 C. 559; 27 C.W.N. 806=1924 C. 173; 44 C. 16, *contra.* Misdelivery is not non-delivery within Art. 31 and is covered by the residuary art. 115. 122 P.W.R. 1913=19 I.C. 477. Suit for wrongful conversion of goods is not governed by this article but by Art. 48. 1935 A. L.J. 61=1935 A. 156. Goods not lost but in possession of company—Sale by public auction—Suit for damages governed by Art. 48 and not by this article. 57 A. 843=1935 A. 601. As to suit to recover the surplus proceeds of sale held by the Railway Company under S. 56 of Railways Act, *see* 1921 M. 362=44 M. 823=41 M.L.J. 205 cited under Art. 62. Delay in taking delivery—Carrier not converted into bailee for purposes of limitation. 1933 A. 466.

STARTING POINT OF LIMITATION.—Art. 31 fixes one year from the date when the goods ought to have been delivered. 1927 O. 478 (2). The expression "when the goods ought to have been delivered" in the third column of Art. 31 must be construed as meaning when the defendant railway company finally said that the goods would not be delivered." Time would begin to run under the Article from after a definite refusal, or declaration of inability, to deliver by the Railway Com-

Description of suit.	Period of limitation	Time from which period begins to run
	Part V.—Two Years.	
32. Against one who, having a right to use property for specific purposes, perverts it to other purposes.	[1][Two years] ..	When the perversion first becomes known to the person injured thereby.

LEG. REF.

[1] Substituted by Act XI of 1923, S. 2 and Sch. I, for "Ditto.",

pany. 58 L.W. 592=1945 M.W.N. 667=(1945) 2 M.L.J. 448=1946 M. 133. Where no time is fixed, the suit may be instituted within a year after the expiry of a reasonable time for the delivery of the goods. 45 A. 43=20 A.L.J. 792. On this point, *see also* 44 C. 16=34 I.C. 130; 13 P.L.T. 695=1933 P. 45=12 P. 67. The question as to when plaintiff's chances of recovery from the defendant became hopeless is immaterial. 6 L. 301=1925 L. 478; 1924 M. 567; 46 M. L.J. 302. But where the defendant failed to send a definite reply for a long time and was responsible for the delay in the institution of the suit, it was not open to him to plead that the suit had been brought too late. 12 P. 67=1933 P. 45. Major portion of consignment delivered on a certain date—Presumption is that the rest also ought to have been delivered on the same day. 103 I.C. 383=1927 P. 335.

ARTS. 31 AND 48.—The correct article of limitation applicable to a suit against a Railway Company for damages for misdelivery of goods consigned is Art. 31 and not Art. 48. 1937 A.L.J. 794=1937 A. 632.

ARTS. 31 AND 49.—A suit against a Railway Company for compensation for non-delivery of goods is governed by Art. 31 and not by Art. 49 and must, therefore, be brought within one year of the non-delivery, no matter what the circumstances are which occasioned the non-delivery. The company does not cease to be carriers for the purposes of the Limitation Act, because they detain the goods of the plaintiff in respect of a claim for their charges before making delivery. The company's claim arises out of the rights as carriers to claim wharfage, and the plaintiff cannot plead that the company's position as carriers was at an end and that the refusal to deliver the goods was unconnected with their position as carriers when their very claim to detain the goods arose out of that position. 1936 N. 21=31 N.L.R. (Supp.) 79.

ART. 32: APPLICABILITY.—Art. 32 can properly be applied only where the person proceeded against had, before the perversion in respect of which he is being sued took place, a right to "use the property for specific purposes." Art. 32 is not intended to apply to a case in respect of land in which the person proceeded against had no other right than a right in common with the general public, to pass over it. 1928 L. 794; 1929 L. 816. Nor to one who has a *mere licence* to use the property. 1934 A. 836. Nor to cases where in substance the plaintiff seeks a greater relief. Where a tenant without the landlord's consent builds upon the *abadi* land which is no part of his tenancy lands, he, by such act, takes exclusive possession of such land to the ouster of the landlord, and a suit by the landlord for the demolition of the building is not a suit falling under Art. 32. I.L.R. 1937 A. 623=1937 A.L.J. 515=1937 A. 472. *See also* 1937 A.L.J. 1231=1938 A. 20. Placing heavier beams on plaintiff's wall, and replacing thatched roof by masonry roof, is no perversion of the purpose for which the wall is to be used and a suit for removal of the beams does not come under this article. 46 A. 68=78 I.C. 193=1924 All. 450. *See also* 1938 A. 20=1937 A.L.J. 1231. But *see contra* 1922 A. 320. Suit for possession under B.T. Act, S. 155, on the ground of tenant's misuse of land is governed by this article. 33 I.C. 923=20 C.W.N. 661. *See also* 8 A. 446; 21 P.L.T. 109=1940 P. 106; 64 C.L.J. 71; 24 C. 160 and 20 A. 519 (suits for removal of trees planted by tenant). Suit for ejectment of occupancy tenant—Alegation of several acts of waste—Right to sue—When accrues. *See* 46 C.W.N. 786. Suit for injunction restraining defendant from cultivating land reserved for communal purposes governed by article. 89 I.C. 405=1925 L. 653. Suit for removal of structure erected by tenant or mortgagee and injunction. *See* 1924 A. 814; 12 I.C. 108=8 A.L.J. 914. Also suit to eject the persons who have built upon a common burning ground after appropriating it to their own use. 1929 L. 186. A co-owner of a *shamilat* reserved for specific purposes perverted it by using it for building purpose. A suit by another co-owner for permanent injunction falls within this article. 1929 L. 535=118 I.C. 447. *See also* 115 I. C. 73 (Suit by one of the proprietors of the village against the rest in respect of *shamilat* land). *See also* 14 L. 267=145 I.C. 553=1933 Lah. 705 (F.B.); 35 P.L.R. 472=1934 L. 701. The notion that Art. 32 applied only to cases *ex contractu* cannot be regarded as correct. When one proprietor in a village sued another for an injunction to compel the removal of various constructions on a part of the village land, *held*, that the

Description of suit.	Period of limitation	Time from which period begins to run.
33. Under the Legal Representatives' Suits Act, 1855, against an executor.	[1][Two years] ..	When the wrong complained of is done.
34. Under the same Act against an administrator.	[1][Two years] ..	Ditto.
35. Under the same Act against any other representative.	[1][Two years] ..	Ditto.
36. For compensation for any malfeasance, misfeasance or non-feasance independent of contract and not herein specially provided for.	[1][Two years] ..	When the malfeasance, misfeasance or non-feasance takes place.

LEG. REF.

[1] Substituted by Act XI of 1923, S. 2 and Sch. 1, for "Ditto.",

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case was governed by Art. 32 and not Art. 120. 121 I.C. 186=1930 L. 283. *See also* 1937 A.W.R. 1093=1938 A. 20. As to the applicability of the article, *see* 10 A. 634; 26 C. 546 (F.B.); 29 Punj.L.R. 308=1928 L. 792.

ART. 35: SUITS GOVERNED BY ARTICLE.—Suit for damages in respect of seizure of standing crops. 17 C.W.N. 308=18 I.C. 253. *See also* 41 Bom.L.R. 1223=1.L.R. (1939) B. 721=1940 B. 20. (Illegal distress without jurisdiction—Suit for compensation). If a suit arises out of tort, or if it arises both from tort and contract and there is no waiver of the tort, it has to be brought within the two years allowed by Art. 36. I.L.R. (1938) A. 454=1938 A. 305. *See also* 1939 Lah. 118. Where a person dissuades other persons from taking a certain building on rent by making false statements as to habitability and safety of building, the person so representing is liable in tort, the tort being analogous to slander of title and falling within the broader description of injurious falsehood. The action is one for misfeasance independent of contract and Art. 36 applies to such action. I.L.R. (1938) Nag. 348=1938 N. 84. Suit to recover damages resulting from conspiracy. 13 I.C. 721=16 C.W.N. 145. Suit for damages for wrongful ex-communication from caste is governed by this article. 37 Bom.L.R. 417 =1935 B. 361. Suit for compensation for loss caused by irregular sale in execution of decree. *See* 1924 L. 136. Suit for damages on account of injury to stock caused by attachment before judgment. 38 M.L.J. 324=55 I.C. 786. Suit for damages for wrongful use of water by tenant. 1936 M. 250=70 M.L.J. 255. Suit for compensation for wrongful attachment of movables by the issue of a prohibitory order. 35 I.C. 98 =31 M.L.J. 257. Suit for compensation for deterioration of goods, caused by wrongful detention by Police. 42 C.L.J. 203. A suit for damages for wrongful seizure of goods by the Official Receiver acting at the instance of a creditor and not under the orders of the Insolvency Court is governed by Art. 36 and neither Art. 2 nor Art. 29 applies to such a case. 1942 A.L.W. 599= 1926 C. 179. Suit for damages for institution of wrongful civil proceeding and for slander of goods. 46 C.L.J. 455=1928 C. 1. *See also* 1938 N. 84. Suit for damages for loss of ship caused by collision at sea owing to the negligence of defendant's workmen. 11 B. 133. *See also* 22 M. 342; 32 C. 459; 36 C. 141 (F.B.). Where an attachment by a plaintiff was stayed by a rival claimant pending his suit for establishment of his claim and the claimaint having misappropriated the goods attached, the attaching decree-holder sued him for compensation, *held*, that Art. 36 and not Art. 48 or 49 applied to the case. 54 A. 567=1932 A. 256. Where certain movables were attached before judgment, but the suit was dismissed on appeal, a suit for compensation for loss of profits and reputation caused by wrongful detention of goods is governed by Art. 36 read with S. 23. 22 A.L.J. 977=81 I.C. 1038=1925 A. 131. Loss of goods due to capsizing of boat—Suit for price of goods is governed by Art. 36. 107 I.C. 723=1928 C. 306. Also a suit for damage to house by bursting of Municipal fittings by the negigence of the Municipality. 1929 L. 730. A suit claiming compensation for damage, said to have been caused by the failure of a local body to maintain its water system in proper order, is governed by Art. 36, and is outside the ambit of Art. 2. 1945 Lah. 324 (F.B.). In failing to maintain its water system in proper order, the local body cannot be said to have either done or omitted to have done an act alleged to be in pursuance of an enactment for the time being in force. 1945 Lah. 324 (F.B.). Art. 2 is a provision intended to afford protection to persons acting in pursuance of an enactment against stale claims. A short period of limitation is pro-

vided for such cases in order that such acts which are of a public nature shall not give rise to a protracted litigation. 47 P.L.R. 302=1945 Lah. 324 (F.B.)=I.L.R. (1945) L. 523. A suit to recover damages against the directors of a company on the ground that in the prospectus published there were misleading or untrue representations which deceived the plaintiff and made him part with cash by taking shares in the company and that as a result he suffered loss, is governed by Art. 36, which is the residuary article in the case of torts or civil wrongs. 57 L.W. 312=1944 Mad. 431. *See also* 1945 Mad. 5=I.L.R. (1945) M. 325=(1944) 2 M.L.J. 286. Application under S. 235 of the Companies Act to recover compensation from an ex-director for misfeasance is governed by Art. 36. 8 L. 167=1927 L. 433; 54 B. 226=32 Bom.L.R. 232; 54 M. 153=1931 M. 58=60 M.L.J. 280. *See* 169 I.C. 640=1937 L. 709 (Suit for damages for making false accusation to Police).

SUITS NOT GOVERNED BY ARTICLE.—Art. 36 does not include wrongs committed by trustees in respect of trusts. Art. 120 and not Art. 36 is the proper article applicable to a suit filed against a trustee or ex-trustee, by a co-trustee or a succeeding trustee of a trust, to make good the loss sustained by the trust by reason of the defendant's omission to collect moneys due to the trust. I.L.R. (1938) M. 586=47 L.W. 344=1938 M. 353=(1938) 1 M.L.J. 334 (F.B.). A suit for compensation for breach of a term in a compromise is governed by Art. 115 and not by Art. 36 or Art. 120; and the fact that such compromise is merged in a decree none the less makes it a contract within the meaning of Art. 115. 12 P. 792=1934 P. 7. The defendant borrowed from the plaintiff his car for private use and while it was in his use it met with an accident which resulted in considerable damage to the car. The plaintiff sued to recover the repair charges and interest by way of damages. *Held*, that the case was one of bailment and that the claim for damages was governed by Art. 115 and not Art. 36. 9 Luck. 189=1933 O. 518. Suit for damages against a Sub-Inspector of Police for malicious arrest is governed by Art. 2 and not by Art. 36 if it is found that he had a *bona fide* belief as to his statutory powers, though malice is proved. 1931 A.L.J. 858=1932 A. 16. Suit to recover money paid under rateable distribution, not governed by article, as there is no non-feasance or misfeasance, or malfeasance in respect of the money. 39 A. 322=39 I.C. 532. Also a suit for recovery by assignee of debt attached and received by attaching creditor, subsequent to assignment. 38 M. 972=26 M.L.J. 166 (F.B.). Also suit for damages against a person untruly representing himself to be agent of another and inducing plaintiff to have dealings with him. 38 M. 275=25 M.L.J. 256. Also suit against director for loss arising through negligence. 5 L. 27=1924 L. 435. Article inapplicable to claim by the liquidator of a Company under S. 235 of the Companies Act as it is not independent of contract. 47 A. 699=1925 A. 519; 1933 S. 103=143 I.C. 713. Hereditary temple *archaka*—Suit against trustee for emoluments—Limitation—Art. 102 applies and not this Article. 68 M.L.J. 132=1935 M. 128.

STARTING POINT.—Time runs from the date of the tort and not from the time when it is known to the plaintiff. 33 M. 71=19 M.L.J. 498. A right to sue for misfeasance of directors of companies arises from the date of misfeasance and is governed either by Art. 120 or Art. 36. 54 M. 153=60 M.L.J. 280=1931 M. 58. *See also* I.L.R. (1938) M. 586=1938 M. 353=(1938) 1 M.L.J. 334 (F.B.). (Suit by succeeding trustee against old trustee to recover loss due to failure to collect trust funds); 1941 P.C. 1; 67 I.A. 448=I.L.R. (1941) M. 175=(1941) 1 M.L.J. 393 (P.C.). Where each act of depositing silt on plaintiffs' grounds afforded the plaintiffs a separate cause of action, their relief in respect of silt deposited more than two years before suit is barred under Art. 36. 27 S.L.R. 41=1933 S. 176.

ARTS. 36 AND 39.—Where the claim is for damages in respect of removal of clay, it is not a mere claim for compensation founded on trespass so as to attract Art. 39, but it is a claim in respect of a tortious act which comes within the scope of Art. 36. 1941 O. 172.

ARTS. 36 AND 120.—As the wording of Art. 36, is very wide, it would cover almost every case of tort. Where a suit for damages is brought against an objector who persists in retaining attached cattle even after the dismissal of his objection and the declaration of the right of the judgment-debtor to them, it is governed by Art. 36, as the retention of the cattle by the objector amounted to misfeasance. Art. 120 could have no application to such a case. 1943 A.L.W. 38. There is no article in the Limitation Act which specially provides for actions against a promotor or director of a Company in respect of a false statement made in a prospectus. A person responsible for the issue of a false prospectus commits a tort, and, by reason of S. 100 of the Companies Act, is under a statutory liability to provide compensation. Art. 36 and not 120 will therefore apply to an action against the directors of a company for compensation for loss suffered as the result of a misleading prospectus. In such a case the tort is independent of contract. The liability of the directors is confined to something which preceded the contract. I.L.R. (1945) M. 825=1945 M. 5 =(1944) 2 M.L.J. 286. *See also* 1944 Mad. 431.

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VI.—Three years.	
37. For compensation for obstructing a way or a watercourse.	[1][Three years] ..	The date of the obstruction
38. For compensation for diverting a watercourse.	[1][Three years] ..	The date of the diversion.
39. For compensation for trespass upon immovable property.	[1][Three years] ..	The date of the trespass.
40. For compensation for infringing copyright or any other exclusive privilege.	[1][Three years] ..	The date of the infringement.
41. To restrain waste ..	[1][Three years] ..	When the waste begins.
42. For compensation for injury caused by an injunction wrongfully obtained.	[1][Three years] ..	When the injunction ceases.
43. Under the [2][Indian Succession Act 1925, section 360 or section 361,] to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets.	[1][Three years] ..	The date of the payment or distribution.
44. By a ward who has attained majority, to set aside a transfer of property by his guardian.	[1][Three years] ..	When the ward attains majority.

LEG. REF.

[1] Substituted by Act XI of 19123 S. 2 and Sch. I, for "Ditto."

[2] Substituted for the words and figures "Indian Succession Act, 1865, S. 320 or S. 321, or under the Probate and Administration Act, 1881, S. 139 or S. 140" by Act VIII of 1930, S. 2 and Sch. I.

ARTS. 37 AND 38.—*See* 82 I.C. 482=1925 N. 189.

ART. 39.—Standing crops are immovable property and the attachment thereof if illegally made constitutes a trespass within this article. 25 M.L.J. 447=21 I.C. 913. *See also* cases cited under Art. 29 on the point. Trespass includes the mischief committed by the trespasser after entering on the land. 23 M.L.J. 618=17 I.C. 605. Thus suits for compensation for injury to crops, (1925) N. 189; 23 M.L.J. 618=17 I.C. 605; or for loss caused by the cutting of gum trees by defendant (20 N.L.R. 80=80 I.C. 769 =1924 N. 125); and suits for damages for cutting and carrying away crops [25 C. 692 (F.B.)] would fall under the article. *See also* 1941 O. 172 (Suit for damages for removal of clay).

ARTS. 39, 115 AND 120.—A suit for damages for use and occupation of a shop, after notice to vacate, is governed by Art. 120 and not either by Art. 39 or Art. 115. Art. 39 can have no application because the suit is not for compensation for trespass upon immovable property. The defendant's remaining in possession of the property after the notice to quit does not constitute a trespass upon the property in the required sense. Nor would Art. 115 apply because the liability of the defendant to put the lessor into possession of the property or on the determination or the lease is a statutory liability and Art. 115 does not provide for the breach of such a liability or statutory duty. Hence it is that the residuary Art. 120 applies to such a suit. 1946 A.L.J. 305 (2)=1946 A.W.R. (H. C.) 516=1947 A. 31.

ART. 40.—Suit for damages for infringement of trade mark is governed by this article. 45 P.R. 1919=51 I.C. 434. As to the applicability of the article *see also* 3 C. 17. Under the copyright Act an infringement takes place not only when a book is reprinted but also when a book in respect of which a copyright exists is sold. There is a fresh cause of action on the sale of every book. 1934 A. 922.

ART. 41.—Time begins to run when the waste begins though it is a continuing wrong. *See* 25 B. 644 (F.B.).

ART. 42.—As to applicability to temporary injunction granted by the lower Court but dissolved on appeal, *see* 16 I.C. 443= 16 C.L.J. 34. *See also* 42 C. 550=26 I.C. 296, holding that no suit lies in respect of a permanent injunction obtained maliciously which is subsequently dissolved in appeal.

ART. 44: APPLICABILITY.—One condition precedent for the application of Art. 44 is that the property should be property belonging to the ward. 1930 O. 82; and it must have actually passed out of the hands of the minor. 1930 A.L.J. 1416=1930 A. 858. The Limitation Act draws a distinction between void transactions and voidable transactions, and while a longer period is allowed for remedies arising out of void transactions, a shorter period has been prescribed for all

actions seeking to set aside voidable transactions; and it makes no difference that there is also a prayer for possession. It is also a well-established principle that whenever there is a specific article applicable to a suit, a general article like Art. 144 will be excluded. 68 M.L.J. 87=40 L.W. 760=1936 M. 1. Article does not apply where the transaction impeached is void *ab initio* which need not be set aside. 9 I.C. 377=13 C.L.J. 277. *See also* 1936 M. 884=71 M.L.J. 366; 30 M. 393; 39 M. 456=28 M.L.J. 571; 107 I.C. 897=1928 N. 262; 54 M. 352=1931 M. 45=60 M.L.J. 701=32 L.W. 680 =1930 M.W.N. 1067; 41 Bom.L.R. 867=1939 B. 427. Any transfer of a minor's property by a person who is neither his natural nor *de facto* guardian would be a transfer by an unauthorised person, and would not affect the minor's interest in the property at all. If the minor comes to Court within 12 years from the date of the transaction, no question of limitation would arise. Art. 44 has no application to cases of transfer by wholly unauthorised persons. 47 C.W.N. 288=A.I.R. 1943 Cal. 203. Sale of minor's land by minor jointly with *de facto* guardian—Latter not described as guardian —Recital that land belongs to both and that consideration was for purposes of both—Sale void and need not to be set aside. Therefore suits to recover property transferred under such alienation will be governed by Art. 144. 43 M. 436=56 I.C. 519=38 M.L.J. 327; 12 C. 69. *See also* 33 I.C. 436 (M.). Also a suit to set aside a permanent lease by the mortgagor which is held to be void as being a clog on the equity of redemption, 53 B. 360=1929 B. 186; 1938 P. 337 (suit to set aside release by guardian of sub-soil rights of minor mortgagee). So also, where the property has been alienated by the guardian *as if it were his own*, and the mortgagee treats it as the personal property of the guardian and has it sold as such, Art. 44 cannot apply. 1935 A. 417=157 I.C. 118. If a sale is held to be void owing to fraudulent registration, there will be no need to set it aside and a suit to recover possession of the properties covered by the sale deed will not be barred, though brought by the ward about eleven years after the date of sale. On the other hand, if it is not void, then such a suit has to be regarded as one for setting aside the sale-deed. As possession cannot be obtained unless the document is set aside, such a suit should be brought within three years from the date of the sale. 54 M. 352=1931 M. 45=60 M.L.J. 701. A sale is not void for mere inadequacy of consideration. 28 I.C. 704=2 L.W. 365. Article applicable to cases of mortgage. 2 L.W. 1210=31 I.C. 811; 1938 M.W.N. 802=1938 M. 822; *cf.* Note 17 Bom.L.R. 113; and of sale of equity of redemption, 44 B. 742=22 Bom.L.R. 680 (suit for redemption cannot be brought without first setting aside sale). A suit by ward's purchaser in combination with ward is within article. 49 B. 309=1925 B. 292=86 I.C. 879. *See also* 28 A. 39; 44 B. 742; 1929 M. 313=56 M.L.J. 332. The article applies to improper alienations made by testamentary guardian appointed by a Hindu father. 38 B. 94=15 Bom.L.R. 882; 59 M. 549=1936 M. 346=70 M.L.J. 352. The article applies to a fraudulent sale by guardian, which is only voidable. 34 I.C. 188. It applies to alienations which are unauthorised. 44 B. 742. (*See also* 56 M.L.J. 332=1929 M. 313 as well as to those which are improper.) 40 M.L.J. 475=1921 M. 425 and which are in excess of authority of the guardian [6 L. 447=1925 L. 619 (2); 9 I.C. 377 (C.)]; 103 I.C. 365 (1); 1921 C. 572. Article does not apply to alienations by unauthorised guardians which are void and need not be set aside. 38 M. 1125=27 M.L.J. 285; 34 A. 213 (P.C.); 26 I.C. 813=10 N.L.R. 133; 83 I.C. 1040=1924 C. 1008; 87 I.C. 1018=1926 N. 124; 84 I.C. 923=1925 L. 239; 1929 A. 879; 1936 Lah. 996; 43 Mys.H.C.R. 17. Art. 44 applies to alienation by *de injure* guardians and not to those by *de facto* guardians. 1931 M. 597 (2)=1931 M.W.N. 417. Art. 44 can have no application unless the transfer to be set aside is voidable in the sense that it is binding on the minor until it is set aside. Though, under the Hindu Law, it is well settled that an alienation by a *de facto* guardian, if for necessity is binding on the minor, it does not follow that an alienation by a *de facto* guardian, not supported by necessity, is voidable in the sense that it is binding on the minor until it is set aside so as to attract the application of Art. 44. Art. 144 and not Art. 44 applies to suits regarding alienations by *de facto* guardians. 24 Pat. 273=1945 P.W.N. 323=A.I.R. 1945 Pat. 298. The natural father of an adopted minor is not a guardian *de jure* and a suit to set aside an alienation by him can be brought within twelve years. 1931 M. 597. So also a suit to set aside an alienation by the *de facto* guardian of an Indian Christian minor. 60 M.L.J. 695=1931 M. 529. *See* also 71 M.L.J. 366=1936 M. 884 (Suit to declare void alienation by sister of minor when mother is alieve). Alienation by minor's elder brother acting as his *de facto* guardian is void. 108 I.C. 529=1928 M. 226 (2); 34 A. 213=39 I.A. 49=23 M.L.J. 6 (P.C.). *See also* 1925 B. 372=27 Bom.L.R. 495=87 I.C. 721; 99 I.C. 1050=1927 N. 145. A step-mother of a Hindu minor is such unauthorised guardian. 51 I.C. 943=15 N.L.R. 55. Mahomedan mother alienating immovable property of her children is an unauthorised person. 25 C.W.N. 258=1921 C. 572=62 I.C. 428; 45 C. 878 (P.C.)=1918 P.C. 11=45 I.A. 73; 47 C. 713; 34 I.C. 85=1 P.L.J. 188. But a Hindu mother is a natural guardian whose alienations are covered by this article. 38 M. 118=25 M.L.J. 405; 30 M. 303; 22 M.L.J. 404=15 I.C. 365; 44 B. 742=22 Bom.L.R. 680; 53 L.W.

Description of suit.	Period of limitation.	Time from which period begins to run
45. To contest an award under any of the following Regulations of the Bengal Code:—	[1][Three years] ..	The date of the final award or order in the case.

LEG. REF.

[1] Substituted by Act XI of 1923, S. 2 and Sch. I, for "Ditto.",

650=(1941) 1 M.L.J. 800 (F.B.)=1941 M. 481=I.L.R. (1941) M. 775; 42 B. 626 =46 I.C. 22; 24 I.C. 110; 88 I.C. 278= 1925 N. 385; 6 L. 447=1925 L. 619 (2); 40 L.W. 760=68 M.L.J. 87=1935 M. 1. But *see* 35 I.C. 551=10 S.L.R. 381; *contra.* An alienation by a Christian mother acting as the natural guardian of her minor child is voidable and not void and a suit by the minor avoiding the transfer should be instituted within the three years prescribed by Art. 44. 1934 M. 605=57 M. 1062=67 M.L.J. 322. A suit to set aside alienations by the father as guardian of property collaterally inherited by a minor is governed by this article. 34 M. L.J. 229=42 I.C. 939. The words of the article are very general and the article is not confined to transfer by certified guardians. 1929 A. 879=1929 A.L.J. 1248. A permission obtained by a certified guardian by a fraudulent misrepresentation is a nullity, but a transfer made in pursuance thereof is only voidable. Where the minor sues after attaining majority to set aside the transfer, the suit is governed by Art. 44 and not Art. 144. 1932 A. 108=1931 A.L.J. 997=53 A. 738. Article contemplates "transfer of property" and is inapplicable to cases where the minor is in possession as in cases of mortgage or sale without parting with possession. 1930 A. 858=52 A. 979.

ALIENATION OF JOINT FAMILY PROPERTY.—Article does not apply to a suit to set aside an alienation of a minor's share by the managing member of a joint Hindu family. Such an undivided share is not property which can be dealt with by a guardian. 84 P.L.R. 1915 =29 I.C. 199. *See also* 49 I.C. 118=41 A. 203; 86 I.C. 234=1925 M. 793. Thus, a suit to set aside an alienation by a Hindu father during his son's minority is not governed by this article. 33 I.C. 441=17 Bom.L.R. 1137 (Note); 32 I.C. 242=12 N.L.R. 12. (It is so even if the manager purports to act as the minor's guardian). The fact that the Hindu father executed the sale-deed as guardian of his son will not make the article applicable. 1918 M.W.N. 892=44 I.C. 605. *See also* 38 A. 126; 40 C. 966 (P.C.)=25 M.L.J. 312=40 I.A. 213. Article not applicable to suit to set aside alienation of joint family property, by undivided uncle. 35 P.L.R. 722=1934 L. 601; by undivided brother, 151 I.C. 1043=36 Bom.L.R. 474=1934 B. 234. A sale deed by a manager of a joint Hindu family for other than necessary purposes is void from its inception, and a suit to set it aside is not governed by this article. 1929 O. 284=4 Luck. 503.

SUITS FOR POSSESSION.—Suit for recovery of property transferred during the minority of the plaintiff is governed by this article, as the alienation should first be set aside under this article. 24 C.W.N. 1016=59 I.C. 589; 1921 L. 25 (2)=61 I.C. 384; 6 L. 447= 1925 L 619; 28 I.C. 704=2 L.W. 365; 23 I.C. 406=17 O.C. 52. *See also* 1936 L. 996; 44 B. 742; 25 B. 337 (P.C.)=10 M.L.J. 368=27 I.A. 216; 28 M. 423; 23 M. 271 (P.C.)=10 M.L.J. 29; 1929 M. 313=56 M. L.J. 332; 116 I.C. 893. To a suit by a ward on attaining majority, for possession of property transferred during the minority pardanashin lady, under a transfer void *ab initio*, Art. 44 has no application. To such a suit Art. 142 applies. 1940 O.W.N. 1318=1941 O. 172. Sale of minor's property by certificated guardian without sanction—Possession not delivered—Suit by minor more than three years after attaining majority to set aside sale and partition—Article not appilcable. 52 A. 979=1930 A. 858.

DEFENCE NOT BARRED.—Though remedy is barred under Art. 44, a plea of invalidity of sale can be set up in defence to a suit by vendee for possession. 42 M. 36=35 M.L.J. 652. But *see* 41 M. 102=33 M.L.J. 309; 1.L.R. (1940) All. 580=1940 All. 416. On the point whether ward's right to property is extinguished by article, *see* 30 M. 393; 41 M. 102.

TRANSFEREE—LEGAL REPRESENTATIVE.—The transferee from the ward stands in the same position as the ward himself and if the latter's suit is barred, the transferee is in no better position and Art. 44 applies. In such a suit the onus is on the plaintiff to prove when his vendor attained majority. 1929 M. 313=56 M.L.J. 332. *See also* 1939 O.W. N. 241=1939 O. 122; 34 Bom.L.R. 1512= 1933 B. 42. If the ward dies during his minority, Art. 44 will not apply to a suit by his legal representative for recovering the property alienated by the guardian, whereas if the ward dies after the attainment of majority, Art. 44 will apply. 1929 M. 313 =56 M.L.J. 332. Suit for possession by ward against alienee from purchaser from guardian—Art. 44 and not Art. 144 applies. 1938 M.W.N. 403=1938 M. 677.

ART. 45.—Order of Collector directing entry of defendant's name in settlement record as occupancy tenant is award within

Description of suit.	Period of limitation.	Time from which period begins to run.
The Bengal Land-revenue (Settlement) Regulation, 1822. The Bengal Land-revenue (Settlement) Regulation, 1825. The Bengal Land-Revenue (Settlement and Deputy Collectors) Regulation, 1833		
46. By a party bound by such award to recover any property comprised therein.	[1][Three years] :	The date of the final award or order in the case.
47. By any person bound by an order respecting the possession of immovable property made under the Code of Criminal Procedure, 1898, or the Mamlatdars' Courts Act, 1906 or by any one claiming under such person, to recover the property comprised in such order.	[1][Three years] ..	The date of final order in the case.

LEG. REF.

[1] Substituted by Act XI of 1923, S. 2 and Sch. I, for "Ditto".

this article. 63 I.C. 161=33 C.L.J. 317 =1921 C. 368. Article is applicable only to a suit to set aside an award made by Revenue authorities and not to one to recover possession. 49 C. 37=33 C.L.J. 497=1922 C. 345. The award contemplated by Art. 45 presupposes a contest between the parties and a decision after proper investigation into the points at issue; when there is no contest or decision on investigation, Art. 45 does not apply. 55 C. 201=1927 C. 902 (49 C. 37, Rel.).

ART. 46.—A decision by Collector of title between two raiyats is not an award within Art. 46. 17 I.C. 881=17 C.W.N. 55. Suit for possession of lands comprised in an award filed in Court, but not executed, is governed by this Article. 52 C. 314=52 I.A. 79=1925 P.C. 34=48 M.L.J. 20 (P. C.).

ART. 47: APPLICABILITY.—Art. 47 does not apply to a case where at the time of the passing of the Magistrate's order there was no existing legal right in the plaintiff to sue for possession, and such a right accrued to him only subsequent to that date. 1927 M. 586=52 M.L.J. 482. *See also* 111 I.C. 152= 1929 M. 38 (2); 1941 Pesh. 65. Art. 47 does not apply where there has been no order for possession by the Magistrate under S. 145, Cr. P. Code, but the proceedings under that section have been consigned to records by the agreement of the parties. 1942 O.W. N. 508=55 L.W. 597=44 Bom.L.R. 868= =47 C.W.N. 38=1942 P.C. 47=(1942) 2 M.L.J. 384 (P.C.). Art. 47 applies only to those cases in which the Magistrate has declared one of the parties to be entitled to possession until evicted therefrom in due course of law or has restored possession to a party found to have been forcibly and wrongfully dispossessed within two months of his intitial order. The essential requirement, therefore, for the application of the article is the order of the Magistrate in respect of possession of the property. Where, therefore, in a boundary dispute, the Magistrate orders demarcation of the boundary in accordance with an order passed previously by a settlement officer, and the parties accept that position and compromise the proceedings under S. 145, Cr. P. Code, which are consigned, it cannot be regarded as an order of the Magistrate respecting possession made under the Criminal Procedure Code within the meaning of the article, and it has accordingly no application. 164 I.C. 118=1936 O. 387. Order under S. 145. Cr. P. Code—Suit for possession of property comprised in order. *See* 45 A. 306=21 A.L.J. 102. *See also* 45 B. 1135=62 I.C. 224=1921 B. 207; 84 P. R. 1912=14 I.C. 566; 38 M. 432=21 I.C. 564; 28 C. 86=5 C.W.N. 160. Art. 47 does not apply to a suit brought by a plaintiff in whose favour an order under S. 145, Cr. P. Code, has been passed. 99 I.C. 532 =1927 M. 304. *See also* 1941 Pesh. 65. It does not matter if the order is made on withdrawal of a party and without taking evidence. 42 I.C. 768=22 C.W.N. 342. But, at the time of suit, there must be an existing right to sue for possession. 19 C. 646. Article not confined to orders under Ch. XII of the Cr. P. Code. Order restoring possession under S. 522, Cr. P. Code, is within the article. 1925 M. 799=48 M.L.J. 372. Article is inapplicable to a suit for declaration of rights. 35 C. 851; 20 B. 270; or for partition of property. 15 B. 299. But *see* 51 C.L.J. 461=1921 B. 207. But plaintiffs cannot escape the bar by framing the suit as one for declaration after taking forcible

possession. 45 A. 306=21 A.L.J. 102 or by framing the suit as one for partition. *See* 3 Bom.L.R. 594=26 B. 146. If the Court merely attaches the property and puts it in the hand of the receiver, it cannot be called an order respecting possession of the property. 20 A. 120. *See also* 26 M. 410. Article applies to suits based on title. 38 M. 432=21 I.C. 564. But *see* 28 B. 601 (F. B.) (previous decision by Mamlatdar). A suit denying a right of way as affirmed by an order of a Mamlatdar, under the Mamlatdars' Courts Act, is a suit respecting possession of immovable property, and as between Arts. 14 and 47, Art. 47 applies to such suit. 33 Bom.L.R. 517=1931 B. 256. It cannot be said that mere failure to sue within the period of three years from the date of an adverse order under S. 145, Cr. P. Code, bars the owner from suing unless it be shown by the person in whose favour the order under S 145, Cr. P. Code, was passed that he had in fact set up a hostile title in those proceedings. The latter fact has to be clearly proved. 1944 A.W.R. (C.C.) 150=1944 O. A. (C.C.) 150=1944 O.W.N. 217=1944 Oudh 250=19 Luck. 531.

ORDER WITHOUT JURISDICTION.—Where the order is found to be without jurisdiction, the case would be governed by Art. 142. 60 I. C. 860 (C.). *See also* 1912 P.R. 84; 9 M L.T. 91. But for this effect to arise, a vice must clearly be established which infects the whole proceedings. 82 I.C. 691=1925 O. 190. Mere irregularities will not render the article inapplicable. 42 I.C. 768= 22 C.W.N. 342.

PERSONS BOUND BY ORDERS, ETC.—Article does not bar a person who was no party to the criminal proceedings in which the order was passed. 17 I.C. 589=23 M.L.J. 348; 23 C. 731 (F.B.); 28 B. 215; 15 P. 481= 17 P.L.T. 726=1936 P. 629. Proceedings under S. 145, Cr. P. Code, about crops—Order as to possession of crops alone—Subsequent suit after 3 years—Parties and area in dispute not same—Suit, if barred. 1934 O. 449=11 O.W.N. 1165. The successor in interest must claim under a title derived subsequent to the order. Otherwise article would not apply. 23 C. 731 (F.B.); 6 Bom.L.R. 305. *See also* 18 B. 348; 15 P. 481=17 P.L.T. 726=1936 P. 629. A suit for joint possession by a co-owner bound by an order passed under S. 145, Cr. P. Code, in favour of his co-owner whose exclusive possession is maintained by that order comes within Art. 47. If such a suit is not brought within the period prescribed by that article, the title of the co-sharer bound by the order will be extinguished by reason of S. 28 of the Limitation Act. I.L.R. (1942) 2 Cal. 332=46 C.W.N. 817=A.I.R. 1943 Cal. 67. Members of joint family getting by survivorship do not claim under the person against whom the adverse order might have been made. 66 I.C. 678=8 O.L.J. 410=1921 O. 191. *See also* 1937 A.W.R. 235=1937 A. 300. Order against the manager of a joint Hindu family as such binds other members of the family. 52 M. 787=1930 M. 48=57 M.L.J. 228. Also persons not parties to the order but having notice of it are bound by it and a suit by them falls within this article. 57 M.L.J. 228=52 M. 787. But *see* 1935 L. 115 (2), where he was only a witness.

TRUST PROPERTY.—S. 145, Cr. P. Code, relates to the question of possession of immovable property and its application does not depend upon whether the claim is made by a private owner or on behalf of a trust. If there is a *bona fide* dispute between a trust and a third person and the other conditions of the section are satisfied, it falls within the cognisance of the Magistrate under S. 145, and to an order passed by a Magistrate in such a case, Art. 47 applies. There is no justification for holding that it is only the particular trustee who was a party to a proceeding under S. 145 that must be held bound by that order or by the limitation prescribed in Art. 47. If the trustee purported to act on behalf of the trust, the proper interpretation of the order will be that the trust itself was a party and must be held bound by that order. 1936 M. 188=70 M.L.J. 441. *See also* 14 P. 424=1935 P. 64.

STARTING POINT.—Time runs from date of Magistrate's order and not the date of the High Court's refusal to exercise its revisional powers. 43 I.C. 955. There is no reason why an order of the High Court under S. 439, Cr. P. Code, should not be regarded as a final order within the meaning of Art. 47; whether the High Court ultimately interferes in revision or not, its order is none the less a final order. Where in proceedings under S. 145, Cr. P. Code, a Magistrate passes an order against which an application in revision is filed under S. 435, Cr. P. Code, before the Sessions Judge, who makes a reference to the High Court under S. 438, Cr. P. Code, with a recommendation that the Magistrate's order should be set aside, the matter remains *sub-judice* so long as it is not finally determined by the High Court. The order passed by the High Court under S. 439, Cr. P. Code, is the final order in the case for purposes of Art. 47, and limitation for a suit runs from that date. The final order in Col. 3 of Art. 47 must be understood to refer to the order contemplated by Col. 1 of the same article. 20 Pat. 735=22 P.L.T. 202=1941 Pat. 372. On this point, *see also* 6 C. 709; 28 I.C. 367 (M.); 12 C.W.N. 840. Where an order of a Magistrate passed under section 145 (6) of the Criminal Procedure Code is not modified by the High Court in revision, it is the final order within the meaning of Article 47 of the Limitation Act. If the application for revision is accepted, and the Magistrate's order is set

Description of suit.	eriod of limitation.	Time from which period beings to run.
48. For specific movable property lost or acquired by theft, or dishonest misappropriation or conversion, or for compensation for wrongfully taking or detaining the same.	[1][Three years] ..	When the person having the right to the possession of the property first learns in whose possession it is.
[2][48-A To recover moveable property conveyed or bequeath in trust,[3] deposited or pawned, and afterwards bought from the trustee, depositary or pawnee for a valuable consideration.	[3][Three years] ..	When the sale becomes known to the plaintiff.]

LEG. REF.

[1] Substituted by Act XI of 1923, S. 2 and Sch. I, for "Ditto".

[2] Inserted by Act I of 1929, S. 3.

[3] Substituted by Act XI of 1923, S. 2 and Sch. I, for "Ditto".

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aside, then his order is no longer the final order; but until it is set aside or modified, it is. Hence when a revision against an order of a Magistrate passed under sub-section (6) of section 145 is dismissed by the High Court *in limine*, it is the order of the Magstrate and not that of the High Court that is the final order within the meaning of Article 47 of the Limitation Act. 57 L.W. 289=1946 M. 441=(1946) 1 M.L.J. 398. Order under S. 145 (6), Cr. P. Code—No suit by unsuccessful party—Subsequent eviction of successful party by *stranger*—Suit by *unsuccessful* party later on against successful party and stranger—Bar. *See* 16 P.L T. 183=1935 P. 764=14 P. 424.

ARTS. 48 AND 49: SCOPE AND APPLICABILITY. Arts. 48 and 49 must be read together, and so read, Art. 49 would aply to a suit for recovery of specific movable property which is other than the specific movable property described in Art. 48; and if the property falls within the description of Art. 48, it would be excluded from the operation of Art. 49, which is a residuary article. 60 B. 848=38 Bom.L.R. 712=1936 B. 322. Arts. 48 and 49 are intended to apply to suits for recovery of specific movable property or for compensation for the same. Art. 48 is more special, whereas Art. 49 is general. The plaintiff's remedy is one for the recovery of the specific movable property, or in the alternative for compensation for wrongfully taking, injuring or wrongfully detaining. In such a case the period begins to run from the time when the property was wrongfully taken, injured or the defendant's possession became unlawful. Distinction in scope between Arts. 48 and 49 pointed out. 54 A. 46=1932 A. 256. By delaying taking delivery of goods, the liability of the carrier as a carrier cannot be continued for an indefinite period, and for the period following the arrival of the goods, if there be no delivery, the carrier's liability is that of a bailee and not that of a carrier, but the carrier does not become the bailee for the purpose of limitation and Art. 48 or Art. 49 does not apply, but Art. 31 applies. 1933 A. 466=1933 A.L.J. 796. Arts. 48 and 49 apply, whether the remedy sought is the recovery of property or compensation or both. 23 M. 621; 7 I.C. 447 (B.). *See also* 20 M. 449. Art. 48 applicable only when the movable property lost is still in the possession of the defendants and not when the property cannot be traced. 133 I.C. 453=1931 P. 436. A suit to recover movables deposited with the defendant is not governed by Art. 49 but by Art. 146. 33 M. 56=20 M.L.J. 41. *See also* 6 R. 547. Attachment of tailor's sewing machine—Vital parts of machine removed from machine when in custody of sureties to whom the machine was entrusted by ataching officer—Suit by tailor after removal of attachment for machine in original condition or for damages —Limitation. (1946) 1 M.L.J. 241. Injury to property in Art. 49 refers to injury to it while in custody of some person other than owner. 11 B. 133. Suit by mortgagee for compensation for injury to specific movable property mortgaged is governed by Art. 49. 17 I.C. 906; 28 M. 208. Art. 49 does not apply to a suit for damages for institution of wrongful civil proceedings and for slander of goods. 46 C.L.J. 455=1928 C 1. Suit for value of crops wrongfully attached, cut and removed is governed by Arts. 48 and 49. 105 I.C. 763=1928 C. 106. A suit to recover articles bailed is governed by Art. 115 and not by Art. 49. 126 I.C. 68 =1930 O. 395. The word 'other' in Art. 49 means specific movable property in general as distinguished from the movable property mentioned in the previous articles. 202 I.C. 218=A.I.R. 1942 Pesh. 57. Misdelivery of goods by Railway Company—Suit for damages. 1937 A.W.R. 613=1937 A. 632.

ART. 48: SPECIFIC MOVABLE PROPERTY—

Description of suit.	Period of limitation.	Time from which period beings to run.
[1]48-B. To set aside sale of movable property comprised in a Hindu, Muhammadan or Buddhist religious or charitable endowment, made by a manager thereof for a valuable consideration.	Three years. ..	When the sale becomes known to the plaintiff.

LEG. REF.

[1] Inserted by Act I of 1929. (*See* notes under S. 10, *supra.*)

MONEY IS.—*See* 37 M. 381=27 M.L.J. 485; 5 A. 341; 29 A. 579; 1930 A. 397. Art. 48 applies to a suit for damages for conversion of specific movable property, whether the conversion is dishonest or not. The onus is on the plaintiff to prove that he came to know of the conversion for the first time within three years of the suit. 49 C.W.N. 810. Government securities are "Specific movabe property". *See* 32 C. 799. Standing crops are movable property as soon as severed. 22 C. 877; 25 C. 692 (F.B.). *See also* 36 C. 141. As to suits to recover title-deeds, *see* 12 Bom.L.R. 513; 15 M. 157; 35 M. 636 (Such cases generally fall under Art. 49 and time runs from the date of demand and refusal). Art. 49 applies only to a suit for "specific movable property," which means property of which one can demand the delivery *in specie*. It is not applicable to a suit for the recovery of a share in certain movable property on declaration of title thereto. 36 C.W.N. 758=55 C.L.J. 420=1933 C. 253. Art. 48 applies only to suits for such articles as have been acquired by theft, dishonest misappropriation or conversion. 12 B. L.R. 513. Thus, a suit for value of coal wrongfully extracted and carried away is governed by Art. 48. 55 I.C. 113=1 P. L.T. 84. *See also* 52 I.C. 361; 8 P. 516= 1929 P.C. 69=56 M.L.J. 52 (P.C.) Also a suit to recover stolen property or its value. 148 P.W.R. 1911=11 I.C. 446. A suit, however, against a carrier on ground of unlawful conversion of goods is not governed by Art. 49 but by Art. 31. 6 L. 301=88 I.C. 979=1925 L. 478. *See also* 39 M. 1 =30 I.C. 840=29 M.L.J. 342 (F.B.). But *see* 1935 A.L.J. 61=1935 A. 156; where Art. 48 was held to apply. *See also* 57 A. 843=1935 A. 601 (Suit for compensation for non-delivery framed in tort not governed by Art. 49). The word "conversion" as meaning dishonest conversion—Possession with some person contemplated by the article. 101 I.C. 62=1927 C. 117. An action of trover claiming damages for the conversion by the defendants of specific movable property, *viz.*, coal wrongfully gotten from the plaintiffs' mines and sold or otherwise disposed of by the defendants to their own use, is governed by Art. 48. Art. 48 alone refers to conversion and conversion cannot be split into two classes, one dishonest and the other not dishonest. "Or" preceding conversion is equivalent to "or by." 56 I.A. 93=8 P. 516=1929 P.C. 69=56 M.L.J. 517 (P.C.). *See also* 133 I.C. 453=1931 P. 436. Art. 48 applies to all conversion, whether dishonest or not. Where the trespass is due to inadvertence and want of reasonable care, both these views of the conversion fall within the terms of Art. 48, under which the limitation period of three years begins to run when the person having the right to possesison of the property first learns in whose possession it is. (1927 C. 117, reversed and 1929 P.C. 69, Rel. on.) 57 C. 1341=34 C.W.N. 483=1930 P.C. 113 =58 M.L.J. 536 (P.C.). A sale of goods by a railway company without the formality provided by S. 55 of the Railways Act is wrongful, and a suit for damages for such wrongful sale is one for conversion and is governed by Art. 48 and the starting date of limitation is the date when the plaintiff, *i.e.*, the person who has the right to possession, first learns of the act of conversion. 13 P. 752=151 I.C. 955=1934 P. 507. *See also* 1936 N. 21 (Suit against railway company for non-delivery of goods—Goods detained by company for non-payment of wharfage).

STARTING OF LIMITATION.—Limitation begins to run under Art. 48 from the time it is known to the plaintiff in whose wrongful possession it is while it runs under Art. 49 from the time when possession becomes unlawful. 1914 M.W.N. 319=38 M. 783. *See also* 11 B. 133; 161 I.C. 855=1936 P. 179. Under Art. 49 the starting point of limitation is when the property is wrongfully taken or injured or when the detainer's possession becomes unlawful. Detention, so as to amount to conversion affording a cause of action, must become adverse to the owner or other person entitled to possession. The usual method of proving that a detention is adverse is to show that the plaintiff demanded delivery of the property without avail. 60 B. 848=38 Bom.L.R. 712=1936 B. 322. *See also* 1937 Rang. 523. According to the plain meaning of Art. 48, time begins to run against the owner of the property, from the time when he first discovers that it is in the possession of the defendant, and there is no question as to whether the owner of the property mentioned in the article was or was

Description of suit.	Period ot limitation	Time from which period begins to run.
49, For other specific movable property, or for compensation for wrongfully taking or injuring or wrongfully detaining the same.	[2][Three years]. ..	When the property is wrongfully taken or injured, or when the detainer's possession becomes unlawful.

LEG. REF.

[2] Substituted by Act XI of 1923, for "Ditto."

not reasonably diligent to discover in whose possession the property he is seeking to recover is. There is no warrant for reading into the article words which are not there. The words "whose possession" in column 3 mean the possession of some definite person who can be identified and against whom effective relief for restoration of the property in question can be obtained. 60 B. 848=1936 B. 322. As to suit for recovery of property or in the alternative for compensation, *see* 1932 A.L.J. 241=54 A. 467=1932 A. 256, cited *supra*.

PLEA OF LIMITATION—ONUS OF PROOF.—In a suit governed by Art. 48, the onus is on the plaintiff to prove that he first learnt within three years of the suit that the property which he seeks to recover was in the possession of the defendant, *i.e.*, that he obtained knowledge of the defendant's possession of the property within three years of the suit and that is all. If he proves this, the defendant, in order to succeed in his plea of limitation, has to prove that the fact that the property was in his possession became known to the plaintiff more than three years prior to suit. 60 B. 848.

ART. 49.—Boat engaged to carry cargo to ship in harbour—Loss by sinking—Suit for value of boat—Limitation. See (1944) 2 M. L.J. 340=1945 M. ..0. Art. 49 contemplates a case of a cause of action arising *ex delicto* whether or not the wrongful taking or wrongful detention was preceded by a contract. The material date is the date when detention becomes wrongful. Even if possession was at its inception under a contract, that would not preclude the application of Art. 49, for it comes into operation only when possession becomes wrongful. In cases where the original possession of the defendant is lawful but becomes unlawful by reason of certain facts, Art. 49 is the ordinary article to apply. I.L.R. (1939) N. 498= 1939 N. 177. Possession, which to start with is permissive, cannot become unlawful until he asserts a title in himself or until he refuses to return possession. A mere demand by the plaintiff would not be enough. A suit by an owner of certain empty oil drums or their value from the defendant who had taken them on loan undertaking to return them whenever required, is in time, and not barred by Art 49, if filed within three years of the refusal by the defendant to return them though beyond three years of the date of demand by plaintiff. 55 L.W. 56=1942 M. 303=(1942) 1 M.L.J. 187. Attached property entrusted to sureties—Claim to—Order allowing claim—Removal of property by sureties wrongfully—Suit by claimant for compensation—Limitation—Starting point. I.L.R. (1945) Mad. 784=(1941) 1 M.L.J. 265 =1946 M. 33.

POSSESSION ORIGINALLY PERMISSIVE SUBSEQUENTLY BECOMING UNLAWFUL.—Mere detention beyond period does not render possession originally permissive unlawful. There should be a demand and a refusal to make it unlawful, and time begins to run from the date of such demand and refusal under Art. 49. 42 A. 45=52 I.C. 382. *See also* 27 I.C. 637=13 A.L.J. 81; 33 M. 56=20 M.L.J. 41. It is so even if there is assertion of ownership on the part of the defendant. 2 R 555=85 I.C. 10=1925 R. 146. *See also* 54 I.C. 159. Possession of title-deeds by mortgagee after satisfaction of debt secured thereby becomes wrongful from the time there is a demand and a refusal. 15 M. 157. *See also* 31 C. 519; 12 C.W.N. 1010. But a suit for movable property originally obtained lawfully but subsequently converted or retained unlawfully is governed by Art. 48 and not by Art. 49. Time runs from the time when plaintiff has knowledge of the conversion. 38 M. 783=23 I.C. 174. Thus, a suit for a jewel or its value, which was pledged with the defendant by the commission agent, to whom it had been given for sale, is governed by Art. 48. 40 M. 678=30 M.L.J. 587. But *see* 12 C.W.N. 1010. Non-payment of rent of article sold on hire-purchase system does not amount to wrongful detention. 27 I.C. 637=13 A.L.J. 81. Sale on approval—Suit for the price is governed by Art. 49 and limitation begins to run when the defendant after receipt of a notice from the plaintiff failed to return them. 1928 O. 47 (1)=105 I.C. 224. Suit to recover ornaments—Stridhan of mother—Art. 49 applies. 32 C.W.N. 133=106 I.C. 885. Pronotes left with another either as security or for safe custody—Suit in respect of—Art. 145 and not

Description of suit.	Period of limitation.	Time from which period begins to run.
50. For the hire of animals, vehicles, boats or household furniture.	[1][Three years] ..	When the hire becom payable.
51, For the balance of money advanced in payment of goods to be delivered.	[1][Three years] ..	When the goods ought to be delivered.
[2]52. For the price of goods sold and delivered, where no fixed period of credit is agreed upon.	[1][Three years] ..	The date of the delivery of goods.

LEG. REF.

[1] Substituted by Act XI of 1923, S. 2 and Sch. I, for "Ditto".

[2] For the period of limitation for these and certain other suits in the province of the Punjab, *see* the Punjab Loans Limitation Act (Pun. Act I of 1904) and S. 29 (1) (*b*) of this Act.

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49 applise. 1938 A.W.N. 59=1938 P.C. 110=47 L.W. 649 (P.C.).

ARTS. 49 AND 2.—Applicability—Inspector destroying tin of ghee seized by him under Punjab Pure Food Act after order of release by Magistrate—Suit to recover tins or value thereof. *See* A.I.R. 1942 Pesh. 57.

ARTS. 49, 115 AND 145.—Applicability—Gold bought from and left with defendant for making ornaments—Delivery of one ornament and non-delivery of other—Suit for ornament not delivered or for value of same—Limitation—Starting point. *See* 20 N.L.J. 198.

ART. 51.— When goods ought to be delivered—Meaning of. *See* 31 I.C. 474=11 N.L.R. 174.

ART. 52: SCOPE.—*See* 63 I.C. 435=19 A.L.J. 555=1921 A. 455; 130 I.C. 574=1931 L. 309. In a suit by a tradesman for the price of goods sold and delivered from time to time, the customer having from time to time made paymetns without specifying any particular item for which the payments were made, the limitation is governed by Art. 52 in respect of each item as delivered. 155 I.C. 44=1935 A.L.J. 33=1935 A. 53. The plaintiff in a case like this is entitled to appropriate the payments to the earlier items in the account but not to credit them to the entire balance due up to date in the sense of saving limitation for each and every item. Art. 85 is not applicable to such a case. 1935 A. 53. *See also* 24 Bom.L.R. 998=1923 B. 113=77 I.C. 943; I.L.R. (1939) Nag. 137=1938 N. L. J. 157=1938 N. 266. The starting point of limitation under Art. 52 is "the date of the delivery of goods'. Where there are several deliveries each delivery gives an independent cause of action. I.L.R. (1945) All. 200=1945 O.W.N. (H.C.) 61=A.I.R. 1945 All. 185. Goods sold and delivered and moneys received on account on various dates—Suit for balance—Cause of action—Limitation—Starting point. I.L.R. (1940) B. 127=42 Bom.L.R. 227=1940 B. 158. Article inapplicable where contract is to return the goods in kind. 4 L.L.J. 268=1922 L. 271; also to suit based on contract of commission agency. 1941 C. 245. Suit to recover arrears of subscription to newspaper is governed by article. 1941 C. 245. 7 Bom.L.R. 190. *See also* 27 M. 243 (F.B.). So also a suit for recovery of the price of medicines supplied. 133 I.C. 537=1931 A. 752. Where goods were sold and delivered to one and were wrongly debited against another person and the mistake being subsequently discovered, the vendor sued the right person for the price, *held*, the suit was governed by Art. 52 and not Art. 96. 142 I.C. 470=1933 Sind 32=27 S.L.R. 81. *See also* 40 P.L.R. 143=1938 L. 338. Sale of goods—Payments made by purchaser on account—Suit by seller for balance—Art. 52 applies. 42 P.L.R. 272=1939 L. 307. Suit to recover money due under a contract for supply of materials and construction of flooring is governed by Art. 115 and not by this article. 2 L. 376=1922 L. 198. On the point, *see also* 103 P.R. 1913=22 I.C. 576. A suit against the Cantonment Board for the price of goods supplied is governed by Art. 52. 56 A. 885=1934 A.L.J. 805=1934 A. 436. Date of delivery of a railway receipt is the date of delivery of goods for the purposes of Art. 52. 108 I.C. 801 (2)=1928 N. 181; 38 M. 664. In a simple transaction of sale of goods, the liability to pay the full price accrues on the date of the sale. The fact that the purchaser, not having all the money in his hands, agrees to pay the balance with interest at a certain rate does not prevent the accruing of the vendor's right to recover the whole price and time begins to run from the date of the sale. 1931 A.L.J. 362=1931 A. 229. Where the goods sold remain in the custody of the vendor as security for the unpaid price of the goods and the vendor sues the vendee for a personal decree against him and not for enforcement of any charge on the security the suit is not governed by Art. 120, but by the

Description of suit.	Period of limitation.	Time from which period begins to run.
[1]53. For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit.	[2][Three years] ..	When the period of credit expires.
54. For the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given	[2][Three years] ..	When the period of the proposed bill elapses.
55. For the price of trees or growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon.	[2][Three years] ..	The date of the sale.
56. For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	[2][Three years] ..	When the work is done.
[1]57. For money payable for money lent.	[2][Three years] ..	When the loan is made.

LEG. REF.

[1]*See* Footnote (1) on page 3511, *supra*.

[2] Substituted by Act XI of 1923 for "Ditto."

three years' rule of limitation. (*Ibid.*) On this article, *see also* 130 I.C. 574=1931 L. 309.

ARTS. 52 AND 8.—Sale of articles of food by shopkeeper—Latter also running restaurant—Suit for their price—Limitation. *See* 1939 Rang.L.R. 626=1940 R. 17 cited under Art. 8, *supra*.

ARTS. 52 AND 85.—The fact that the debtor has supplied to the creditor certain articles of goods in partial discharge of the monies due by him to the creditor cannot alter the character of the account between the parties and bring it within the ambit of Art. 85 Nor would the mere supply of different goods on different dates to the debtor give rise to a fresh period of limitation from the date of the last supply. If no period of credit has been agreed upon, Art. 52 would obviously apply and limitation would start from the date of the delivery of the goods on each occasion, unless the case can be brought under Art. 85. 55 L.W. 585=1943 Mad. 13=(1942) 2 M.L.J. 337.

SECS. 52 AND 96.—Electric energy is 'moveable property', and therefore "goods" within the meaning of Art. 52. A suit claiming the charges for electric energy supplied during a period of five years can only be decreed so as to cover only a period of three years prior to the institution of the suit. The fact that it was owing to a mistake of the meter reader that incorrect bills were issued during the period of five years cannot attract the provisions of Art. 96. 1946 A.L.J. 195=1946 A. 502.

ART. 53.—When the price is not claimable as of right, on the date the goods are delivered, it is sale on credit within Art. 53. 7 A. 284. The word "thavanai" entered on a bill of sale implies credit and a suit for money due in respect of the transaction is governed by this Article. 47 M.L.J. 844 =48 M. 275=1925 M. 161.

ART. 54: APPLICABILITY—CONDITIONS.—For Art. 54 to apply, it must be alleged that the hundis were not executed as promised. If the defendants wish to make this allegation, it is for them to make it in their written statement or their pleadings clearly and without any attempt to mislead the plaintiff. 162 I.C. 302=1936 L. 328.

ART. 56.—*See* 2 L. 376=1922 L. 198; 103 P.R. 1913=22 I.C. 576 cited under Art. 52. A suit for printing work done is governed by this article. 30 C. 687. *See also* 3 Luck. 584=1928 O.W.N. 297=5 O.W. N. 350; 1938 Nag. 286 (Suit for remuneration by goldsmith for work done). A village carpenter is an artisan within the meaning of Art. 7 and a suit for wages by him is governed by Art. 7 and not by Art. 102 or Art. 56. 152 I.C. 885=1934 N. 260. A suit by an Advocate for his fees when there is no contract, is governed by Art. 56. 75 C.L. J. 7=1942 Cal. 444.

ART. 57.—When money is lent from time to time, limitation runs as regards each loan from the respective dates of the advances. 33 C. 1047=33 I.A. 165=16 M.L.J. 300 (P.C.). A suit for recovery of money on a *bahi* account, where the dealings between the parties were simple money loans as between creditor and debtor and the account was not mutual in any sense of the term, is governed by Art. 57 and not by Art. 85. 12 L. 420=1931 L. 241. Neither selling the

Description of suit.	Period of limitation.	Time from which period begins to run.
58 Like suit when the lender has given a cheque for the money.	[1][Three years] ..	When the cheque is paid.

LEG. REF.

[1] Substituted by Act XI of 1923, S. 2 and Sch. I, for "Ditto".

goods by the pawnee nor the recovery of the debt out of the sale proceeds bars the pawnee from suing for the debt under the contract of loan. 104 I.C. 641=1927 N. 346. *See* 30 B. 218 and 24 A. 251. The plaintiff was a dealer in timber and the defendant did the business of sawing wood. The plaintiff stated that, between certain dates, a certain sum of money was advanced to the defendant and the plaintiff sued to recover the money lent, less the value of the work done by the defendant. *Held*, that the suit was governed by Art. 57 and not by Art. 115. 147 I.C. 295=1934 A. 126. A suit for recovery of money secured by a pledge is really a suit for money lent and advanced, and a suit to recover the balance due after the sale of the pledged property is none the less a suit for money lent, and the period of limitation is three years under Art. 57. The fact that movable property has been pledged does not change the nature of the suit. 37 Bom. L.R. 165=1935 B. 213. *See also* 18 P. 16=1929 P. 605; 160 I.C. 986=1936 Pesh. 43 (Suit on personal covenant contained in mortgage deed). Where, money is lent under a special contract fixing the date of repayment, that date fixes the period of limitation under Art. 115. 10 C. 1033; 15 M. 380; 37 M. 175; 12 L.W. 67=52 I.C. 456 (M.). Where no date is fired for repayment, the loan is payable at once and time runs from the date of the loan even against the surety. 13 L. 240=132 I.C. 590=1931 L. 691. As to applicability to suit on balance struck and for recovery of a further advance in cash, *see* 4 L.L.J. 69=1922 L. 204; 148 P.W.R. 1916=35 I.C. 577; to suit on "thavanai" account, *see* 13 Bur.L.T. 21=57 I.C. 908; 36 I.C. 497. Where the transaction between the parties was conducted as between a debtor and a creditor, and on a certain date the balance was struck and it was agreed that the debtor should pay interest from that date on the amount found due by him and the creditor sued to enforce his rights, *held*, that the suit was on an account stated and that it was governed by Art. 64 or perhaps Art. 57 and not by Art. 85. 131 I.C. 292=1931 L. 233. Where on hundis being held inadmissible in evidence for want of proper stamp, a suit is brought on the original consideration over three years after the date of payment, it is barred under this article. 51 I.C. 945=29 C.L.J. 508. Suit to recover money on account of advance in kind and cash is not governed by article. 37 I.C. 300. Where the transaction between parties starts as a deposit and subsequently there are several items of deposits and withdrawals in the handwriting of the depositee, the transaction is one between customer and banker and to such a case Art. 60 applies and Art. 57 does not apply. 15 L. 242=1934 L. 42. *See also* 1937 Rang.L.R. 254=1937 R. 340.

ARTS. 57 AND 96.—Where a customer of a bank draws cheques on it knowing that the funds to his credit are not sufficient to meet them but expecting the bank nevertheless to honour them, he impliedly applies to the bank for an overdraft or a loan. A suit for recovery of the amounts due by the customer in such a case is governed by Art. 57. The mere fact that some clerk or officer of the bank has been careless in honouring cheques drawn by the customer when presented for payment would not make the moneys paid under a mistake so as to make Art. 96 applicable when there is no evidence to show that the manager was under any misapprehension that the amounts were covered by security. Art. 96 would only apply to a case where money is paid to another under the influence of a mistake, that is, upon a supposition that a specific fact is true, which would entitle the other to the money, but which fact is untrue, and the money would not have been paid if it had been known to the payer that the fact was untrue. But where the money was not in fact paid under any such mistake, Art. 96 cannot apply. 1941 P.W.N. 638=1942 P. 201.

ART. 57 AND 58—60.—Art. 58 applies to a case in which the lender draws his own cheque and gives it to the borrower. It does not govern a suit in which he transfers to the borrower a cheque which had been drawn by another person and endorsed in his favour by the payee. Such a suit comes within the ambit of Art. 57 only. 65 I.A. 132=I.L.R. (1938) A. 326=1938 P.C. 66=(1938) 1 M. L.J. 785 (P.C.). Deposit being a species of loan, if Art. 60 does not apply then either Art. 57 or Art. 59 will apply. 1939 A.M. L.J. 6. Suit on personal covenant—Fictitious property included in mortgage to give jurisdiction—Registration invalid—Suit for money. *See* 41 C.W.N. 783=1937 C. 347.

ART. 58.—The period of limitation commences from the date the cheque is paid and not when the cheque is handed over. 28 A. 54. *See also* 38 B. 293=23 I.C. 779. A cheque is paid under Art. 58 when it is cashed by the lender's bankers, for it is only then that the lender's money passes into the hands of the borrower and the loan is made by the

Description of suit.	Period of limitation	Time from which period begins to run.
[2]59. For money lent under an agreesment that it shall be payable on demand.	[1][Three years] ..	When the loan is made.

LEG. REF.

[1]*See* footnote (2) on page 3513, *supra*.

former to the latter. The mere handing over of a cheque by the lender to the borrower does not amount to a payment of the cheque. Nor does the period prescribed by Art. 58 begin to run against the lender when the cheque received by the borrower is given by him to his own bank and the amount is credited to him by the bank. 65 I.A. 132=I.L.R. (1938) A. 326=40 Bom.L.R. 752=1938 P.C. 66=(1938) 1 M.L.J. 785 (P.C.).

ARTS. 59 AND 60: SCOPE AND APPLICABILITY. —In the case of a registered bond, the article which is applicable, is not Art. 59 but Art. 116. 151 I.C. 426=1934 R. 227. Arts. 59 and 60 deal with transactions of two different natures; while the former applies to loans, the latter applies to deposits. That a transaction is a deposit, has to be proved undoubtedly by the person alleging it to be so. The test to determine whether a particular transaction is one of loan 'or one of deposit' is to ascertain whether the money paid or deposited was in the nature of an advance of loan so as to create the relationship of creditor and debtor between the parties or was merely a deposit without bringing into existence such relationship. 184 I.C. 559 =1939 All. 378. Where money is deposited by a customer with a banker, the death of the banker does not change the character of the sum. It cannot be said that the liability of the heirs of the banker is in any way different from that which existed between the original banker and the depositor. The money does not become a loan in the hands of the banker's heirs, so as to make Art. 59 applicable. Art. 60 would still apply both to the principal and the interest. The ordinary rule is that the cause of action for recovery of principal and of interest accruing due on it is a single cause of action and when the claim is a single claim for principal and interest, there cannot be two periods of limitation applicable 185 I.C. 339=1940 P. 120. The word "deposit" used in Art. 60 covers all payments of the customer's moneys made to the banker which make up the credit balance in favour of a customer in the banker's hands. 29 Bom.L.R. 423=1927 B. 362; 17 L. 481=165 I.C. 699=1936 L. 718; 15 P. 709=165 I.C. 593=1936 P. 539. *See* 102 I.C. 145=1927 B. 433. Loan or deposit —Distinction. *See* 25 Bom.L.R. 503=1924 B. 28; 37 A. 292=28 I.C. 949. *See* 1940 P. C. 132=44 C.W.N. 1041 (P.C.); *also* 20 B. 8; 19 B. 775; 22 I.C. 936 (M.); 102 I. C. 145=1927 B. 433; 140 I.C. 96=1932 A. L J. 261. Doubt arising whether a transaction amounts to a loan or deposit; the presumption is that it is a deposit, and not a loan (dubted in). 107 I.C. 290=1938 M. 499 (1). For the period of limitation prescribed in Art. 60, the *terminus a quo* is not the date of the last balance but the date "when the demand is made." 15 L. 242=151 I.C. 712=1934 L. 42. Art. 60 is not limited to suits against bankers only. Where money is deposited for safe custody, with liberty to depositee to lend the money to others and pay a certain rate of interest to the depositors, Art. 60 applies and a demand is necessary before time begins to run. 25 C.W.N. 981=1921 C4 644. *See also* 52 I.C. 25; 4 P.R. 1919 =47 I.C. 592; 39 M. 1081=30 M.L.J. 245; 98 I.C. 554=1927 P. 91. The investment of the *stridhanam* moneys in a firm of Nattukottai Chetties amounts to a deposit and a suit brought within three years from the date of notice demanding payment is in time under Art. 60. The demand under Art. 60 should be an unqualified demand for the whole sum due. 63 M.L.J. 232=1932 M. 685. Under Art. 60, the making of a demand is entirely dependent upon the volition of the plaintiff, and the period of limitation may be indefinitely prolonged, and a suit may be instituted without even a demand being made, in which case no question of limitation arises. 1933 P. 701. A suit to recover a deposit with a Nattukottai Chetty on "thavanai" terms, is governed by Art. 60, both as regards principal and interest. 43 M. 629=38 M.L.J. 437. *See also* 1935 M.W.N. 559=41 L.W. 536=1935 M. 734. The fact that money is deposited on the understanding that it was to be paid on demand after a certain time does not take the case out of the article. 47 I.C. 948=1918 M.W.N. 564. *See also* 20 P.L. T. 84=1939 P. 261. But if the money is to be paid at the end of the "thavanai" period, the case is governed by Art. 115. 43 I.C. 972=1918 M.W.N. 242. *See also* 42 I.C. 573=1917 M.W.N. 858; 52 I.C. 456 10 L.W. 67. For similar cases, *see* 20 B. 8; 19 B. 352. Where, after the expiry of the "thavanai" contract, no fresh contract is entered into, the money is held as a deposit and Art. 60 applies. 57 I.C. 908. But *see* 36 I.C. 497. As to application of article, *see also* 15 L. 242=1934 L. 42. (noted under Art. 57, *supra*). Where money is paid to defendant for purchase of goods, on the understanding that the balance remaining after paying for the purchase should be given back on demand, there is deposit within Art. 60. 28 C. 393. Art. 60 governs suit

for gold mohurs deposited, delivery of which is refused on demand. 47 A. 643=17 A.L. J. 888. Deposit must be by agreement payable on demand. 1928 M. 509. It is not necessary that the agreement to pay the amount due on demand must be "express." Thus Art. 60 applies even if the agreement is to be "implied" from the course of dealings between the parties or the other circumstances of the case. 15 L. 242=1934 L. 42; 164 I.C. 50=1936 L. 587. *See also* 35 P.L.R. 91=1934 L. 179. The suit itself may be taken to constitute a demand for the purpose of Art. 60. 16 L. 242. The demand contemplated in Art. 60 must be a legal demand, made by a person capable of giving a valid discharge. If the deposit is payable to more persons than one, the demand must be made by them all or at least by one of them duly authorized by the others and in a position to give a legal discharge. The demand must be made directly on the party with whom the deposit lies in his capacity as depositee, for the whole sum due. A claim to deposit not addressed to depositee but put forward in a written statement in a suit in which both the claimant and the depositee were co-defendants is not a demand of the nature contemplated in Art. 60. I.L.R. (1939) Kar. 602=1939 Sind 173. Where a banker with whom a deposit is made on current account is adjudicated insolvent, tender of proof of debt and claim made in insolvency by the creditor is not a demand within the meaning of Art. 60. 1938 Rang.L.R. 468 =1938 Rang. 335. The demand contemplated by Art. 60 is a demand for the repayment of the whole amount of the deposit due, and not a demand for partial payment. *Ibid.* Where there is no evidence that the dissolution of partnership is notified to customers of the firm, then on the customer's demanding payment from either of the partners his cause of action has arisen against them all. 15 Pat. 709=1936 P. 539. Time under Art. 60 can only run from the date of demand, if that demand is part of the cause of action. Where as a result of a demand some payment is made, a later demand would give a fresh cause of action, only if full payment had been made on the first demand and the second demand was for a sum not due when the first demand was made. 1939 A.M.L.J. 66. In the case of money deposited with a banker, there must ordinarily be a demand or something that can be deemed equivalent to a demand or take the place of a demand as part of the action for a suit to recover it under Art. 60 of the Limitation Act. The necessity for a demand may, however, be got rid of by special contract or waiver. A repudiation by the banker of the customer's right to be paid any particular sum would be a waiver of any demand in respect of such sum. The defendant banker cannot simultaneously repudiate liability to pay the amount and insist that a demand previous to suit is essential to its maintainability. 1940 P. 129. Suit to recover money invested in Bank in fixed deposit is not within this article. 1931 A. 59. When the deposit for the recovery of which the action is brought, is subsequently held to be invalid and insufficient, limitation runs not from the date of deposit but from the date of its appropriation. 8 Luck. 79= 9 O.W.N. 414=1932 O. 222.

LOAN AND DEPOSIT—DISTINCTION.—*See* 17 L. 481=1936 L. 718; 15 P. 709=1936 P. 539; 1932 A.L.J. 261; 13 Luck. 323=1937 O.W.N. 831=1937 O. 394 (Claim against co-sharer in respect of improvement made to joint property—Art. 120 applies). The distinction between a loan and a deposit is that, in the case of a loan, it is ordinarily the duty of the debtor to seek out the creditor. In the case of a deposit it is the duty of the depositor to go for the money to the banker or the depositee and to make a demand for it. Where a certain sum is deposited for three years, and after that period, depositors are to withdraw it jointly, and in the meantime interest to be paid periodically, such a transaction is not a loan, but amounts to a deposit, on the stipulation that it shall carry interest at a specified rate and shall be payable to the depositors on demand and with a further stipulation that such a demand shall not be made within three years. To such a transaction, Art. 60 applies. (1936 L. 587, Affirm.) 39 P.L.R. 377=1937 L. 81. To determine whether a bailment of a certain sum of money is a deposit for safe custody or a loan, the test to be applied is whether the bailee is to keep the money till the bailor asks for it or whether there is an obligation on his part to seek out the bailor and repay him. The appellant received moneys from the respondent, put them in his Bank account and credited them to the respondent, and whenever the appellant paid any of these moneys to the respondent it was because the respondent had asked for them, and further there was no security, no receipt in writing, no promissory note and no agreement as to rate of interest. *Held*, the moneys were simply held by the appellant for safe custody, he was really acting as a Banker for the respondent; and therefore, a suit by the respondent for the recovery of the moneys was governed by Art. 60. 189 I.C. 444=42 Bom.L.R. 971=44 C.W.N. 1041= 1940 P.C. 132 (P.C.). The character of a deposit with a banker is not altered by the fact that the person in whose name the money is deposited agrees in writing with another person that a part of it should belong to that other from the date of the agreement. The money still remains a deposit, and a suit to recover it by the respective parties is governed by Art. 60. The right to sue does not accrue until there is a demand and refusal. Art. 115 cannot apply to such a

Descrip tion of suit.	Period of limitation	Time from which period begins to run
60. For money deposited under an agreement that it shall be payable on demand, including money of a customer in the hands of his banker so payable.	[1][Three years[..	When the demand is made,
61. For money payable to the plaintiff for money paid for the defendant.	[1][Three years] ..	When the money is paid

LEG. REF.

[1] Substituted by Act XI of 1923 for "Ditto".

case, as the claim can in no sense be one for compensation for breach of a contract. 47 L.W. 118=1938 M. 236=(1938) 1 M.L.J. 56.

ART. 60.—Where there is no evidence that the dissolution of partnership is notified to customers of the firm, then on the customer's demanding payment from either of the partners, his cause of action has arisen against them all. 15 P. 709=165 I.C. 593=1936 P. 539. The agreement that the money shall be payable on demand within Art. 60 need not be an express one. It can be an implied agreement, and often is implied from the circumstances of the deposit. 180 I.C. 300 =1939 R. 42; 1939 A.M.L.J. 6. Deposit on current account—Insolvency of bank—Proof of claim—Annulment of adjudication—Receiver acting under S. 37 (1) of Provincial Insolvency Act—Suit for deposit—Limitation—Starting point. 1938 R. 335= 1938 Rang.L.R. 468.

LOAN AND DEPOSIT—DISTINCTION BETWEEN. —The terms "loan" and "deposit" are not mutually exclusive. Deposit does not necessarily involve the creation of a trust, but may involve only the creation of the relation of debtor and creditor, a loan under conditions. A demand by the depositor will therefore be a normal condition of the obligation of the depositee to repay. I.L.R. (1944) Nag. 462=1944 N.L.J. 83=1944 Nag. 101.

ARTS. 60 AND 62.—It is essential for a claim to fall under Art. 62, that the money must at the time of its receipt by the defendant belong to the plaintiff. That term could hardly be applied to a surrender value in a life insurance policy which grows from year to year and does not even begin to accrue until a certain number of premia have been paid. It is Art. 60 that would apply to such a claim and a suit would be in time when the demand is made less than 3 years prior to suit. I.L.R. (1943) N. 253=1942 N. 9.

ART. 61: APPLICIBILITY.—The article applies to cases where the plaintiff has paid money for the defendant. The payment must have been at the defendant's request express or implied. *See* 34 M. 167; 20 M.L.J. 989 29 A. 627; 5 Bom.L.R. 725. Payments made on behalf of another need not be accepted or adopted by the person on whose behalf they are made. 1931 L. 344. The expression "when the money is paid" in Art. 61 means actual payment and not merely a notional payment which a renewal implies. 1945 A.L.J. 488=1945 O.W.N. (H.C.) 318=I.L.R. (1945) A. 871=1946 A. 142. When one person places money with another person to secure a regular monthly payment to a third person, the transaction amounts to one of deposit and the person with whom the money is deposited becomes, as regards that particular transaction, the banker of the depositor. Art. 60 of Limitation Act applies to such a case. 1939 A.M.L.J. 49. Article does not apply where a charge is created by statute for the claim. 35 C.W.N. 678=1931 C. 493. Where plaintiff borrows money for defendant's benefit and is compelled to pay the amount himself, suit for recovery of the amount paid by him is governed by Art. 61 or 83, and time runs when the plaintiff pays the amount. 29 A. 627; 5 Bom.L.R. 725. *See* however 37 M. 381. As to suit for reimbursement where plaintiff assumes responsibility for the defendant's debts which he is subsequently compelled to pay to the creditors, *see* 26 M. 322;. *See also* 1936 M. 334; 70 M.L.J. 537. Where in a compromise one party agrees to pay off a certain creditor and on the failure of fulfilment of the term the other party pays off the creditor, then limitation runs from the date of the payment by the other party to creditor. 1935 L. 307. A suit for recovery of money paid to save property of another from execution sale falls under this article. 78 I.C. 738=1925 O. 132 (2). *See also* 7 A.L.J. 585. Also suit by puisne mortgagee against mortgagor for reimbursement of money which he had paid to discharge a prior mortgage decree. 19 A.L.J. 840=63 I.C. 604=44 A. 67= 1922 A. 153. *See also* 1929 A. 943 (discharge of prior mortgage). But *see* 1935 O. 245=1935 O.W.N. 272 (case of co-mortgagee redeeming). Also suit to recover money paid to defendant's guardian for purposes of minor's necessity. 35 C. 320. *See also* 41 Bom.L.R. 585=1939 B. 394; I.L.R. (1940) M. 27=1939 M.W.N. 798=1940 M 106. Also suit by plaintiff for recovery

of revenue paid by him in respect of property of which he has been dispossessed. 42 A. 61=52 I.C. 632. Also claim by a divorced Mahomedan wife to recover arrears of maintenance for the child. 51 I.C. 968=21 Bom. L.R. 713. Where the mortgagee has failed to pay a creditor of the mortgagor according to the terms of the mortgage and the mortgagor himself has to pay the same, suit for recovery of the amount is governed by this article. 63 I.C. 87; 1922 A. 409. But *see contra* 1931 A.L.J. 533=53 A. 702=1931 A. 549 (2) holding that such a suit was governed by Art. 120. *See also* as to suit by vendor against vendee for a payment which ought to have been made by the vendee according to the terms of the sale-deed. 14 L. 380=1933 L. 109 (time runs from the date when the vendor is actually damnified). Where an agent borrows moneys without the principal's authority and pays the same to the principal's creditors a suit to recover the amount paid is governed by this article. 52 I.C. 414=10 L W. 33. *See also* 34 M. 167=20 M.L.J. 989. But *see* 34 Bom.L.R. 1268=1932 B. 593; 31 P.L.R. 666 (suit by agent against principal held to fall under Art. 83). Where the defendant purchased goods and wrongfully got the transaction entered in the name of the plaintiff and a decree was obtained against the plaintiff for the price, a suit by plaintiff before paying the decree amount was held to be premature as plaintiff had not paid the amount and that the cause of action would arise only on actual payment. 1933 L. 404. Sale in execution of mortgage decree—Deposit by purchaser of equity of redemption under O. 21, R. 89—Suit to recover the amount from mortgagor is not covered by Art. 61. 51 A. 606=1929 A. 309. Suit by landlord to recover from tenant a moiety of the road cess paid by him under the Madras Local Boards Act whether governed by Art. 61. *See* 33 M.L.J. 379=42 I.C. 502. On appeal, *see* 52 I.C. 468=1919 M.W.N. 365, holding such suit is governed by Art. 120. *See also* I.L.R. (1940) N. 439=20 N.L.J. 73=1937 N. 152 (lessee and sub-lessee). As to suit for contribution by a partner of a firm who has paid whole or more than his share of the amount due from all the partners, *see* 5 L.L.J. 310=1924 L. 112. *See also* 52 I.C. 243=1919 M.W.N. 429; 57 M. 347; 38 L.W. 858=1934 M. 12=65 M. L.J. 789. Limitation runs from the date of payment by plaintiff and any later payment by defendant towards the joint liability does not save limitation. *See also* 26 M. 886; 8 I.C. 336 (O.); 1914 P.C. 40=19 C.W. N. 193 (P.C.). As to suit for contribution by co-sharer from whom money in excess of his share has been realised by coercive process by the creditor, *see* 26 C.W.N. 340=1921 C. 814; 19 A. 244; 25 C. 844 (P.C.); 44 L.W. 135=1936 M. 782. Suit by *de facto* guardian to recover expenses incurred on behalf of minor is governed by this article, and time runs from the date of expenditure and not from time when ward attains majority. 17 Lah. 78=37 P.L.R. 246=1935 L. 437. A suit to get back money deposited as security is governed either by Art. 61 or by Art. 115. 108 I.C. 49 (1). A suit for reimbursement by a purchaser, whose purchase has been set aside as a sham transaction, of the sum of money he had paid for the redemption of an undisclosed mortgage on the property is governed by Art. 61. 32 Bom.L.R. 1376=1931 B. 39. Also a suit against *A* and *B* by a receiver put in charge of the property pending determination of rights between *A* and *B* to recover the decree amounts paid by him to the watchmen for guarding the property. 6 Luck. 102=1930 O. 420. Suit by trustee of temple, to recover money from former trustee, is not governed by this article, nor by S. 10; but Art. 120 applies to it. 40 L.W. 275=1934 M. 542. When a receiver or manager is appointed by the Court, he is appointed on behalf of all persons interested in the property. Hence the expenses incurred by the receiver of an estate in instituting a suit to recover money due to the estate are incurred by him on behalf of and for the person who owns the estate, and they are "money payable to the plaintiff for money paid for the defendant" within the meaning of Art. 61. Therefore, a suit by the quondam receiver to recover the amount spent by him in instituting a suit on behalf of the estate is governed by Art. 61 and not by Art. 83 or 120. The circumstance that the receiver was also benefited by the suit does not make the suit any the less a suit on behalf of the owner of the estate or take it out of the purview of Art. 61. 1935 M. 594=69 M.L.J.5 39.

ARTS. 61, 96 AND 120.—Where a person becomes subrogated to the rights of a mortgagee by redeeming his mortgage he is in precisely the same position as the mortgagee whose mortgage he redeems, and must therefore bring his suit for recovery of the amount paid by him within 12 years of the original mortgage. Considered as merely a right to reimbursement of the money, Art. 61 of the Limitation Act would apply, and the suit must be brought within three years from the date when the money is paid. Art. 120 would not apply whether the claim is made under S. 69 or S. 70 of the Contract Act. Even if it is deemed to confer an equitable charge for the money paid, a fresh period of limitation would not be available from the date of payment. 1945 M.W.N. 319 (2)=(1945) 1 M.L.J. 341. Applicability—*R* and *N* borrowing money on pronote from *J* and *M*—*J* alone realizing amount by draft on *R* and *N*—Suit by *M* against *R* and *N* decreed for half the amount on ground that *J* had no authority to receive payment on behalf of

Description of suit.	Period of limitation.	Time from which period begins to run.
62 For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use.	[1][Three years] ..	When the money is received.

LEG. REF.

[1] Substituted by Act XI of 1923 for "Ditto".

M—Decree confirmed in appeal—*M* recovering the amount in execution—Suit by *E* and *N* against *J*—Limitation—Starting point. *See* 1936 L. 747; 18 Lah. 623=40 P L.R. 300=1938 L. 99. Sale certificate—Stamps purchased and paid for by one of two joint purchasers—Suit for contribution—Limitation runs not from date of purchase but only from date on which stamps were actually used. 52 L.W. 508=(1940) 2 M.L.J. 494.

ART. 62: SCOPE AND APPLICATION.—Article is applicable where the defendant has received money which, in justice and equity, belongs to the plaintiff under such circumstances as in law render the receipt of it a receipt by the defendant to plaintiff's use. 49 C. 886=36 C.L.J. 295=1922 C. 157. *See also* 32 C. 527; 37 A. 233; 25 M.L.J. 531; 18 I.A. 158=19 C. 123; 31 M. 230; 40 I.C. 173; 19 I.C. 3=1913 M.W.N. 218; 101 I.C. 322=1927 A. 437; 1928 N. 256. As to the nature of such action, *see* 41 M. 923=35 M.L.J. 581. Art. 62 cannot be applied to a case where an account has to be taken of money received by co-owner of property as such; and a suit by one co-owner of property against another who has received more than his share of the income of the joint property does not fall under Art. 62. A suit for money had and received does not lie by one tenant-in-common against another who has received more than his share. The appropriate remedy in such a case is an action for an account and either Art. 89 or Art. 120 would apply. Whether Art. 89 or 120 applies would depend upon the facts of each case. Where the suit is not for accounts of agency, Art. 89 will not apply and Art. 120 would be the proper article to apply. 45 Bom.L.R. 424=A.I.R. 1943 Bom. 216. *See also* I.L.R. (1946) Mad. 423=1946 M. 116=(1945) 2 M.L.J. 422. The test of what is "receiving for use of" is not the intention of the defendant to receive it as such. If money to which another is entitled is received without valuable consideration, that is receiving for use of that other. 39 M. 62=27 M.L.J. 640=26 I.C. 219; 52 I.C. 580=85 P.R. 1919. *See also* 36 P.R. 1913=17 I.C. 311. Art. 62 governs cases where a definite sum of money has been received by the defendant, which the law says he must hold for the use of the plaintiff, and is not applicable to cases where the defendant is asked to account for properties and moneys when the person managing or collecting them is entitled to a just allowance. 182 I. C. 426=1938 L. 139. Art. 62 of the Limitation Act is applicable to cases where the defendant has received money which in justice and equity belongs to the plaintiff but in circumstances where the receipt by the defendant would be regarded in law as a receipt to the plaintiff's use. Where the receipt by the defendant, is on his own account and is not or cannot be regarded as one on behalf of the plaintiff, Art. 62 can have no application. 55 L.W. 90=1942 M. 386=(1942) 1 M.L.J. 274. Art. 62 applies to suits falling under the category well-known in English Law as "suits for moneys had and received". Such suits arise where money paid into the hands of the defendant is payable forthwith to the plaintiff. 7 R. 540=1930 R. 21. Although privity of contract is not necessary for the purposes of Art. 62, there must be some privity of a legally recognizable nature, such as some knowledge of particular facts in the man who received the money, or some mistake or ignorance of facts on the part of the man who paid the money, or some relation of trust and confidence between them on which the Court could fasten as creating the relation of principal and agent (though by fiction) between the plaintiff and defendant. 118 I.C. 444=1929 L. 290; 41 M. 923. *See also* 1941 M. 767=(1941) 2 M.L.J. 222; 1941 M. 742. Article does not apply to an equitable claim against a trustee for an account and ascertainment of what may be due. 8 R. 645=58 I.A. 1=130 I.C. 609=1931 P.C. 9=60 M.L.J. 1 (P.C.); 6 C. 120. *See also* 59 L.W. 109=(1946) 1 M.L.J. 140 (Article does not apply where the claim is only on an equitable basis). Art. 62 contemplates a suit in which the plaintiff is entitled to obtain the whole of the money received as soon as it is received. 1930 R. 197; 143 I.C. 496=1933 M. 524=37 L.W. 631=64 M.L.J. 574. Subscription collected for a particular purpose—Suit for recovery from person making collections — Limitation—Starting point (*Ibid.*) Where a mortgagee receives a certain sum from an Insurance Company, the property mortgaged being destroyed by fire, a suit for accounts by mortgagor is governed by Art. 120 and not by Art. 62, inasmuch as the mortgagee has a lien on the moneys he received and is entitled to retain those moneys until his mortgage is satisfied. 1930 R. 197. Relinquishment of rights—Money paid in consideration—Failure of deed to take egect—Claim for refund of money paid—Limitation is under Art. 62 or Art. 97. 1930 A.L.J. 1112=1930 A.

785. Limitation for a suit to recover money retained with defendant as stake-holder to be paid to successful party in a suit, is three years from the date of decision in the suit. 1935 A.W.R. 500.

MONEY HAD AND RECEIVED.—Assets realized and debts paid by a person appointed by deceased—Suit by sister of the deceased to recover her share of inheritance is suit for money had and received by the defendant for her use and is governed by this article. 37 A. 40=27 I.C. 533=12 A.L.J. 1256. *See also* I.L.R. (1939) All. 594=1939 A. 442. But where the amount of maintenance granted under a will is to come out of income of particular property and the defendants are in possession of the property under the will, the proper article to apply to the suit for arrears of such maintenance against the defendant is Art. 123 and not Art. 62. 35 C.W.N. 307=1931 C. 670. A sum due for rent by mortgagee to the mortgagor is not money had and received. 41 M. 488=34 M.L.J. 193. Surplus proceeds of sale held by Railway Company under sec. 56 of the Railways Act are received for plaintiff's use within this article. 44 M.823=1921 M.362 =41 M.L.J. 205. *See also* 18 C. 234 (Sale for arrears of Government revenue). Money deposited in Court in *usum jushabentis* and withdrawn by a person having no right to it may be held to be received for the use of the plaintiff. 33 A. 450=10 I.C. 736. Article applies to a suit to recover money alleged to have been collected *benami* for the plaintiff. 28 I.C. 495=1915 M.W.N. 215. *See also* (1941) 2 M.L.J. 222=1941 M. 767. A claim for arrears of revenue is governed by Art. 62 and not Art. 131 which applies only to a suit to establish a periodically recurring right. 55 B. 193=33 Bom.L.R. 127 =1931 B. 189. A suit to recover money paid to a defendant under sec. 73, C. P. Code, is a suit for money paid to him for plaintiff's use. 39 M. 62=27 M.L.J. 640. A payment of money made to a person with a view to its reaching the party entitled to it, is a payment for the use of the latter. 20 C.W. N. 983=1 P.L.J. 374; 104 I.C. 704=1927 C. 917. *See also* 16 P. 194=18 P.L.T. 162. Where a person has lost money by theft he can sue the thief for the recovery of the money, quite apart from the crime, but if he does, the suit must be framed as one for money had and received, and the suit then falls under Art. 62. I.L.R. (1941) M. 414 =1941 M. 391=(1941) 1 M.L.J. 27. The provisions of Art. 62 of the Limitation Act might have been applied before the enactment of sec. 55 of the T. P. Act to cases where there was no covenant and the suit was merely on the allegation that the vendor had purported to transfer some property to which he had no title. Now that sec. 55 has imported into all transfers, unless the parties agree to the contrary, a covenant warranting the title of the vendor, it would seem that a suit to recover the consideration would be on the basis of that specific covenant and time would begin to run from the date of the deed after it had been established that there never had been any title. But in cases where there is an express covenant it must be construed according to the intention of the parties and no general rule can be laid down about the date when the cause of action arises. Such suits would be on the basis of a covenant and the provisions of Art. 97, would apply if there was no registered deed and the provisions of Art. 116 if there was a registered deed. 1945 A. L.J. 473=1945 O.W.N. (H.C.) 295=1945 A. W.R. (H.C.) 310=1945 A.L.W. (H.C.) 342.

OTHER ILLUSTRATIVE CASES.—Suit to recover money from mutawalli received by him on behalf of a deity is governed by Art. 62. 50 A. 265=25 A.L.J. 1047=1928 A. 134. Suit for accounts against shebaits—Defendants collecting rents and profits for benefit of idol—Money received belonging to idol and payable to him—Art. 62 applies. 27 A.L.J. 229=114 I.C. 734=1927 All. 689. But *see* 8 R. 645 (P.C.), cited *supra*. Art. 62 does not apply to an equitable claim against a trustee liable to account for an account and ascertainment of what may be due. 58 I.A. 1=8 R. 645=60 M.L.J. 1 (P. C.). Nor to suits for accounts between principals and agents. 1933 A.L.J. 1009= 1933 A. 642. *See also* 41 Bom.L.R. 215= I.L.R. (1939) B. 154=1939 B. 326. Nor to suit for recovery of money under sec. 68, T. P. Act. 161 I.C. 461=1936 R. 80. Agreement of partnership—Undertaking to finance litigation of third party—Realisation of money by defendant—Suit by plaintiff for accounts after notice—Article is not applicable. 36 Bom.L.R. 1068=1934 B. 491. Nor to suit by principal for moneys misappropriated by agent. 60 C. 1347=149 I. C. 996=38 C.W.N. 211=1934 C. 238. This is governed by Art 89. 60 C. 1347=1934 C. 238. Suit for profits received by agent after termination of agency is governed by this article. 41 A. 635=52 I.C. 373; 29 I.C. 986=13 A.L.J. 494; 1925 M.W.N. 23=27 I.C. 807. *See also* 39 M. 62=27 M.L.J. 640. Also a suit for money received by the pleader of the plaintiffs for their use. 35 C.L. J. 330=1922 C. 499. Suit by an heir of the deceased person to recover his share of the debt due to the deceased, which had been realised by another heir holding succession certificate is governed by Art. 62. 37 A. 434=29 I.C. 347. *See also* 37 A. 233=27 I.C. 712; 50 C. 610=27 C.W.N. 941=1924 C. 142; 69 I.C. 274=41 M.L.J. 274=1921 M. 283 (One member of joint Hindu family collecting debts due to family); 25 M.L.J. 531=21 I.C. 394. So also suit for recovery of share of compensation money for the house acquired by Government. 2 L.L.J. 353. Also suit by the other members to recover their shares in outstandings left undivided at partition and subsequently realised by one member. 32 M. 191=19 M.L.J. 94; 24 C. 309. Where however various debts owned in common had been collected and rents and profits received, a suit for money had and received under Art. 62 does not lie in respect of such moneys, the appropriate

remedy being a suit for account. 1922 M. 150=45 M. 648=42 M.L.J. 507 (F.B.). *See also* 12 I.C. 586=13 Bom.L.R. 1014; I.L.R. (1940) 1 C. 110=1940 C. 363; 1939 A. 442; I.L.R. 1939 A. 594=1939 A.L.J. 428 (One co-sharer appointed by Government as manager to collect rent). Tenants-in-common — Suit *inter se* to recover share of profits—Art. 120 and not Art. 62 is applicable. 1929 O. 83=4 Luck. 265. *See also* 1937 Pesh. 28. In a suit for mesne profits 7 years after a decree for partition, there having been no actual partition in spite of the decree, it was held the rents and profits received by one co-owner in respect of undivided lands could not be considered to be money payable by him to others as money received for their use within Art. 62 and that Art. 120 applied to the case. 131 I.C. 511=1931 R. 150. *See also* 16 P. 184=1937 P. 237=18 P.L.T. 162; 1937 Pesh. 28. Also a suit by members of an unregistered company for refund of their subscriptions falls under Art. 120=1920 R. 21=7 R. 540. Suit by karnavan of a Malabar tarwad against a junior member for money realised by the latter is governed by this article. 37 M. 381=22 M.L.J. 485=14 I.C. 254; 1928 L. 688. Suit for compensation by purchaser where patni sale set aside by suit—Article applicable. *See* 46 C. 670 =36 M.L.J. 557=50 I.C. 444 (P.C.). *See also* 3 A. 354; 38 A. 676=14 A.L.J. 728. Money advanced by plaintiff for a mortgage or sale which is void *ab initio*, is money received by the defendant for plaintiff's use under Art. 62. 39 B. 358=28 I.C. 442; 40 B. 614=36 I.C. 564; 55 B. 565=33 Bom.L.R. 1092=1932 B. 36; 44 P.R. 1918=46 I.C. 26; 81 I.C. 873=1925 N. 130. *See also* 118 I.C. 203=1930 S. 12. In a suit to recover money paid under a void agreement the *terminus a quo* for purposes of limitation is the date of the agreement, that being the time at which (in the absence of special circumstances) the agreement was discovered to be void within the meaning of sec. 65 of the Contract Act. [50 C. 929 (P.C.), Rel on.] 60 I.A. 13=54 A. 1067; 1933 P.C. 63 =64 M.L.J. 403 (P.C.). Where a plaintiff, who had advanced money on a mortgage, repudiates it himself and files a suit for the money paid, such a suit is not a suit for compensation for breach of contract and is governed either by Art. 62 or by Art. 97, according as to whether the contract is void or voidable and not Art. 116. 145 I.C. 186 =1933 L. 581=34 P.L.R. 96. Decree setting aside execution sale in suit by stranger—Absence of saleable interest in judgment-debtor —Suit by purchaser for refund of purchase-money—Limitation. *Held*, that the suit was governed by Art. 62 and not by Art. 120, as the suit was in substance one for money had and received. 41 L.W. 305=1935 M. 354 =68 M.L.J. 630. Suit under sec. 65, Contract Act, to recover consideration paid for a void mortgage. *See* 1943 A.L.W. 360=I.L.R. (1943) All. 604=1943 A. 294. *See also* 47 P.L.R. 122=1945 L. 164. Where the purchaser is put in possession but is subsequently dispossessed by a person with paramount title, suit for refund of money paid is governed by Art. 97 and not Art. 62 as such money has been paid under an existing consideration which afterwards fails. 37 B. 565 =20 I.C. 254=15 Bom.L.R. 559; 55 B. 565 =134 I.C. 1157=33 Bom.L.R. 1092; 38 M. 887=23 I.C. 570; 1925 R. 113 (2). *See also* 44 I.C. 719; 55 I.C. 93; 47 I.C. 886; 118 I.C. 203; 133 I.C. 76=1931 S. 141 (Art. 116 held applciable); 13 L. 1=32 P.L.R. 457= 1931 L. 448 (Mortgagor who paid money for redemption to one person as representing the mortgagee and was subsequently compelled to pay it once over to another, suing the former). Suit for damages for breach of a covenant for indemnity contained in a registered deed is governed by Art. 116 and not Art. 62 or 97. 1932 A.L.J. 317=1932 A. 358; 1933 M. 126=64 M.L.J. 336. Suit on original liability on failure of consideration in a contract affecting it, is governed by Art. 97 and not Art. 61. 13 L. 188=137 I.C. 828=1932 L. 382. Where the plaintiff failed to enforce specific performance of a contract to sell land, a suit for the recovery of advance paid by him is governed by Art. 97 and not by Art. 62. 40 I.C. 893=1917 M. W.N. 447=6 L.W. 44. Suit to recover arrears of jagir income, wrongfully received and appropriated by defendants, is governed by this article. 46 P.W.R. 1914=23 I.C. 445. Also suit for recovery of money advanced under a void agreement. 47 I.C. 214 =5 O.L.J. 277. But *see* 1925 M. 885=48 M. L.J. 598=88 I.C. 557 (Art. 96 applied). Assignment of mortgage bond which had been repaid—Suit against assignor by assignee— Art. 120 and not this article applies. 1935 P. 159. Land acquisition—Money paid to person apparently entitled—Suit by person having interest in land for money so paid. Art. 120 and not this article applies 1935 P. 42. Also suit for money paid as patni rent without consideration. 1921 C. 796=33 C.L.J. 366. Also a suit for refund of money illegally collected as profession-tax. 1932 M.W.N. 1089. Arrears of house tax and sanitary tax due to Municipality—Suit for —Limitation. *See* 44 Bom.L.R. 849=1943 B. 21. Art. 62 is not confined to an action for money had and received in the strictest sense of the term as understood in the English Common Law Courts and cannot be held to be inapplicable when the action is based not on any implied contract but on the principle of *ex aequo et bono*. Art. 62 is intended to apply to all actions for money had and received to the use of the plaintiff whether they be actions which may be deemed strictly to be based on implied contracts or whether they be merely to enforce an equitable claim to the return of the money had and received. A suit to recover licence fees and profession-tax alledged to have been wrongfully levied by a Municipality is one to which Art. 62 applies. Such a suit does not fall under Art. 120. 55 L.W 783=A.I. R. 1943 Mad. 191=(1942) 2 M.L.J. 663=I. L.R. (1943) Mad. 521. Art. 62 and not Art. 96 applies to a suit to recover money paid to a Municipality as tax on the ground that

the tax was illegally levied by the Municipality. 189 I.C. 678=42 Bom.L.R. 491=1940 Bom. 252. Also a claim for the refund of premium paid by the tenant. 33 Bom.L.R. 1563=1932 B. 86. Also suit for enhanced amount of rent paid under protest is governed by this article. 27 Bom.L.R. 645=89 I.C. 65=1925 B. 435. Also suit by Official Receiver for money of judgment-debtor attached before insolvency but paid to the decree-holder after insolvency. 41 M.L.J. 334 =45 M. 70= 1922 M. 189. *See also* 47 L. W. 557=1938 M. 532=(1938) 1 M.L.J. 682. [Art. 96 is to be preferred to Art. 62 in a suit to recover money paid by the plaintiff to the defendant by mistake in excess of the amount due. 4 P. 448=1925 P. 765.] Money paid by mortgagor after preliminary decree but before final decree—Mortgagee not certifying payment nor crediting it as directed by mortgagor holds it to the use of the mortgagor. 1927 A. 710=50 A. 111. The income of joint family property which accrues during period between preliminary and final decrees in a partition suit, constitutes joint family property; and if that is not divided by final decree, a suit to enforce a share in such income is governed by Art. 127 and not by this article. 1935 N. 137. Same agent for two principals—Money belonging to one lent by the agent to the other—Liability of the other to re-pay the loan arises on the date of actual payment and Art. 62 applies. 49 A. 520 =1927 A. 161. Where in a suit for recovery of certain sums from the sons of a deceased *karpardar* or agent, it is found that the *karpardar* was under no liability to pay over the sums received by him to the principal directly on receipt, and that there was a running account, the arrangement being that he should keep in his hands sufficient funds out of the collections for costs of litigation on behalf of his principal, the proper article applicable to the suit is not Art. 62 and limitation will not run from the date of each receipt by the deceased agent: Art. 89 or 120 will apply to the case. 7 Cut.L.T. 87. *See also* (1945) 2 M.L.J. 422.

ARTS. 62, 89 AND 120: APPLICABILITY.—Art. 62 is applicable to cases where the defendant has received money which in justice and equity belongs to the plaintiff, but in circumstances where the receipt by the defendant would be regarded in law as a receipt to the plaintiff's use. Where the receipt by the defendant, is on his own account and is not or cannot be regarded as one on behalf of the plaintiff. Art. 62 can have no application. Plaintiff's husband took a loan from the defendant *Nidhi* and placed with the *Nidhi* certain shares which he held in the *Nidhi* as security for the repayment of the loan. The *Nidhi* afterwards sold the shares and adjusted the proceeds towards the amount due. There was a surplus left with the *Nidhi*. After his death, the plaintiff brought a suit against the *Nidhi* for payment of the balance that may be found due to her after giving credit for the yearly dividends on the shares on the one side and after debiting her with any liability incurred by her husband touching the shares on the other. ***Held,*** that suit was governed by Art. 120, and neither Art. 62 nor Art. 89 applied to the case. 55 L.W. 90=1942 M.W.N. 129=1942 Mad. 386=(1942) 1 M.L.J. 274. *See also* 23 Pat. L.T. 457=1942 Pat. 181.

ARTS. 62, 97 AND 116: APPLICABILITY.—A suit for the return of money paid in advance, under a contract of sale, is governed either by Art. 62 or Art. 115. It is difficult to regard such money as money paid upon an existing consideration within the meaning of Art. 97. 47 P.L.R. 174=1945 Lah. 210.

ARTS. 62, 97 AND 120.—Where a suit is for profits of property entrusted to the defendant by the plaintiffs for safe custody and management, neither Art. 62 nor 109 applies to the case. It is Art. 120 that applies. Art. 62 cannot apply to a case in which profits, and not money, are sought to be recovered. It only applies when the defendant has received money as distinct from profits into his hands. Nor could Art. 109 apply because the receipt of profits was not wrongful. The defendant was in rightful possession and received the profits rightfully but it is his retention that was wrongful. 1941 N.L.J. 184=1941 N. 181. Where, before a decree for specific performance could be passed in respect of an agreement to assign a particular decree, the defendant withdraws the money deposited in respect of the said decree and the plaintiff files a suit to recover it, it is a suit to enforce an equitable claim to follow the money withdrawn by the defendant contrary to agreement and as such it does not fall under Art. 62, but comes under Art. 120 of the Act. the starting point being the date of the conveyance to him of the decree. 1941 N.L.J. 665. Art. 62 applies to cases in which there is a failure of consideration from the very beginning, or, in other words, where the transaction is void *ab initio* and the defendant is deemed to have received the money for the plaintiff's use. On the other hand, Art. 97 applies to cases where the consideration fails afterwards by reason of some subsequent event, as in the case of voidable transactions. Where, therefore, an auction-purchaser, under a decree obtained by a third praty loses a part of the property purchased by him and brings a suit against the decree-holder for refund of the purchase-money, the suit is governed by Art. 62 or 97 and not by Art. 120. 13 Luck. 138=1937 O. 286. Consideration in a contract of sale is not money paid for the use of the payer, so as to attract the operation of Art. 62 of the Limitation Act, except perhaps when the contract is of such a nature that it is void in law *ab initio*. A test for the applicability of Art. 62 is whether when the money was paid it was recoverable immediately by the plaintiff. Art. 97 and not Art. 62 would govern a suit for recovery of part purchase price paid on sale which afterwards goes off by reason of the failure of the buyer to complete payment. Art. 120 also cannot be applied to such a case. 1942 Sind 37=I.L.R. (1941) Kar. 495=1942 Sind 37. *See also* 1941 M. 767=(1941) 2 M. L.J. 222. (Claim against fraudulent trans-

Description of suit.	Period of limitation.	Time from which period begins to run.
[1]63. For money payable for interest upon money due from the defendant to the plaintiff.	[2][Three years] ..	When the interest becomes due.
[1]64. For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them.	[2][Three years] ..	When the accounts are stated in writing signed by the defendant or his agent duly authorized in this behalf, unless where the debt is, by a simultaneous agreement in writing signed as aforesaid, made payable at a future time, and then when that time arrives.

LEG. REF.

1 For the period of limitation for these and certain other suits in the Punjab, *see* Punj. Act I of 1904 and sec. 29 (1) (*b*) of this Act.

2 Substituted by Act XI of 1923, sec. 2 and Sch. I, for "Ditto".

feree from benamidar—Relationship between benamidar and real owner is one in the nature of trust).

ARTS. 62 AND 116.—Where a registered perpetual lease by one of joint tenants contains a covenant to refund the nazarana in case of dispossession and the lessee, knowing of the defective title of the lessor, does not take any action but obtains possession, and is dispossesed after ten years and sues for the refund of the nazarana, it is Art. 116 and not Art. 62 that applies to the suit and the starting point is the date of dispossession. 1941 O.W.N. 1182=1942 O. 82=17 Luck. 289 .

ART. 63.—Art. 63 is applicable to suits for recovery of interest on "thavanai" deposits. *See* 43 M. 629=38 M.L.J. 437=58 I.C. 639. Where there is no independent contract to pay interest, the interest is a mere accessory to the principal and if the principal is irrecoverable, so is the interest thereon. But this principle does not apply if there was a special contract to pay interest at a specified rate. 1942 Pesh. 85=204 I.C. 509. On this article, *see also* 40 I.C. 229=20 O.C. 152: 3 A. 328.

ART. 64: WHAT IS AN ACCOUNT STATED.—An account stated is one where several cross items are set-off, one against the other and the balance is struck in favour of one of he parties, the law implying a new promise by the other party to pay the balance. 5 P.L.J. 34 =1 P.L.T. 190. *See also* 9 B. 516; 23 A. 502; 54 A. 506=1932 A. 461; 22 B. 513; 86 I.C. 942=1925 M. 1147; 106 I.C. 53=1928 N. 127; 108 I.C. 600=1928 L. 459; 138 I.C. 542=1932 L. 273. There must be items on both sides of accounts. I.L.R. (1940) N. 441 =1938 N. 180; 1941 C. 595. An entry in an account book showing the balance due signed by the debtor, amounts to an "account stated," though the account is not of mutual claims and there are only credit and debit entries showing calculation of interest and payments made. It is not material that some of the items brought into the account were statute barred. 1945 N.L.J. 464=I.L.R. 1946 N. 21=1946 N. 112. Where the account upon which the suit is based includes a certain sum, which was brought forward from the previous year's account, is clearly for the defendant to prove that the is clearly for the defendant to prove that the dues brought forward from the prevous year's account were time-barred, and in any case the mere fact that some of the items are statute-barred can be of no avail to him where the suit has been brought on account stated. [56 A. 376 (P.C.), Rel. on.] 167 I.C. 652=1937 P. 348. Where the book of account contained entries of account of only one of the parties and there was nothing to show that there was an account stated between the parties, Art. 64 has no application. 52 A. 480 1930 A. 467; 54 A. 506. *See also* 10 L. 745= 1929 L. 263 (balance struck and signed and accepted was novation of contract). Mere striking of the balance due on a certain date in the unsigned account books will not furnish a cause of action on account stated under Art. 64. 38 I.C. 227=32 M.L.J. 536. *See also* 10 M. 199; 5 P.L.J. 371=1 P.L.T. 190; I.L.R. (1938) A. 141=1938 A.L.J. 773=1938 A. 504; 27 S.L.R. 308=1933 S. 324. The expression "account stated" has a technical meaning. Where the accounts were gone into, a balance was struck and the defendant signed the same but there was nothing before the Court to show that the several items for which credit had been given to the defendant were due to him from the plaintiff. *Held*, that it was not a case of account stated and that Art. 64 was inapplicable. There can be account stated, although the balance of indebtedness is througout in favour of one side. It is irrelevant whether the debt in favour of the final creditor is created at the outset by one large payment or consists of several sums of principal and several sums of interest. Nor is it material whether the only payments made on the other side were simply payments in reduction of such indebtedness made in respect of other dealings. In any event items must be

ascertained and agreed on each side before the balance can be struck and settled. (English case-law discussed). (54 A. 506, (Reversed). 61 I.A. 273=56 A. 376=1934 P.C. 147=67 M.L.J. 110 (P.C.); 1941 C. 595. The essence of an account stated is not the character of the items on one side or the other, but the fact that there are cross items of account and that the parties mutually agree to the several amounts of each and, by treating the items so agreed on the other side, *pro tanto* go on to agree that the balance only is payable. Such a transaction is in truth bilateral, and creates a new debt and a new cause of action. There are mutual promises, the one side agreeing to accept the amount of the balance of the debts as true and to pay it, the other side agreeing to the entire debt as at a certain figure and then agreeing that it has been discharged to such and such an extent, so that there will be complete satisfaction on payment of the agreed balance. Hence, there is mutual consideration to support the promises on either side and to constitute a new cause of action. The account stated is accordingly binding, save that it may be re-opened on any ground—for instance, fraud or mistake—which would justify setting aside any other agreement. 67 M.L.J. 110 (P.C.); 1938 C. 861; 189 I.C. 802 (Some items time barred, effect of). The acknowledgment which forms the basis of an account stated must be an acknowledgment within time. An account stated may contain some time-barred items and yet the account stated may form the basis of a suit. But if the whole account is time-barred, then the ban imposed by sec. 25 (3) of the Contract Act would apply. 1942 N.L.J. 248=I.L.R. (1942) Nag. 369=1942 Nag. 92; 131 I.C. 867=1931 A. 375. Where the account is not open and current at the time of the suit and the account is closed and balance struck, Art. 64 is applicable. 1922 L. 182. *See also* 130 I.C. 570. Where the transactions between the parties were conducted as between a debtor and creditor, and on a certain date the balance was struck and it was agreed that the debtor should pay interest from that date on the amount found due by him and the creditor sued to enforce his rights. *Held*, that the suit was on an account stated and that it was governed by Art. 64 or perhaps Art. 57 and not by Art. 85. *Held, further*, that the mere fact that subsequent to the date of the striking of the balance, there were four items on each side of the account did not have the effect of converting it into a mutual, open and current account. 32 P.L.R. 65=1931 L. 233. Suit on balance of account treated as one on account stated. *See* 3 L. 326=1922 L. 425. As to suit for money on accounts, based on decree, *see* 22 L.W. 195=1925 M. 1260. For the article to apply, there need not be reciprocity of demands. 1923 C. 578; 1923 L. 645=37 P.L.R. 126. An entry of balance not containing a promise to pay cannot be relied upon to recover a time-barred debt. 25 I.C. 89=9 C.L.J. 263. An 'account stated' does not extinguish the original debts on which the account is based. 63 I.C. 280. *See also* 189 I.C. 802 (Account stated and acknowledgment—Distinction between). *See also* 14 Luck. 478=1939 O. 120). Where, in a suit brought by a commission agent for commission, the accounts were stated and balance was struck, the proper article applicable to the suit is Art. 64. 100 I.C. 874=1928 L. 51. *See also* 14 L. 14=1933 L. 12; 33 Bom. L.R. 1200=1932 B. 25; 162 I.C. 178=1936 P. 444 (Suit against surety). Plaintiff had been employed under the defendant from 1913 to 1928. In the books of the defendant's business, there were accounts of drawings by plaintiff from time to time; there was no account on the other side as the plaintiff's salary was never fixed. In 1928, an account was drawn up by the defendant's manager, showing credits for salary and debits for drawings and ending in a balance in favour of the plaintiff. *Held*, that it was an account stated and involved a promise to pay the balance for good consideration. 38 C.W.N. 813=1934 P.C. 144=67 M.L.J. 103 (P.C.). An account stated may only take the form of a mere acknowledgment of a debt, though, if those circumstances amount to a promise, and the existence of a debt may be inferred, that can be rebutted by showing that there is no real debt at all. On the other hand, there is another form of account stated, a "real account stated," which contains entries on both sides and in which the parties have agreed that the items on one side should be set off against those on the other, and the balance only should be paid; the items on the smaller side are set off and deemed to be paid by those on the larger side, and there is a promise for good consideration to pay the balance. It is not necessary, to make out a real account stated, that there should be debts *in praesenti*, or that they should be legal debts. 67 M.L.J. 103 (P.C.). *See also* 1936 C. 470=64 C.L.J. 75; 1937 C. 535. Suit on alleged settlement of account—Heading of account and entries in handwriting of defendant not a statement of account "signed" by the defendant sufficient for purposes of Art. 64. 1940 M. 887=(1940) 2 M.L.J. 334.

ARTS. 64 AND 85: PRINCIPAL AND AGENT—ACCOUNTS—NATURE—MUTUAL, OPEN AND CURRENT ACCOUNTS—ACCOUNT STATED—SUIT ON.—Cases of transactions between a creditor and his debtor must be distinguished from those of a principal and agent. Where the whole basis of the relation between the parties is that of principal and agent, the accounts between them are mutual, running and current accounts. The essentials of a mutual, open and current account are the reciprocity of dealings and the right to mutual demands. Where these are the relations between the parties, an account, to be a settled account, need not be signed provided that it is submitted to the party sought to be made liable on it, and he has, by words or by conduct, acquiesced in its correctness. Until an account is stated between the parties, the right of either of them is to bring a suit for accounts and to

Description of suit.	Period of limitation.	Time from which period begins to run.
65. For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency.	[1][Three years] ..	When the time specified arrives or the contingency happens.
[2]66. On a single bond, where a day is specified for payment.	[2][Three years] ..	The day so specified.

LEG. REF.

1 Substituted by Act XI of 1923, sec. 2 and Sch. I, for "Ditto.".

2 *See* footnote 1, p. 3521.

have accounts taken. 1940 P.W.N. 28=21 P. L.T. 41=1940 P. 71.

ART. 65: SCOPE.—*See* 31 I.C. 479=9 S.L. R. 90. Art. 65 does not apply unless there is an agreement between the parties to pay the loss immediately on its being ascertained, and in the absence of any specified time or specified contingency. So, a suit by a commission agent to recover loss on the transactions entertained on behalf of his constitutents is governed by Art. 83 and not by Art. 65. 33 Bom.L.R. 1200=1932 Bom. 25. Suit for recovery of a debt in kind payable in kind or for cash value is governed by this article. 4 L.L.J. 64=1922 L. 122 (2); 1922 L. 271; 49 I.C. 231=41 P.R. 1918. Registered lease discovered to be void—Suit to recover premium paid is governed not by Art. 65 or Art. 97, but by Art. 116. 164 I.C. 277 =1936 P. 462. Breach of promise—Suit for compensation. *See* 1923 N. 47; 1 M.H.C.R. 162. Suit for damages—Parties agreeing as to amount of damages before the date fixed for delivery—Limitation—Starting point. 99 I.C. 591=1927 L. 122. As to limitation for an application for enforcing a bond executed by a surety to produce the movables attached, see 1933 M. 219=37 L.W. 127.

ART. 66: SCOPE.—*See* 4 A. 3; 31 I.C. 479 (Sind). As to applicability, *see* 37 M. 175. A bond merely for the payment of a certain sum of money, without any condition in it, is called a simple or single bond. 1923 O. 19= 26 O.C. 121. *See also* 22 I.C. 60 (Mad.). Art. 66 is not limited in its application to a suit for the enforcement of a bond against the executant himself. A suit on a bond executed by a Hindu, after his death, to enforce the same against his sons is governed by Art. 66. The article makes no reference to the persons against whom the suit is brought. 1937 A. 559. Where money is deposited with a person for certain expenses and the balance is repayable with interest at a fixed date, the case is governed by Art. 66 and not by Art. 115. 37 M. 175=24 I.C. 852; 164 I.C. 459 =1936 R. 338. As to suit for recovery of money deposited with another and repayable on the happening of a future event, *see also* 22 I.C. 60=1914 M.W.N. 264. Article is inapplicable where repayment is to be made within a period, but the amount might be repaid earlier. 3 A. 276. Where a simple bond sets out firstly that the money is payable on demand and further on its sets out that the whole sum with interest should be paid within one year, it is not open to the debtor to make a payment before the end of the period of one year fixed, as the bond is not payable within that period, unless the creditor makes a demand. Art. 66 applies to a suit on a such bond, and the period of limitation runs not from the date of execution but from the expiry of the period of one year specified in the bond. 154 I.C. 521=1935 A.L. J. 381=1935 A. 413. Mere condition that, in default of payment of interest at the stipulated intervals, the creditor is to have the option to enforce payment earlier, does not take the case out of Art. 66. 39 I.C. 574=15 A.L.J. 313; 1 C. 163 (P.C.). But *see* 2 A. 322; 27 O.C. 318=85 I.C. 280. Suit to recover money due on a registered bond is not governed by this article. 16 Bom.L. R. 20=38 B. 177; 6 B. 75. Where a mortgagee sues on a personal covenant to make the mortgagor responsible for any deficiency in the realisation of the mortgage debt out of the mortgaged properties, the claim is governed by Art. 66. 1927 O. 567. But see *contra* 1928 M. 1124=55 M.L.J. 506 which holds that Art. 116 governs such a case. *See also* 51 A. 473=1929 A. 139; 52 M. 105 =1929 M. 53=56 M.L.J. 10 (F.B.); 35 C. W.N. 1030=1931 C. 801 (1). In a *rehan* bond, there was a personal covenant to repay on a certain date, and in addition, there was a clause which gave the mortgagee the right to realise from the mortgaged property, from the person of the mortgagor and from his other properties, if he was dispossessed from the *rehan* property. The mortgagee sued basing his cause of action on dispossession and, after sale of the mortgaged property in execution of his decree, applies for a personal decree for the balance. *Held*, that Art. 116 applied and not Art. 66 or 67; and that the starting point for limitation was the date of dispossession. 13 P. 228= 1934 P. 578. *See also* 12 Luck. 211=162 I. C. 459=1936 O. 279. Where a second mortgage-deed provided that the mortgagor would redeem the mortgage at the same time when he would redeem the first mortgagee, *held*, that the condition regarding the time for redemption did not amount to specifying a day for payment within the meaning of Art. 66 and as no date was specified, the period of twelve years to enforce the second mortgage commenced from the date of the mortgage. 1933 L. 85=34 P.L.R. 37. Where the parties to a mortgage-deed get it registered by practising fraud on the Registering Officer and including a fictitious item of the property, the registration is

Description of suit.	Period of limitation.	Time from which period begins to run.
[1]67. On a single bond, where no such day is specified	[2][Three years] ..	The date of executing the bond.
[1]68. On a bond subject to a condition.	[2][Three years] ..	When the condition is broken.
[1]69. On a bill of exchange or promissory note payable at a fixed time after date.	[2][Three years] ..	When the bill or note falls due.
[1]70. On a bill of exchange payable at a sight or after sight, but not at a fixed time.	[2][Three years] ..	When the bill is presented.

LEG. REF.

1 *See* foot-note 1, p. 3521.

2 Substituted by Act XI of 1923, sec. and Sch. I, for "Ditto".

invalid for all purposes. The deed must be treated as unregistered even for the purpose of the personal covenant to pay. A suit for recovery of the money on the personal covenant is governed by Art. 66 or Art. 57 and not by Art. 116, and there is no breach of a contract in writing registered within the meaning of Art. 116. 41 C.W.N. 783=1937 C. 347. *See also* 1937 R. 484.

ARTS. 66, 68, 75 AND 80.—Where an ordinary unregistered money bond provides for repayment of the principal with interest after a specified period and for interest payable annually and recites that in default, the creditor may at once sue for the entire amount due, the bond is a single bond, notwithstanding the default clause. The period of limitation runs from the date specified for payment as prescribed by Art. 66. Time does not run from the date of the first default in payment of interest, nor does the whole amount of the bond become payable on that date so as there and then to include the application of Art. 80. It is doubtful if Art. 68 would apply to such a case. Though the bond contains a condition, it is not one which relates to the whole sum due on the bond. Art. 68 applies rather to bonds of the nature of security bonds. The bond in question could not be called instalment bond and it is only in the case of an instalment bond to which Art. 75 applies that time begins to run from the date when the default is made. 16 Luck. 464=1941 O. 210 (F.B.).

ART. 67.—When payment is to be made on the happening of a certain future event, time begins to run from that date. Neither Art. 66 nor 67 applies. 32 I.C. 575. A bond payable on demand is indentical with one in which no day for payment is specified. 3 A. 600 (F.B.); 3 A. 340. Book entries of balance struck by the defendants which were attested by witnesses, were held to be bonds within this article. 5 L. 406=1925 L. 75. Mortgage of house under attachment—Suit to enforce personal liability—Art. 67 applies. 1927 L. 101=27 P.L.R. 801.

ART. 68.—*See* 1941 O.W.N. 361=1941 O. 210; 40 I.C. 235=5 L.W. 706. The cause of action against the heirs of a deceased surety arises from the date of his death because the condition of the bond is broken within the meaning of Art. 68 at the very latest on the death of the surety. 1943 Pat. 218. Surety bond under the Guardians and Wards Act—Suit on it is governed by this article except where immovable property is charged. 42 M. 302=36 M.L.J. 114 =49 I.C. 587. So also on an administration bond. 1 R. 63=1924 R. 68; 27 I.C. 849. A suit by an assignee of an administration bond under the provisions of sec. 292, Succession Act, for its enforcement, is a suit upon a bond subject to a condition to which Art. 68 applies. Where the administrator dies, the condition must be deemed to have been broken at the latest on that date and limitation would begin to run from that date. Sec. 292 of the Succession Act has not the effect of conferring a new cause of action on the assignee and hence cannot provide a fresh starting point for the purposes of limitation. 67 I.A. 416 =I.L.R. (1941) B. 202=45 C.W.N. 429= 1941 P.C. 6=(1941) 1 M.L.J. 88 (P.C.). *See also* I.L.R. (1938) N. 399=1938 N. 13 (Suit on a bond not being a single bond). 38 Bom.L.R. 632=165 I.C. 672=1936 B. 363 (Suit by assignee of administration bond is governed not by Art. 68 but by Art. 120). If a bond provides that if the monthly interest is not paid, or if the principal money lent is not paid at the end of the year, the creditor may sue, and the monthly interest is not paid, there is a breach of the condition for payment of interest, a matter over which the creditor has a right of waiver and limitation under Art. 68 will only begin to run from the expiry of the period of one year stipulated in the bond for payment. 1935 A.L.J. 341=1935 A. 405. Time begins to run from the date of the particular breach giving rise to the suit. 1 R. 463=1924 R. 68. *See also* 56 I.C. 968; 26 I.C. 505. Where a debtor who makes a part payment of the amount due under the bond makes an endorsement on it that he would pay the balance within a certain period, the limitation for a suit for that balance will only begin to run from the expiry of the period mentioned in the endorsement. 41 P.L.R. 352=1939 L. 236.

ART. 69.—*See* 33 M.L.J. 70=56 I.C. 384 (Six months' time fixed for payment in a promissory note).

Description of suit.	Period of limitation.	Time from which period begins to run.
171. On a bill of exchange accepted payable at a particular place.	[2][Three years] ..	When the bill is presented at that place.
172. On a bill of exchange or promissory note payable at a fixed time after sight or after demand.	[2][Three years] ..	When the fixed time expires.
173. On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue.	[2][Three years] ..	The date of the bill or note.
174. On a promissory note or bond payable by instalments.	[2][Three years] ..	The expiration of the first term of payment as to the part then payable; and for the other parts the expiration of the respective terms of payment.

LEG. REF.

[1] *See* foot-note 1, p. 3521.

[2] Substituted by Act XI of 1923, sec. 2 and Sch. I, for "Ditto".

ART. 73.—A promissory note payable at sight is payable on demand and a suit on it is governed by Art. 73. 40 C.L.J. 84=1924 C. 1065. *See also* 47 C. 861; 25 C.L.J. 238 44 C. 978. Promissory note—Endorsement—Suit against endorser—Limitation—Starting point. 1940 M. 85=50 L.W. 649=(1939) 2 M.L.J. 760; I.L.R. 1939 Kar. 63=1939 S. 281. A suit against a Hindu son, on a promissory note executed by his father is governed by Art. 73, and limitation runs from the date of the note. 33 Bom.L.R. 1234=1931 B. 542. Limitation will be extended if the pronote sued on was accompanied by a security bond of the same date hypothecating certain properties. 140 I.C. 460=1932 O. 286.

ART. 74.—When a debt is payable in instalments, limitation runs as regards each payment on the date it is payable. Plaintiff can recover only in respect of instalments falling due within three years before suit. 1923 M.W.N. 699=1924 M. 310; 38 M. 374 =25 M.L.J. 264. Where in a bond it is stipulated that it will be paid back within a fixed period, and the principal amount of the bond is divided into annual instalments, provisions being also made for the payment of interest, and there are no express words in the bond which affirmatively give the creditor a right to sue for the entire amount after the date fixed for the last instalment and there is nothing which precludes the creditor from suing for a defaulted instalment, the bond is one payable by instalments and the proper article applicable to such a bond is Art. 74. (4 Luck. 480, Appl.) 42 C.W. N. 545. Bond stipulating payment of principal within fixed period—Entire principal divided into instalments payable annually with interest—Bond is one payable by instalments and the proper article applicable is Art. 74. 100 I.C. 655 (1)=4 O.W.N. 207 =1927 O. 539 (1 O.W.N. 617, Foll.; 48 A. 457, Ref.)=7 O.W.N. 230=4 Luck. 480. The suit bond was executed on the 1st December, 1926. According to the terms of the bond, interest was to be paid monthly and the principal amount was to be paid in certain instalments after the lapse of the first three years. The bond further provided that, in default of payment of interest month by month, the whole amount should become payable at once. The defendant paid interest only for the first six months. The suit for the recovery of the entire amount was instituted on the 22nd November, 1930. *Held*, that the suit was barred under Art. 80 and that Arts. 74 and 75 had no application. 142 I.C. 851 (2)=1933 L. 548. If a decree does not make the entire decretal amount payable at once after default as to the first instalment, the decree should be executed for recovery of the instalments that are within time. 13 Luck. 340=1937 O. 379. Construction of instalment bond—Default in payment of principal *and* interest—Default in payment of principal *or* interest—Limitation. 37 P.L.R. 242=1935 L. 557.

ARTS. 74 AND 75.—There is a well-defined distinction between Arts. 74 and 75. The former applies to an instalment bond which does not contain any default clause, and in such a case, therefore, the plaintiff is entitled by the very terms of the bond to sue only for such instalment as remains unpaid. No question of waiver or default can ever arise in such a case. But where the document provides that in the case of default the obligee has the right to sue for the whole of the sum then remaining due, Art. 75 applies. When a debt is payable by instalments and there is no default provision, a new cause 18 P. 459=1939 P. 433 (F.B.); 1937 L. 1. of action arises upon each default and the plaintiff can recover in respect of instalments falling due within three years before suit, *vide* Art. 74, Limitation Act. But if

Description of application.	Period of limitation.	Time from which period begins to run.
[1]75. On a promissory note or bond payable by instalments, which provides that if default be made in payment of one or more instalments, the whole shall be due.	[2][Three years.]	When the default is made, unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made in respect of which there is no such waiver.

LEG. REF.

1 *See* foot-note 1, p. 3521.

2 Substituted by Act XI of 1923, sec. 2 and Sch. I, for "Ditto".

there is a default provision, Art. 74 cannot be relied upon, and under Art. 75, if the plaintiff sues more than three years from the first default and there is no waiver, the suit is totally time barred, that is, he cannot recover even those instalments which fell due within three years of suit. But the Chief Court of Oudh is in favour of interpreting any facts which can possibly be so interpreted as favouring the view that the creditor has waived the exercise of the option on the first instalment when he bases his suit on subsequent defaults which are within limitation and does not seek to found his cause of action on the earlier defaults. The principle which holds good in regard to the first exercise of the option under the default clause holds equally good in respect of a claim founded on subsequent defaults. 194 I.C. 744=1941 O. 485. An instalment bond gave the creditor the option to demand payments of three instalments, if default was made, together with interest thereon from time to time, and also gave the creditor an option to bring a suit for the whole amount due under the bond, if the creditor chose to exercise his right in the whole amount. *Held*, that in view of the wording of the bond, Art. 74 and not Art. 75, applied, and hence it was open to the creditor to sue at any time for all those instalments which had become payable, within three years of the institution of the suit. (38 P.L.R. 357, Rev.) 39 P.L.R. 110=1937 L. 1.

ART. 75.—As to applicability, *see* 6 L. 163=89 I.C. 294=1925 L. 394; 79 I.C. 848 =1925 O. 34; 75 I.C. 98=1924 P. 439; 31 I.C. 479=9 S.L.R. 90; 130 I.C. 571=52 C. L.J. 591=58 C. 615=1931 C. 157. *See also* 1933 L. 548=142 I.C. 851 (2)=34 P.L.R. 145; 1934 A.L.J. 1056=1934 A. 1039=57 A. 561; 16 Luck. 464=1941 O. 210 (F.B.). It is immaterial whether whole amount becomes payable from a single default or from more than one default. 3 L.L.J 522=1921 L. 280; 38 I.C. 302 (M.). Where the instalment bond provides that, in case of default, the whole shall be payable on demand, Art. 74 governs the case. 1923 M.W.N. 699=1924 M. 310. Creditor given option to recover whole in default or to wait till the expiry of term fixed for last instalment—Suit within three years of fresh default not barred. 89 I.C. 383=23 A.L.J. 896=1926 A. 142. *See also* 19 I.C. 738=16 O.C. 45; 1928 M. 705; 1929 C. 399; 1930 L. 124; 11 P.L.T. 866= 132 I.C. 112; 167 I.C. 293=1937 O. 288; 164 I.C. 431=1936 O. 384; 1936 L. 570=38 P.L.R. 357. Where an instalment bond provided that, if default be made in payment of one or more instalments, the whole shall be due and the creditor elected to enforce the default clause. *Held*, that the suit was governed by Art. 75; and that the creditor could not by merely saying that he chose to give up a part of the claim fall back on Art. 74. 57 A. 108=1934 A. 661 (F.B.). Where there is a covenant in a bond, entitling the creditor to sue for the amount due on the bond before the expiry of the stipulated period of four years, it is for the benefit of the creditor, and it is open to him to waive that option, and to wait for the full period of four years before putting the bond into suit, and that the time for recovery of the debt did not begin to run from the date of the first default. 55 A. 283=1932 A.L.J. 550=1933 A. 235. *See also* 1937 L. 863. Where the plaintiffs waive the benefit of the provision as to the recovery of the whole amount, they will not be able to sue in future for the whole amount at one, but they are entitled to sue for instalments as they fall due under Art. 75, the cause of action accruing on each default. 1929 A. 812; 187 I.C. 221. An instalment bond provided that if there was default of two instalments the remaining amount was payable at once. The plaintiff sued for the recovery of the entire balance due alleging that he had received the first two instalments but that the 3rd and 4th instalments were in default. The Court found that the first two instalments were not paid and *held* that the cause of action accrued when the second instalment was defaulted and dismissed the suit as it was instituted more than three years after that date. In revision, it was contended that the Court below should have at least decreed the instalments which were within time. *Held*, that the plaintiff having exercised his option in suit for the whole amount, must be deemed to have waived his right of claiming the amount by instalments as they fell due. 1945 N.L.J. 473=1946 N. 12=I. L.R. (1946) N. 12. In the case of an instalment bond, if it is provided that in the event of a default in payment of one instalment the creditor can bring his suit for realising the entire amount of the bond, the whole amount must be considered *to become due* within the meaning of Col. 1, Art. 75 and Art. 75 will be applicable to a suit bas-

Description of suit.	Period of limitation.	Time from which period begins to run.
[1]76. On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen.	[2][Three years] ..	The date of the delivery to the payee.
[1]77. On a dishonoured foreign bill where protest has been made and notice given	[2][Three years] ..	When the notice is given,

LEG. REF.

1 *See* foot-note 1, p. 3521.

2 Substituted by Act XI of 1923, sec. 2 and Sch. I, for "Ditto".

ed on such a bond. Neither Art. 74 nor Art. 80 can have any application. By virtue of the provisions of Col. 3 of Art. 75 time will begin to run from the date of the first default which makes the whole money due, and if waiver is proved the date of a fresh default. Time will begin to run from the date of default no matter whether the creditor has been given the option of suing only for the instalment in respect of which a default has been committed. A stipulation in the bond that the creditor will also have the right to realise by filing a suit in Court the total amount due from the executant on account of principal and interest after the expiry of time for all the instalments, that is, at the time when the last instalment falls due, cannot arrest the running of time when once it has begun to run, on account of the fact that Art. 75 governs the case. Such a stipulation is nothing short of a contract or agreement between the parties for altering the statutory period of limitation, namely three years as prescribed by Art. 75. Parties cannot by contract alter the statutory period of limitation nor can they alter the statutory *'starting point'* of limitation. Such a covenant must be deemed to be void under sec. 23 of the Contract Act. 225 I.C. 122=1946 A.L.W. 324=1947 A. 38.

WAIVER, EFFECT OF.—In absence of waiver, time runs from date of default, for a suit for recovery of overdue instalments. 15 I.C. 856; 11 I.C. 526=14 O.C. 129; 1925 N. 298; 164 I.C. 431=1936 O. 384; 167 I.C. 293=1931 O. 288; 1937 L. 863. Where there is no waiver, plaintiff cannot make his suit within time by claiming only the instalments not barred. 47 A. 552=1925 A. 499; 14 N.L.J. 141=1932 N. 1 (F.B.), following 53 C. 277=1926 C. 789. *See* 31 C. 297; 7 M. 577; 36 C. 394=9 C.L. J. 226; 37 A. 400 (F.B.); 20 B. 109; 47 I.C. 943 (C.); 33 I.C. 606. *See also* 1935 M. 303=68 M.L.J. 244 (Case of instalment bond in connection with a *chit fund* and containing a default cause). But *see* 41 A. 104 =47 I.C. 926=16 A.L.J. 929 (Plaitiff presumed to have exercised option to waive). *See also* 23 I.C. 830; 133 I.C. 223=1932 O. 176. Where there is no waiver, time runs from the date when the right accrues. 1929 C. 292. Where the bond gave the plaintiff the option of taking advantage of the forfeiture clause, his right to realize the amount by instalments as originally agreed upon could not be lost by his failure to exercise his option. 1933 L. 849 (1). *See also* 1930 L. 124. If the plaintiff does not receive the offered payment, there is no default and consequently no waiver. 38 M. 374=25 M.L.J. 264. Where Art. 75 applies, the starting point of limitation is the date of the first default, or in case of waiver of its benefit, the next default, no matter whether the creditor is given by a contract no option to wait or not to wait. The principle underlying seems to be that the commencement of the period of limitation depends really upon whether the creditor is entitled under the terms of the bond to sue for the that, having regard to O. 32, r. 10, C. P. Code, whole money due under it and it is not affected by the fact that he has the option not to do so if he likes. 1943 A.W.R. (H. C.) 128=1943 O.A. (H.C.) 128=1943 A.L. J. 238=1943 A.L.W. 368. The Limitation Act does not lay down substantive law, and so the exception made in Art. 75 in favour of the creditor who waives, cannot be construed as conferring a right which does not exist under the ordinary law. The article refers to cases in which the creditor is entitled to exercise the privilege and it cannot apply when under the ordinary law, or by reason of a special contract, he is precluded from doing so. In case of bonds providing for repayment of debts by instalments with exigibility clause in case of default, the general principle is that the person in default should not be allowed to take advantage of his own wrong and these clauses are generally inserted for the creditor's benefit. It follows that unless the bond specially takes away the privilege it must be taken to exist. 1942 N.L.J. 296=A.I.R. 1942 Nag. 138=I.L.R. (1943) Nag. 630. Where a person executes a bond acknowledging a certain sum as due from him to the person in whose favour the bond is executed and agrees to pay it in six instalments on specified dates, and in default of payment of any such instalment, to pay the whole amount due, the cause of action to recover on the bond arises on the date of the first default. The expression *indul talab* used in such a bond means 'on demand' and does not confer an option on the creditor to demand the whole amount if there was default in payment of any instalment. I.L.R. (1944) All. 274=1944 A.L.J. 251=1944 O.W.N. (H.C.) 83=A.I.R. 1944 All. 197. In an instalment bond where on a default it is provided that the creditor has the right to claim the whole amount, there is an option either to bring

a suit for the whole amount relying on the default clause or to waive the default clause and claim each instalment as it falls due. When it is clear from the plaint in such a suit that the suit was not based on the default clause but on the agreement to pay each instalment on the due date, no question of any bar of O. 2, r. 2, C. P. Code, would arise. I.L.R. (1945) All. 105=1945 O.W.N. (H.C.) 17=1945 A.L.J. 107=A.I.R. 1945 All. 119.

WHAT CONSTITUTES WAIVER.—"Waives the benefit", meaning of. 1934 A. 1039=1934 A.L.J. 1056=153 I.C. 205. Where the obligee under an instalment bond is given the right to sue for the whole amount on the occurrence of default in payment of any instalment, it is open to him to waive the benefit of that provision, and yet to avail himself of that provision when a similar default takes place in the payment of a subsequent instalment. What amounts to waiver must depend upon the circumstances of each case. It cannot be laid down as a general rule that, wherever a person omits to claim a particular amount, it must be held to constitute a waiver. It is not necessary for a creditor to adduce affirmative evidence in support of waiver. In fact generally it is to be inferred from all the surrounding circumstances. 164 I.C. 431=1936 O.W.N. 665=1936 O. 384. *See also* 151 I.C. 852=11 O.W.N. 1191=1934 O. 455; 1941 O. 74=16 Luck. 280. Waiver must be something more than negligence. 1938 A.M.L.J. 50. It must be considered first whether the plaintiff had an option to waive his right to bring a suit at once on the happening of the default and whether as a matter of fact he did exercise the right of waiver. 1922 A. 113; 99 I.C. 871=1927 S. 151. Waiver must depend on some definite act or forbearance. 1929 C. 292. Where whole amount and not merely the amount due on unpaid instalments, is claimed, there is no waiver. 1929 C. 292; 35 A. 455=20 I.C. 933=11 A.L.J. 664; 149 I.C. 972 (1)=1934 L. 283 (1). Consent not to sue if waiver. *See* 31 I.C. 672=19 C.W.N. 1172. *See also* 164 I.C. 59=1936 L. 570. Acceptance of an overdue instalment is waiver. 2 L.L.J. 324; 59 I.C. 607 (S.); 1929 A 881; 58 C. 615=1931 C. 157. But *see* 1933 N. 70=144 I.C. 211; 1933 S. 365. Payment and acceptance of amounts equivalent to overdue instalments are not sufficient to prove waiver, when such payments are not appropriated to any particular instalments. 18 N.L.J. 104. Acceptance of portion only of such instalment is not waiver. 20 I.C. 156; 33 I.C. 606. *See also* 19 N.L.R. 170=1924 N. 61; 36 C. 394; 19 M. 162; 18 P. 459=1939 P. 433 (F.B.); 16 A. 371; 27 B. 1 (F.B.); 29 A. 431; 12 M. 192 on the point. As to proof of waiver, *see* 1937 O. W.N. 1073=1938 O. 42; 1937 L. 863. An instalment bond provided that the creditor will be entitled on default of any one instalment to realize the full amount with interest in a lump sum or by miscellaneous amounts. There was default but the debtor made voluntarily miscellaneous payments which the creditor accepted and subsequently sued for the balance on the ground that he was entitled to sue for the whole amount. It was contended for the debtor that the creditor had waived such a right and that he was entitled only to the balance with interest from date of the last default. *Held*, that he was entitled only to the balance with interest from the date of the last default. 1934 A. 697. A creditor waiving default, if and when entitled to take advantage of subsequent default. *See* 163 I.C. 165=38 P.L.R. 286; 1936 L. 570. The question whether there is waiver or not depends on the attendant circumstances of the act claimed as a waiver in each particular case. Where there is no evidence either that the debtors requested the creditors to excuse the default or that the payment of an overdue instalment was accepted as a consequence of waiver, the suit filed more than three years from the date of the first default cannot be saved from the bar of limitation by a plea of waiver. 1933 N. 70. Mere abstension from enforcing rights in case of default does not amount to waiver. 47 A. 552=23 A.L.J. 424. *See also* 1924 B. 301; 25 I.C. 938=3 S.L.R. 63; 47 I.C. 943 (C.); 1929 C. 291. But it is very strong evidence of waiver. 36 M. 66=12 I.C. 57. It is not necessary for waiver that there must be acceptance of an overdue instalment. 36 M. 66. *See also* 1929 C. 309. Recovery of overdue instalments by suit amounts to waiver of right to sue for the whole as soon as default occurred. 19 N.L.R. 170=1924 N. 61; 1930 A.L.J. 495=1929 A. 812. If the promisee had the option to sue for the entire amount on the first default, but he did not base his claim on that option but instead sued specifically for the last three instalments, basing his cause of action on each of the said defaults, that is sufficiently indicative of his having waived his option. 137 I.C. 223=1932 O. 176. As to bond with default provision in respect of interest payable at stated intervals, *see* 1919 M.W.N. 82=9 L. W. 479=51 I.C. 724; 41 I.C. 423=4 O.L. J. 402; 31 I.C. 479 (2)=9 S.L.R. 90; 142 I.C. 851=1933 L. 548. As to principle of this article applied to suits on mortgage bonds, *see* under Art. 132. *See also* 11 P.L. T. 609=1930 P. 615; 30 N.L.R. 314=1934 N. 180, for a case of instalment decree. Where a mortgage deed provides for payment by instalments with a default clause that on default in payment of an instalment the whole of the balance becomes payable, the mortgagee does not forfeit his right to recover the balance after the expiry of the term of the mortgage, though he might not have taken advantage of the default clause. A suit to enforce a personal remedy under such a bond is governed by Art. 75 read with Art. 116 and would be within time if filed within 6 years from the date fixed for the payment of the last instalment. 1941 N.L.J. 649.

In a case under Art. 75, the plaintiff try-

Description of suit,	Period of limitation.	Time from which period begins to run.
[1]78. By the payee against the drawer of a bill of exchange which has been dishonoured by non-acceptance.	[2][Three years] ..	The date of the refusal to accept.
[1]79. By the acceptor of an accommodation bill against the drawer.	[2][Three years] ..	When the acceptor pays the amount of the bill.
[1]80 Suit on a bill of exchange, promissory note or bond not herein expressly provided for.	[2][Three years] ..	When the bill, note or bond becomes payable.
81. By a surety against the principal debtor,	[2][Three years] ..	When the surety pays the creditor.
82. By a surety against a co-surety.	[2][Three years] ..	When the surety pays anything in excess of his own share.
83. Upon any other contract to indemnify.	[Three years] ..	When the plaintiff is actually dannified.

LEG. REF.

1 *See* foot-note 1, p. 3492.

2 Substituted by Act XI of 1923, sec. 2 and Sch. I, for "Ditto".

ing to get over the bar of limitation by pleading waiver has to make his pleadings specifically on the point and support it by cogent evidence. Waiver cannot be presumed. If in a case of an instalment bond which provides that on failure to pay two instalments the whole amount is payable, the plaintiff never stated in the Court below that there was any waver on his part but pleaded repayment of the first two instalments and stated that the cause of action accrued when the third and the fourth instalments were defaulted, he cannot, having failed to substantiate his case that the first two instalments were paid, turn round for the first time in revision and urge that the failure to realize the first two instalments should be treated as waiver on his part and that the default took place when the fourth instalment was not paid. This would be allowing him to make out a new case altogether and one which was not pleaded. 1945 N.L.J. 473.

ART. 78.—Where the cheque or hundi sent by a debtor to his creditor is dishonoured, original cause of action. 46 C. 168=45 article is inapplicable to an action on the I.C. 241=27 C.L.J. 392.

ART. 80.—Where a promissory note payable on demand was accompanied by a writing fixing a period of payment, a suit by the payee is govened by Art. 80. 39 M. 129=30 M.L.J. 51 (F.B.). *See also* 11 M. 53; 162 I.C. 459=1936 O.W.N. 518=1936 O. 279. So also where period of payment is postponed on the request of the executant of the promissory note. 42 A. 55=52 I.C. 235 (2). Where a pronote is payable on demand made by the payee after coming of age, time runs when the payee after majority makes demand. 3 M.L.J. 199. Where the claim was for recovery of the amount due on a war bond, which in form was a promissory note payable at a specified period after date thereof and at a special place. *Held*, that the suit was governed by Art. 80 and time commenced to run from the date on which it should have been presented for payment at the specified place. 1933 M. 376=64 M.L.J. 172. Suit on mortgage bond redeemable in 12 years but providing for annual payment of interest, and giving power to the mortgagee in case of default either to add interest due to the principal and charge compound interest or to sue for the principal at once, falls under Art. 80 read with Art. 116, and time begins to run from the date of first default in payment of interest. 45 A. 27=1923 A. 1 (F.B.). But *see* 1934 A.L.J. 261=148 I.C. 951=1934 A. 397 (F.B.). As to instalment bond providing for payment of interest monthly, *see also* 1933 L. 548=34 P.L.R. 145; 1934 A.L.J. 261 =1934 A. 397 (F.B.); I.L.R. (1938) N. 399 =1938 N. 13 (suit on bond not being a single bond); 1941 O.W.N. 361=1941 O. 210=16 Luck. 466.

ART. 81.—*See* 67 I.C. 365=55 P.L.R. 1922. Surety's right to sue the principal debtor is not barred, though creditor's action against the principal debtor is barred. 5 B. 647. *See also* 59 M. 288. 'Payment' does not include incurring of a fresh obligation by executing a pronote, bond, etc. 50 I.C. 611=15 N.L.R. 78. *See also* 60 I.C. 23=(1920) 3 U.B.R. 261. So time runs when the surety actually pays the creditor. *See* 26 M. 322; 39 M. 288=27 M.L.J. 746. Where date of payment by surety is uncertain, discretion should be exercised in favour of the surety. 1925 A. 164.

ART. 82.—*See* 13 M.L.J. 83=26 M. 686; 39 M. 288=27 M.L.J. 746.

ART. 83.—Contract to indemnity need not be express. It may be inferred from circumstances. 29 A. 627=1 A.L.J. 501; 5 C. 811. *See also* 20 M.L.J. 989=34 M. 167. It may be imposed by statute or implied or inferred in virtue of the jural relations of the parties. 33 Bom.L.R. 1200=1932 B. 25. Article does not apply to a suit to enforce a charge against the person who purchased property in execution subject to the charge. 1933 M.W.N. 486=66 M.

Description of suit.	Period of limitation.	Time from which period begins to run.
84. By an attorney or vakil for his costs of a suit or a particular business, there being no express agreement as to the time when such costs are to be paid.	[1][Three years] ..	The date of the termination of the suit or business, or (where the attorney or vakil properly discontinues the suit or business) the date of such discontinuance.

LEG. REF.

[1] Substituted by Act XI of 1923, sec. 2 and Sch. I, for 'Ditto'.

L.J. 4=57 M. 218=1934 M. 1. Suit to recover compensation for the breach of a contract to indemnify the vendee against the claims of the mortgagee is governed by this article. 2 L. 316=64 I.C. 431=1921 L. 260. *See also* 57 I.C. 982=38 M.L.J. 470; 13 I.C. 979=15 O.C. 25; 7 M.L.J. 46 (Notes of recent cases); 1935 A.L.J. 255=1935 A. 463. Where a vendee under a registered sale deed undertakes to pay off a mortgage debt of the vendor out of the amount left in his hands for that purpose, it amounts to a contract of indemnity. A contract of indemnity may be express or implied. Where such a vendee fails to make the payment and such non-payment has resulted in the property of the vendor being sold, the vendor has a cause of action to sue for damages for the breach of the contract of indemnity and such a suit would be governed by Art. 83 read with Art. 116. I.L.R. (1938) A. 500=1938 A. 297 (F.B.). *See also* 19 P.L.T. 198=17 P. 338=1938 P. 275; 17 P. 751=1939 P.W.N. 361=1939 P. 194; 1940 L. 321; 1936 A. 870. Co-mortgagor redeeming mortgage—Suit for contribution not governed by this article. 1935 O.W.N. 278 =1935 O. 245. In a suit for refund of consideration for a sale on the ground that the plaintiffs were dispossessed by a third party the cause of action to recover damages on account of the covenant for indemnity in the sale-deed arises only when the plaintiffs are dispossessed, and not when the hird party files a suit or gets a decree, and the suit is governed by Art. 83 read with Art. 116. (31 M. 452, foll.; 26 B. 750, dist.) 55 B. 565= 33 Bom.L.R. 1092=1932 B. 36. *See also* 1940 B. 161=42 Bom.L.R. 175; 1938 L. 196=39 P.L.R. 948; I.L.R. (1941) L. 353=43 P.L.R. 548=1940 L. 32; 44 L.W. 458=1936 M. 655. Also suit for indemnity in respect of losses sustained during agency. 23 P.R. 1915=26 I.C. 415. Time begins to run when the plaintiff is actually damnified. 1932 B. 25=33 Bom.L.R. 1200. Purchase of goods by commission agent for principal—Re-sale by agent at a loss—Suit by agent to recover loss is governed by Art. 83. 1929 L. 265=1927 L. 826; 139 P.W.R. 1918=46 I.C. 685. Limitation in such cases operates from the date of payment made on behalf of the principal and not from the date of sale. 106 I.C. 40=1927 L. 826. Suit by agent to recover money due from principal. 106 I.C. 40=115 I.C. 76 (1). A suit by an agent to recover the amount due from his client must be brought within the period of limitation prescribed by Art. 83. Limitation in such a case operates from the date of payment. 1928 L. 424. *See also* 31 P.L.R. 666. Plaintiff is damnified when he has to pay the amount on account of the defendant's default. *See* 2 L. 316=64 I.C. 431. *See also* 1925 M. 594; 5 C. 811; 26 M. 322; 39 M. 288. Person undertaking payment to third person—No time specified—Limitation commences from date of loss to the person to whom guarantee is given as to payment. 49 A. 603=101 I.C. 691 (2)=1927 A. 435. *See also* 1936 M. 334=163 I.C. 177=70 M. L.J. 537. Breach of compromise term for payment to creditor—On breach, payment by other party — Limitation — Starting point. 1935 L. 307. Where a vendee required to pay off vendor's incumbrances defaults in paying and the vendor sustains loss thereby, a suit by the vendor for a relief against the vendee is governed by Art. 116 read with Art. 83 or Art. 61; and the starting point for limitation is the date when the vendor is actually damnified. 1933 L. 109=14 L. 380 (34 A. 429 Not Foll.); 1936 A.W.R. 1197= 1936 A. 870. *See also* 14 L. 646=1933 L. 793=34 P.L.R. 734; 10 P. 451=1931 P. 271 (following 49 A. 603); 1933 A. 386=1933 A.L.J. 787=55 A. 490.

ARTS. 83 AND 61.—The liability under sec. 222 of the Contract Act of a principal to indemnify the agent is a liability under a contract within the meaning of Art. 83 of the Limitation Act. Accordingly a suit for money spent by the agent out of his pocket on behalf of the principal acting within his authority, is governed by Art. 83 and not by Art. 61 of the Limitation Act. 48 C.W.N. 317= A.I.R. 1944 Cal. 302 (1).

ART. 84.—The word 'cost' is not confined to out of pocket expenses of the practitioner. Suit for remuneration is also governed by this article. 29 I.C. 763 (M.) Application made under the rules of the Court, by attorney for realisation of costs, where it involves enquiry, is a suit governed by Art. 84. 46 C. 249=51 I.C. 941=23 C.W.N. 473. But *see* 1 B. 253; 32 B. 1; 24 C. 70. Art. 84 does not apply in the case of a decree which provides that the costs shall be paid to the solicitor (named) of one of the parties to the suit. It is governed by Art. 120. 34 Bom.L.R. 670=1932 B. 378. Termination of suit. *See* 7 M. 1; 22 C. 943. Proceeding does not terminate by compromise not certified by Court. 1 B. 505. Where, a petition for which the attorney was engaged, resulted in an order in favour of the client in 1924, and nothing was done further till 1930, when the client instructed his attorney to have his bill of costs taxed, it cannot be said, where the continuance of the solicitor's lien is in question, that the business

Description of suit.	Period of limitation.	Time from which period begins to run.
85. For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties.	[1][Three years] ..	The close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account.

LEG. REF.

1 Substituted by Act XI of 1923, sec. 2 and Sch. I, for "Ditto.".

terminated in 1924 and that the lein became barred in 1930. 131 I.C. 158=1931 M. 183=60 M.L.J. 133. In many proceedings of which administration suits are examples, the so-called final decree is very far from being the termination of the suit. 52 C.L.J. 197 =1930 C. 651 (F.B.).

ART. 85: APPLICABILITY.—Art. 85 applies to a suit on a mutual, open and current account. 1930 B. 5=53 B. 652. As to what is a mutual, open and current account, *see* 102 I. C. 225=1927 B. 225=29 Bom.L.R. 375; 56 C. 575=1929 C. 641; 112 I.C. 715; (A.) 1930 L. 711. The conditions for the applicability of Art. 85 are that there should be cross-claims arising out of a course of dealings which evidences or is referable to an intention to set-off. The phrase "reciprocal demands" does not import that either party has made an actual demand in fact. 58 C. 649= 34 C.W.N. 1175=1931 C. 359. Where a depositor borrows money from a bank by means of overdrafts, and occasionally deposits money which is applied to the overdrafts, the transaction is not a mutual account, and the statute of limitation runs from the date of each loan, notwithstanding the transaction opens with a credit to the depositor. 197 I.C. 449 =1942 P. 201. The phrase 'reciprocal demands' in Art. 85 does not import that either party has made an actual demand in fact. But the dealings must be of such a nature that they might lead to reciprocal demands. 1939 N. 113=184 I.C. 139. *See also* 1936 R. 495; 1938 R. 224; 1938 R. 270; 1936 O. 384. It refers to cases where the course of business between the parties has been of such a nature as to give rise to reciprocal demands between them, that is, the dealings between the parties must have been of such a nature that the balance might sometimes be in favour of one party and sometimes in favour of the other. 1936 R. 495. *See also* (1942) 2 M.L.J. 337=1943 M. 13.

MUTUAL, OPEN AND CURRENT ACCOUNT.—The term 'mutual' in relation to accounts is found in at least four different collocations and all cases concerned with 'mutual dealings' or 'mutual accounts' are not necessarily safe guides when considering what constitutes 'mutual, open and current account' under Art. 85. 184 I.C. 139=1939 N. 113. Where there is dual contractual relationship between the parties (*i*) that of borrower and creditor and (*ii*) that of principal and agent, and in these dealings, the plaintiff as creditor has demands against the defendant, while the defendant as the principal has independent demands against the plaintiff as his agent, and the items relating to all the dealings are entered in one account, such an account is clearly a mutual, current and open account, and a suit for recovery of the amount due on it is governed by Art. 85. The absence of a shifting balance is not a decisive factor in case of mutual, open and current accounts. 185 I.C. 805=1939 L. 356. *See also* 1942 P. 298= 1941 P.W.N. 638. A mutual account within the meaning of Art. 85, is an account of dealings between two parties which are such as to create independent obligations in favour of one party against another. The fact that the balance was always in favour of one party throughout the entire period of accounting would not take the transaction out of the category of Art. 85 of the Limitation Act. Though a shifting balance is a test of mutuality its absence is not conclusive proof against mutuality. 1942 A.L.W. 321. *See also* 1943 M. 13=(1942) 2 M.L.J. 337. An 'open account', what is. *See* 100 I.C. 815=28 Punj.L.R. 146=1927 L. 848. Dealings should be entered in an account consisting of mutual items of debt and credit. 63 I.C. 950= 23 Bom.L.R. 540=1921 B. 451. There must be transactions on each side, creating independent obligations on the other, and not merely transactions which create obligations on the one side, those on the other being merely complete or partial discharges of such obligations. 44 M.L.J. 184=1923 M. 278; 1936 C. 382. *See also* 1923 L. 636; 1923 L. 347; 1922 L. 338; 1922 L. 316; 12 L. 420=1931 L. 241; 1922 P. 364=3 P.L.T. 492; (1911) 2 M.W.N. 440=22 M.L.J. 14=1927 M. 819=1930 O. 287; 15 N.L.J. 105=1933 N. 50; 1930 L. 711; 1936 A.M.L.J. 68; 130 I.C. 574=1931 L. 309; 1933 A.L.J. 1283; 1937 R. 340; 58 C. 649=34 C.W.N. 1175=1931 C. 354. In other words, the dealings must be such that there may be balance in favour of either party and not always in favour of one party in the very nature of the transactions. 44 M.L.J. 174; 47 B. 128=1923 B. 82; 4 P.L.T. 571= 35 Bom.L.R. 929=58 B. 200=1933 B. 450. But *see also* 106 I.C. 53=1928 N. 127. But actual shifting balance is not necessary. 47 B. 128; 1923 N. 108; 1924 P. 107; 29 Bom.L. R. 575=1927 B. 225; nor does it afford a real test of mutuality. 17 I.C. 48=23 M.L.J. 516; 1933 N. 50=15 N.L.J. 105. The question whether an account is mutual, open and current so as to attract the operation of Art. 85 is one of fact and must depend upon the nature of the dealings between the parties, nature of the entries and other relevant circumstances. In order that an account should be mutual, there must be dealings between the parties and such dealings must be capable of giving rise to independent obligations

on each side of the account at any given period or stage.' One test commonly applied is the possibility of shifting balances. But that test is not conclusive. The real test is whether the dealings between the parties are of such a nature that the balance might so shift. An account current means a running account, that, is an account which is continued and not stopped or closed. If the account is running, that is to say, if it is unclosed, then it is open and current. Mere cessation of dealings between the parties, however, does not mean that the account is closed. The real question in each case would be what is the intention of the parties. 58 B. 200=1933 B. 450. Where there is no open account on the date of suit, the plaintiff cannot sue on a mutual account and claim the benefit of Art. 85. *Ibid.* Each party must have a demand against the other, *i.e.*, each party should be able to say against the other "I have an account against you." 5 C. 759; 6 C.L.J. 158; 3 L.L.J. 362; 8 Bur.L.T. 116=27 I.C. 879. *See also* 17 P.W.R. 1920 =54 I.C. 453; 47 B. 128; 17 I.C. 48=23 M.L.J. 516; 22 M.L.J. 14=12 I.C. 673; 6 B. 134; 10 M. 259; 32 A. 11; 17 M. 293; 22 B. 606; 39 A. 33; 132 I.C. 420=1932 A. 38; 1939 N.L.J. 109=1939 N. 113; 1940 A. 209; 1936 A.M.L.J. 68; 1938 L. 264. In order to bring a case within the article, it is necessary that the dealings on either side must be so independent of each other that neither party giving credit to the other relies on the debt which he has against him. 15 L. 14=1933 L. 12. The account must be continuous or current, uninterrupted or unclosed by settlement or otherwise, consisting of a series of transactions, from which the balance due to one of them is or can be easily ascertained. 1923 L. 347; 3 P.L.T. 492=1922 P. 364. *See also* 6 M.H.C.R. 142; 100 I.C. 815=28 P.L.R. 146 =1927 L. 848. Where independent obligations are created between the parties and the accounts are never closed even though annual balances are struck, the fact that the balance has been in favour of same party during the last few years does not take the transaction out of the category of Art. 85. I.L.R. (1938) A. 741=1938 A.L.J. 773=1938 A. 504. A mutual, open and current account continues as such, so long as the account remains open and current. It would not become a non-mutual, open and current account, merely by reason of the fact that after a certain date the account was one-sided. The mutuality results from the reciprocal claims which can spring out of the transactions which once made the account mutual. Where an acknowledgment closes the old account, then the old account ceases to be a mutual, open and current account. It could cease to be open and it could cease to be current, but it could never lose the quality of mutuality. With the end of either of the first-mentioned characterists would end the applicability of Art. 85. 1939 N.L.J. 109=1939 N. 113. Plaintiff sending moneys to defendant as loans—Defendant making purchases for plaintiff and advancing moneys for him—All these accounts debited and credited in the defendant's account, by the plaintiff—Account, is a mutual, open and current. 27 A.L.J. 73 =112 I.C. 715. The phraseology of Art. 85 is wide and comprehensive and does not exclude from its purview the case of a principal and agent between whom a mutual open and current account has existed. 1930 L. 712. Where a customer is permitted to overdraw a current account with his bank and the account is sometimes in credit and sometimes in debit, the bank is a debtor when the account is in credit, and when the account is overdrawn, the customer is under an obligation to the bank. In such circumstances the account can only be regarded as a "mutual, open and current" account. I.L.R. (1946) M. 325=1945 Mad. 467=(1945) 2 M.L.J. 120.

ILLUSTRATIVE CASES.—The following are covered by the article:—Agency business in selling goods on commission, on behalf of the defendant involving mutual accounts. 1922 L. 338; 217 I.C. 773; 34 Bom.L.R. 1410; 34 Bom.L.R. 1268=1932 B. 593; 15 I.C. 336; 62 I.C. 898=1922 L. 188; 29 I.C. 462=1915 M.W.N. 519; 58 C. 649=34 C.W.N. 1175. Suit for money due on a *bhahi* account. 54 I.C. 453. But *see* 12 L. 420=1931 L. 241. Agent for both the parties lending money to each other as the agent of the other and keeping a current account. 1 Bur. L.J. 240=1923 R. 18. Defendant in the employment of plaintiff taking advance from time to time as against salary—Suit to recover excess. 87 I.C. 832=1925 N. 295. The defendant firm was depositing money with the plaintiff Bank from time to time and the plaintiff Bank was allowing them to draw money in excess of the deposits with the result that the balance was frequently shifting in favour of one or the other party. *Held*, that the account was a mutual, open and current one. 15 L. 652=1934 L. 358. Article inapplicable where plaintiff is alone the banker advancing and receiving part-payments, with balance always in his favour. 37 I.C. 300; 12 L. 420=1931 L. 241; *see also* 1942 Pat. 201; or a tradesman supplying goods on credit. 88 I.C. 747=1925 P. 806; 1930 O. 287. Goods sold and delivered from time to time—Payment by customer from time to time without specifying item. 1935 A.L.J. 33=1935 A. 53. Suit for accounts after the agency dealings had stopped is not governed by this article. 37 I.C. 875=5 L. W. 375. Servant debited with sum advanced—Salary credited when due—Account is not mutual. 1927 M. 819=103 I.C. 48; 7 P. 238=107 I.C. 533; 108 I.C. 694=50 A. 645=1928 A. 236. Where the contract is for outright sale and there is no stipulation that the accounts should be settled after the goods had been resold in the market by the purchaser time for instituting a suit for the price runs from the date of the initial purchase and the period is that provided in Art. 57, and not Art. 85. 1931 A.L.J. 363=1931 A. 229. In a suit on settlement of accounts on striking balance it was held that the account was not a mutual, open and current account

Description of suit	Period of limitation.	Time from which period begins to run.
[86. (*a*) On a policy of insurance when the sum insured is payable after proof of the death has been given to or received by the insurers.	Three years ..	[2]The date of the death of the deceased.
(*b*) On a policy of insurance when the sum insured is payable after proof of the loss has been given to or received by the insurers.		The date of the occurrence causing the loss.]*
87. By the assured to recover premia paid under a policy voidable at the election of the insurers.	[1][Three years] ..	When the insurers elect to avoid the policy.
88. Against a factor for an account.	[1][Three years] ..	When the account is, during the continuance of the agency, demanded and refused or, where no such demand is made, when the agency terminates.
89. By a principal against his agent for movable property received by the latter and not accounted for.	[1][Three years] ..	Ditto.

LEG. REF.

*Substituted by Act XIII of 1941.

1 Substituted by Act XI of 1923, sec. 2 and Sch. I, for "Ditto".

2 Substituted by Act IV of 1938, sec. 122.

within the meaning of Art. 85, but an account stated within that of Art. 64 and that therefore the suit was within time. 130 I.C. 570. The mere fact that subsequent to the date of the striking of the balance, there were four items on each side of the account could not have the effect of converting it into a mutual, open and current account. 131 I.C. 292=1931 L. 233. Art. 85—If affects sec. 74, Partnership Act—Suit after 1—10—1933 for debt due and acknowledged before 1—10—1933—Last date of account or of accounting year falling after 1—10—1933—Suit—If barred—Sec. 74, Partnership Act—If excluded. *See* I.L.R. (1942) Kar. 442=1943 S. 26. As to when time begins to run, *see* 5 C. 211; 5 C. 759 at 764; 1 L. 12=55 I.C. 872.

ART. 86.—Time runs from the date when proof of loss is given. 6 B.H.C.R. (A.C. J.) 34. A policy of insurance contained a clause that "the Company should not be liable for any loss or damage after the expiration of twelve months from the happening of the loss or damage, unless the claim was the subject of pending action or arbitration". Where the suit was filed more than twelve months after the fire, and there had been no reference to arbitration and all the time had been spent in the investigation of the claim and delay by the insured. *Held*, that (*i*) the words "pending action" referred only to a pending suit and not to steps which the company might take in the investigation of the claim; (*ii*) that the clause only provided that the company shall not be liable if the claim was made more than twelve months from the date of the loss and not that the insured should not have the right to sue after twelve months; and so it was not against public policy and it did not contravene the provisions of sec. 28 of the Contract Act, or Art. 86. 11 R. 475 =1934 R. 15.

ART. 89: SCOPE AND APPLICABILITY.—As to applicability, *see* 39 M. 376=28 M.L.J. 140; 109 I.C. 332=1928 M. 906; 1930 M.W.N. 119=1931 M. 185 (2)=54 M. 654=62 M.L.J. 45; 1937 A.L.J. 264=1937 A. 363. Art. 89 would apply if the defendant acted as plaintiff's agent implied or express. If there is no agency, Art. 120 would apply. 45 M. 648=1922 M. 150=42 M.L.J. 507. Art. 89 and not Art. 115 applies even where the relation of principal and agent is created by a written agreement. 4 P. 289 =1925 P. 494=89 I.C. 275. But when the contract is registered, Art. 116 applies. 12 C. 357. A legal practitioner, who happens to be the agent of a party, does not cease to be such agent merely because he gets a vakalatnama from his principal and sues on the strength of it for realising the amount due to his principal. 1935 L. 49. Termination of agency—Burden of proof. 1935 L. 49. Co-sharer managing property on behalf of another co-sharer is an agent of the latter. 40 C. 108=18 I.C. 735=17 C.L.J. 103. *See also* 26 Bom.L.R. 1165=1925 B. 148. But *see* 7 A. 25. Where joint property is in possession of one member of the family, he holds the same as agent for the others, and a suit by the latter for an account of such property and for recovery of their shares is governed by this article. 45 B. 313=1925 B. 384=59 I.C. 357. *See also* 27 C.W.N. 725=1923 P.C. 31; 30 Bom.L.R. 912=1928

B. 365; 1928 N. 256. When after partition one brother is recovering outstandings originally due to the joint family, there must be an implied contract of agency between that one brother and the other, and a suit by the other brother for rendition of accounts and recovery of his share of the joint outstandings is governed not by Art. 62 or Art. 120, but by Art. 89. 116 I.C. 327=1929 L. 407. Also suit by coparcener against manager for recovery of outstandings collected and misappropriated. 121 I.C. 205=1930 P.C. 18=58 M.L.J. 245 (P.C.). (1925 M. 922, Rev.). *See also* 45 Bom.L.R. 424; (1945) 2 M.L.J. 422=I.L.R. 1946 M. 423=1946 M. 116. When by an oral agreement one tenant-in-common is left in possession as the agent of the other tenants-in-common, if one of them sues him for an account, the suit is governed by Art. 89. 54 M. 654=62 M.L.J. 45=33 L.W. 1=1931 M. 185 (2). The guardian is not an agent of the ward within the meaning of Art. 89. The relationship between the guardian and his ward is not that of a principal and agent but is in the nature of a fiduciary relationship. 22 Pat. 114=1943 Pat. 218. Director of limited company whether agent within article. *See* 5 L. 27=79 I.C. 740=1924 L. 435. **Loan raised on security of shares—Creditor** selling shares—Subsequent suit by debtor for surplus and account—Limitation—Relation of principal and agent—If exists. *See* 1942 M. 386=55 L.W. 90=(1942) 1 M.L.J. 274. Suit by Municipality against Secretary and Executive Officer for recovery of moneys embezzled on account of his negligence is governed by this article. 46 A. 175 =1924 A. 467. Chairman of Municipality is not agent of the Council. 22 M. 342. Money is movable property within this article. 21 C.W.N. 591=40 I.C. 359; 39 M. 376=26 I.C. 740=28 M.L.J. 140; 49 C. 250 =1922 C. 355=26 C.W.N. 61; 32 C. 719; 35 C. 298. A suit for accounts against a rent collector is governed by article. 49 C. 250 =26 C.W.N. 61=1922 C. 355. Art. 89 applies to a suit by a principal against his agent for an account and for any money that may be found due on the taking of such account. The starting point of limitation is (1) when the account is demanded and refused, or (2) when the agency terminates. 58 B. 200=35 Bom.L.R. 929=1933 B. 450; 1933 A. 648=55 A. 814. A suit by the principal against the agent for recovery of certain sums misappropriated by him is governed by Art. 89 and not Art. 62. Art. 89 is not confined to suits for accounts only. 60 C. 1347=38 C.W.N. 211=1934 C. 238. Where accounts of an agent have already been adjusted, a suit for money fround due is not governed by this article. 25 C.L.J. 335=21 C.W.N. 591. Article inapplicable to suit against heirs of agent. 17 C.W.N. 5=16 I.C. 742; 16 C.W.N. 1042=16 I.C. 414; 1 P.R. 1912=13 I.C. 930; 1923 P. 259. But see *contra* 47 M.L.J. 483=1924 M. 840. A suit for an account by the principal against the legal representatives of a deceased agent is governed by Art. 89. I. L.R. (1943) Nag. 470=1943 N.L.J. 308= 1943 Nag. 227. The proper article applicable to a *suit by the legal representative of the principal against the agent* for accounts is Art. 89. The article is not restricted to a suit by the principal against the agent or *vice versa*. It also applies to a suit by or against the legal representatives of the principal or of the agent. The omission of any mention of legal representatives in the words under "Description of suit" in Art. 89 does not mean that the article does not apply to a suit by or against the legal representatives. 40 C.W.N. 245=62 C.L.J. 464; 44 C. 1=1916 P.C. 148=31 M.L.J. 836 (P.C.); 85 I.C. 704=1925 A. 682. Time runs from the termination of the agency (*i.e.*) the death of the principal (*see* 26 C. W.N. 320=1922 C. 53; 43 C. 248) whether the principal has demanded an account or not. 44 C. 1 (P.C.). Pleader engaged for several suits—Death of pleader—Suit for moneys advanced against legal representatives is barred in respect of suits disposed of more than three years prior to the suit. 50 M. 249=51 M.L.J. 804=1927 M. 157. **Arter a dissolution of a partnership, an agreement was entered into by the partners to** the effect that the two partners, as mentioned in the agreement, were to collect the outstandings of the partnership as trustees and to deposit the amount in a bank after paying off the partnership liabilities and to share it equally. Then a suit had been instituted for rendition of accounts of the moneys realized as per agreement. *Held*, that under the above-mentioned circumstances the suit was governed by Art. 89 and not by Art. 106 of the Act, because by virtue of the said agreement the trustee partners were the agents of the partnership for recovering the assets and therefore the suit was essentially between the principal and an agent and for accounts. 134 I.C. 527=1931 L. 300. A suit by one partner for partnership accounts (without a prayer for dissolution of partnership) based on an express agreement between the partners to render accounts and to distribute the profits annually is governed by Art. 120 and not Art. 89 or Art. 100 or Art. 116. 1933 N. 127=29 N.L.R. 34.

STARTING OF LIMITATION.—Whether failure to render accounts amounts to refusal under this article, *see* 53 I.C. 675=30 C.L. J. 90. If there is demand and there is no response, there is an implied refusal. 43 C. 248=19 C.W.N. 1070=30 I.C. 697. But *see* 1 P.R. 1912=13 I.C. 930; 43 I.C. 570 (Putting off not refusal); 3 P. 546=80 I. C. 956. There must be a definite repudiation on the part of the defendant of a liability to account or any circumstances from which the failure or omission on his part to render accounts might be construed as a refusal. 56 C.L.J. 172=1933 C. 204. Non-compliance or evasion or procrastination on the part of the agent amounts to a refusal. 123 I.C. 228=1930 S. 142. Where there is no demand and refusal, time runs only from the termination of the agency. 20 C.W.N.

Description of suit.	Period of limitation.	Time from which period begins to run.
90. Other suits by principals against agents for neglect or misconduct.	[1][Three years] ..	When the neglect or misconduct becomes known to the plaintiff

LEG. REF.

1 Substituted by Act XI of 1923, sec. 2 and Sch. I, for "Ditto".

366=29 I.C. 848. *See also* 1937 A.L.J. 264 =1937 A. 363; 35 C. 298; 32 C. 719; 11 W.R. 76. Agency terminates when agency is complete. Question of termination depends on circumstances of each case. 21 S.L.R. 336=1926 S. 264; 110 I.C. 575= 1928 L. 833. *See also* 40 L.W. 538=1934 M. 691 (1). The question when an agency terminates is a question of fact. 41 M. 1 =45 I.C. 430. *See also* 37 I.C. 875=5 L.W. 375; 31 M.L.J. 685=36 I.C. 804. Where the agency is not terminated and is still in existence the limitation as laid down in Art. 89 would run from the time the account is demanded and is refused. But if it terminated in any of the manners provided in sec. 201, Contract Act, time begins to run from the very date of such termination. 1943 A.L.W. 133. In a suit by heirs of the principal for accounts, time runs from the death of the principal which terminates the agency. 44 C. 1 (P.C.); 26 C.W.N. 320 =1922 C. 53; 43 C. 248. Where an agent is appointed by a certain person and thereafter that person dies, and the agent continues to hold service under the son of his deceased principal, the agency created by the deceased terminates on his death, and the subsequent service of the agent under his son should be regarded as a new agency held under the son of the deceased principal. The two periods should be separately considered, and if a suit for accounts in respect of the anterior period is instituted more than three years after the death of the former principal, that suit must be regarded as barred. 40 C.W.N. 245=62 C.L.J. 464. Where an agency does not terminate with the death of the principal but terminates with the completion of a transaction which has occurred in the life time of the principal, the *terminus a quo* for limitation under Art. 89 begins from the completion of the transaction. 1929 L. 883; 1939 M. 114; 1939 A. 738 (Suit to recover money collected by agent—Agency revoked by letter—Starting point). Subsequent resumption of work after termination of agency cannot prevent running of time as regards the first agency. 30 I.C. 691 (M.); 26 I.C. 740=28 M.L.J. 140. *See also* 40 C.W.N. 245=62 C.L.J. 464. As to suit by co-sharer for his share of profits, *see* 1936 A. 706. *See also* 1939 M. 671; 1939 A. 442. On this article, *see also* 1936 M. 170. Starting point under Art. 89—Suit to recover money collected by agent under power of attorney in general terms to collect an outstanding. 58 L.W. 650=(1945) 2 M.L.J. 484=1945 M.W.N. 735=1946 M. 122. In the case of co-principals demand by one only does not start limitation. 2 P. 585= 1923 P. 464. Joint and several principals—Death of one—If terminates agency as regards survivors—Suit by latter—Limitation. 1936 C. 650. The plea of limitation must be specifically raised supported by necessary facts. 3 P. 546=80 I.C. 956. On this article, *see also* 21 M.L.J. 453=9 I.C. 54.

ARTS. 89 AND 90.—Art. 90 and not Art. 89 is the article applicable to a suit in which the claim is based on the misconduct or neglect of an agent. A suit by a sabha against an ex-secretary claiming a sum of money wrongfully retained by not entering it in the accounts and for sums of money falsely entered as having been spent on behalf of the sabha is governed by Art. 90. 48 L. W. 775=1939 M. 114. *See also* 1938 M. 38.

ARTS. 89 AND 120.—In a case where a hundi is vested in the defendant for payment of debts of a third person, the defendant's obligation to account is equitable. If the defendant is to be regarded as an agent of such third person for the purpose of paying off his creditors, the suit for accounts will fall under Art. 89, if not under Art. 120. But, in both cases, time will run from the date on which the defendant had denied such third person's claim, or in any other manner infringed or threatened to infringe his right. 1936 M. 876; 49 L.W. 608=1939 M. 671 (Joint creditors—Pronote by debtor in favour of one—Arrangement that the latter should collect and pay the other his share—Relationship is one of trust, not agency—Art. 120 applies).

ART. 90.—This is a residuary article with regard to actions between principal and agent and would apply only if no other article applies. 109 I.C. 332=1928 M. 906. "Neglect or misconduct"—Meaning of. Art. 90 is not happily worded, for the law knows nothing of negligence or misconduct in the abstract, and no cause of acton can exist and no suit will lie that is founded on negligence or misconduct as such. A suit for negligence means a suit in respect of some negligence, act or omission (and the words in the third column mean) "from the time when the negligent act or omission becomes known to the plaintiff". 9 R. 575=1932 R. 1. Limitation for a suit against an advocate for neglect or misconduct in his professional duties is Art. 90, as such suit arises on negligence arising out of contract between principal and agent and not out of tort. 1938 Rang.L.R. 457=1938 R. 258 (F.B.). Limitation runs from the date when the negligent act becomes known to the plaintiff and not from the date when the plaintiff discovers the act to be negligent. 9 R. 575. Wher the conduct of the diectors of a bank

Description of Suit.	Period of limitation	Time from which period begins to run.
91. To cancel or set aside an instrument not otherwise provided for.	[1][Three years] ..	When the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him.

LEG. REF.

1 Substituted by Act XI of 1923, sec. 2 and Sch. I, for "Ditto".

is such as to render them liable to the amount lost by the bank owing to wilful breach of their obligation as directors, Art. 90 and not Art. 36 applies. 160 I.C. 759=1936 L. 271. Where a director of a bank acted in a transaction as an agent of the bank, the suit by the bank against him is a suit by a principal against an agent to which Art. 90 applies. (5 L. 27, Foll.) 17 L. 262=38 P.L.R. 526=1936 L. 268. Suit for recovery of unauthorized payments made by agent on account of principal is governed by this article. 36 I.C. 418=9 Bur.L.T. 130. *See also* 1938 M. 38. In a suit against agent for misconduct, limitation runs from the time when the account books are got from the agent, when only the plaintiff will come to know of the misconduct. 25 I.C. 136=7 Bur.L.T. 199. Money entrusted to person with direction to dispose it of in particular manner—Person wrongfully retaining it in his hands—Suit for recovery of such money—Limitation runs from the date the matter comes to the knowledge of the principal. 1930 A. 397. Suit by principal against agent for recovering secret profit made by latter. Time would run only from the date of knowledge. 25 A.L.J. 448=1927 A. 436. Before Art. 90 can be invoked it must be ascertained at which time or on what date the fact of the defendant's withholding of the money became known to plaintiff. 58 C. 923 1931 C. 738. The starting point of limitation is the knowledge of all the facts; if the plaintiff is lulled into a sense of security by being led to believe that something was done which was not in fact done, or that something was not done which was in fact done, time cannot run against him. But once he knows the true facts, it is for him to judge of their legal consequences, and he cannot afterwards say that he did not know those legal consequences. Where a suit is brought against an advocate for neglect or misconduct in and about his duties as professional adviser in failing to join certain party in appeal, the fact that the plaintiff was aware of the neglect at the institution of the appeal but knew it to be actionable as such only when the appeal was lost does not extend time. 1938 Rang. L.R. 457=1938 R. 258 (F.B.). Art. 90 does not say that time begins to run when the cause of action for neglect or misconduct became known to the plaintiff, but when the neglect or misconduct became known. Once the plaintiff is acquainted with what has happened, he cannot sit still and say that time does not run against him until he chooses to take the view that the omission of which he is aware is actionable neglect or that the act of which he is aware amounts to actionable misconduct. 1935 Rang.L.R. 457=1938 R. 258 (F.B.).

ART. 91.—Art. 91 applies to suits of the kind mentioned in sec. 39, Specific Relief Act. 16 A. 73. Where a plaintiff merely disputes the legal effect of an instrument, it is not a suit to cancel or set aside. *See* 23 A. 383 (P.C.). Article applies only where plaintiff or his predecessor in title was a party to the instrument. 32 C. 473; 13 C.W.N. 815; 16 A. 73; 52 P.R. 1895; 24 I.C. 246 (M.)=27 M.L.J. 50; 22 A. 90; 24 M.L.J. 592=38 M. 321; 64 I.C. 775=17 N.L.R. 169=1921 N. 74; 9 Luck. 365=1934 O. 55; 1923 R. 82; 1929 L. 816. An award is an instrument within the meaning of Art. 91. 1927 L. 172=100 I.C. 596. Article applies to a suit to set aside an award which is not void but it only voidable. 15 I.C. 819=5 S.L.R. 240. *See also* 1939 A.L.J. 642=1939 A. 348; 1938 L. 869; I.L.R. 1939 N. 1=1938 N. 335. If a deed of gift is a void transaction, no question of cancelling or setting it aside would arise, but it it is only a voidable transaction, *i.e.*, a transaction valid until rescinded, then it is necessary to set it aside before possession of the property can be claimed. Though a gift may have been induced by undue influence, it does not necessarily follow that it was not made "voluntarily" within the meaning of sec. 122, T. P. Act,. It being only voidable and not void, time under Art. 91 runs from the date of the knowledge, *i.e.*, date of the document, and not from the dare of removal of the undue influence . 72. I.A. 21=I.L.R. (1945) Bom. 440=49 C.W.N. 303=58 L.W. 176=1945 A.L.J. 280=1945 P.C. 54=(1945) 1 M.L.J. 253 (P.C.). The instrument to be cancelled or set aside which is referred to in Art. 91 is that instrument which the plaintiff himself has actually asked to have cancelled or set aisde and not one which he ought to have set aside. 1940 Rang.L.R. 35=1939 R. 278. A party cannot impeach the decree incorporating an award unless he can show that a suit to set aside the award was brought within the period prescribed by Art. 91. 100 I.C. 596=1927 L. 172. Where a decree is binding, a suit must be brought to set it aside within time. 4 P. 510=1925 P. 625. Article is inapplicable to reversioner suing to enforce his rights after the death of the widow who has alienated family property. 40 B. 51=30 I.C. 909; 19 B. 809; 33 B. 88; 1929 L. 816. Where the alienation was by a Hindu widow of an unrecognized portion of a *bhag* and

the reversioner sued to set aside the same after the lifetime of the widow. *Held*, that the alienation being void *ab initio*, limitation commenced from the date of the sale-deed and the suit was barred whether Art. 91 or Art. 120 applied to the case. 32 Bom.L.R. 1013=1930 B. 545. An adopted son suing to set aside an alienation made by the deceased widow before adoption is in the position of reversioner. 48 B. 654=1925 B. 9. Art. 91 inapplicable to an alienation by an unauthorised person attacked by the successor in office of a mahant of religious institution. 1929 L. 816. Also to a suit for declaration. and injunction by plaintiff alleging that the settlement deed under which the defendant claimed was sham and fictitious. 1929 M. 478. *See also* 1939 A.L.J. 389=1939 A.W.R. (H.C.) 400: I.L.R. (1940) L. 546=1939 L. 544; 140 I.C. 709=1933 O. 72 (suit for possession on the ground that a deed of mortgage in respect of suit properties was a fictitious and sham transaction). If a person executes an instrument without authority to do so, plaintiff need not sue to set it aside, but may treat it as of no effect. 24 C. 77; 14 M. 26; 32 A. 392=7 A.L.J. 387; 16 A. 73. Article inapplicable to suit to set aside alienation by a coparcener. 13 I.C. 547. Suit by junior members of Malabar tarwad to recover possession of property improperly alienated by Karnavan is not governed by this article. 46 M.L.J. 340=1924 M. 607. *See also* 27 M.L.J. 60 (alienation by *ejaman* of an Aliasanthana family). Alienation by an unauthorised guardian is void and need not be set aside. 83 P.R. 1916=33 I.C. 643; 38 M. 1125=27 M.L.J. 285; 26 I.C. 813=10 N.L.R. 133. Art. 91 does not apply to a suit to set aside the sale of property belonging to a minor by his *de facto* guardian. *See also* 34 C.W.N. 642=1930 C. 748 (suit to avoid lease). 99 I.C. 1050=1927 N. 145. Suit to set aside a wrongful lease by agent of the principal's property is governed by this article. 12 I.C. 49=114 P.W. R. 1911. Suit for declaration that a mortgage deed executed by plaintiff was without consideration and ineffectual to confer any right on defendant is governed by this article. 37 A. 640. So also suit to set aside sale on ground of undue influence. 1921 M. 394=41 M.L.J. 474=1938 B. 97; 39 Bom.L.R. 1233;=1938 B. 97; 43 I.C. 164= 1917 M.W.N. 906; 38 M. 321=24 M.L.J. 592; 1938 R. 264; 1940 P. 201; 1931 O. 34 (misrepresentation as to the real nature of the deed); 1938 A.L.J. 502=1938 A. 451. The time begins to run from the discovery by the plaintiff of the true nature of the deed which he had signed, and not from the date when he escaped from the influence by which according to the plaintiff, he was dominated. [15 C. 58 (P.C., Ref.] 61 I.A. 224=9 Luck. 178=1934 P.C. 130=67 M.L. J. 7 (P.C.). Suit to set aside gift deed executed under undue influence—Limitation is three years from the date when the true facts became known to the plaintiff. 7 O.W.N. 1129=1931 O. 34; 1932 A. 63; 106 I.C. 903= 1927 O. 629. The burden of proof in on the defendant to show that the plaintiff had clear and definite knowledge of the true facts. 1939 A. 348. Suit for cancellation of document and suit for declaring document to be null and void distinguished— Latter class of suits is governed by Art. 120 and not by Art. 91. *See* 50 All. 510=1928 A. 267. Article is inapplicable to void documents, the cancellation of which need not be claimed, and is not specifically claimed. 42 B. 638=47 I.C. 581 (F.B.); 33 I.C. 441 =17 Bom.L.R. 1137 (N.); 26 C.W.N. 517= 69 I.C. 476=1921 I. 131; 26 C.W.N. 479= 1921 C. 786; 23 C.W.N. 93=49 I.C. 76; 65 I.C. 224; 39 M. 456=28 M.L.J. 571=29 I.C. 1. Suit by vendee for declaration that the sale-deed is either void or voidable at his instance and for return of purchase money falls under this article and time runs when he comes to know of the alleged defects in vendor's title. 1930 S. 66. Article has been held to apply to a suit for declaration of invalidity of a registered adoption deed. 45 A. 169=20 A.L.J. 945. Where there exists a document which, if valid and binding on a party, would defeat his right to recover possession of any property, he must sue under Art. 91 for its cancellation. 38 B. 449=22 I.C. 195. Art. 91 can have no application where the deed which the plaintiff challenges is one which was not executed by him or by one under whom he claims and where it is absolutely immaterial to the plaintiff whether it is cancelled or not. But it does apply to a case in which it is not possible to the plaintiff to get any relief until the instrument is set aside. In other words, if the instrument is binding upon the plaintiff, then, even though the plaint may have been made to look as much like a suit for recovery of lands as possible, the plaintiff in order to get any such relief must have the instrument cancelled or at any rate have a declaration of its invalidity as against him. 37 C.W.N. 1141=1933 C. 812; *see also* 1934 A.L.J. 817=1934 A. 507. In a suit for recovery of possession of land to which the plaintiff claimed to be entitled by inheritance and which had been transferred to the defendant by the deceased owner by means of fictitious sale-deed, *held*, that the property having been found to be non-ancestral and to be the self-acquired property of the last owner, it was necessary for the plaintiff to obtain a cancellation of the sale-deed in favour of the defendant and that Art. 91 applied to the suit, even though the main prayer in the suit was a decree for possession of the land. 34 P.L.R. 412=1933 L. 399. Where a guardian sells immovable property belonging to a minor without the sanction of the Court and subsequently executes a second sale with the permission of the Court, the latter transferee can sue for possession outright and need not expressly sue to have the first sale set aside. To such a case Art. 120 and not Art. 91 will apply. 34 C.W.N. 948. *See also* 1936 L. 996. Under Art. 91, the time for setting aside a settlement deed induced by undue influence runs

Description of suit.	Period of limitation.	Time from which period begins to run.
92. To declare the forgery of an instrument issued or registered.	[1][Three years] ..	When the issue or registration becomes known to the plaintiff.
93. To declare the forgery of an instrument attempted to be enforced against the plaintiff.	[1][Three years] ..	The date of the attempt.
94. For property which the plaintiff has conveyed while insane.	[1][Three years] ..	When the plaintiff is restored to sanity, and has knowledge of the conveyance.

LEG. REF.

[1] Substituted by Act XI of 1923, sec. 2 and Sch. I, for "Ditto".

from the date when the facts entitling the plaintiff to have the instrument cancelled or set aside became known to the plaintiff, and not from the date of the removal of the undue influence. I.L.R. (1946) Nag. 433=1946 N.L.J. 406=1946 N. 377. A suit by a creditor to declare the invalidity as against him of a fraudulent transfer executed by his debtor is not governed by Art. 91, but is governed by Art. 120. 8 O.W.N. 593=1931 O. 333=7 Luck. 131.

ARTS. 91 AND 120.—A suit for a declaration that a mortgage-deed was without consideration and was null and void and ineffectual, and that no charge had been created thereunder on the property included in the said deed, is governed by Art. 120 and not Art. 91. I.L.R. (1945) All. 494=1945 All. 367. Art. 120, and not Art. 91, governs a suit by a creditor under sec. 53, T. P. Act, for a declaration that an alienation by his debtor was effected with intent to defeat or delay him and other creditors and that therefore it is not binding on the plaintiff and the other creditors of the defendant. The starting point of limitation is the date on which the plaintiff decides to exercise his option of avoiding the transfer. 46 Bom.L.R. 613=A.I.R. 1944 Bom. 267.

ARTS. 91 AND 142.—There is a wide difference between an instrument which is voidable and one which is void from the beginning. In the former the right under the contract continues until it is avoided and therefore restoration of property handed over in pursuance of it cannot be claimed until the instrument is avoided either by the act of parties or through the Court. In the latter no legal contract ever came into being and so the rights of the parties are determined independently of the deed. There is no need to avoid or cancel that which never existed in the eye of the law and so the substantial relief claimed would not be governed by Art. 91, nor can the mere addition of an ancillary relief for cancellation which need never have been claimed make any difference. These observations apply equally whether the transaction is embodied in one instrument or two. If the legal parts can be separated from the illegal, then the relief of restitution in respect of the bad part is not governed by Art. 91. If they cannot, even then Art. 91 would not apply, for the only difference is that the whole would be bad and so void *ab initio* instead of only a part; nor can the fact that the other side can elect in such a case to make restitution in respect of the bad and keep the good without altering the consideration make any difference. It is Art. 142 that applies to such a case. I.L.R. (1939) N. 1=1938 N. 335 (F.B.). *See also* 20 P.L.T. 957=1940 P. 201; 19 P.L.T. 362=1938 P. 69. In a suit where there is not only a prayer for cancellation of a document, as for example, a hibanama, sought to be avoided but also for confirmation of possession of the properties covered by the deed, the position must be recognised that if the defendant is put in possession by virtue of an instrument which is not void on the face of it, a suit for possession even without a prayer for cancellation of the document would not take it out of the operation of Art. 91. In such a case, the *prima facie* title remains with the defendant, and until that title is defeated or displaced, the possession of the defendant cannot be disturbed. Art. 142 is inapplicable to such a case. 65 C.L.J. 34=1937 C. 500.

ART. 92.—Art. 92 applies to a suit for a declaration that an alleged deed of relinquishment is a forgery. 102 I.C. 287=1927 A. 826. Will—Suit to declare not genuine and invalid on the ground of testator's minority and absence of sound disposing state of mind—Limitation applicable. *See* 52 L.W. 440=A.I.R. 1941 M. 179.

ART. 93: ATTEMPT TO ENFORCE includes the institution of proceedings in which the genuineness of the instrument is directly put in issue and to which the person against whom it is sought to be enforced is a necessary party. 1921 M. 545=40 M.L.J. 348; 32 I.C. 99 (M.). An attempt to register a document is not an attempt to enforce it. 40 B. 22=17 Bom.L.R. 635; 32 I.C. 99 (M.) Attempt to have a lease recorded under the Record-of-rights Act is not an attempt to enforce the lease, but an attempt to recover rent under the lease is. 40 B. 22=30 I.C. 399. Mere mention of will in written statement in a previous suit is not an attempt within this article. 62 I.C. 531=40 M.L.J. 348; nor mention in the petition for succession certificate by a widow. 32 I.C. 99 (M.). A party challenging a document as forged is not bound to set it aside by suit. (1916) 2 M.W.N. 325=37 I.C. 642.

Description of suit.	Period of limitation.	Time from which period begins to run.
95. To set aside a decree obtained by fraud, or for other relief on the ground of fraud.	[1][Three years] ..	When the fraud becomes known to the party wronged.

LEG. REF.

[1] Substituted by Act XI of 1923, sec. 2 and Sch. I, for "Ditto".

ART. 95.—The article has no application when, on the face of the plaint, no equitable relief is claimed on the ground of fraud. 37 B. 158=19 I.C. 406. *See also* 25 C. 49; 6 A. 406. Art. 95 applies where the plaintiff has sustained loss or damage on account of the fraud of the defendant. It has no application to a suit for return of bonds lost or acquired by theft, or dishonest misappropriation or conversion. 60 B. 848=38 Bom.L.R. 712=1936 B. 322. The object of the provision is to extend time in favour of the plaintiff where there is fraud. 5 A. 294; 16 B. 1; 30 M. 402. The fraud contemplated by Art. 95 is fraud practised upon a party to the decree or a party to the transaction in which the fraud was committed. A stranger who is intended to be defrauded by it cannot seek to have the decree set aside; all that he can sue for is to have it declared that his interest cannot be affected by such a collusive decree. A suit for such a declaration does not come within the purview of Art. 95, but falls under Art. 120. 45 Bom.L.R. 525=1943 Bom. 283. A decree obtained against a person treating him as a minor while in reality he is a major, is not a nullity. A suit by the defendant to declare that the decree obtained against him wrongly impleading him as a minor, is governed by Art. 95. A suit after three years is clearly barred when the decree challenged is not a nullity. 189 I.C. 535=21 P.L.T. 269. The heirs of the person against whom the fraudulent decree has been obtained, must also sue within the period prescribed by the article. 4 P. 510=1925 P. 625. In a suit under Art. 95 to set aside an *ex parte* decree on the ground of fraud, it is not enough if the plaintiff proves merely that there was no service of summons on him. He must show that the decree was obtained by fraud; he must show that the summons was fraudulently suppressed and by fraud of the plaintiff (in the former suit) he was kept in ignorance of the decree. 60 C.L.J. 120=1935 C. 95. Where a suit is filed to set aside a consent decree in a partition suit on the ground of fraud, Art. 95 applies and limitation runs from the date of the discovery of the fraud. 145 I.C. 777=1933 S. 53. Sale in execution of a fraudulent decree cannot be set aside without setting aside the decree which is not a nullity. 20 C.W.N. 659=33 I.C. 767. 28 M.L.J. 187=16 I.C. 843; 26 C. 326. *See also* 49 I.C. 953; 30 C.W.N. 59=1926 C. 167. Although there may be allegations of fraud where the suit is really one for possession by the auction purchaser, Art. 138 and not this article applies. 167 I.C. 481=1937 P. 331. If a sale is sought to be set aside on the ground of fraud, Art. 95 and not Art. 12 applies. 14 P.L.T. 441 =1933 P. 473. Suit to set aside execution also where the vendor has no title to the holder in concealing encumbrances is governed by this article. 16 I.C. 215 (M.). So also where the vendor has no title in the property sold, suit to set aside sale on the ground of fraud. 19 I.C. 5. Also suit to recover possession of property as shebaits against defendants who were in possession under a certificate of sale under the Public Demands Recovery Act to which the plaintiffs were not parties. 34 C.W.N. 801 =1931 C. 69. So also suit to recover together with interest money advanced on a fraudulent mortgage. 37 I.C. 351. 'Other relief' includes compensation for damages caused by fraud. 27 M. 343. Knowledge of fraud implies definite knowledge and not mere suspicion. 6 A. 406; 17 B. 341 (P. C.). The onus of proving such knowledge before period of limitation is on the defendant. 17 B. 341 (347). *See also* 31 M. 230; 27 A. 540. Where a Mahomedan son, who is not the authorised agent of his father, by mortgaging his father's land holds himself out to be an agent, the limitation for a suit for compensation starts from the date on which the father obtains a decree in a suit for possession of the mortgaged property and not from the date of institution of suit. Though the plaintiff knew that the father repudiated the agency directly he instituted his suit, he was in possession of the land and it was not until a decree was obtained that he suffered any loss. 151 I.C. 58=1934 Pesh. 49. Whether Art. 95 or 115 applies to a suit for compensation against a pretended agent under sec. 235 of the Contract Act, the period of limitation is three years. The date from which limitation starts is the date on which the plaintiff has notice that the implied agency did not exist, but it must be an effective notice. (*Ibid.*)

ARTS. 95 AND 96.—Art. 95 is applicable only when the relief is claimed solely on the ground of fraud. Art. 96 of the Limitation Act is intended to apply only to cases where the plaintiff seeks to be relieved of a mistake committed in the course of contractual transactions. It does not apply to a suit for possession of immovable property. Where a separated member of a Hindu family brings a suit for his share in a part of the family property which he alleges was not included at the prior partition through the fraud of the other mem-

Description of suit.	Period of limitation.	Time from which period begins to run.
96. For relief on the ground of mistake.	[1][Three years] ..	When the mistake becomes known to the plaintiff.
97. For money paid upon an existing consideration with afterwards fails.	[1][Three years] ..	The date of the failure.

LEG. REF.

[2] Substituted by Act XI of 1923, for "Ditto."

bers of the family neither Art. 95 nor Art. 96 would apply. 45 Bom.L.R. 825=A.I.R. 1943 Bom. 419.

ART. 96: SCOPE OF.—*See* 1924 L. 324; 20 B. 511. Article applicable only to cases of mistake. **101 I.C. 62**=1927 C [illegible] *also* 18 L. 623=1938 L. 99; 1936 L. 747; 40 C.W.N. 914=1936 C. 400 (Suit to rectify petition for adjustment of decree). Suit for recovery of excess of cess paid by mistake is governed by this article. 4 P. 448=1925 P. 765. *See also* 1936 L. 747; 1940 B. 252=42 Bom.L.R. 491 (Suit to recover illegal tax levied by Municipality); 1938 L. 338 (Wrong bills sent by mistake for electric current supplied by plaintiff—Suit for balance of current supplied not charged); 1941 M. 742. *See also* 55 L.W. 90=(1942)1 M.L.J. 274. Money paid by mistake—Nature of claim—Banker and customer—Cheques drawn on bank by customer without funds—Suit for money paid on such cheques—Limitation. *See* 1941 P. W.N. 638=1942 P. 201. Execution sale—Subsequent decree in claim suit holding that judgment-debtor had no interest in property sold—Suit by purchaser for purchase-money from decree-holder—Limitation. *See* 1941 M. 742=1941 M.W.N. 484. This article governs suit for refund of excess price paid on account of short delivery. 48 M. 925=1925 M. 1255=49 M.L.J. 228. Mistake in partition. 45 B. 582=61 I.C. 34; 54 M. 883=1931 M. 707=61 M. 883=1931 M. 707=61 M.L.J. 430 (Plaintiff allotted properties belonging to third party suing to reopen the partition and to readjust the shares). But *see* 55 I.C. 422. *See also* 130 I.C. 552=1931 S. 27 (Art. 142 held to apply); where Art. 141 was applied; mistake in lease, 48 I.C. 972; mistake in decree (negligence) not covered by this article. 11 I.C. 537. It is open to the plaintiff or the defendant in a suit to adduce oral evidence in regard to the correct description of the property in a conveyance executed between them and relief in regard thereto may be granted even though a suit for rectification has not been filed and even though a suit is barred by limitation under Art. 96. 47 L.W. 661=1938 M. 589=(1938) 1 M.L.J. 806. *See also* 6 M. 344. Mistake of law—If and when a ground for relief under article—Pure mistake of law—Mistake bearing upon private or special right of party seeking redress—Distinction. 56 M.L.J. 269=1929 M. 177. Goods sold and delivered to one of two brothers trading independently—Other brother debited by mistake—Mistake subsequently discovered—Claim against right person—Held Art. 52 and not Art. 96 applied. 27 S.L.R. 81=1933 S. 32.

ARTS. 96, 97 AND 62.—Suit to recover purchase price paid under void sale—Possession of property delivered to purchaser—Limitation. *See* 47 P.L.R. 122=1945 Lah. 164. Mistake in the sale held in execution—Claim by auction-purchaser for return of the purchase money—Limitation—Starting point. 59 L.W. 523=(1946) 2 M. L.J. 231=1947 M. 90.

ARTS. 96 AND 138.—*See* 1937 P. 331.

ART. 97: APPLICABILITY.—*See* 33 M.L. J. 577=42 I.C. 519. As to distinction between applicability of this article and of articles 115 and 116, *see* 13 P. 192=1934 P 148. Art. 97 which is the proper article to apply with regard to voidable transactions is not inapplicable to cases where the contract was void *ab initio*. There is nothing in the wording of the article which would enable any distinction to be drawn between a void transaction and a voidable one. I. L.R. (1944) Mad. 663=1944 M.W.N. 350=1944 Mad. 211=(1943) 2 M.L.J. 645. This article is applicable to the following suits: Suit for recovery of purchase money where the sale is inoperative and unenforceable, being only of reversionary interest. 45 A. 179=50 I.A. 69=1922 P.C. 403=44 M.L.J. 489 (P.C.); 1943 A.L.W. 360. [But *see* 1933 S. 379; 25 B. 593 (Sale-deed void *ab initio*—Article inapplicable).] Where the vendee is dispossessed by the true owner owing to the defective title of the vendor. 39 M.L.J. 449=60 I.C. 235; 46 M. 40=1923 M. 46=43 M.L.J. 721. *See also* 50 I.C. 815 (M.); 32 I.C. 176=19 M.L.T. 163; 55 I.C. 93; 37 B. 538; 48 M.L.J. 217=1925 M. 749. A purchaser's suit for refund of purchase money owing to vendor failing to make out clear title. 50 A. 95=25 A.L.J. 841=1927 A. 734. *See also* 28 Punj.L.R. 74. Registered sale deed—Vendee put in possession—Lease by him—Lessee dispossessed by vendor—Suit by vendee for declaration of title against vendor and his brother—Sale found binding only as to vendor's share—Subsequent suit by vendee for refund of excess purchase money over half price—Cause of action held started when previous suit was decided. 30 N. L.R. 138=1934 N. 16. *See also* 47 P.L.R. 122=1945 Lah. 164; 18 P. 654=1940 P. 81. Art. 97 applies in the case of a suit

for refund of advance of moneys on mortgages subsequently declared void. 5 R. 283 =54 I.A. 145=1927 P.C. 99=52 M.L.J. 579 (P.C.). Mortgagee obtaining sale of mortgaged property after mortgagor's death from guardian of his minor sons—Sale subsequently set aside—Effect on mortgage—Suit by mortgagee for mortgage-money which was set off as part of purchase money —Limitation—Starting point. 1942 Pat. 247. Where the plaintiff, who has advanced money on a mortgage, repudiates it himself and files a suit for the money paid, such a suit is not a suit for compensation for breach of contract and is governed either by Art. 62 or by Art. 97, according as to whether the contract is void or voidable and not Art. 116. 1933 L. 581. Article applicable to a suit by a mortgagee who could not obtain possession of the mortgaged property by reason of a defect in the mortgagor's title. 55 I.C. 413. *See also* 13 L. 188=1932 L. 382; or by a lessee evicted by a third party, for return of premium. 10 I.C. 486=38 C. 681. Also to suit by the auction-purchaser for recovery of the purchase money where execution sale is declared a nullity for want of any saleable interest in the judgment-debtor. 1922 M.W.N. 561=1923 M. 23. *See also* 1937 O. 286; 30 C.W.N. 79=1926 C. 297. [But in 46 C. 670=36 M.L.J. 557 (P.C.), it has been held that a suit for recovery of purchase money by the purchaser at a *patni* sale subsequently set aside in a suit, falls under Art. 62.] A suit for recovery of earnest money on the dismissal of a suit for specific performance of contract of sale is governed by this article. 45 A. 378=21 A. L.J. 265=1923 A. 231. *See also* 18 Bom. L.R. 806=41 B. 31; 1937 A.L.J. 812=1937 A. 689. But *see* 4 Bur.L.J. 160=1925 R. 373. A suit for reimbursement by the purchaser of certain property of the amount paid for the redemption of an undisclosed mortgage, after the purchase in his favour was found to be sham and nominal, is not governed by Art. 97. It cannot be said to be "for money paid upon an existing consideration which afterwards fails" because *ex hypothesi* no consideration was ever intended for the transaction. (15 I.A. 211; 28 A. 466 and 28 A. 618, Dist.) 32 Bom. L.R. 1376=1931 B. 39. *See also* 197 I.C. 498=1942 P. 247. Relinquishment of rights —Money paid in consideration—Failure of deed to take effect—Claim for refund of money paid—Limitation Act, Arts. 62 or 97 applicable and not Art. 116. 1930 A. 785. *See also* I.L.R. (1941) Kar. 495=1942 S. 37. Where the representative of the mortgagor paid the mortgage amount to the representative of the mortgagee and was subsequently compelled to pay it once over to a donee from the mortgagee, a suit by him to the former with interest and expenses of prior litigation would be governed by Art. 97 and not Art. 62. The suit for compensation would even fall under Art. 116 as there was a stipulation for reimbursement in the redemption deed executed by the representative of the mortgagee, in case any difficulty was experienced in obtaining possession. 32 P.L.R. 457=13 L. 1=1931 L. 448. *See also* 1941 Pesh. 41; 1941 Pesh. 57=I.L.R. 1944 M. 663=1944 M. 211=(1943) 2 M.L.J. 645 (Suit by purchaser to enforce indemnity bond). No distinction between void and voidable contracts. Plaintiff wrongly paying defendants to redeem mortgage—Third person obtaining foreclosure decree—Plaintiff paying him also to redeem mortgage—Suit to recover money wrongfully paid to defendants —*Held*, governed by this article and time began to run from date of foreclosure decree. 11 Luck. 140=1935 O. 378. A suit for refund of the purchase money paid under a registered instrument on the ground that the vendor had no title and there was no consideration is governed by Art. 116 and time begins to run only from the date of knowledge of vendor's want of title or the purchaser is dispossessed of the property in consequence thereof. It is not governed by Art. 62 or Art. 97 (45 B. 955; 8 P. 432; 118 I.C. 203, Foll.). 133 I.C. 76 =1931 S. 141. Where it was declared that certain property could not be sold in execution of a decree obtained by the plaintiff on foot of his mortgage deed and the decree became thereby infructuous and a suit for a simple money decree having been barred on that date, the plaintiff sued for damages for breach of a covenant for indemnity contained in the mortgage deed: *Held*, that the suit was governed by Art. 116 and not by Art. 62 or 97. *Held*, further that the suit was in time whether it was reckoned from the date of the objection to the plaintiff's execution or the date of the decree nullifying the decree in favour of the plaintiff. 1932 A.L.J. 317=1932 A. 358. On 24th February, 1926, the plaintiff paid the receiver certain amount as part of the purchase money of the estate of the insolvent. The Insolvency Court having refused to sanction the transfer, the purchaser applied in October, 1929, for a refund of the amount paid by him, and the Court dismissed his application, and he thereupon sued in May, 1931, for recovery of the amount. Meanwhile the property had been sold in auction in September, 1927. *Held*, that the suit was governed by Art. 97 and time ran from the date of failure of consideration, namely, the date on which the property was sold to another person. 1934 A. L.J. 864=1934 A. 547.

STARTING OF LIMITATION.—As to what is date of failure of consideration, *see* 31 A. 68; 24 M. 27; 38 M. 887; 11 B. 475; 25 A. 618; 19 C. 123. Where lender was put in possession of land of the debtor for appropriation of the usufruct towards interest and there was no execution of a mortgage, the suit for money on dispossession of the land commences only from the date of dispossession. 1937 R. 148 (37 B. 938; 25 M. 396; 1927 P.C. 99, Rel. on); 1937 A. 689. Where there was a suit on an existing consideration, time runs from failure of that

suit. 103 I.C. 385=1927 A. 756 [19 C. 123 (P.C.), Foll.] Where vendee is dispossessed under a decree of Court starting point of limitation is not the date of the decree but the date of the actual dispossession. 46 M. 40=1923 M. 46=43 M.L.J. 721; 1927 L. 570. *See also* 10 I.C. 486 (Lessee evicted by suit. 22 B. 783; 26 A. 519. But *see* 1926 C. 297=30 C.W.N. 79). Where a decree-holder omitted to give credit in his execution application to certain amounts received from the judgment-debtor, the payment of which he had certified to the Court and had the house of the judgment-debtor sold in execution and realised far more than the amounts due to him. *Held,* that a suit by the judgment-debtor to recover the excess realised was governed by Art. 115 or 120 and not by Art. 97 and that the starting point of limitation was the date of sale. 140 I.C. 472=1933 L. 112. Where an execution sale is declared a nullity, the starting point is the date of the decree of the first Court declaring the sale to be invalid and not of the appellate Court confirming the decree. 70 I.C. 45=1923 M. 23. *See also* 39 M.L.J. 449=60 I. C. 235; 1928 N. 134. The plaintiff purchased a decree. A suit to have that decree set aside on ground of fraud was decreed by the first Court but was reversed on appeal. The High Court, however, on second appeal restored the decree of the first Court. The plaintiff having sued for refund of the price on the ground of failure of consideration. *Held,* that time began to run from the date of the High Court's decree. 53 A. 914=1931 A. 651. Where a decree is confirmed in appeal, time under Art. 97 runs from the date of the adverse judgment of the first Court. The running of time is not postponed by reason of the filing of the appeal. 39 L.W. 147=1934 M. 224. As to limitation in a suit for refund of purchase money where plaintiff is entitled to sue for specific performance, *see* 1923 R. 87. *See also* 58 C.L.J. 235=1934 C. 148. Where a sale is void *ab initio* and possession is not given to the purchaser, a suit to recover the purchase money would be governed by Art. 62. Where, however, the title is imperfect and possession is not handed over and it is subsequently discovered that the contract of sale became void, Art. 97 would apply to a suit to recover the purchase money, and limitation would start from the time when the purchaser endeavoured to obtain possession and being opposed found himself unable to obtain possession. But where possession has been handed over by the vendor to the vendee the cause of action would not arise till the vendee is dispossessed. 33 Bom.L.R. 1092=55 B. 565. *See also* 118 I. C. 203=1930 S. 12; 14 N.L.J. 125=1932 N. 5 (F.B.). In a suit for refund of purchase money limitation will ordinarily run from the date of the agreement. But there may be special circumstances in which it would not. When there is a misapprehension as to the private rights of the vendor in the property limitation begins when the true nature of those rights is discovered. 144 I. C. 724=1933 N. 244. Once the plaintiff establishes that there was a misrepresentation and that he was kept from knowledge of the defect in title by it, then the burden shifts to the other side. If the question of title has been bound up with a complicated family history, the plaintiff cannot know of the defect in the title with reasonable definiteness, until the Court has finally decided the matter and then the starting point is the date of decision in the appellate Court. 1933 N. 244. Certain occupancy tenants effected a mortgage in favour of one of their landlords. It was, however, set aside as having been brought about without the consent of the other landlords and the mortgagors were formally put in possession. Nevertheless, the mortgagee continued in possession for some time afterwards, and, on the ground that he was on some subsequent date dispossessed, the mortgagee brought a suit for money lent as on a failure of consideration. *Held,* that time began to run from the date when the mortgage was held to be invalid and the mortgagors were put in possession, and not from the date when they were actually dispossessed. 34 P.L.R. 104=1933 L. 83. The plaintiff entered into a contract for the purchase of lands in 1916 but was unable to get possession of some of them. His suit for possession was dismissed in 1921. Within six yeras thereafter, the plaintiff brought the present suit for damages against his vendor for breach of the implied covenant of title. His subsequent suit for damages against vendor is governed by Art. 116 and not Art. 97. 64 M.L.J. 336=1933 M. 126. To a suit for recovery of damages due to breach of covenant as to title, Art. 97 applies and the date at which the party had notice of the defect as to title is the starting point of limitation. 31 Bom.L.R. 658 =1929 B. 361. *See also* 137 I.C. 61=1932 N. 3 (Art. 116 applied). Contract of sale —Due diligence to be used by vendor in applying to the Court for an order for sale Failure by vendor—Subsequent mortgage to another who had it sold in satisfaction thereof—Suit by the original vendee for the return of the deposit money falls under this article. Time begins to run from the date, when the contract became impossible performance or was rescinded or abandoned. 56 C. 455=1929 C. 216. Contract to execute lease—Consideration paid in two instalments on different dates—Breach of contract—Suit for recovery of amounts paid—*Held,* the suit was governed by this article or Art. 115 and that limitation began to run only from breach of agreement which could only be after the second payment by the plaintiff. 155 I.C. 1092=1935 A. 759. Where a lessee failing to get possession of the leased property sued for the return of the advance paid by him, *held,* the breach of the covenant to lease occurred from the commencement of the lease which was the starting point of limitation whether Art. 97 or Art. 116 applied. 138 I.C. 119=1932 M. 255.

Description of suit.	Period of limitation.	Time from which period begins to run.
98. To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust.	[1][Three years] ..	The date of the trustee's death, or if the loss has not then resulted, the date of the loss.
99. For contribution by a party who has paid the whole or more than his share of the amount due under a joint decree, or by a sharer in a joint estate who has paid the whole or more than his share of the amount of revenue due from himself and his co-sharers.	[1][Three years] ..	The date of the payment in excess of the plaintiff's own share.

LEG. REF.

[1] Substituted by Act XI of 1923, sec. 2 and Sch. I, for "Ditto".

ARTS. 97 AND 62.—A suit for the return of the consideration by vendee of mortgagee rights against his vendor on the dismissal of a suit on the mortgage which was found to be without consideration and not binding on the heirs of the executants, is governed by Art. 97 and not by Art. 62 and the starting point is date of dismissal of suit. 1942 A.L.W. 50. *See also* 1942 S. 37=I.L.R. (1941) Kar. 495. A suit for recovery of the purchase price or compensation in a case where possession of the property was delivered to the purchaser under a contract of sale which is subsequently discovered to be void, is governed by Art. 97 and not by Art. 96 or 62, and the *terminus a quo* is the date of dispossession of the purchaser from the property that he purchased. The fact that the contract became void owing to a mistake made by the contracting parties and, therefore, the basis of the suit was mistake committed by the parties, does not make Art. 96 applicable. It is not the basis of a suit, but the relief and the cause of action on which the suit is founded that determine the article of the Limitation Act. Even in cases of void contracts, where actual possession is handed over by the seller to the purchaser for the time being and the enjoyment is in the purchaser, the seller does not hold the money for the purchaser's use in terms of Art. 62. 47 P.L.R. 122=A.I.R. 1945 Lah. 164

ART. 98.—Joint family property not the "general estate" within this article. 35 M. 308. Art. 98 does no more than carry a deceased trustee's liability for breach on to his estate after his death. It does not contemplate any different cause of action. I.L.R. (1940) Nag. 94=1938 N. 30. A suit was brought against a daughter in respect of a breach of trust committed by her father. She was not a trustee, she had not committed any wrong act: the defalcated money was not in her possession; nor was there anything in her hands which could be said to represent it. *Held*, that the suit against her was clearly one to make good the loss occasioned by her father's breach of trust out of his general estate, and Art. 98 would apply. I.L.R. (1940) N. 94=1938 N. 30.

ART. 99.—Art. 99 applies to a suit for contribution in respect of a joint personal decree. It does not apply to a case where the liability is not personal, but attaches to immovable property. Art. 99 therefore does not apply to a suit for contribution in respect of liability attaching to immovable property. 22 Pat. 187=1943 Pat. 305. Suit for reimbursement of money realized by coercive process is governed by this article. 26 C.W.N. 340=1921 C. 814. *See also* 22 A. L.J. 737=1924 A. 843 (money payable by mortgagee under deed, realised from mortgagor). Article applies also to voluntary payments. 57 I.C. 884=1921 C. 814. One co-sharer paying revenue on behalf of another—No charge is created—Suit for contribution governed by Art. 99 and not by Art. 132. 7 P. 613=111 I.C. 84=1928 P. 641. *See also* 44 L.W. 135=1936 M. 782. Art. 99 applies only to a suit for a personal decree under a charge created by sec. 82 of the T. P. Act, but not to a suit to enforce the charge itself. 33 A. 708=8 A.L.J. 854. *See also* 35 C.W.N. 678=1931 C. 493 (Article inapplicable to a suit to enforce a statutory charge under sec. 171, B. T. Act). Comortgagor redeeming a mortgage becomes assignee of the original security and therefore limitation for his suit for contribution is the same as that for suit on the mortgage. 57 I.C. 868=25 C.W.N. 283. 1921 C. 166. *See also* 44 L.W. 135. "The date of payment" is the date of acceptance of deposit of the money by the Court to the credit of the decree-holder. 56 C. 192=1928 C. 361. Where one member of a joint Hindu family pays a certain decree debt after separation and sues the others for contribution, Art. 99 applies and time runs only from the date of payment and not the date when the debt was incurred. 1931 A.L.J. 651=1931 A. 652.

A and *B* were mortgagees of a share each. Both sub-mortgaged the entire share to *C*. *A* paid to *C* his share of the sub-mortgaged debt, but *B* defaulted. *C* obtained a joint decree against *A* and *B* and had both their

Description of suit.	Period of limitation.	Time from which period begins to run.
100. By a co-trustee to enforce aginst the estatate of a deceased trustee a claim for contribution.	[1][Three years] ..	When the right to contribution accrues.
101 For a seaman's wages.	[1][Three years] ..	The end of the voyage during wich the wages are earned.
102. For wages not otherwise expressly provided for by this schedule	[1][Three years] ..	When the wages accrue due.
103. By a Muhammadan for exigible dower (*mu'wajjal*).	[1][Three years] ..	When the dower is demanded and refused or (where during the continunce of the marriage, no such demand has been made) when the marriage is dissolved by death or divorce.

LEG. REF.

[1] Substituted by Act XI of 1923, sec. 2 and Sch. I, for "Ditto".

mortgagee rights sold in execution, on 21-10-1927 and got possession of the same on 19-1-1928. *A* then filed suit against *B* on 9-1-1931 for the recovery of his share of the mortgage amount with interest, and the suit was framed as one for contribution. *Held*, the suit was barred by time, that Art. 120 did not apply, that even if Art. 99 applied, limitation ran from date of sale and not date of dispossession and that sec. 69, Contract Act, had no application as payment was held not to have been made. 10 O.W.N. 919=1933 O. 478.

ART. 102: 'WAGES'—MEANING OF.—*See* 39 A. 81=36 I.C. 871. The term "wages in Art. 102 of the Limitation Act is not used in the restricted sense of remuneration for mechanical or manual labour, but is used in the larger sense of remuneration for service of an employee. Consequently this article governs a suit for remuneration for any service which is not provided for specifically in other articles, Neither Art, 115 nor Art. 120 can be applied to such a case. 48 C.W.N. 317=1944 Cal. 302 (1). Suit for commission by broker is not suit for wage *ibid*. Suit by a *bisardar* for wages is governed by this article. 26 O.C. 327=1924 O. 189. Suit for wages of cook employed in hotel, *see* (1937) 1 M.L.J. 329=37 M. 342. As to suit for wages by weighman in a shop, *see* 90 I.C. 120=48 A. 164=1926 A. 172; also suit for wages by person employed as salesman 1935 R. 235. Art. 102 applies only to suits for wages as such brought by the person entitled to the wages. A suit brought by person not entitled to the wages cannot therefore be regarded as a suit within the meaning of the article. 7 O.W.N. 760=1930 O. 420. A village carpenter is an artisan within meanof Art. 7 and a suit for wages by him is governed by Art. 7 and not by Art. 102 or Art. 56. 152 I.C. 885=1934 N. 260. Applicability—Shahna employed to watch crops attached in execution—Suit for wages —Limitation. 1935 A.L.J. 78=1935 A. 102. In the case of monthly wages, the wages accrue and become due in law on the final day of the month, and the period of limitation for recovery of arrears of monthly wages runs under Art. 102 from that date and not from the date of termination of service. 154 I.C. 713=1935 A. 716.

CLAIM BY ARCHAKA AGAINST TRUSTEE FOR 'TASTIK' ALLOWANCE.—The relationship of master and servant subsists between the trustee of a temple and the hereditory archaka attached to that temple. A suit by an archaka against the trustee for the emoluments of his office is a suit for wages coming under Art. 102. The allowance called 'tastik' paid by the trustee to his archaka, although paid out of Government revenue, is yet paid only in lieu of wages for the services rendered to the temple. So, a claim by an archaka to "tastik" allowance is governed by Art. 102. 1936 M. 149=70 M.L.J. 220: 1935 M. 128=68 M.L.J. 132. *See also* 41 M. 528.

SUIT FOR MONEY DUE FROM DISMISSED EMPLOYEE.—Defendant claiming set-off of arrears of pay—Plaint filed within three years of dismissal admitting arrears—Defendant's claim for arrears not barred. 1936 C. 277=167 I.C. 265.

Where a servant of the District Board is dismissed but is subsequently reinstated and a sum is agreed to be paid to him in respect of the intervening period, a suit brought to recover that sum is not governed by Art. 102. 1943 A.L.W. 513.

ART. 103.—Suit for prompt dower. *See* 78 I.C. 106=1925 O. 267. Under Art. 103, time begins to run not from the date of demand of the dower but from the date of the refusal. I.L.R. 1937 A. 153=1937 A. 39. *See also* 1937 L. 270. Article applicable to suits for dower on the basis of registered instruments. *See* 50 C. 253=36 C.L.J. 370. Art. 103 is not applcable to a suit on a mortgage bond executed for the amount of dower. 99 I.C. 553=1927 A. 268. Demand must be express and unambiguous. 2 Beng.L.R. 306; 24 W.R. 163 (P.C.); 142 I C. 833=1933 Pesh. 31.

ARTS. 103 AND 104.—Under Mahomedan Law a divorce by means of a written deed

Description of suit.	Period of limitation.	Time from which period begins to run.
104. By a Muhammadan for deferred dower (*mu'wajjal*).	[1][Three years] ..	When the marriage is dissolved by death or divorce.
105. By a mortgagor after the mortgage has been satisfied to recover surplus collections received by the mortgagee.	[1][Three years] ..	When the mortgagor reenters on the mortgaged property.
106. For an account and a share of the profits of a dissolved partnership.	[1][Three years] ..	The date of dissolution.

LEG. REF.

[1] Substituted by Act XI of 1923, S. 2 and Sch. I, for "Ditto.",

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is valid if communicated to the wife. Hence, time under Arts. 103 and 104, for a suit for dower runs from the date of communication of divorce to the wife. The onus about the date of communication however in such a suit is on the plaintiff. 1941 L. 166.

ART. 104.—It is a part of the Mahomedan Law that, so far as a claim for dower is concerned, the marriage is dissolved only when it comes to the wife's notice, and there is nothing in Art. 104 against that rule. So a suit brought by a Mahomedan wife for deferred dower is in time, if within three years from the date when the talak pronounced in her absence by her husband was communicated to her, though it may be more than three years from the date of the pronouncement. 133 I.C. 375 =1931 M. 647. Where a Mahomedan widow in possession in lieu of dower is dispossessed forcibly, limitation for her suit for the balance of her dower debt runs from such dispossession and not from the death of the husband. 33 A. 569=8 A.L. J. 578. Divorce by husband—Talaknama offering to pay deferred dower in instal ments—Suit by wife after three years—If barred—Decree for instalments not barred —Power of Court to grant. 1936 C. 627. Under the Mahomedan Law a divorce effected by a deed is valid from the time of its execution; so far as a claim for dower is concerned limitation does not begin to run against the wife until the fact of divorce is communicated to her. If the wife does not know of her right to claim dower by reason of the fraudulent conduct of the husband (withholding all knowledge of the deed of divorce), time will only begin to run against the wife when she knows of the fraud. 45 P.L.R. 231=1943 Lah. 215.

ART. 105.—As to applicability, *see* 38 I. C. 610=20 O.C. 25; 32 I.C. 729=2 O.L.J. 620 (Recovery of mesne profits and interest). Article has no application where the mortgagor recovers property by a redemption suit. 30 A. 225. *See also* 10 I.C. 402; 26 C.W.N. 123=1922 C. 189.

ART. 106.—*See* 36 Bom.L.R. 106= 1934 B. 491. Art. 106 contemplates suits between partners *inter se* and does not apply to an action by partner against the sub-partner. Such an action is governed by Art. 120. 57 M. 347=1934 M. 12=65 M. L.J. 789. A suit for a declaration that certain property attached in execution of a decree against one of the partners as belonging solely to him, is not solely owned by him, and that plaintiff has got a share in it, is not a suit for account or for share of profits of a dissolved partnership and is not governed by Art. 106. 1933 A. 926. Art. 106 only applies in the case of a partnership that has been already dissolved. 6 R. 198=1928 R. 160; 138 I.C. 375=1932 L. 519. Where a firm is not dissolved, Art. 106 does not apply but only Art. 120. 66 I.C. 811=25 C.W.N. 847=1921 C. 538. *See also* 37 L.W. 288=144 I.C. 573=1933 M. 353; 48 I.C. 89 (M.)=37 M.L.J. 353; 6 R. 198=1928 R. 160. There is no scope for the application of Art. 106 where admittedly a memorandum has been drawn up on the dissolution of a partnership, embodying the settlement between the parties as to their respective rights on settlement of the accounts of the partnership. 1938 M. 133=(1937) 2 M.L.J. 511. Where a partnership is dissolved on the death of a partner, and it is sought to make the sons of the partner liable for debts due from him as a member of the partnership, a suit for recovery of the debts is governed by Art. 106, and must be instituted within three years of the death of the partner. 1936 L. 514=167 I.C. 759. A suit by one partner for partnership accounts (without a prayer for dissolution of partnership) based on an express agreement between the partners to render accounts and to distribute the profits annually is governed by Art. 120 and not Art. 89 or Art. 106 or Art. 116. 29 N.L.R. 34=1933 N. 127. A suit instituted for rendition of accounts of the moneys realized as per agreement entered into by partners after dissolution of partnership was held to be governed by Art. 89 and not by Art. 106 of the Act. 134 I.C. 527=1931 L. 300. The right of the legal representative of a deceased partner is not a right to a share of the profits of a dissolved partnership within the meaning of Art. 106, but is a right accruing to him by the subsequent dealing with the assets belonging to the deceased partner and Art. 106 does not apply. 45 C.W.N. 1065. The business of a partnership formed for running a chit fund, with the partnership as the stake-

Description of suit.	Period of limitation.	Time from which period begins to run.
107. By the manager of a joint estate of an undivided family for contribution in respect of a payment made by him on account of the estate.	[1][Three years] ..	The date of the payment.
108. By a lessor for the value of trees cut down by his lessee contrary to the terms of the lease.	[1][Three years] ..	When the trees are cut down.
109. For the profits of immovable property belonging to the plaintiff which have been wrongfully received by the defendant.	[1][Three years] ..	When the profits are received.

LEG. REF.

1 Substituted by Act XI of 1923, sec. 2 and Sch. I, for "Ditto".

holder, does not cease or terminate with the expiry of the chit period or earlier if the auction of chits every month comes to an end earlier for other reasons. Accordingly for a suit for dissolution and accounts of such a partnership time will not begin to run until all the assets of the partnership are realised and the liabilities paid, when alone the business can be said to come to end. 54 L.W. 355=(1941) 2 M.L.J. 490=1942 Mad. 104. Cessation of annual accounts and rendering of final account showing division of capital and revenue if constitutes dissolution of partnership. *See* 36 M. 185=25 M.L.J. 128 (P.C.). As to time of dissolution, *see also* 42 I.C. 459=162 P.W.R. 1917; 32 I.C. 853=49 P.W.R. 1916. Even after business of the partnership is stopped, partnership can continue for purpose of realisation of assets, and limitation for a suit for accounts begins from the date of the final dissolution. 143 I.C. 900=1933 S. 121. Death of a partner effects dissolution. 7 N.L.J. 195=1924 N. 263. *See also* 57 M. 378=1934 M. 162=66 M.L.J. 625. Death of partner—Continuance of business by survivors and son of deceased partner in old firm name—Use of old premise and old account books—Suit for accounts—Limitation. 153 I.C. 969=1935 L. 209. As to the effect of contract to continue partnership on death of a partner, *see* 1922 L. 343; 101 P.R. 1914=27 I.C. 69; 1924 M. 508=46 M.L.J. 503. Where one of the divided members of a Hindu family running a business in partnership after partition, puts an end to the partnership, there is a dissolution and a suit by such member is governed by this article. 1921 A. 411. *See also* 1939 A. 217. So also where a partnership is already dissolved and a suit is for its winding up. 25 M. 149. Also suit for plaintiff's share of partnership property purchased out of the partnership funds. 30 A. 279=5 A.L.J. 278. Also a suit by the heirs of one of two brothers who carried on joint business for an account and a share of the profits. 38 M. 1099=32 I.C. 1002. Also suit for declaration that plaintiff retired from partnership on a certain date, that the partnership was dissolved so far as he was concerned and for accounts and share of profits due to him. 22 C.W.N. 104=43 I.C. 893. Also suit for price of article delivered to a partner during the course of partnership. 10 I.C. 250. But if the plaintiff alleges such receipt after dissolution, suit to recover share within three years of such receipt is not barred, though a suit for accounts might be barred. *See* 6 B. 628; 20 B. 15; 28 M. 344; 12 B.H.C. 97. But *see* 97 P.R. 1910; 34 B. 515=11 Bom.L.R. 1354, disapproving 6 B. 628. A suit by an expelled partner for accounts or for dissolution and a share in the profits is governed by Art. 120 and not by Art. 106. 120 I.C. 613=1930 L. 378. Suit for accounts of partnership—Decree—Amount found due to *ex parte* defendant—Suit by latter to recover—Limitation. *Held*, that the claim was not analogous to one arising out of an adjustment of partnership accounts; that the suit did not involve or require the kind of accounts taking usually directed in a case of the ordinary accounting kind; and that the suit was therefore not governed by Art. 106. 40 L.W. 792=1934 M. 665=67 M.L.J. 413. Joint family business—Partition of part of properties of family—Business still carried on in common for sometime—Outstandings collected by branches and retained—Suit for partition of undivided properties and for accounts of the collections—Art. 120 and not this article applies. 45 L.W. 749=1937 M. 599.

ART. 107.—Time runs from the date on which the manager expends the money for family purposes. 20 C. 18. A suit for contribution by a member of a joint family who pays a decree debt after separation is governed by Art. 99 and not this article. *See* 1931 A. 652.

ART. 108.—Applicability. *See* 25 I.C. 704=27 M.L.J. 266.

ART. 109.—The words "wrongfully received" include receipts under a claim or title that cannot be legally substantiated. 2 L.W. 169=28 I.C. 85; 26 C.W.N. 386=1922 C. 235. As to the meaning of the words "wrongfully received", *see* 43 L.W. 706=1936 M. 654. *See also* 1939 B. 365. They do not import bad faith on the part of the defendant. 10 W.R. 486. Receipt of

Description of suit.	Period of limitation.	Time from which period begins to run.
110. For arrears of rent.	[1][Three years] ..	When the arrears become due.

LEG. REF.

[1] Substituted by Act XI of 1923, sec. 2 and Sch. I, for "Ditto".

rents and profits by one of several tenants-in-common on behalf of all cannot be said to be wrongful. 45 M. 648 (F.B.)=1922 M. 150=42 M.L.J. 507; 131 I.C. 511=1931 R. 150. *See also* 1933 L. 951; 1938 R. 416. Advance collection of rent, if wrongful receipt. *See* 16 P. 184=18 P.L.T. 162. Suit for share of profits—Suit by members of joint family against purchaser of another member's interest in property—Inapplicability. 41 L.W. 138=68 M.L.J. 487. *See also* 1941 N.L.J. 184=1941 N. 181 (Suit for profits against person entrusted with property for safe custody).

ILLUSTRATIVE CASES.—A suit for recovery of profits by a person who was dispossessed under a decree, and who was subsequently restored to possession, the decree being reversed in appeal is governed by this article. 28 I.C. 85=2 L.W. 169. *See also* 55 L.W. 264=I.L.R. (1942) M. 562=1942 M. 487=(1942) 1 M.L.J. 472; 22 C.W.N. 263=43 I.C. 781 (Possession obtained by defendant under a patni sale which was subsequently set aside). Also suit by purchaser at a mortgage sale for recovery of profits received by a transferee *pendente lite*. 26 C.W.N. 386=1922 C. 235. [In such cases proceedings to set aside the sale by the judgment-debtor do not operate to suspend limitation. 89 I.C. 1000=99 [illegible] 973=1926 C. 65.] *See also* I.L.R. (1937) A. 628=1937 A. 481. Also suit for mesne profits by usufructuary mortgagee against mortgagor. 39 A. 200=39 I.C. 663. Under the article mesne profits cannot be claimed for more than three years prior to suit. 26 I.C. 890=19 C.W.N. 1167; 22 C.W.N. 263=43 I.C. 781; 13 I.C. 791 (M.); 14 I.C. 801 (Bur.); 10 C. 785 (P.C.). Application by Official Assignee for mesne profits from mortgagee whose mortgage has been annulled. 71 M.L.J. 289. 59 Mad. 1020=1936 M. 778. Claim for profits wrongfully received by receiver appointed by Court. *See* 50 L.W. 389=43 C.W.N. 897=1939 P.C. 178 (P.C.). Government lands under management of Railway Company—Agreement of license by company for cultivation of special crops for one year—Suit for mesne profits—Limitation. *See* 1936 P. 362. *See also* 32 C. 118; 21 C. 157 (P.C.); 14 M. 328=1 M.L.J. 171; 1925 A. 52. Starting point of limitation is the actual receipt of profits. 24 I.C. 866=10 N.L.R. 76; 35 C. 996; 161 I.C. 461=1936 R. 80; and not date of decision as to question of title of the plaintiff. 146 I.C. 939=1933 L. 615. Under Art. 109 the suit must be brought within three years from the date when the profits were received. The starting point is the date when the profits were received and not the date when the cause of action to recover those profits arose. I.L.R. (1938) B. 107=1938 B. 158. *See also* 1937 A. 481. Three years to be reckoned back from the date of the plaint and not date of application for ascertainment of mesne profits. 68 I.C. 203=2 P.L.T. 648=1921 P. 430.

ARTS. 109 AND 116.—Where a mortgagor covenants to deliver possession to the mortgagee before a certain date and to pay rent at a certain rate till then and fails to do so the mortgagee's suit is governed by Art. 116 and not by Art. 109, and it would be within time if brought within six years from the date fixed for delivering possession when the breach occurred. 6 Luck. 203=1941 O. 1.

ARTS. 109 AND 110.—When an execution sale is set aside even though the purchasers had entered into possession by virtue of a Court sale the profits received, by them would be "wrong fully received" within the meaning of Art. 109. and any suit in respect of it would only be governed by that Article and not by Art. 120. I.L.R. 1942 A. 671=1942 A.L.J. 411=1942 All. 358.

ARTS. 109 AND 120.—Applicability—Person recognised as landlord by Collector under sec. 3 (5) of the Madras Estates Land Act—Receipt of rents and profits—If wrongful—Suit by person ultimately declared by Civil Court to be entitled to estate for accounts of rents and profits—Limitation applicable—Starting point—Final decision by Civil Court—If gives fresh cause of action——Implied contract—Interest—Right to. I.L.R. (1942) Mad. 562=1942 Mad. 487=(1942) 1 M.L.J. 472.

ART. 110: APPLICABILITY.—Where the relationship between the partes is not that of landlord and tenant, the article has no application. 25 B. 556; 13 M.L.J. 248; 18 W.R. 132. Rent is payable within the meaning of this article only when it is ascertained. 36 M. 438. *See also* 12 I.C. 804=7 N.L.R. 169. Suit by assignee for arrears of rent comes within the article. 63 I.C. 424; 1 P.L.J. 506=38 I.C. 102. *See also* 45 C.W.N. 787=I.L.R. (1941) 2 Cal. 335=1942 C. 222. Also suit for *Kattubadi* cess. 161 I.C. 336=43 L.W. 522=1936 M. 147. Also suit for money settled by auction for date and palm trees. 15 P. 626=17 P.L.T. 363=1936 P. 403. *See also* 30 S.L.R. 146=1936 S. 184 (suit for license fee for use of municipal land); suit to recover arrears of royalty and commission is not one for rent within Art. 110. 19 I.C. 865=17 C.L.J. 372. Also suit for miras or customary dues payable to a chatram. 16 M. 305. Suit for rent on a registered lease is governed by Art. 116 and

Description of suit.	Period of limitation.	Time from which period begins to run.
111. By a vendor of immovable property for personal payment of unpaid purchase-money.	[1][Three years] ..	The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance.

LEG. REF.

[1] Substituted by Act XI of 1923 for "Ditto".

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not by Art. 110. 1916 P.C. 182=44 C. 759 =44 I.A. 65=32 M.L.J. 357 (P.C.); 37 B. 656=21 I.C. 315; 1942 P. 83; 133 I.C. 102 =53 C.L.J. 522=1931 C. 790. A suit for arrears of rent based on an unregistered kabuliyat is governed by Art. 110 and not by Art. 115. I.L.R. (1941) 2 C. 335=1942 C. 222. [Decisions in 34 A. 464 and in 1 P.L. J. 504 to the contrary not good law.] Suit for recovery of jodi payable by inamdar to zamindar is governed by this article. 1923 M.W.N. 524=1924 M. 73. Under sec. 46 of the Contract Act, where no time is fixed for the performance of a contract a reasonable time must be allowed for its performance. Where money has to be paid under a contract which does not specify when such money is payable, then the money must be paid within a reasonable time, and limitation for a suit to recover the money would commence to run only after the expiry of such reasonable time. Royalty payable in respect of a coal mine cannot be treated on the same footing as rent, because the amount cannot be possibly ascertained until the raisings of coal have been weighed and checked, etc., 21 P.L.T. 442=1940 P. 609. If a purchaser at a revenue sale annuls an under-tenure under sec. 37 of Act XI of 1859, without having received any rent from the holder of it, he must be taken to have refused to recognise the under-tenure from the date of sale. He is only entitled to damages from him for use and occupation from the date of sale to the date of annulment and to mesne profits for the subsequent period. Obviously, to the claim for none of these periods, Art. 110 would apply, as the claim would not be one "for arrears of rent" within the meaning of this article. The article applicable would be Art. 120. 43 C.W.N. 469=69 C.L.J.. 220=1939 C. 468.

STARTING POINT OF LIMITATION.—Usually arrears of rent become due at the end of each fasli year. But a different time may in certain circumstances be the time from which time begins to run. 46 M. 579=44 M.L.J. 318=1923 M. 461. *See also* 27 M. 143 (P.C.)=14 M.L.J. 1=31 I.A. 17 and 29 M. 553=16 M.L.J. 415 on this point. Thus, where right of landlord and that of tenant were vested in the same person, time begins to run only from the date when they vest in different persons. 46 M. 579=44 M.L.J. 318=1923 M. 461. Where a date is fixed when the rent would fall due, time runs from that date. 37 M. 540=16 I.C. 934. *See also* 22 M.L.J. 451=15 I.C. 393; 1 P.L. J. 506=38 I.C. 102; 1931 A. 51=1930 A.L. J. 1490=53 A. 218.

ART. 111.—A suit to enforce the vendor's lien for the unpaid purchase-money is governed by Art. 132 and not by this article. 29 M. 305 (F.B.); overruling 21 M. 141 and 24 M. 233. *See also* 22 B. 846; 18 B. 48; 2 A. 454; 30 A. 172=5 A.L.J. 243. Article is not applicable to a suit to recover amount due under compromise in a suit for partition. 1928 L. 662; nor to a suit by the vendor to recover unpaid purchase-money which the vendee had failed to pay to a creditor of the vendor in accordance with his undertaking. 1931 A.L.J. 985= 1931 A. 419; 1937 A.L.J. 279=1935 A. 411 =57 A. 797. *See also* 15 P. 753=1937 P. 44. Art. 111 governs suits for unpaid purchase money payable to or to the order of the vendor under the agreement to sell and is independent of rights arising by the deed of sale. When the agreement is embodied in the registered sale deed, a suit for compensation for breach of contract is governed by Art. 116. 56 M. 724=1933 M. 424=64 M.L.J. 526. *See also* 15 P. 753= 166 I.C. 599=1937 P. 44. Art. 111 does not apply to a case where no time was fixed for completing the sale and the purchase-money is not payable till some date after conveyance of the property. Where the purchase money or a substantial portion of it was not payable until one year after the conveyance of the property and no time was fixed for completing the sale. *Held*, Art. 116 did not apply. 1934 L. 296 (1). Vendor and purchaser—Amount kept with vendee to pay previous mortgage—Surplus to be paid to vendor—Claim for surplus. *Held*, that Art. 111 was not applicable to the case but Art. 116 was applicable and the period would commence from the date of the breach, *i.e.*, when for the first time in the suit instituted by the vendee for redemption, the Court of first instance would find that smaller sum than the amount left with the vendee was due. 10 L. 26=11 O.W.N. 691=1934 O. 240. Registered sale—Portion of purchase-money retained by vendee—Contract of indemnity—Starting point of limitation. *Held*, that it was governed not by Art. 111 but by Art. 116; the *terminus a quo* was not the date of the execution of the sale-deed, but the date on which the contract was deemed to have been broken, this date being either when there was a repudiation of the liability under it or when the contract had become impossible of performance on account of the vendor's debt having been satisfied.

Description of suit.	Period of limitation.	Time from which period begins to run.
112. For a call by a company registered under any Statute or Act.	[1][Three years] ..	When the call is payable.
113. For specific performance of a contract,	[Three years] ..	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused

LEG. REF.

1 Substituted by Act XI of 1923 for "Ditto".

(2 L. 316; 55 B. 505; 8 P. 860, Foll.) 14 L. 646=1933 P. 793. *See also* I.L.R. (1938) N. 45=1937 N. 246. Sale by guardian—Money left with vendee to be paid to two minors on attaining majority—Suit by such guardian as reversioner for money—Limitation governed by Art. 120 and not by Art. 111. 1933 L. 860.

ARTS. 111, 116 AND 83.—Registered sale-deed—Consideration left with vendee for payment to vendor's creditor for debt due under mortgage and hand-note—Vendee committing default—Hand-note paid by vendor—Suit by vendor for unpaid consideration—Limitation Act, Arts. 111 and 116 apply. 1941 P. 452=193 I.C. 345.

ART. 112.—Inapplicable to suit by liquidator suing on behalf of the company in liquidation. 10 B. 483. The call payable to the company and the liability to contribution on a winding up are distinct and different; the fact that the company could not realise the calls by lapse of time is no answer to the liquidator's claim. 10 P. 249=130 I.C. 534=1931 P. 44. Where the articles of association of a company provide that a person shall continue to be liable for the unpaid balance of share money though his share is forfeited, the result is that the shareholder on forfeiture ceases to be a member of the company, and all that is left is the new liability to pay all monies which at the date of the forfeiture were payable by him to the company in respect of his share. Hence the starting point of limitation for a suit to recover such unpaid balance of share money is the date of forfeiture and not the date of the allotment of share. 1940 N. 235=I.L.R. (1942) Nag. 114. As to the applicability of the article in the case of call upon shareholders in a company, *see* 1927 L. 543=102 I.C. 705. When a suit to recover the call money has been barred by time the fact that the name is kept in the register as a shareholder and the share is forfeited only subsequently does not revive the debt, and the company cannot claim that limitation should run from date of forfeiture. 10 O.W.N. 447=1933 O. 285. A shareholder was called upon to pay a certain amount by 2nd March, 1925, but he failed to do so and thereupon the directors of the company forfeited his share on 22nd March, 1926. The liquidator who was appointed subsequently, sued to recover the amount on 16th March, 1929. *Held*, that the suit was in time, the cause of action having arisen when the share was forfeited. 54 A. 541=1932 A. 342. A company issued certain shares which were partly not paid up. In 1920 they mortgaged the unpaid calls to the plaintiff. By a resolution of the company the unpaid calls were made payable on the 31st August, 1931. The shareholders took no notice of the calls. In April, 1923, the plaintiff sued on his mortgage. In July, 1923, the company went into liquidation. The plaintiff bought the unpaid calls in 1924 at the sale in execution of his own decree and then sued the shareholders. *Held*, that the suit was barred by Art. 112, that time began to run from 31st August, 1921, and that the limitation was not interrupted in any way by the liquidation of the company. 54 C.L.J. 588=137 I.C. 380 =1932 C. 382. *See also* 1934 L. 1015=36 P.L.R. 282.

ART. 113: APPLICABILITY.—*See* 10 I.C. 1061; 9 I.C. 243. Article applicable to a suit for specific performance of a contract for conveyance of immovable property. *See* 45 M. 641=49 I.A. 335 (P.C.)=1922 P.C. 345=44 M.L.J. 740. The fact that the defendant was, even prior to the contract, bound to hold the property for the benefit of the plaintiff does not affect limitation. 66 I.C. 622=1921 O. 248; of a contract to grant lease. 23 I.C. 360; 4 P.L.J. 447= 52 I.C. 452; 24 I.C. 911=8 L.A.R. 64; of a contract to resell. 29 I.C. 898. Where there is an agreement by the vendee to reconvey the property to the vendor and, on the vendor's demanding resale of the property, he (vendee) denies the agreement, his denial amounts to a refusal to perform the agreement within the meaning of Art. 113. 36 Bom.L.R. 290=1934 B. 171; *see also* 56 L.W. 679; to a suit to enforce a covenant to give the first offer to the vendor in case of subsequent sale by the vendee 80 I.C. 962=1921 S. 118. Suit based on a covenant in an exchange deed, for re-exchange in the event of obstruction is governed not by this article but by Art. 143 42 M. 690=51 I.C. 939. Specific performance and possession how far governed by this article. *See* 6 A. 231; 25 W.R. 521; 33 C. 88=4 C.L.J. 162. Suit by patnidar for settlement and possession of chaukidari chakran lands transferred to the zamindar is governed not by this article but by Art. 144. 46 C. 173=35 M.L.J. 728=45 I.A. 162 (P.C.). Suit for possession of land pur-

Description of suit.	Period of limitation.	Time from which period begins to run.
114. For the rescission of a contract.	[1][Three years] ..	When the facts entitling the plaintiff to have the contract rescinded first become known to him.

LEG. REF.

[1] Substituted by Act XI of 1923 for "Ditto".

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chased from Government after cancellation of sale by superior Revenue Officer—Limitation. I.L.R. (1943) Kar. 404=1944 Sind 44. Also suit by heir for possession of his share under an agreement. 20 P.R. 1913=I.C. 411. As to applicability of article to suit for accounts of partnership, *see* 36 Bom.L.R. 1068=1934 B. 491. The word "contract" does not apply to award. 51 I. C. 999. Suit to recover money under an award is not governed by this article. 34 A. 43=11 I.C. 705; 10 M.L.J. 208=23 M. 593; 23 A. 285; 33 C. 831; 32 P.R. 1913 =16 I.C. 804; 36 Bom.L.R. 174=1934 B. 140; nor a suit to enforce an award. 1929 S. 168. Suit for possession of "immovable property" on the basis of an award is governed by Art. 144 and not by this article. 42 I.C. 116=4 O.L.J. 487. *See also* 4 U.B. R. 124=1923 R. 108. *See also* 1932 L. 36 =33 P.L.R. 562; 1933 A. 410 (2). This article applies to a suit for possession under a lease, where plaintiff was never put in possession. 1935 A.L.J. 662=1935 A. 569.

STARTING POINT OF LIMITATION.—The date fixed for the performance must be a date expressly fixed in the contract itself which is to be specifically enforced and not a date which the parties may have fixed by necessary implication without stating expressly what it was. If not expressly stated, the date of notice of refusal of performance is the starting point of limitation. 1933 A.L. J. 300=1933 A. 410 (2). *See also* 139 I.C. 121=1932 L. 36; 32 P.L.R. 761=1932 L. 24; 1940 L. 225=42 P.L.R. 194; 1938 L. 23 (Agreement to finance litigation). Where no time is fixed for performance, time runs from the time when performance is demanded and refused. 43 C. 790=20 C.W.N. 370 =20 C.W.N. 370=35 I.C. 305; 38 M.L.J. 29=55 I.C. 533; 41 M. 18=33 M.L.J. 35; 17 I.C. 399=1912 M.W.N. 1004; 1 Bur.L. J. 171=1923 R. 44. On the point, *see also* 5 C. 175; 34 C. 564; 31 M. 51. Under that article the *terminus a quo* is the date fixed for the performance of the contract and if no such date is fixed, the date when the plaintiff has notice that performance is refused. 42 P.L.R. 194=1940 L. 225. Where a purchaser of a portion of property has agreed to release it of an existing mortgage, but he fails to do so the cause of action for a suit by the vendor on such covenant arises either on the date when such payment is to be made or at least not later than the date when the vendor calls upon the purchaser to do so. Such a suit is governed by Art. 116, and if it is for specific performance, it is governed by Art. 113. 60 C. 761=146 I.C. 863=1933 C. 641. Document contemplating another document to be executed—No date fixed—Time runs from notice of refusal. 1927 N. 353=102 I.C. 305. Time runs from the date when the plaintiff comes to know of the refusal. 32 I.C. 573; 32 I.C. 536; 107 I.C. 905=1928 N. 218 (2). *See also* 31 P.L.R. 636=1930 L. 1020 (A suit to enforce an agreement to sell under Punjab Colonisation of Government Lands Act subject to some conditions).

ARTS. 113 AND 116.—Where a mortgage decree for sale is assigned under a registered deed, which provides *inter alia* that part of the consideration money remaining unpaid should be paid by the assignee to the assignor on the assignee realizing the decree, a suit by the assignor for the amount due and interest thereon is suit for compensation for breach of a contract falling under Art. 116 and is governed by the six years' rule of limitation. It is not a suit for specific performance so as to make Art. 113 applicable to it; nor is it a suit for indemnity. 1939 P.W.N. 769=1940 P. 155.

ARTS. 113 AND 144.—Where a lease is registered it effects an actual demise and the right to possession becomes vested in the lessee. The lessee acquires a right which he can enforce by a suit for possession over the leased property against the lessor and as against any third person who might happen to be in possession over it. Where there was a perpetual lease but the lessee was not put in possession, it was held that the rights acquired by the lessee were real rights which might be enforced by a suit for possession and not by a suit for specific performance. Such a suit would be governed by Art. 144 and not by Art. 113. I.L.R. (1938) All. 664=1938 A.L.J. 561=1938 A. 429.

ART. 114.—Applies only to suits by parties to contract. 3 A. 846. Art. 114 applies to a suit for rescission of a contract to take shares from a company on the ground of fraud and misrepresentation. If during the currency of the limitation period there is delay in filing the suit, such delay so long as the company has not gone into liquidation will not prevent the proceedings succeeding unless it shows waiver or abandonment or acquiescence or occasions alteration in the position of the other party. 47 C.W. N. 421. Article is inapplicable to a suit by a donor to recover possession of the gifted property on the ground that the donee failed to fulfil the conditions mentioned in the gift deed. I. R. 1932 L. 645.

Description of suit.	Period of limitation	Time from which period begins to run.
115. For compensation for the breach of any contract, express or implied, not in writing registered and not herein specially provided for.	[1][Three years] ..	When the contract is broken, or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs, or (where the breach is continuing) when it ceases.

ART. 115: APPLICABILITY.—Distinction between this article and Art. 97 pointed out. 13 P. 192=150 I.C. 975=1934 P. 148. Art. 115 applies to a case of express or implied contract and not a contract in writing registered. The article again applies to cases for compensation and not where the action is for a liquidated sum of money. 1934 P. 7=12 P. 792. Applies to all cases of breaches of contract not otherwise specially provided for. 14 C. 256; 31 I.C. 335 (M.); 3 A. 600 (F.B.); 107 I.C. 493=1928 L. 442; 7 O.W.N. 769=1930 O. 395. The word "compensation" has the same meaning as it has in sec. 73 of the Contract Act. 1928 L. 442=107 I.C. 493. Article applies also to a case of liability on a simple debt due and is not limited to cases of damages for breaches of contract. 39 I.C. 205=21 C.W.N. 479. *See also* 1928 L. 442; 6 B. 76. Thus, a suit upon a letter of guarantee would be governed by the article. 39 I.C. 205=21 C. W.N. 479. Also suit by mortgagee where the right to sue for the money arises from a contract. 20 I.C. 360. Suit for money due on a contract to supply marble for a flooring and also to construct the flooring is governed by this article, as neither Art. 52 nor Art. 56 would cover the claim as a whole. 2 L. 376=1922 L. 198. The word "registered" in Arts. 115 and 116 includes articles of association registered under the Indian Companies Act and is not confined to registration under the Indian Registration Act. 1930 B. 572=54 B. 226=32 Bom.L.R. 232. But *see* 1933 S. 103=143 I.C. 713 (*contra*). *See also* 168 I.C. 786= 1937 P. 293. Article 115 will not apply where part of the contract was in writing registered, *i.e.*, contained in the articles of association. Art. 115 is not strictly applicable to misfeasance in the nature of a breach of trust, nor is Art. 116, as "breach of contract" is not the sole liability sued on, nor is it the usual nomenclature for a breach of trust whether specific or *quasi*. 54 B. 226=32 Bom.L.R. 232. But *see* 1933 S. 103=143 I.C. 713, holding that limitation for proceedings under sec. 235, Companies Act, are governed by Art. 115. [49 M. 468 (F.B.), Foll.] *See also* 1937 P. 293. Where a suit was filed to recover articles bailed with the defendant, but it appeared that no time was fixed for return of the articles, *held*, that Art. 115 applied and that limitation commenced from the date when the bailee should return the articles. If the contract of bailment is silent, the Court may take it that there was an implied term that the articles should be returned after the lapse of a reasonable time. 126 I.C. 682— 7 O.W.N. 769=1930 O. 395.

THE FOLLOWING SUITS ON EXPRESS CONTRACTS ARE GOVERNED BY THE ARTICLE.—The word "registered" in Art. 116 means registered under the Registration Act. Hence registration of a company under the Companies Act is not equivalent to a registration of the Articles of Association, within the meaning of Art. 116 and therefore limitation for proceedings under sec. 235, Companies Act, is governed by Art. 115 and not by Art. 116. [49 M. 468 (F.B.), Foll.] 143 I.C. 713=1933 S. 103. But *see* 54 B. 226 (*contra*). A suit by a legal adviser for his remuneration for services rendered on the basis of an express agreement with the client is governed by Art. 115 and not by the residuary Art. 120. 43 P.L.R. 97. Suit by lessee for damages caused by the lessor's failure to deliver a portion of the demised land. 40 M. 910=30 M.L.J. 575. Suit claiming repair charges and damages from the defendant who had borrowed the plaintiff's car for private use, which was considerably damaged by an accident. 10 O.W. N. 1105=145 I.C. 1001=1933 O. 518. suit to recover deposit money payable by lessees on execution of the lease. 25 I.C. 812=1 L.W. 858. Deposit for fixed term— Article applicable. *See* 64 I.C. 412=1936 Rang. 338. Art. 115 is a general provision applying to all actions *ex contractu* not specifically provided for otherwise. Where *D* contracted with *N* to supply goods and render services to *N* for a fixed sum of money and after the contract was broken, *P* purchased the debts due to *D* from *N* on account of goods supplied and services rendered to *N* by *D*, and *P* sued *N* for the purchased debts. *Held*, that Art. 52 did not apply and Art. 115 applies to the suit. 1935 L. 222. Suit against a *del credere* agent for the value of goods sold by him. 8 B.L.R. 197 =16 W.R. 35 (P.C.). Where partnership is dissolved, and there is subsequently an adjustment of accounts, which however was not signed, a suit for the recovery of the amount is not governed by Art. 64, but only by this article or Art. 120, and the starting point is the date of adjustment. 27 S.L.R. 308=1933 S. 324. A settlement of accounts between partners of a dissolved partnership accompanied by a promise to pay the amount found due affords a fresh cause of action and a suit filed within three years of that

cause of action is within time. I.L.R. (1944) Nag. 101=1944 N.L.J. 99=1944 Nag. 124. Suit for money on the basis of an agreement to deliver half the produce of certain land or on default, a sum of money annually. 72 I.C. 480=1924 L. 149. A suit for recovery of a sum of money as the value of work done by the plaintiff. 35 P.L.R. 529 =1934 L. 475. Suit for money due under the terms of an award would be governed by the article if the award is signed by the parties in token of their acceptance. 265 P.W.R. 1912=16 I.C. 804. Also suit for royalty under a decree passed in pursuance of a compromise agreement between the lessor and lessee. 2 P. 749=1924 P. 231. A compromise decree has got both the characteristics of a compromise and a decree. A suit for compensation for non compliance with such a decree may either be based on the compromise or the decree, and it depends upon the circumstances of each case. Where the suit is based on the contract, it is governed by this article. 12 P. 792=1934 P. 7. As to the applicability of the article to *thavanai* contracts, *see* 42 I.C. 573=6 L.W. 687; 8 L.B.R. 526=36 I.C. 497. Where the debtor wrote a letter to the following effect in respect of a time-barred debt: "In regard to my overdrawn floating account with your branch, I herewith send Rs. 100, through *B*, General Manager of your Bank, to be credited in my above overdrawn floating account and I promise to pay the balance as soon as I am able to arrange within a period of six months. This is to give you time in the matter of limitation . . . . . ." *Held*, that on a breach of the contract embodied in the letter the creditor's remedy was a suit for compensation and that such a suit was covered by Art. 115. 13 L. 448 =1932 L. 212. A suit by a creditor against a surety upon a letter of guarantee, executed by the latter in respect of a debt payable forthwith is governed by Art. 115 and limitation begins to run from the date of the execution of the guarantee, notwithstanding a stipulation in the guarantee to the effect that the creditor may look for payment to the surety if the principal made default in payment. 132 I.C. 590=1931 L. 691. The fact that limitation against the principal is extended by a local Act such as the Punjab Loans Limitation Act does not have the effect of extending the period of limitation against the surety. 1931 L. 691. *See also* 38 P.L.R. 276=163 I.C. 928=1936 L. 668. Suit by judgment-debtor to recover excess realised by the decree-holder by execution sale is governed by this article or Art. 120, and the starting point is the date of sale. 140 I.C. 472=33 P.L.R. 1084=1933 L. 112.

THE FOLLOWING ARE NOT GOVERNED BY THE ARTICLE.—Suit against Railway Company for compensation for non-delivery of goods is governed by Art. 31 and not by this article. 31 I.C. 474=11 N.L.R. 174 (26 B. 562; 13 C.W.N. 851; 33 A. 544, Foll.) But *see also* 44 C. 16=34 I.C. 130; 7 B. 478. The plaintiff was a dealer in timber and the defendant did the business of sawing wood. The plaint stated that, between certain dates, a certain sum of money was advanced to the defendant, and the plaintiff sued to recover the money lent less the value of the work done by the defendant. *Held*, that the suit was governed by Art. 57 and not by Art. 115. 147 I.C. 295=1934 A. 126. As to case of misdelivery, *see* 122 P.W.R. 1913=19 I.C. 477. Parties trading independently and agreeing to equalise profits on tking accounts. Suit for such accounts is not for compensation within Art. 115. 1927 M. 775. Suit for accounts against an agent would fall under Art. 89 despite the fact that there were written agreements between the parties. 4 P. 289=1925 P. 494 =89 I.C. 275; 1931 M. 185 (2)=54 M. 654 =62 M.L.J. 45=1930 M.W.N. 1199. Whether Art. 95 or 115 applies to a suit for compensation against a pretended agent under sec. 235 of the Contract Act, the period of limitation is three years. The date from which the limitation starts is the date on which the plaintiff has noticed that the implied agency did not exist, but it must be an effective notice. 151 I.C. 58=1934 Pesh. 49. Arts. 115 and 116 have no application to a claim made by the liquidator of a company under sec. 235, Companies Act. 1925 A. 519=47 A. 669=23 A.L.J. 473. As to suit for balance of price of article sold with claim to damages and interest added, *see* 130 I.C. 574=1931 L. 309. As to suit for damages for use and occupation of shop after notice to vacate, *see* 1946 A.L.J. 305= 1947 A. 31.

SUIT BY MEMBER AGAINST DISTRICT BOARD FOR TRAVELLING ALLOWANCE.—Rule 79 (i) (xvii) of the Travelling Allowance Rules of the District Council, merely empowers the Council to pay members a certain travelling allowance if and when it so desires. There is, therefore, no statutory obligation to pay under that rule. The obligation arises out of the further step which the District Council takes to implement its powers. The District Council says, in effect, by its resolution that if members undertake certain journeys then in the exercise of the powers conferred on the Council, it will pay them certain sums of money. When journeys are undertaken there is an implied contract to pay. That contract is not in writing registered, and so Art. 115 applies to a suit by a member against the District Council to recover travelling allowance which the latter has undertaken to pay by its resolution. I.L.R. (1946) Nag. 392=1946 Nag. (Rul.) 136=224 I.C. 12.

"IMPLIED CONTRACT".—Meaning, *see* 38 M. 275=25 M.L.J. 256. *See also* 1938 P. 429 =17 P. 277. When a person untruly represents himself to be an authorized agent and deals with the plaintiff, a suit for damages against the agent is governed by this article. 38 M. 275. *See also* 14 M.I.A. 134. Suit upon an agreement which is not express but based merely on local custom falls under the article. 3 A. 385. A lambardar who col-

lects rents and manages the estate on behalf of the proprietors is an agent, bound by an implied contract to render accounts. 51 I.C. 733=4 P.L.J. 304. But a suit by some co-sharers in a ferry against other co-sharers for profits is not governed by this article. 35 I.C. 430=1 P.L.J. 69. A suit by a medical practitioner for the recovery of fees due for medical attendance is governed by Art. 115. In such a case there is an implied contract to pay the fee on each day of the visit and there is a breach of contract whenever there is non-payment. If the practitioner demands the fee and the party promises to pay the same promptly and fails to do so, there is a breach of contract at least on the last date of the attendance or anyhow on the date of the death of the patient. 1931 A.L.J. 949=1931 A. 752 (2). As to suit for recovery of purchase money and costs incrured in litigation in an unsuccessful attempt to take possession of the property sold, *see* 42 M. 507=36 M.L.J. 157. Article applies to suit for damages against the decree-holder who has received payment out of Court but fails to certify the same and applies for execution. 36 M. L.J. 175=48 I.C. 810; 5 M. 397 (F.B.). *See also* 30 M. 545; 25 M. 50 (decree executed notwithstanding compromise); 140 I.C. 472 =1933 L. 112 (excessive execution without giving credit to payments made.) In a suit for compensation for the subsidence of a tank the action for misfeasance or malfeasance was based on implied covenant running with the land that surface land had the inherent right of support from the underground mines. 8 P. 776=1929 P. 245.

STARTING POINT OF LIMITATION.—Time runs from the breach. 20 B. 8; 31 I.C. 335 =(1916) 1 M.W.N. 121. *See also* 166 I.C. 48=1936 R. 510; 1941 R. 129=195 I.C. 737. The question when the breach has occurred turns upon the interpretation of the contract. 20 B. 8. As to cases when demand and refusal are necessary to start limitation, *see* 20 B. 8; 14 B. 498; 31 I.C. 335=(1916) 1 M.W.N. 121 (M.). In a case of alternative contract to sell land or pay compensation, the claim to recover compensation accrues only when the vendor elects to adopt one of the courses and the three years' period runs only from that date. 132 I.C. 489=1931 L. 657. Where the lessee sues for damages for non-delivery of a portion of the leased property, time runs either from the date of the lease or from the date when possession was demanded and denied. 40 M. 910=30 M.L.J. 575. Continuing breach—Limitation does not run until the breach ceases. 30 M.L.J. 575. *See also* 1938 Lah. 277. An omission by directors to come to any conclusion on an important peace of business duly proposed for the decision of the Board is a breach of duty which continues as long as he decision is deferred. 143 I.C. 713=1933 S. 103. An indemnity clause in a sale-deed is a continuing covenant and a suit for indemnification is within time, if brought within six years of the date on which it is held by a Court of law that neither the purchaser nor his vendor had the rights given to him by the sale deed. 35 M.L.J. 124=47 I.C. 924. *See also* 42 M. 507=36 M.L.J. 157. Covenant for quiet enjoyment in favour of tenant—Test as to whether breach thereof is a continuing one or not. *See* 40 M. 910=30 M.L.J. 575. Covenant for title does not admit of continuing breach and time runs for a claim based on such covenant, from the date of the sale. 21 I.C. 740=1 L.W. 110. Contract for toll—Default by contractor—Attempted re-sale by District Board—Second re-sale—Loss sustained by—Suit to recover—Limitation for—Starting point of. 145 I.C. 476=38 L.W. 533=1933 M. 704. *See also* 1938 P. 429= 17 P. 277 (Suit to recover money due under lease of market tolls by municipality. *See* also 16 P. 302=18 P.L.T. 252=1937 P. 360; (1938) 1 M.L.J. 56=1938 M. 236. (Suit for money deposited in bank—Agreement between depositor and another dividing amount between them); 20 N.L.J. 198 (Suit for gold left with defendant to make jewel for its value); 173 I.C. 675=1938 S. 48 (Suit for terminal tax). Where a Municipal Committee continues to hold a cattle fair on another's land from year to year, an inference can be drawn that there was an implied contract between the Committee and the land-owner that the Committee should pay to the owner and that the owner should allow the Committee to hold the fair. A suit therefore for compensation not received will be governed by Art. 115 and not by Art. 39 or Art. 120. 178 I.C. 49=1938 L. 267.

SUCCESSIVE BREACHES.—See 34 A. 429= 9 A.L.J. 534. Where a party has recurring or successive causes of action, each cause of action will give a fresh start to the period of limitation and the mere fact that party has not availed himself of the earlier cause of action, will not prevent him from availing himself of a later one. 11 P. 112=134 I.C. 609=1931 P. 285. In a claim for damages for non-payment of *malikhana*, plaintiff is entitled only to such arrears as have accrued for three years antecedent to suit. 15 I.C. 911=15 C.L.J. 684. (10 A. 85; 13 A. 330; 19 C. 19; 24 C. 669, Rel.) *See also* 10 A. 85.

ARTS. 115, 116 AND 120.—The directors are in a limited sense trustees. Their liabilities depend upon their position as directors. Their position as directors is governed by the Aricles of Association and generally by the written constitution of the company. The Articles are a part only of the contract. Thus the liability of the directors under sec. 235, Companies Act, arises out of a contract which is partly in writing and partly not in writing. Therefore, an application by the liquidator for compensation under sec. 235 for damages for misfeasance or breach of contract of the directors is not governed by Art. 115 or Art. 116, which deal with contracts exclusively in writing or not in writing. Hence

Description of suit.	Period os limitation.	Time from which period begins to run.
	Part VII.— Six years.	
116. For compensation for the breach of a contract in writing registered.	[Six years] ..	When the period of limitation would begin to run against a suit brought on a similar contract not registered.

the application is governed by Art. 120. 1930 B. 572=32 Bom.L.R. 232. 54 B. 226; 1937 P. 293. A suit by a shareholder to recover dividend is governed not by Art. 115 but by either Art. 116 or Art. 120 of the Limitation Act. Where the dividend was declared prior to the registration of the plaintiff as a shareholder but the beneficial ownership of the shares had throughout been with the plaintiff and the member of the defendant company on the register had throughout been in a position to demand the dividend, and if necessary, to sue for it on the plaintiff's behalf, limitation begins to run from the date of the declaration of the dividend and not from the date of the registration of the plaintiff. 48 C.W.N. 693. A suit for rent based on a registered *qabuliyat* would be governed only by Art. 115, and not either by Art. 116 or Art. 120. A *qabuliyat* though it cannot be looked into for certain purposes, can certainly be looked into for determining the amount of rent and for inferring that the executant came into possession under a contract with an undertaking to pay rent. 1942 A.L.W. 659. A suit to recover license fee assessed by the Municipal Committee under Municipal Act, in respect of a platform erected by the defendant in his holding, is governed by Art. 120 and not by Art. 115. The liability of the defendant does not arise out of any contract, between him and the Municipality but out of an obligation imposed by the statute on the licensees of platforms to pay the fees assessed by the Municipal Commissioners. The Municipality is authorized to recover such fees by distraint or suit. 175 I.C. 86=1938 P. 192. In a suit for assessment of a fair and equitable rent and compensation for use and occupation of land where the tenants are willing to pay a reasonable rent and dispute only the figure at which a reasonable rent should be fixed, it cannot be said that the tenants are guilty of any breach of implied contract to pay reasonable rent and therefore Art. 115 does not apply to the case and the suit could be governed by Art. 120. 190 I.C. 631=1940 C. 400.

ART. 116: SCOPE AND APPLICABILITY.—*See* I.L.R. 1936 N. 5=1936 N. 180; 1936 R. 80 =161 I.C. 461. Distinction between this Article and Art. 97 pointed out. 13 P. 192 =150 I.C. 975=1934 P. 148. Article applies to all registered contracts. 15 Bom.L.R. 836 =37 B. 656=1 M.L.J. 482=14 M. 165; 18 C. 506; 3 A. 600 (F.B.). The term 'registered' includes registration under special laws as the Companies Act or the Copyright Act as well as the Registration Act. Thus, a suit by a share-holder to recover dividends from a registered Company is governed by Art. 116. 42 M. 33=35 M.L.J. 256; I.L.R. (1940) Bom. 165=42 Bom.L.R. 57=1940 B. 97 (F.B.); 20 P.L.T. 285; 1930 B. 572; 54 B. 226= 32 Bom.L.R. 232=48 C.W.N. 693. But *see* 1933 Sind 103=143 I.C. 713; 1937 P. 293=168 I.C. 786. But a purchaser at a Court sale of shares in a Company cannot claim the benefit of this article. 46 M.L.J. 563=79 I.C. 947=1924 M. 721. The word 'contract' does not include an award. 19 I. C. 376=6 S.L.R. 148. But *see* 16 I.C. 804 =32 P.R. 1913=165 P.W.R. 1912 (Punj.), cited under Art. 115. The word 'contract' in Art. 116 includes an implied 'contract' also. 51 A. 651=119 I.C. 243=1929 A. 293 =1929 A.L.J. 433. Where a personal covenant to pay is contained in regisered mortgage, it being in writing registered, the relevant article is 116. 52 L.W. 777=1940 P.C. 204=67 I.A. 431 (P.C.)=I.L.R. 1940 K. P.C. 419. It cannot be said that Art. 116 applies only to cases where the document is signed by both the parties. Article does not contain the words "executed by both parties" and there is no reason to interpolate them. If there is a valid contract, evidenced by a registered document which though signed by one party only is complete, because it has been accepted by the other and breach of that contract has been committed, Art. 116 will apply. 50 A. 661=1928 A. 313. If the vendees' promise to pay the purchase-money is set out in the registered conveyance which is accepted by him, the contract between the parties can be regarded as embodied in the conveyance, even though it is not actually executed by the vendee. The plaintiff's right to a personal decree on the failure of the defendant to pay the balance of consideration in such a case is governed by Art. 116. 9 R. 56=1931 R. 139. Where the liability of the vendee arises in virtue of the conveyance, *i.e.*, upon a contract in writing registered within the meaning of Art. 116 the six years' period allowed by that article applies. 60 I.A. 183=11 R. 186=1933 P.C. 143=64 M. L.J. 655 (P.C.). Where a mortgagor sells mortgaged property under a registered sale-deed, reserving part of the consideration for the sale with the vendee for discharging the mortgage debt, but the latter fails to discharge and redeem the mortgage and the mortgagee sues on the mortgage and brings the property to sale and after sale, obtains a personal decree against the mortgagor for the deficiency, if the mortgagor who is compelled to pay the balance to the mortgagee brings a suit against the vendee for damages

for breach of contract, Art. 116 applies to the case, and the suit if brought within 6 years of the date when the plaintiff made the payment, is not barred by limitation. 223 I.C. 248. Art. 116 does not apply to a claim against the directors of a Company for misfeasance in the nature of a breach of trust because the whole of the contract governing the relationship of the Company and the directors is not in writing registered but part only, *viz.*, that which is contained in the articles of association. 54 B. 326=32 Bom. L.R. 232=1930 B. 572. *See also* 1937 P. 293. Relinquishment of rights—Money paid as consideration—Failure of deed to take effect—Claim for refund of money paid—Limitation—Art. 97 applies, but not Art. 116. 1930 A.L.J. 1112=1930 A. 441. A suit for taking the accounts of a dissolved partnership cannot be deemed to be a suit "for conpensation for breach of contract" and is not therefore governed by Art. 116. 57 M. 378=1934 M. 162=66 M.L.J. 625. The word 'compensation' need not be restricted to a claim for unliquidated damages and can include a claim for a sum certain. 49 B. 596 =27 Bom.L.R. 637=1925 B. 440; 8 I.C. 788 =12 C.L.J. 423; 3 A. 600 (F.B.); 39 A. 81 =14 A.L.J. 873. The 'word compensation' has the same meaning as it has in sec. 73 of the Contract Act and denotes a sum of money payable to a person on account of loss or damage caused to him by breach of the contract. 107 I.C. 493=1928 L. 442. Art. 116 applies not merely to a suit for compensation for breach of contract in the narrow sense of the word compensation, but also to a suit for money payable under the terms of the contract, and it is applicable in all cases in which the contract is in writing and registered, notwithstanding that there may be an article directly applicable to the class of contracts in question. 9 R. 56=1931 R. 139. Thus, a suit for recovery of money due on a registered bond is governed by article. 17 C.W.N. 369=13 I.C. 440; 42 I.C. 609=6 L. W. 712. *See also* 1940 P. 74; 1939 P.W.N. 220 (suit for rent under registered lease deed); Also suit by heirs of a Muhammadan lady for dower debt on registered dower deed. 27 C.W.N. 210=1923 C. 507; 50 C. 253=1923 C. 152; 44 C. 759 (P.C.)=1916 P.C. 182=32 M.L.J. 357=14 I.A. 65. Suit for arrears of rent on a registered lease is governed by Art. 116 and not Art. 110. 44 C. 759=44 I.A. 65=32 M.L.J. 357 (P.C.); 196 I.C. 466 1942 Pat. 83; 1944 Pat. 87 (F.B.); 23 P. 185 =133 I.C. 102=53 C.L.J. 522=1931 C. 790; 67 I.C. 939; 56 I.C. 241=11 L.W. 328 (kanom deed); 44 I.C. 153 (*Zuripeshgi* lease). 1937 N. 12=20 N.L.J. 73 (Sub-tenant). Suit for profits owing to non-delivery of possession under a registered instrument is in substance one for compensation governed by Art. 116. 31 I.C. 804; *See also* 25 M. 587=12 M.L.J. 249; 30 A. 400=5 A.L.J. 486; 32 I.C. 245; 11 I.C. 337=(1911) 1 M.W.N. 361=1928 A. 313=26 A.L.J. 426=50 A. 661; 1927 L. 1 =7 L. 42. As to suit for recovery of mortgage money by a mortgagee who is deprived of his mortgage security, *see* 3 R. 60=1925 R. 223. If the stipulation for payment of interest in a mortgage deed does not constitute an independent agreement, and is no more than a part of the contract for the payment of the principal, the mortgagee cannot get a personal decree for the recovery of the interest, even for the period of six years preceding the suit, in a case where his suit for enforcement of the personal remedy in respect of the principal was barred by time at the time of the institution of the suit. There being one contract from which the liability for the principal and the interest arises, the cause of action arising from the breach of contract is not divisible or severable and the time for the recovery of both principal and interest must be deemed to begin to run from the date when the breach took place. If the covenant for payment of interest is an independent and separate agreement, the breach of such covenant will give rise to a separate cause of action independently altogether of the cause of action arising on a breach of the covenant for the payment of the principal. A suit instituted within six years of such breach will obviously be within time, in view of the language of Art. 116 of the Limitation Act, and cannot be held to be barred by limitation, merely because an action for compensation for breach of another independent covenant has become time-barred. The mortgagee is entitled to a personal decree for recovery of such interest even though he has no subsisting right to get a personal decree for the recovery of the pincipal. It is hardly necessary to add that this is subject to the proviso that the mortgagee is not entitled to any relief in respect of interest falling due after the mortgage debt itself has become irrecoverable, because in that event his suit for sale itself will be liable to dismissal as barred by time and no occasion will arise for him to apply for a personal decree under O. 34, r. 6, C. P. Code. 47 P.L.R. 358 (F. B.). Where a mortgage bond provides that the mortgage money shall be payable on demand, the debt becomes payable at once, and limitation begins to run from the date of the bond. Where the words are "when required by you", they mean only on demand. A claim for a supplemental decree in a suit for sale must be held barred by time where the mortgage bond provides that the money shall be paid whenever required by the mortgagee, when the suit is brought more than six years from the date of the bond though within six years of the date of notice of demand. I.L.R. (1945) Mad. 758=1945 Mad. 157=(1945) 1 M.L. J. 233. Mortgaged property sold owing to mortgagor's default in paying land revenue —Sale confirmed—Application by mortgagee for setting aside sale—Sale set aside by lower Court but confirmed by highest Revenue Court—Suit by mortgagee for personal decree on ground of loss of security—

Limitation—Starting point. I.L.R. (1943) Nag. 422=1943 N.L.J. 159=1943 Nag. 178. *See also* 1931 O. 5=7 O.W.N. 1045; 20 N. L.J. 42. A suit under sec. 68 of the T. P. Act for a personal decree against the mortgagor, on the ground that the security was lost as the result of a litigation between the mortgagor and a third party, is governed by Art. 116 or 120 and the period commences (*i.e.*, the cause of action arises) at the time when the mortgagor loses the property and not when the mortgagee comes to know of such loss. 11 O.W.N. 1198= 1934 O. 415. *See also* 1936 R. 80; 1936 S. 14=29 S.L.R. 361; 43 C.W.N. 38=1939 C. 26; 41 C.W.N. 783=1937 C. 347. Where the plaintiff himself repudiates a mortgage and sues for the amount advanced under it, Art. 116 cannot apply. 1933 L. 581=34 P. L.R. 96. The period of limitation applicable for the recovery of money due under a personal covenant contained in a registered deed of mortgage, where the mortgaged property has been sold and the claim is for deficiency, is six years under sec. 116. 36 C.W.N. 117=1933 C. 268; and not three years under Art. 66 or 67. 52 M. 105=56 M.L.J. 10 (F.B.)=1929 M. 53; 35 C.W.N. 1030=133 I.C. 101=1931 C. 801 (1); 140 I.C. 387=1932 L. 592. *See also* 68 C.L.J. 109=43 C.W.N. 38=1939 C. 26; 5 O.W.N. 1128=114 I.C. 813; 1928 M. 1124=55 M. L.J. 506; 5 O.W.N. 836=1928 O. 465; 6 O.W.N. 974; 1934 L. 765; 1935 B. 203=37 Bom.L.R. 170. Limitation for enforcing the relief starts from the date of the mortgage. 140 I.C. 387=1932 L. 592. *See also* 50 L.W. 889=1940 M. 233 (Passing of decree on mortgage does not affect right to enforce covenant in the mortgage deed). 172 I.C. 75=1937 R. 484. But where the mortgage deed provided that the mortgagee would be entitled to recover the amount after 4 years, limitation for the personal relief would be six years from the date when the mortgage money became payable. 1933 L. 329=144 I.C. 738. *See also* 1936 S. 14. 43 C.W.N. 38=1939 C. 26. Where a suit is instituted more than six years after the making of the mortgage, and the mortgage money is payable on demand, a personal decree is barred. 51 A. 473=1929 A. 139. *See also* 1930 L. 993=129 I.C. 201 (A suit brought after six years after the first default was held barred). As to the operation of the article in favour of a person not a party to the contract on which he sues, *see* 9 I.C. 988; on appeal, 41 C. 13=17 C.W.N. 1143; *see also* 4 M.H.C.R. 366 (Registered pro-note endorsed to plaintiff). Whether signature of defendant is necessary to attract the operation of the article, *see* 25 M. 55; 35 C. 683; 17 C.W.N. 1143 =41 C. 137; 20 C.W.N. 408=31 I.C. 394. Article applies to an action for breach of duty declared by sec. 108, T. P. Act. 6 P. 606=101 I.C. 707=1927 P. 248. A suit by one partner for partnership accounts (without a prayer for dissolution of partnership) based on an express agreement between the partners to render accounts and to distribute the profits annually is governed by Art. 120 and not Art. 89 or Art. 100, or Art. 116. 29 N.L.R. 34=1933 N. 127. Article is not applicable to suit by purchaser for refund of purchase money in respect of sale by him at Court auction when the sale proved infructuous. 28 Punj.L.R. 74. *See also* 18 P. 654=1940 P. 81 (Suit by dispossessed lessee for return of premium paid and for damages when dispossession was due to want of title in lessor). The suit was to recover arrears of maintenance due to plaintiff's mother up to the date of her death. A prior suit by the mother had been compromised and by that compromise, the annuity had been charged on certain properties and the security bond registered. The plaint in the present suit, however, contained no reference to the security bond; it was simply a claim for money due on account of arrears of maintenance with interest. *Held*, that the suit was not governed by Art. 116 and that the period of limitation was only three years. 146 I.C. 1033=1934 P. 244. Vendor and vendee—Vendor failing to discharge mortgage on property as agreed to under sale—Suit on mortgage—Sale of properties resulting in dispossession of vendee—Suit by latter for damages—Limitation—Starting point—Measure of damages. 1943 Mad. 150=(1942) 2 M.L.J. 617.

ARTS. 116 AND 89: APPLICABILITY—SUIT FOR MONEY BASED ON REGISTERED POWER OF ATTORNEY.—A registered power of attorney executed in favour of the defendant was in the following terms:—"We hereby authorise our said attorney to withdraw and receive payment. . . . .and pay and make over to us in proportion to our respective shares as above set forth such amount out of the said sum of Rs. 10,000 as is due thereto within a week of the encashment of the said cheque". The plaintiff who was one of its executants sued to recover his share of the money received by the defendant on the authority of the power of attorney. *Held*, that the suit was governed by Art. 116 and not by Art. 89 as the terms of the power of attorney constituted an express contract in writing registered to make payment and the defendant was liable to pay to apart from any basis of agency. I.L.R. (1943) 1 Cal. 578=1944 Cal. 106.

BREACH OF COVENANTS CONTAINED IN REGISTERED DEED.—Where a contract is in writing and registered, a suit for breach of all covenants expressed or implied therein is covered by this article. 27 C.W.N. 1025= 1924 C. 148; 14 N.L.J. 125 (F.B.)=1932 N. 5; *see also* 17 L.W. 254=1923 M. 392; 22 L.W. 704=49 M.L.J. 668=1926 M. 255; 21 M. 8; 25 M. 587=12 M.L.J. 249; 38 M. 1171=27 M.L.J. 517; 12 C. at 481; 45 B. 955=23 Bom.L.R. 325=61 I.C. 70; 52 I.C. 269; 43 M.L.J. 64=1923 M. 28; 50 I.C. 673 (M.); 140 I.C. 805=37 L.W. 497 =64 M.L.J. 336=1933 M. 126; 31 I.C. 877=11 N.L.R. 186; 88 I.C. 699=1926 N. 109; 8 P. 432=1929 P. 388; 1929 M. 775; 1929 A. 293=51 A. 651; 57 C. 683=1930

C. 568; 1931 L. 448=13 L. 1; 167 I.C. 809 1929 A. 293=51 A. 651; 57 C. 683=1930 =1937 R. 39 (Suit for breach of covenant for title contained in sale deed). As to suit on a covenant to indemnity in a sale deed, *see* 40 A. 605=48 I.C. 18. As to suit for recovery of periodical payments due by a usufructuary mortgagee to the mortgagor under an agreement contained in the mortgage deed, *see* 40 I.C. 594. *See also* 1937 N. 246=I.L.R. 1938 N. 48 (Suit for unpaid purchase money due under registered sale deed). *See also* 5 P. 753. A suit by a vendor against vendee for breach of covenant by the latter to pay a mortgage debt of the vendor out of the sale price falls within Art. 116. 1935 A.L.J. 279= 1935 A. 411=57 A. 797; 34 A. 429=9 A. L.J. 534=14 I.C. 244; 87 I.C. 804=1925 A. 488. *See also* 29 N.L.R. 298=1933 N. 379; 17 P. 751=1939 P. 194. The starting point is not the date of the deed nor the date when the fact of non-payment came to vendor's knowledge, but the date when vendor himself was obliged to pay the debt and thereby incurred loss. 1935 All. 431. But *see* 60 C. 761=146 I.C. 863=1933 C. 641. As to suit by creditor to recover the debt from the vendee under such covenant, *see* 41 C. 137=17 C.W.N. 1143. Suit for damages based on a clause of indemnity or on a covenant for title and quiet possession contained in a registered sale deed is governed by Art. 116. 1929 L. 388; 1921 L. 260=2 L. 316. *See also* 1929 M. 775. Where it was declared that certain property could not be sold in execution of a decree obtained by the plaintiff on his mortgage deed and the decree became thereby infructuous and a suit for a simple money decree having been barred on that date the plaintiff sued for damages for breach of covenant for indemnity contained in the mortgage deed. *Held*, that the suit was governed by Art. 116 and not by Art. 62 or 97. *Held, further* that the suit was in time whether it was reckoned from the date of the objection to the plaintiff's execution or the date of the decree nullifying the decree in favour of the plaintiff. 1932 A.L.J. 317=1932 A. 358. *See also* 17 P. 751=1939 P. 194. Where an agent has undertaken by a registered agreement to re-pay the amount found to have been misappropriated by him within a month of the ascertainment of the amount, a suit by the principal for the recovery of the misappropriated amounts is governed by Art. 116. 44 C.W.N. 793=1941 C. 257. Suit to enforce payments of Government revenue and under-proprietary rent based on registered conveyance of immovable property in lieu of maintenance falls within this article. 1929 O. 311=6 O.W.N. 431.

STARTING POINT OF LIMITATION.—It depends on the article under which the suit would have fallen had the contract not been registered, whether under special article or under the residuary Art. 115. *See* 15 C.L. J. 17; 3 A. 600 (F.B.). [In the numerous reported decisions, this article has been read along with other special articles which would apply if the contract is not registered for which, *see* under the respective articles.] In a suit to recover compensation for the breach of contract to indemnify the vendee against the claims of a mortgagee, the starting point is the date when the purchaser is compelled to pay off the prior mortgage under Art. 83 read with the article. 1921 L. 260=2 L. 316=64 I.C. 431. But *see* 60 C. 761=146 I.C. 863=1933 C. 641. In a suit for damages for breach of a covenant of title, time begins to run from the date of the breach of the covenant. 1921 B. 252 =45 B. 955=61 I.C. 70; 8 P. 432=1929 P. 388; 50 L.W. 889=1940 M. 233. That is from the date when it is found that the vendor had no title or the purchaser is dispossessed of the property in consequence thereof. 133 I.C. 76=1931 S. 141. *See also* 1932 N. 5=14 N.L.J. 125 (F.B.); 41 L.W. 728=68 M.L.J. 588=1935 M. 636. Where the purchaser could not get possession of some of the lands sold, and his suit against the person in possession was dismissed, limitation for a suit for damages against his vendor would start only from the date of dismissal of the suit against the stranger in possession. 64 M.L.J. 336= 1933 M. 126. As to starting of limitation for a suit by a purchaser from an auction-purchaser who undertook to obtain delivery of possession from Court and give possession to him claiming possession of the property or return of consideration, *see* 1933 M. 153=143 I.C. 504. But where the vendor admittedly had no title to the property and the vendee had not been put in possession, a suit for the recovery of the purchase money must be brought within 6 years from the sale deed. 1925 B. 440=49 B. 596= 27 Bom.L.R. 637; *see also* 31 I.C. 877=11 N.L.R. 186; 25 L.W. 11=1927 M. 273; 38 M. 887; 38 M. 1171=27 M.L.J. 577; 35 M. 39; 17 L.W. 254=1923 M. 392; 29 M. L.J. 454=31 I.C. 179; 88 I.C. 699=1926 N. 109; 21 I.C. 740; 1930 S. 12=118 I.C. 203. *See also* cases cited under Art. 97 on the point. A suit for refund of purchase money under an invalid sale is governed by this article and time runs when the defect in title is discovered. 8 P. 432=1929 P. 388; 1930 S. 66. *See also* 137 I.C. 61= 1932 N. 3. Plaintiffs wrongly paying defendants to redeem mortgage—Third person obtaining foreclosure decree—Plaintiffs paying him to redeem mortgage—Suit to recover money wrongly paid to defendants. 1935 O. 378=11 Luck. 110. Where the agreement is that a debt due to a third party should be paid and it is not so paid, the starting point of limitation is the date when the vendee repudiates his liability or the date when the payment of the debt is made by the vendor himself or the performance of the contract is rendered impossible. 8 P. 860. *See also* 33 Bom.L.R. 136=133 I.C. 267= 1931 B. 365. Time runs in such a case from the date when the vendor is actually damnified. 14 L. 380=1933 L. 109; 33 Bom.L. R. 136. *See also* 144 I.C. 362=1933 L. 793

Description of suit.	Period of limitation.	Time from which period begins to run.
117. Upon a foreign judgment as defined in the Code of Civil Procedure, 1908	[Six years] ..	The date of the judgment.
118. To obtain a declaration that	[1][Six years] ..	When the alleged adoption

LEG. REF.

[1] Substituted by Act XI of 1923, sec. 2 and Sch. I, for "Ditto".

=1930 P. 46=14 L. 646. (34 A. 429, Diss.). Where vendor's properties are sold in execution of a decree obtained by a creditor, whose debt had been directed to be paid by vendee, the starting point of limitation for a suit by vendor for the purchase money is the date of the sale of the properties when the vendor actually suffered loss. 64 M.L. J. 526=1933 M. 424=56 M. 724. Under Art. 116 time begins to run from the date of breach of contract under a registered instrument. Where no time is fixed for payment, it runs from the date of the deed itself and a suit brought more than six years after the date is barred by time. 1929 A. 775. Vendor and purchaser—Amount kept with vendee to pay previous mortgage—Surplus to be paid to vendor—Claim for surplus. *Held*, that Art. 111 is not applicable to the case but Art. 116 is applicable and the period would commence from the date of the breach, *i.e.*, where for the first time in the suit instituted by the vendee for redemption, the Court of first instance would find that a smaller sum than the amount left with the vendee was due. 11 O.W.N. 691=1934 O. 240=10 Luck. 26. Where a registered kabuliyat expired on 31st March, 1922, and the lessee sued to recover damages from the lessor on 30th April, 1925. *Held*, that the suit was barred by Art. 115. 1932 C. 85=58 C. 930=133 I.C. 179. As to continuing or successive causes of action, *see* under Art. 115. In a *rehan* bond there was a personal covenant to repay on a certain date and in addition, there was a clause regarding dispossession which gave the mortgagee the right to realise from the mortgaged property from the person of the mortgagor and from his other properties, if he was dispossessed from the *rehan* property. The mortgagee sued basing his cause of action on dispossession and after sale of the mortgaged property in execution of his decree applied for a personal decree for the balance. *Held*, that this article applied, and that on the mortgage deed as it stood, the dispossession was as much a cause of action in a registered deed giving rise to limitation under Art. 116 as the cause of action of failure to pay on the date fixed in the bond and that the starting point for limitation was the date of dispossession. 13 P. 228=1934 P. 578. Where possession was not given to the lessee in accordance with the terms of a lease deed, and the lessee sued to recover the advance paid by him, *held*, that the breach of the covenant to deliver possession occurred from the commencement of the lease and that it was not a continuing breach. 138 I.C. 119=1932 M. 225. *See also* 1939 P.W.N. 220. Where a sale was declared void by the Court and the vendee sued to recover the purchase price and relied on an express covenant in the sale deed. *Held*, that the suit was governed by Art. 116 and time commenced to run from the date when the sale was declared void by the trial Court and not from the date when such decision was affirmed in appeal. 148 I.C. 825=1934 L. 305 (2). Sons impugning sale deed by father—Trial Court granting them decree followed by delivery of possession—Decree affirmed on appeal—Suit by vendee for refund of price—Limitation—Starting point. 156 I.C. 177 =1935 A. 786. Moragage by Hindu father for antecedent debts and for fresh cash advances—Suit against son after death of father—Limitation. *See* 40 Bom.L.R. 381=1938 B. 295.

ART. 117: APPLICABILITY.—*See* 8 L. 54 =102 I.C. 523=1927 L. 200 (2). Under Art. 117 a suit if filed in British India on a foreign judgment, is in time, notwithstanding that under the law of the foreign state where the decree was obtained, execution of the decree in that state is barred by time. The law applicable to the place where the suit is brought is applicable. The law of the place where the obligation arose need not be considered. Art. 117 deals only with the period of limitation. It does not create a right to sue. In India a foreign judgment itself forms a cause of action and a suit can therefore be based on it, and it has to be filed in six years. I.L.R. (1939) B. 639=41 Bom.L.R. 1084=1939 B. 522. The "date of the judgment" in Art. 117 is the date of the decree, and if there is the decree of the appeal Court, it that decree which is the starting point for counting the period of limitation, and not the decree of the original Court. I.L.R. (1939) B. 639. *See also* 1933 M. 511=65 M.L.J. 572=56 M. 951. Where the Baroda Court passed an order calling upon the contributories to pay Rs. 20 per share, and a date was fixed for the payment of the call money and the liquidators were authorised by the Court to file suits against contributories residing outside the jurisdiction of the Baroda State. *Held*, that it was not a suit on foreign judgment, and is therefore governed by Art. 120. 17 L. 341=1945 L. 975 reversing 1935 L. 553.

ART. 118.—Art. 118 applies only to a suit under sec. 42, Specific Relief Act, for

Description of suit.	Period of limitatiod.	Time from which period begins to run.
an alleged adoption is invalid, or never, in fact, took place.		becomes known to the plaintiff.
119. To obtain a declaration that an adoption is valid.	[1][Six years] ..	When the rights of the adopted son, as such, are interfered with

LEG. REF.

[1] Substituted by Act XI of 1923, sec. 2 and Sch. I, for "Ditto".

a declaration that an adoption is invalid or that it did not take place, and not to a suit for possession of immovable property. 183 I.C. 853=1939 L. 135. Art. 118 gives a right which is strictly limited to a period of six years to the then representative of the reversion to obtain a declaration that a particular adoption is untrue or invalid. If no suit is filed within the period of six years, then no succeeding reversioner can file any such suit. But it cannot apply when specific allegations of fraud are made by a succeeding reversioner against the previous reversioner and against adopted son. Nothing can deprive a succeeding reversioner of his present right of action based on fraud which he asserts between the adopted son and the presumptive reversioner who brought the prior unsuccessful suit. 57 L.W. 500=1944 M.W.N. 582=(1944) 2 M.L.J. 214=1945 Mad. 33=I.L.R. (1945) Mad. 450. A suit for possession by reversioner of the first adopted son alleging the second adoption of the defendant is invalid as having been made after the power to adopt has become extinguished under Hindu Law, if brought after six years, is barred by this article. 41 B. 728=41 I.C. 845. *See also* 40 P.L.R. 660=1938 L. 193; 8 Cut.L.T. 96.

STARTING POINT OF LIMITATION.—*See* 15 L. 645=1934 L. 274 (2). Where plaintiff gives *prima facie* evidence of his want of knowledge the defendant must prove knowledge at a particular date when it is alleged limitation began to run. 1 L. 608=59 I.C. 124. *See also* 8 Cut.L.T. 96; 9 I.C. 163; as to onus of proof. Time runs from the time when adoption comes to the knowledge of the next reversioner. 44 M. 218=1921 M. 380=39 M.L.J. 621; 24 M. 405; 29 M. 390. *See also* 28 I.C. 632=2 L.W. 377. Under Art. 118, the starting point of limitation will be the time when the alleged adoption became known to the plaintiff. If a person who is setting up a case of adoption begins to proclaim the alleged adoption soon after the death of the adoptive father and if the person challenging the adoption is aware of such allegation, the period of limitation in such a case will begin to run immediately after the latter comes to know of the allegation even though the alleged adoption never has taken place. 8 Cut. L.T. 96=1943 Pat. 68.

ARTS. 118 AND 119.—Apply only to a suit for declaration in respect of an adoption and not to a suit for possession. 45 A. 1=20 A. L.J. 814; 1923 A. 361; 48 M. 1=1925 M. 497; 46 A. 637=87 I.C. 938=1925 A. 79; 1927 P.C. 229=53 M.L.J. 301; 51 I.A. 220=48 B. 411=46 M.L.J. 598=1924 (P.C.) 137; 1924 N. 142; 44 P.R. 1911=11 I.C. 11; 11 C.P.L.R. 49; 81 P.R. 1914=25 I.C. 429; 30 M. 308=17 M.L.J. 182. But *see contra* 41 B. 728=41 I.C. 845; 37 B. 513=20 I.C. 162, [24 B. 260 (F.B.) held to be good law even after 28 A. 727 and 39 C. 418 (P.C.) *infra*]. Compare the Privy Council judgment in 48 M. 883=52 I.A. 322=49 M.L.J. 769=1925 P.C. 249 (P.C.). This article will not apply to a suit for possession of immovable property by the adopted son, even if it is necessary to decide in the suit whether the adoption was or was not valid. 58 B. 280=1934 B. 110. A suit by a Hindu widow to recover possession of the estate of her deceased husband from the defendant who claimed to be the adopted son of the deceased is not governed by Art. 118, and is in time if brought within twelve years from the death of the husband. 35 C.W.N. 465=1931 P.C. 84=60 M.L.J. 619 (P.C.). Suit to set aside adoption and for possession is governed by Art. 118. 6 P. 506=1927 P. 145. Adoption — Declaration of invalidity of—Suit for— Limitation— Presumptive reversioner—Death of, within period of limitation—Reversioner next in grade a minor at time of—Suit by, within 3 years after attaining majority—If in time—Point referred to Full Bench but not decided by it. 52 M. 620=1929 M. 577=56 M.L.J. 760 (F.B.). Suit for declaration that alienation by adoptee not binding on reversioners—Suit substantially for declaring invalidity of adoption—Art. 118 applies. 1929 L. 579. Omission to bring within the period prescribed by Art. 118 a suit for declaration that an alleged adoption is invalid is no bar to a suit by a reversioner for possession of the property on the death of the limited owner. 39 C. 418=39 I.A. 19=22 M.L.J. 240 (P.C.); 8 L. 48=1926 L. 655; 52 M.L.J. 711=1927 M. 674. Suit to declare invalidity of adoption—Knowledge of alleged adoption for over 6 years—Suit is barred by Art. 118. 1927 P.C. 229=53 M.L.J. 301 (P.C.). *See also* 28 A. 727=33 I.A. 156=16 M.L.J. 440=1922 B. 223=46 B. 776 (F.B.). [34 A. 8 and 24 B. 260 (F.B.) to the contrary are not now good-law]; 1930 L. 438.

ART. 119.—[*See also* under Art. 118]—Where adoption is challenged and rights interfered with, suit to establish adoption must be brought within 6 years from the date of such interference. 43 B. 63=47 I.C. 639 (2); What amounts to interference under the article. 1 R. 186=1924 R. 34. Some-

Description of suit.	Period of limitation	Time from which period begins to run
120. Suit for which no period of limitation is provided elsewhere in this schedule.	[1][Six years] ..	When the right to sue accrues.

LEG. REF.

[1] Substituted by Act XI of 1923, sec. 2 and Sch. I, for "Ditto".

thing incompatible with the recognition of the adoption must be proved. 58 I.C. 394 =22 Bom.L.R. 974. Where in a suit for possession, the adoption is denied, the suit is governed by Art. 144 and not by this Article. 81 P.R. 1914=25 I.C. 429; 58 B. 280=1934 B. 110. *See also* cases cited under Art. 118. 1924 N. 142.

ART. 120: SCOPE.—Art. 120 is applicable only where no other article covers the suit. 14 I.C. 19; 28 I.A. 148=24 A. 17 (P. C.); 1933 L. 581; 50 I.C. 6; 20 I.A. 155= 21 C. 157 (P.C.); 26 C. 564 (F.B.); 34 M. 167=20 M.L.J. 189; 3 A. 170; 37 M. 381= 22 M.L.J. 485; 36 I.C. 418; 1930 O. 395; 146 I.C. 939=1933 L. 615; 24 M.L.J. 184; 31 I.C. 335; 35 I.C. 98 (M.)=35 M.L.J. 257. Wording of plaint so as to escape Art. 91 will not bring the suit under Art. 120. 37 A. 640=29 I.C. 968. Art. 120 applies to all declaratory suits. 27 A.L.J. 794=1929 A. 529. Alienation by Hindu widow—After-born reversioner—Suit for declaration of his rights—Governed by this Article: 16 P.L.T. 236=1935 P. 256. Starting point (*Ibid.*). Coparcener excluded from enjoyment—Suit for declaration and injunction. This article is applicable and not Art. 127. 1935 Pesh. 95.

STARTING POINT OF LIMITATION.—Time runs when the right to sue first accrues. *See* 30 M.L.J. 104, *i.e.*, when it accrues to the plaintiff or his predecessor-in-title and not when it accrued to one through whom the plaintiff does not claim. 22 A. 33 (F.B.); 37 A. 195. The starting point is the date on which the circumstance entitling the plaintiff to have his interests guarded first comes to his knowledge. 12 L. 262=1931 L. 70 (2)=130 I.C. 778. *See also* 20 P.L.T. 303=1939 P. 548. The words "when the right to sue accrues" may be taken to mean when the cause of action arises. The cause of action would comprise the facts which have necessarily to be proved in order to entitle the plaintiff to the relief asked for by him in a particular suit. 1930 M. 173=58 M.L.J. 349. *See also* 41 P.L.R. 321=1939 L. 6; 1940 A.L.J. 459 =1940 A. 424; 1931 L. 70 (2); 1933 L. 270. (as to the interpretation of the words). There can be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted. 1930 P.C. 270=57 I.A. 325=59 M. L.J. 621 (P.C.); 15 P. 151=17 P.L.T. 131 =1936 P. 323. *See also* 47 L.W. 438=1938 M. 193=(1938) 2 M.L.J. 434. The expression "right to sue" means the right to bring the particular suit with reference to which the plea of limitation is raised. 58 C. 1187 =58 I.A. 125; 61 M.L.J. 9=1931 P.C. 89 (P.C.). A suit by an after-born son to declare mortgage effected by his father void and for setting aside a decree obtained on that mortgage must under Art. 120, be brought before the expiry of 6 years from the date when the right to sue accures, *i.e.*, the date of the mortgage so far as the relief by way of setting aside the alienation is concerned. 59 M. 667=1936 M. 440=70 M.L.J. 360. In a suit for declaration that certain mortgages and sales held in pursuance of those mortgages are void and not binding on the plaintiff, the plaintiff's right to sue accrues not only when the mortgages are created but also when the mortgagees bring the mortgaged properties to sale; the sales give a fresh starting point. 15 P. 151 =17 P.L.T. 131=1936 P. 323. Sale by guardian—Money left with vendee to be paid to minors on attaining majority—Suit by guardian as reversioner claiming the money. Art. 111 does not apply because the plaintiff was not the vendor of the property, but had acted merely as the *de facto* guardian of the two minor girls under the Customary Law, and the suit is governed by Art. 120 and limitation runs from the date of the death of the younger girl. 1933 L. 860.

ILLUSTRATIVE CASES—SUITS FOR DECLARATION OF TITLE TO IMMOVABLE PROPERTY.—Suit by plaintiff in possession for declaration of his title to immovable property. Time runs when the defendant did the first act prejudicial to plaintiff's title. 1900 P.R. 20. *See also* 26 C.W.N. 206; 1930 P.C. 270=57 I.A. 325=59 M.L.J. 621=11 Lah. 657; from the date of denial by defendant of plaintiff's title. 61 P.R. 1908. *See also* 1933 L. 412 =142 I.C. 606. When the denial comes to the plaintiff's knowledge. 24 B. 533; 29 M. L.J. 574=30 I.C. 660; when a decision adverse to the plaintiff is given by a competent revenue authority. 45 A. 461=1923 A. 500; 18 R.D. 619=16 L.R. 122 (Rev.). *See also* I.L.R. (1942) M. 562=1942 M. 487=(1942) 1 M.L.J. 472. When a cloud is cast upon plaintiff's title, 120 I.C. 321=1930 N. 92; 1929 A. 529; 115 I.C. 629; 1930 A. 420. In the case of a suit for declaration of title to the property which is in *custodia legis* article is applicable. 35 Bom.L.R. 440= 1933 B. 276=145 I.C. 190. If in a suit for declaration and possession of immovable property, the relief for possession is negatived, the fact that possession is refused cannot make the suit

one for a declaration only so as to make it fall under Art. 120 and thus reduce the period of limitation otherwise available to the plaintiff. 39 Bom.L.R. 224=1937 B. 244. A suit which is confined to a mere declaration of title and is neither in form nor in substance a suit for possession of immovable property is governed by Art. 120, and not by Art. 142 or 144. 55 L.W. 597 =1942 A.L.W. 488=44 Bom.L.R. 868=47 C.W.N. 38=1942 P.C. 47=(1942) 2 M.L. J. 384 (P.C.). A claim to something or some sum of money which had become barred would not revive when it has been brought into Court. 1933 M. 503=144 I.C. 602=38 L.W. 194. The right to sue accrues only when the defendant infringes or has unequivocally threatened to infringe the right asserted by the plaintiff in the suit. 35 Bom. L.R. 440=1933 B. 276; 12 P. 727=14 P.L. T. 258=1933 P. 250. Where the plaintiff sued for a declaration that he was entitled on behalf of a *math* to obtain possession of the property which was in *custodia legis* and held by the administrator and for an injunction restraining the defendants from recovering possession and from asserting their claim. *Held*, that the plaintiff having claimed in his own right, time commenced to run from his installation to the office. 35 Bom.L.R. 440=1933 B. 276. Suit for declration of title and that plaintiffs are in possession of underground rights. *See* 52 I.A. 109=4 P. 244=48 M.L.J. 328 (P.C.). Suit for declaration that the property mortgaged to defendant is plaintiff's property. 52 I.C. 646=17 A.L.J. 973. A suit for declaration by a co-sharer in possession is not barred, if brought within six years from an attempt to oust him from possession. 32 P.L.R. 731 =1932 L. 81. *See also* 14 L. 267=1933 L. 704 (F.B.); 41 C.W.N. 1090=67 C.L.J. 74. A person in possession is not bound to bring a declaratory suit on any and every possible invasion of his title and suit brought within six years of the last of such invasion is in time. 3 L. 43=1922 L. 94; 43 I.C. 175 (A.); 79 P.R. 1917=42 I.C. 346; 1930 N. 92; 115 I.C. 629 (A); 1933 L. 53=145 I.C. 241; 1939 L. 428; 1938 L. 318; 1940 L. 154. When the plaintiff remains in possession, though frequent successive threats and attacks on his title are made by the defendant, his title is not extinguished and so long as his title subsists, he has right to sue for declaration and his suit would be considered to be within time if he makes a threat or attack made within six years, the foundation of his suit. I.L.R. (1939) 1 C. 349=43 C. W.N. 57=1938 C. 804. *See also* 1939 L. 428; 1938 L. 227; 12 Luck. 371=1936 O. 387. It is wrong to say that the period of limitation for a suit for declaration of right begins to run when the right to sue accrues and that it is immaterial whether the plaintiff has knowledge of it or not. Unless the plaintiff knows that there is any infringement of his right, it cannot be said that any right to sue accrues to him. A suit for declaration of right cannot be said to be time barred so long as the plaintiff has a subsisting title to the property. Each invasion of rights gives him a fresh cause of action. The mere act of forbearance in respect of a previous action on the part of a person in possession cannot debar him from instituting a suit later on when a fresh invasion is made against his title which gives him an independent cause of action and the mere making of an adverse entry in the village records cannot be said to have actually disturbed the plaintiff's title if he still continues in possession. 17 Luck. 805=1942 Oudh 374. Every notice of ejectment is a fresh invasion of title and gives rise to a fresh cause of action. 6 L. 132=89 I.C. 299=1925 L. 391 (2). A suit by plaintiff for a declaration that he alone was entitled to succeed to his father's property and that the defendant had fraudulently procured the entry of his name in the revenue records is governed by Art. 120 and the cause of action arises when the fraud becomes known to the plaintiff. 148 I.C. 776=1934 L. 574. A suit by the plaintiff for correction of an entry in the jamabandi papers is governed by Art. 120. The cause of action accrues when the entry is made in the jamabandi for the first time. Neither the opposition to an attempt to change the entry in plaintiff's favour nor the fact that his attempt to enter a correction in the jamabandi failed furnishes a new cause of action. There must be some attempt on the part of the opposite party to oust the plaintiff from possession in order to give the plaintiff a fresh cause of action. Nor does the preparation of a new jamabandi give the plaintiff a fresh cause of action. 210 I.C. 385=(1943) Pesh. 84. Suit for declaration of title and correction of entry in the revenue records is governed by this article. 9 I.C. 804 (a); 20 I.C. 262 (C.); 1929 L. 379; 1930 L. 284 (2). There is a conflict of rulings as to commencement of limitation in such cases. All the early rulings would be seen collected in. 36 A. 492=12 A.L.J. 810. *See also* following cases:—Allahabad.—20 A. 35 (F.B.); 31 A. 9; 20 A.L.J. 231=1922 A. 114 (2); 41 A. 509=17 A.L.J. 588; 102 I.C. 172=1927 A. 597; 1927 A. 148; 100 I.C. 45=1927 A. 396; 145 I.C. 728=1933 A. 663. Calcutta—1923 C. 307; 20 I.C. 262; 53 I.C. 968=23 C.W. N. 883; 1939 C. 749; 25 C.W.N. 1022=1922 C. 251; 34 I.C. 702=23 C.L.J. 561; 1934 C. 192. Punjab.—73 P.W.R. 1918=44 I.C. 912; 38 P.L.R. 1916; 99 P.W.R. 1914=23 I.C. 23 I.C. 458; 53 I.C. 595=98 P.L.R. 1919; 86 I.C. 117=1925 L. 417; 1929 L. 379; 15 L. 469=1934 L. 134. Oudh.—23 O.C. 46= 55 I.C. 893; 22 O.C. 369=54 I.C. 317=17 Luck. 805. Patna.—45 I.C. 432=3 P.L.J. 361; 42 I.C. 397; 41 I.C. 199=2 P.L.J. 557; 1933 P. 698 (2). Madras.—42 M.L.J. 457= 1922 M. 184; 1927 M. 568=52 M.L.J. 323. Fresh cause of action gives fresh starting point. 98 I.C. 811=1927 A. 148; 150 I.C. 814=1934 A. 539. *See also* 13 P. 517. Where the plaintiff sues for a declaration that the defendants do not possess any underproprietary rights in the lands in suit basing his cause of action, on the wrong entry in the Settlement Court and not on any fresh in-

vasion of his rights made subsequently, the limitation in respect of the said cause of action begins to run from the date of the order of the Settlement Court, (as the wrong is then completed) and the fact that the plaintiff purchased the lands in suit subsequent to the making of the settlement entry cannot stop the running of limitation against him. 1937 O. 291=13 Luck. 143. *See also* 40 C.W.N. 566=1936 C. 456. A mere entry of names in the khewat does not debar for ever the person against whom the entry is made from suing for declaration, if six years are allowed to expire after the entry. Any fresh act which can amount to a fresh invasion of his right or a fresh attempt to cast a cloud on his title would create a new cause of action in his favour. 27 A.L.J. 794=1929 A. 529. *See also* 115 I.C. 629; 1933 A. 663 =145 I.C. 728; 153 I.C. 73=1935 A. 174; 1936 P. 129; 1936 P. 321; 42 C.W.N. 96= 1937 C. 745; 40 C.W.N. 566=1936 C. 456; 1940 O. 283=15 Luck. 487; 1937 O. 291=13 Luc. 143; 164 I.C. 118=1936 O. 387. A suit for a declaration will not lie for setting aside a mere assertion. A mere declaration by a trustee that he proposes to hold the property as full owner is not an overt act which would start limitation running against the beneficiaries of a trust. I.L.R. (1946) Lah. 300. The limitation for a declaratory suit occasioned by a threat to a person in possession of property begins to run when that particular threat is unequivocally made, and does not accrue from day to day as the same threat continues or assumes a more menacing aspect. I.L.R. (1945) Nag. 300= 1945 Nag. 129. The rejection of the application for correction of entries in revenue records give a cause of action, but as a fresh invasion of plaintiff's right occurred when the direction was made by the Revenue Officer for partition of the occupancy rights, limitation began to run from the latter date. 1930 L. 284 (2). *See also* 120 I.C. 321=1930 N. 92. Limitation for a suit for the correction of an entry in record-of-rights is six years from date of final publication of the record of rights. (1 P.L.J. 73, Ref.). 1933 P. 698 (2); 161 I.C. 465=1936 P. 129. Suit for declaration of plaintiffs' exclusive title to property and also for declaration that the revisional survey entries in record-of-rights were wrong—Suit filed after six years—Plaintiffs were in exclusve possession of the property. *Held*, that the suit was not for the correction of record-of-rights but for declaration of plaintiffs' exclusive title, and was not time barred. (1 P.L.J. 73, Dist.). 163 I.C. 408 (1)=1936 P. 321 (2). Time commences to run from the time when the plaintiff's right was actually infringed. 1934 C. 192=58 C.L.J. 120. *See also* 17 Luck. 805=1942 O. 374. So long as an adverse entry in the Revenue Records does not injure the plaintiff he need not come to Court at all and hence a plaintiff in a suit for declaration that he is an under-proprietor is not out of time if he institutes the suit within 6 years of the injury which the entry created namely ejectment. 1942 O. 346=1942 O W.N. 217. *See also* 17 Luck. 805=1942 O.W.N. 225. Where the mutation entries in the name of the defendants were made with the plaintiff's consent and the plaintiff had no grievance until the defendant's asserted title on that basis. *Held*, that it was the wrong assertion which constituted the cause of action for a declaratory suit. 144 I.C. 316=1933 O. 283. Plaintiff was in possession of the land which was the subject of alienation by will in favour of the defendant; mutaton was effected in favour of defendant whereupon plaintiff sued for declaration of his title. *Held*, that it was unnecessary for him to bring any suit to set aside the alienation by will as he was in posession of the property and that his suit fell under sec. 45, Land Revenue Act, and was governed by Art. 120, Limitation Act, and not by Sch. I, Art. 1, Punjab Limitation Act. 15 L. 469=1934 L. 134. *See also* 164 I.C. 118=1936 O. 387. A person executed a deed of gift of property in 1924 but did not deliver its possession to the donee. Donee got the property mutated in his name in 1932. On this the donor brought a suit to declare the gift invalid. *Held*, that as possession was never delivered to the donee, time for such suit began to run only when the donee first attacked the title of the donor by getting mutation sanctioned in his favour. 161 I.C. 592=1936 L. 49. *See also* 1938 L. 671=40 P.L.R. 940. Portion of estate—Separate registration—Refusal by Collector—Fresh application by owner. 57 M. 460=1934 M. 373=67 M.L.J. 544. Dismissal of application for correction of jamabandi—Suit for declaration—Plaintiff in possession—Starting point. 1935 O. 181. In a suit for declaration every fresh denial gives rise to fresh cause of action. 1927 L. 887. The fact that in the written statement, the defendant denies the title of the plaintiff does not give rise to a fresh cause of action. 115 I.C. 628. Declaratory suit after an order of attachment made by a Magistrate under sec. 146, Cr. P. Code. There is no continuing wrong in the order and time runs from the date of attachment. 85 I.C. 631=1925 N. 236; 49 C. 544; 1937 M. 787; (1937) 2 M.L.J. 296. But *see* 20 C.W.N. 481 holding that it is a continuing wrong. In 20 A. 142 suit to recover possession brought more than 6 years was held to be within time under Arts. 142 and 144. Where however the Magistrate wrongly put a party in possession, a suit for recovery of possession against that party is not governed by this article but by Art. 142 or 144. 16 I.C. 620=16 C.W.N. 1073. Suits regarding claim orders in cases ofattachment before judgment are governed by Art. 120 and not by Art. 11. 44 M. 902=1921 M. 163=41 M.L.J. 252 (F.B.); 152 I.C. 297=1934 P. 580. Art. 120 and not Art. 11 or 13, applies to a suit brought by an unsuccessful claimant whose claim to property attached before judgment had been preferred and rejected before the decree has been passed. 49 C.W.N. 111=79 C.L.J. 181=1945 Cal. 449. Art. 11 governs

only a suit by decree-holder to declare an alienation by his judgment-debtor as fraudulent after an adverse order has been made against him in objection proceeding, and does not apply to a suit by other creditors who had not attached the property, which is governed by Art. 120. 138 I.C. 412=1932 L. 516. *See also* 1936 P. 535=1936 P.W.N. 779. A suit for a declaration that the plaintiff has a charge on a certain immovable property is governed by this article. 45 B. 597=1921 B. 182. Where the land is in the possession of occupancy tenants, a suit for declaration that the plaintiffs are entitled to collect rents and for an injunction restraining the defendant from wrongfully collecting the same, is in effect a suit for possession governed by Art. 144 and not Art. 120. 34 Bom.L.R. 1469=1933 B. 26. A suit filed by the Official Receiver for a declaration that the mortgage executed by the insolvent was sham and nominal is governed by Art. 120. An alternative claim made under sec. 53 of the Transfer of Property Act will also be governed by the same article. Time begins to run from the date of the plaintiff's knowledge of the fraudulent nature of the transfer. Where the plaintiff is the Official Receiver, though he represents the body of creditors, it is his knowledge that should be taken into consideration rather than the knowledge of this or that creditor which might or might not have reached the Official Receiver. There should be knowledge of facts which would invariably lead to definite inference that the transfer was made with an intent to defeat or delay creditors. I.L.R. (1946) M. 777=59 L.W. 52=1946 M.W.N. 86=1946 M. 236=(1946) 1 M.L.J. 113.

OTHER DECLARATORY SUITS.—Suit for a declaration of a public right of way. 26 C.W.N. 587=1921 C. 405. Suit for declaration of a right to graze cattle—Burden of proof. 1933 L. 370=144 I.C. 976. Representative suit for declaring certain land as graveyard and for injunction directing defendants to remove buildings erected thereon. 178 I.C. 125=1938 L. 254. A suit for a declaration that water collected on the land of the plaintiff belongs to him is within time if filed within six years of the date of the act of the defendant, which is the subject-matter of the dispute, to avoid which the declaration is asked for. Moreover in such a case, so long as the defendant continues to dispute there is a recurring cause of action for the plaintiff. I.L.R. (1945) Nag. 273=1945 Nag. 106. Suit to have a Municipal election declared void. 35 A. 308=20 I.C. 490; suit for declaration that the defendant's name as lessee in the lease is only benami for the plaintiff. 35 A. 149=18 I.C. 698. *See also* 25 C. 49. Suit for declaration that an alienation of ancestral land by father of the plaintiff is not binding on him. 34 I.C. 253. *See also* 77 I.C. 174=1923 L. 268; 33 M. 31 (alienation of tarwad property); 106 I.C. 35=1927 O. 574. Suit by remote reversioner to set aside alienation by Hindu widow and for a declaration of its invalidity. 27 O.C. 173=1934 O. 381; 5 L. W. 482=32 I.C. 270; 37 A. 195=26 I.C. 737 =13 A.L.J. 196; 1 L. 69=55 I.C.924; 15 P.R. 1916=33 I.C. 161. An allegation of collusion of the nearest reversioner will not bring it under Art. 125. 24 M.L.J. 183; 46 I.C. 202 (F.B.). *See also* 41 M. 659=35 M.L.J. 57; 10 M.L.J. 229. So also suit to declare void a gift made by a Hindu widow in favour of her daughter and a stranger, is not governed by Art. 125, but by this article. 1933 A. 856=1933 A.L.J. 1305. Suit by widow of deceased co-parcener against surviving co-parcener for rendition of accounts Art. 120 applies. 182 I.C. 426=1938 L. 139. *See also* 44 L.W. 208; 1936 L. 49 (Suit by donor to declare gift invalid). Time runs from the date of alienation and not when the alienation becomes known to the plaintiff. 33 Bom.L.R. 1418; 38 M. 1064=33 I. C. 45. After born reversioners cannot claim an extension of time under sec. 6 or sec. 7. 6 L. 405=1925 L. 654. Where the alienation was by a Hindu widow of an unrecognised portion of a bhag and the reversioner sued to set aside afer the lifetime of the widow. *Held*, that the alienation being void *ab initio*, the starting point for limitation under Art. 120 is the date of the sale-deed. 32 Bom.L.R. 1013=54 B. 837=1930 B. 545. No fresh cause of action arises when alienee from widow alienates. 1929 L. 579. Article applies to a suit to set aside surrender by Hindu widow. 101 I.C. 275=1927 N. 193. Where a suit was filed for a declaration by the deceased's brother against the widow that the property was the joint family property and that mutation in the widow's name was made only for consolation, *held* that the plaintiff was not bound to institute a suit for declaration on the basis of the mutation entry, for he was not disturbed at all by it as it did not throw any cloud on his title and that it was not until the defendant actually asserted a title by means of filing the suit for profits that it became obligatory upon him to file the suit and that hence limitation for the suit started only from the latter date and not from the date of mutation entry. 1942 O.A. 602=1942 O.W.N. 744=205 I.C. 520. Claim against a benamidar in respect of moneys received and held by him for the benefit of the real owner. *See* I.L.R. 1946 M. 306=(1946) 1 M.L.J. 140=1946 M. 248. A suit by adopted son to set aside alienations by his maternal grandmother—Cause of action arises from the date of the plaintiff's adoption. 38 M. 396 =20 I.C. 625. 25 M.L.J. 219· 46 I.C. 202 =41 M. 659=35 M.L.J. 57 (F.B.). Where the sons sued to set aside certain alienations made by a Hindu father and it appeared some of the properties transferred had been transferred by gift to the alienor by his father. *Held*, that the suit related to joint family property and was governed by Art. 120 and not Art. 126. 150 I.C. 963=1934 L. 397. A suit by a worshipper at a mosque

for a declaration that an alienation made by the mutawalli of waqf property is invalid and not binding on the trust. 2 P. 391=1923 P. 475. Suit by trustee for a declaration that a mortgage decree was not binding on the trust property—Time runs from the date of the mortgage suit. 137 I.C. 707 =1932 M. 589. *See also* 1933 L. 270. Suit to set aside alienation of temple property by trustee for private purposes is governed by Art. 120 and time runs from the date when plaintiff has notice of the alienation. 1928 M. 837. *See also* (1937) 1 M.L.J. 91; 1938 M. 999=48 L.W. 577. (Suit by trustee against banker for recovery of trust funds misapplied by banker in reduction of private debt of co-trustee). A suit for declaration that a sale by a trustee is invalid is governed by Art. 120. 24 I.C. 369=26 M.L.J. 537; 1928 M. 837. But where recovery of possession is prayed for, the suit would fall under Art. 134. 41 M. 124=33 M.L.J. 357 *See also* 1936 L. 784. Suit to remove unauthorized mutawalli—Art. 120 applies. 41 P.L.R. 166. Art. 120, does not apply to a representative suit on behalf of a community under O. 1, R. 8, C. P. Code, for a declaration that a certain property is wakf. It cannot be said that the community as such was even aware before the institution of the suit that their title was in jeopardy, although some members thereof learnt about the assertion of adverse title by the defendant who was in possession of the property as mutawalli, as that does not mean that the assertion was to the knowledge of the entire community. I.L.R. (1946) Nag. 518=1946 N. 401. A suit for ejectment against the mortgagees of property dedicated to an endowment brought more than six years after the dates of mortgages being governed by Art. 120 is barred. It cannot come under sec. 10 of the Act as that section expressly excludes assignees for consideration. Nor does it come under Art. 134 as a Hindu Religious Endowment does not constitute a trust within the meaning of the article and secondly the suit is not for possession but merely for ejectment. (1922 P.C. 123, Rel. on.). 165 I.C. 48=1936 L. 784. As to right to conduct festival in temple, *see* I.L.R. (1941) M. 544 =1941 M. 498=(1941) 1 M.L.J. 322. A suit by a Hindu reversioner for declaration of the nullity of an adoption by the widow. 41 A. 492=50 I.C. 938. Suit by reversioner for declaration about alienation by one of two sisters of her share in property inherited by them from their father. (1946) 2 M.L.J. 214=1947 M. 102. Article is applicable to a suit to set aside a deed as void *ab initio*. 26 C.W.N. 479; 50 A. 510=1928 A. 267=26 A.L.J. 289; to a declaratory suit for setting aside a will. 27 I.C. 574. Also to a suit based on trust created by will. 1929 L. 834. A suit to avoid an alienation under sec. 53 of the T. P. Act. 22 L.W. 592; 1926 M. 66; 2 L.W. 479=29 I.C. 62; 46 Bom.L. R. 613. As to when time begins to run in such cases whether on the date of the alienation or on the date when the option given by sec. 53, T. P. Act, is exercised, *see* 22 L.W. 592. *See also* 7 L.W. 280=44 I.C. 551, holding that time runs from the latter date. 7 Luck. 131=1931 O. 333. The right to sue accrues only when the creditor has a clear and definite knowledge of the facts which constitute fraud and of its effect upon his interests. 132 I.C. 51=7 Luck. 131=1931 O. 333. Suit for declaration that razinamah decree is void. 47 M.L.J. 801=1925 M. 194. Suit to set aside compromise decree against minor. 22 A.L.J. 521=46 All. 575=1924 A. 625. *See also* 2 L. 164=62 I.C. 794. Where a plaintiff does not ask to set aside any act by order of an officer of Government in his official capacity but only seeks a declaration that his dismissal was not dismissal in the eye of law, the suit is governed by Art. 120. 1943 O.W.N. 118=A.I.R. 1943 Oudh 368. A suit for a declaration that a decree in a previous suit related to the present suit land and that the plaintiff acquired title to it by that decree, is governed by Art. 120. 76 C.L.J. 183=A.I.R. 1943 Cal. 460. Where the suit was for compensation based on a contract in the compromise decree, *held*, that the suit was governed by Art. 115 and not 120. 12 P. 792=1934 P. 7. Suit for declaration that attachment and sale are illegal and for restitution governed by this article. Time runs from the date of sale and not from the date of attachment. 36 M. 383=22 M.L.J. 108; *see also* 60 I.C. 529 (Sale held in contravention of sec. 158 of B. T. Act). Suit for declaration of title to surplus sale proceeds under the Bengal Land Revenue Sales Act—Time runs when such right is denied. 47 C. 331=24 C.W.N. 294. For a suit by third party transferee of tenure under secs. 12 and 13, Bengal Tenancy Act, for restraining sale of tenure in execution of decrees not binding upon him, limitation begins to run when the landlord applies for the sale of the tenure and not when the decree was obtained. 57 I.A. 214 =59 M.L.J. 607=58 C. 301=1930 P.C. 193 (P.C.). Art. 120 governs a suit by a landlord to avoid a transfer of occupancy right by a tenant at will, and the period begins to run from the date of the testator's death. 13 L.L.T. 40. Suit for declaration of right to moveable property. 26 M. 410; 20 I.A. 155 =21 C. 157 (P.C.). Suit for declaration that defendant is not the son and heir of the deceased. 54 I.C. 300. Suit for dissolution of marriage or declaration of divorce. 8 O.L. J. 650=1922 O. 109. *See also* 22 B. 430; 1936 A.L.J. 574=1936 A. 454 (suit for damages for enticing away plaintiff's wife). Suit for declaration of the plaintiff's status or right under sec. 42, Specific Relief Act. 25 A. 1 (P.C.); 33 A. 430. *See* 15 B. 422. *See* also I.L.R. (1939) N. 580=1939 N. 197 (Suit for relief under sec. 54, Specific Relief Act and for possession of land). Where a company rejected the request of the plaintiff to have his name entered along with that of his son as the owner of certain shares in June, 1918, a suit brought by the plaintiff for declaration of his title thereto in June, 1924,

is in time, though the shares might have been purchased in 1914. 55 B. 447=33 Bom.L.R. 250=133 I.C. 241=1931 B. 269. Suit by tenant against landlord for declaration that he is not entitled to collect excess rents: 33 M. 171. Suit for damages for use and occupation of shop after notice to vacate. *See* 1946 A.L.J. 305 (2)=1947 A. 31. Mortgagor executing a perpetual lease in favour of a third party—Insufficiency of security for the mortgage—Suit by the mortgagee to avoid the lease—Suit is governed by Art. 120. 100 I.C. 728=1927 O. 148. Where the prayer for declaration is merely ancillary to the main relief, the suit is not thereby governed by this article . 1924 R. 11: 15 I.C. 545. Suit for declaration as to character of partition and invalidity of alienation falls under this article. 31 Bom.L.R. 1240. Suit by sons for setting aside alienation of their father, when vendee was never in possession is only declaratory and comes under this article. 1929 A. 750 (2). Where the act of the Government in respect of which a declaration and injunction are sought is an act which is illegal or *ultra vires* and the declaration is sought on that basis, in such a case neither sec. 59, Revenue Recovery Act, nor Art. 14 applies, but Art. 120 applies. 57 M. 501=1934 M. 147=66 M.L.J. 715. But if the ground of such a suit is not that the act of Government was *ultra vires* or illegal but a mere irregularity which does not vitiate the main proceedings, but relates only to some question of detail such as the exact amount to be collected or something of that kind, which does not make the proceedings *ultra vires,* in such a case, Art. 14 may apply or in a case falling under the Revenue Recovery Act, even sec. 59 Revenue Recovery Act, may apply. 1934 M. 147. Where the Government has acquired the land and has paid the money to one who was apparently entitled to it, a suit by a person who has also got interest in the land and claims the money paid by the Government is governed by Art. 120 and not by Art. 17 or Art. 62. 1935 P. 42. Suit against Secretary of State to declare as *ultra vires* an order of forfeiture. 16 B. 455. *See also* 47 M. 572=47 M. L.J. 35=29 C.W.N. 365=1924 P.C. 150. Suit by Zemindar against Government—Prayer for declaration that enfranchisement of service inam was not valid and binding —Limitation—Starting point. 58 M. 141= 1936 M. 313=68 M.L.J. 409. Suit to set aside Government Order rejecting objections to the marking of the plaintiff's lands in the patta and excluding certain others, and for declaration of his right. 47 M. 572=1924 P.C. 150=47 M.L.J. 35. Suit for declaration as to land being held rent free—Prayer for possession and injunction added but unnecessary falls under this article, the starting point of limitation being the date of the institution of rent suits. 1929 C. 417=49 C.L.J. 281. The plaintiff's suit for declaration that defendant was only an annual tenant and not owner as alleged to have been asserted by him is governed by Art. 120. (31 A. 9, Foll.). 118 I.C. 62=1929 N. 124. The plaintiffs alleged that the order by the Collector disposing of the suit lands in favour of the second defendant was null and void, that the plaintiffs being the owners of the adjacent land and the grant being of alluvial land, the grant should have been made to plaintiffs under sec. 63 of the Bombay Land Revenue Code. The suit was for declaration against the Secretary of State and for possession as against his grantee. *Held,* the relief regarding possession could not be awarded in this suit: that it was really a suit for declaration and injunction and governed by Art. 120 and not by Art. 144. 33 Bom.L.R. 772=55 B. 447=1931 B. 369. *See also* I.L.R. (1941) M. 587=1941 M. 428= (1941) 1 M.L.J. 374=199 I.C. 693. Suit against directors for compensation—Misleading prospectus—*See* 57 L.W. 546=1944 2 M. L.J. 286. Suit for damages against directors— Misleading prospectus issued by them—*See* 57 L.W. 312=1944 M. 431. Where it was proved that the guardian *ad litem* was guilty of gross negligence in the conduct of a suit and the minor sued after attaining majority for a declaration that the decree was not binding on him. *Held,* that Art. 120 was applicable and that limitation commenced to run, not the moment the decree was passed, but only when the gross negligence of the guardian became known to the plaintiff. 1930 M. 173=58 M.L.J. 349. *See also* 33 Bom. L.R. 1033=1931 B. 500; 1936 M.W.N. 351 =1936 M. 804. Where a guardian sells immovable property belonging to a minor without the sanction of the Court and executes a second sale with the permission of the Court, the later transferee can sue for possession outright and need not expressly sue to have first sale set aside. To such a case Art. 120 and not Art. 91 applies. 34 C.W. N. 948=58 C. 128=1931 C. 131. *See also* I. L.R. 1940 M. 27=1940 M. 106 (suit for money advanced by guardian for necessaries of minor). Where funds subscribed by a large number of persons are held in trust for a particular purpose, which fails or comes to an end, there arises a resulting trust of such funds as remain, in favour of the contributors or subscribers or, if they are dead, their personal repesentatives. The fact that the funds are held by one of the subscribers who undertakes to pay interest on the funds would not be inconsistent with the transaction being in the nature of a trust and would not make it a deposit or constitute the holder a banker. A suit by a contributor to recover his share is governed by Art. 120 and limitation commences to run from the date when there is a failure of the purpose whereupon the resulting trust arises. 1938 M. 641=(1938) 1 M.L.J. 616. Suit for declaration that plaintiffs are under-proprietors—Starting point of limitation—Adverse entry in revenue records followed by ejectment. *See* 18 Luck. 38=1942 O. 346; Suit to declare property as public, charitable, trust property. *See* I.L.R. (1945) Kar. 40 =1945 S. 57; Suit for declaration involving setting aside of an order. *See* 19 Luck. 163; 1943 O. 368; Suit for dividend declared be-

fore plaintiff's registration as shareholder—*See* 48 C.W.N. 693. Loan raised on security of shares from *Nidhi*—Latter selling shares and realising amount due—Subsequent suit by debtor's heir for account of shares and for balance due—Limitation. *See* 1942 M. 386=55 L.W. 90=(1942) 1 M.L.J. 274.

SUIT FOR DECLARATION THAT MARRIAGE IS NULL AND VOID.—A suit under the Specific Relief Act by the plantiff who was a Jewess domiciled in England, for a declaration that her marriage in France in accordance with French law to the defendant who was a Hindu domiciled in British India and who had a Hindu wife at the time of the marriage, is null and void, is governed by Art. 120 and not by sec. 23 of the Limitation Act. The right to sue accrues as soon as the wedding ceremony is performed, or at all events, as soon as the defendant claims marital rights. Ignorance of law and her rights, in the absence of fraud on the part of defendant will not extend the period of Limitation. The exception in sec. 29 of the Limitation Act regarding matrimonial matters, refers only to suits under the Divorce Act. 49 C.W.N. 570=A.I.R. 1945 Cal. 484.

SUIT FOR INJUNCTION.—Governed by this Article. 13 M. 445=26 A. 391; 1923 A. 452; 3 L.L.J. 228=1921 L. 242; 2 L.L.J. 463=56 I.C. 1003; 42 B. 333=45 I.C. 592 (mandatory injunction); 49 B. 586=27 Bom. L.R. 503=1925 B. 373; 89 I.C. 405=1925 L. 653. *See also* 1938 L. 259. Suit for mandatory injunction for removal of encroachment on public road is governed by Art. 120. 29 P.L.R. 308=1928 L. 792 (1). So also suit for injunction for removal of water spout. 109 I.C. 638=1929 L. 88. In a suit alleging interference with the plaintiff's right of worship on a holy hill and claiming relief by way of injunction and declaration in respect of *charans* or footprints of saints, which the defendants had removed and replaced by charans of a different type abhorrent to the plaintiffs. *Held*, that the suit was not barred by Art. 120 as the act complained of was a continuing wrong and that under sec. 23 of the Act, a fresh period began to run at every moment of the day on which the wrong continued. 60 I.A. 313=12 P. 681=37 C.W.N. 1021=1933 P.C. 193=65 M.L.J. 163 (P.C.). Suit by reversioner to restrain waste of movables by a Hindu widow. 44 M. 984=41 M.L.J. 279=1921 M. 234 (2). Suit for removal of encroachment on communal land—Time runs from the date of encroachment. 88 I.C. 176=1925 L. 455. *See also* 13 I.C. 661; I.L.R. 1941 L. 22; 1940 L. 359. Suit for injunction against a co-owner denying title is governed by Art. 120. 14 L. 267=145 I.C. 553=1933 L. 705 (F.B.). So also suit to restrain a co-owner from preventing the plaintiffs from using the common property for the specific purpose for which it had been set apart; and it is not governed by Art. 32, though the defendant had perverted the use of the property to an unauthorised purpose. 14 L. 267. But if the relief claimed is one for possession, then Art. 144 will apply. 14 L. 267. Suit for permanent injunction—Removal of construction on *shamilat* of which both plaintiff and defendant are owners. 35 P.L.R. 472=1934 L. 701. *See also* 1939 N. 197=I.L.R. 1939 N. 580. Accretion—Islets in river—Notice by Government claiming penal assessment—Suit for declaration of title and injunction—Limitation. *See* (1942) 2 M.L.J. 223=1942 M. 660.

SUIT FOR MOVABLES.—Suit by reversioner to recover movable property on the death of a Hindu female is governed by the article. 49 C. 45=25 C.W.N. 585=1922 C. 321; 32 C.W.N. 913=55 C. 903. *See also* 34 P.R. 1914=21 I.C. 919; 46 I.C. 627=3 P.L.J. 522; 32 C.W.N. 913=55 C. 903=1928 C. 670. A suit to establish a right to inherit the property even though movable of a deceased person is governed by Art. 120. 1940 L. 475=191 I.C. 676. A suit for the recovery of money wrongfully withdrawn by the defendant from Court by setting up an adverse title to the claim of the plaintiff, is governed by Art. 120 and not by Art. 62. 69 C. L.J. 108=1939 C. 413. As to recovery of ornaments by virtue of inheritance right, *see* 1929 C. 42=32 C.W.N. 133. A suit for a declaration that the plaintiff is entitled to an eight annas share in certain movable property and for recovery of possession thereof from the defendant wrongfully withholding the same is governed by Art. 120 and not by Art. 49 or 62. 1933 C. 253=36 C. W.N. 758=55 C.L.J. 420. *A* deposited his jewellery with his friend *B* at he time of *B's* marriage to be used by him for the purpose of the wedding on condition that it would be returned whenever *A* asked for it. *Held*, that the transaction was a deposit and not a loan and the mere fact that *B* was allowed to use the jewellery did not take the transaction out of the category of a deposit as that expression is used in Art. 145 and Art. 120 had no application. 31 P.L.R. 987=1930 L. 913. Where a donor had given subscription for a specific purpose which became impossible, he was entitled to refund, and the suit was governed by Art. 120. 11 O.W.N. 937=1934 O. 329. *See also* 1941 N.L.J. 184=1941 N. 181 (Suit for profits against person entrusted with property for safe custody).

SUIT FOR PRE-EMPTION.—In respect of lease, 1921 A. 154=19 A.L.J. 442=62 I.C. 884; suit by rival pre-emptors against one another in respect of the same sale. 80 P. R. 1912=14 I.C. 328. *See also* 164 I.C. 366=1936 L. 503. Where possession has not been taken by the vendee a suit for pre-emption by the vendor under a covenant to pre-empt in the sale deed would be governed by Art. 120. 1921 M. 554=62 I.C. 27=40 M. L.J. 443. So also a suit by *othidar* for pre-emption, and time runs from the date he comes to know of the sale. 38 M. 67=23 M.L.J. 607. Also suit for pre-emption in respect of a contemplated sale. 1922 N. 14=65 I.C. 959.

SUIT FOR ACCOUNTS is governed by Art. 120 when it is not covered by any other

article. 14 C. 147 (P.C.). *See also* 1942 M. 48=(1942) 1 M.L.J. 472; 55 L.W. 79=(1942) 1 M.L.J. 274=1942 M. 386. As to whether plaintiff in such a suit brought within time is entitled to go back more than six years and open up the whole account, *see* 39 M. 365=28 I.C. 221 (M.); 13 Bom.L.R. 1014; 19 M. 425; 14 C. 147 (P.C.)=13 I.A. 123; 9 C.L.J. 383=13 C.W.N. 557; 8 C. 788; 1936 M. 170; suit for rents and profits of land to which both plaintiff and defendant have claims—Art. 120 applicable. 1940 Rang.L.R. 136=1939 R. 365. *See also* 45 Bom.L.R. 424=1943 O. 216. A co-sharer's suit for his share of the income of the joint property is governed by Art. 120 and the starting point is when the right to sue accrues, *i.e.*, when the right of the plaintiff is denied or when there is an ouster. He may be entitled to an account of the share of income for a period which may be more than 6 years before the date of suit. It cannot be said that even in the absence of ouster or assertion of hostile title to the knowledge of the plaintiff, his right to share in the income should be confined only to a period of 6 years before the date of suit. 1942 M. 514=55 L.W. 196=1943 M.W.N. 239=(1942) 1 M.L.J. 408. *See also* (1942) 1 M.L.J. 472; 142 I.C. 708=1933 M. 200 holding that account can be claimed for the whole period. In a suit by one co-sharer against another for his share of the income of the joint property, which is governed by Art. 120 of the Limitation Act, time begins to run from the date when there has been an infringement of or some clear threat to infringe the plaintiff's right to an account. Until that has happened there can be no question of any bar of limitation; and a plea of limitation must fail when the defendant is unable to specify the particular date at which the claim to an account was denied by him, and when there is no evidence to show any refusal of the plaintiff's right or any threat of infringement of his right. A general request in the defendant's written statement that the suit should be dismissed is insufficient. In such a case the Court can order an account to be taken for the entire period during which the defendant has realised the plaintiff's share and not merely for a period of 6 years. 45 Bom.L.R. 424=1943 Bom. 216. Where the ex-minor brings a suit for accounts against the ex-guardian, Art. 120 and not Art. 89, applies. 22 Pat. 114=1943 P. 218. Suit by a member of a firm against his *sub-partner* for contribution based on a settlement between him and the defendant, in respect of the loss sustained by the plaintiff in the partnership, is governed by this article and not by Art. 61 or Art. 106. 1934 M. 12=38 L.W. 858=65 M.L.J. 789. A suit for dissolution and accounts of a subsisting partnership is governed by Art. 120. 37 L.W. 288=1933 M. 353 (2)=144 I.C. 573. So also a suit by one partner for partnership accounts (without a prayer for dissolution of partnership) based on an express agreement. 141 I.C. 277=1933 N. 127=29 N.L.R. 34. *See also* 1933 S. 324=27 S.L.R. 308. Hundi vested in defendant for payment of debts of third person—Suit for accounts in respect of—Art. 89 or 120 applies—Starting point. 1936 M. 876. A member of a Hindu family had assigned to him a mortgage bond by the *karta* of the family at the partition which took place in 1929. The mortgage bond was however repaid in fact in 1922. An action being brought by the member on the mortgage with an alternative claim for a money decree against the *karta* if he had received the money. *Held*, that this being merely a case of conversion by the *karta* or a case where having held the money for many years from the date of the partition, he must be said to hold it in trust for the plaintiff, in which event Art. 120 would apply and not Art. 62. 1935 P. 159=156 I.C. 887. The article applies to suit for account against a *karta* of a joint Hindu family. 1921 C. 571=25 C.W.N. 356=58 I.C. 877. *See also* 1940 C. 51=I.L.R. (1940) I.C. 183=44 C.W.N. 93; 1938 L. 139; by a ward against the guardian; 50 C. 910; 30 M.L.J. 11 (recent cases); by a sharer against co-owner of Jahagir appointed by the Government as the manager. 40 M. 291=30 M.L.J. 341. *See also* 142 I.C. 708=1933 M. 200. *See also* 7 Cut.L.R. 87; I.L.R. (1940) 1 C. 110=1940 C. 363; 1937 Pesh. 28; I.L.R. 1940 K. 534=1941 Sind 50; (1940) 2 M.L.J. 494=1941 M. 96 (Sale certificate in respect of property jointly purchased by two persons—Money for stamp paid by one—Suit for contribution against the other—Art. 120 applies and not Art. 61). Where money due to tenants in common was received by one or more tenants to exclusion of the rest, suit by a co-sharer for accounts against other co-sharers. 168 I.C. 41=1937 Pesh. 28; 1938 L. 139; by a Temple Committee. 31 M.L.J. 857=4 L.W. 186; 1939 M.W.N. 360=1939 M. 671 (Suit against trustee for accounts); against an executor or administrator. 32 B. 364; 10 B. 242; 12 Bom.L.R. 881=8 I.C. 189; 13 C.W.N. 557; 19 M. 425; 7 M.L.T. 123; 1935 C. 511=62 C. 120; 1935 M. 594=69 M.L.J. 539 (receiver spending money for estate and surety for the same); by an executor against his co-executor. 10 B. 242; 1927 B. 424=29 Bom.L.R. 418. Banker and customer—Current account—Suit to recover amounts due falls under this article. 33 C.W.N. 412=56 C. 556=1929 C. 714. A suit by a member of an unregistered company for refund of subscriptions is in substance one for an account governed by Art. 120. 7 R. 540=1930 R. 21. Article applicable to an equitable claim against a trustee, liable to account for an account and ascertainment of what may be due, is Art. 120 and not Art. 62, and limitation does not begin to run until the "right to sue" accrues, *i.e.*, until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right by the defendant. Consequently,

the plea of limitation fails when the defendant is unable to specify the particular date at which the claim to an account was denied by him. 35 C.W.N. 145=60 M.L.J. 1=58 I.A. 1=8 R. 645=1931 P.C. 9 (P. C.).

WITHDRAWAL OF SUIT.—In a suit to have an order of withdrawal of a suit vacated and to prosecute the suit further, the plaintiff's cause of action arises as from the date of the withdrawal of the suit from which date he would get 6 years under Art. 120. 67 C.L.J. 320=1938 C. 874.

MISCELLANEOUS—SUITS GOVERNED BY THIS ARTICLE.—A suit by a servant of the Calcutta Corporation for the provident fund amount standing to his credit is governed by Art. 120 and not by Art. 115. I.L.R. (1944) 1 Cal. 463=1945 Cal. 144. There is no article in the Limitation Act which lays down the limitation period in a suit where a jagirdar as superior holder sues muafidar, as inferior holder, for the fixed yearly payments due to him. Hence it is only Art. 120 that can apply to such a suit. 1942 A. M.L.J. 40. Suit by trustee against his co-trustee for breach of trust. 20 M. 398. Suit by trustee of temple to recover money from former trustee. 152 I.C. 345=40 L.W. 275 =1934 M. 542. Art. 120 applies to a suit by a trustee against a receiver appointed under O. 40, C. P. Code, for his negligence in the management of the estate, when such suit is brought by the plaintiff under leave granted to him in proceedings arising out of objections to the receiver's accounts by the Court which appointed the receiver. To such a suit, neither sec. 10 nor Art. 36 nor Art. 89 nor Art. 115 of the Limitation Act is applicable. The "right to sue" accrues in this class of suits, when the leave to sue the receiver or the ex-receiver is given to a person by the Court which had appointed the receiver. 46 C.W.N. 394=75 C.L.J. 1= 1942 Cal. 483=I.L.R. (1942) 1 Cal. 577. A suit by a trustee against a stranger to recover trust funds which have been applied in breach of trust falls under Art. 120 and not under Art. 36. The right to sue accrues when the trustee becomes aware of the breach. 67 I.A. 448=I.L.R. (1941) M. 175=1941 P.C. 1=(1941) 1 M.L.J. 393 (P. C.). Suit against trustee for neglect of duty. 18 B. 401. Suit by beneficiary against trustee. 58 I.A. 279=10 P. 851= 61 M.L.J. 78=1931 P.C. 196 (P.C.). Suit to declare decree against minor void on ground of gross neglect of guardian. 1936 M. 804. Contract of sale—Buyer failing to complete payment of price and seller avoiding contract—Suit by buyer to recover part price paid. *See* I.L.R. (1941) Kar. 495=1942 Sind 37. Administration bond to Court—Assignment by Court—Suit by assignee—Article applies—Starting point—Assignment, if gives fresh starting point of time. 165 I.C. 672=1936 B. 363=38 Bom. L.R. 632. Suit for administration of deceased's estate. 25 M. 361=12 M.L.J. 183; 36 B. 111=13 Bom.L.R. 1025. *See also* 67 I.A. 406=53 L.W. 1=(1941) (1) M.L.J. 594 (P.C.)=1940 P.C. 215; 23 M. 583 (Suit for administration of fund). Claim by administrator against debtor of estate of deceased —Limitation—Starting point. 1935 C. 511 =62 C. 120. A suit by the zemindar to recover the cess paid by him to Government from the inamdar is one to enforce a statutory liability and is not one for rent or one based on a contract, express or implied, and falls under Art. 120. I.L.R. 1937 M. 498 =(1937) 1 M.L.J. 91 (F.B.). *See also* 185 I.C. 626=1940 P. 254 (Suit to recover annuity under a will); I.L.R. 1940 Bom. 165 =1940 Bom. 97=42 Bom.L.R. 57. (Suit by shareholder of company for dividend); 1941 N.L.J. 665 (Suit to enforce equitable claim). Compensation payable under Land Acquisition (Mines) Act, being a statutory liability, suit for recovery of the same is governed by this article and not by Art. 2. 15 P. 510=17 P.L.T. 279 =1936 P. 513; 1939 L. 583. Suit by one co-sharer against another in possession of the property for compensation for use and occupation or for his share of the rents and profits. 23 C. 799; 33 I.C. 705=39 M. 541 (M.); 5 P.R. (Rev.) 1915=32 I.C. 102. *See also* 28 A. 161; 37 A. 318=13 A.L.J. 407; 1923 N. 229; 41 I.C. 848=13 N.L.R. 127; 39 M. 54=33 I.C. 705; 4 Luck. 265 =1929 O. 83; 131 I.C. 511=1931 R. 150; 135 I.C. 836=1932 A. 272; 1933 L. 92 [48 M. 648 (F.B.), Foll.]. Suit for mesne profits. 1 R. 405=1924 R. 155; 165 I.C. 266 =1936 A.L.J. 984=1936 A. 706; 1940 C. 400. Suit for profits of land belonging to the plaintiff which were wrongly received by the defendant from the Collectorate, while the land was under attachment under sec. 146, Cr. P. Code.. 50 C. 475=1923 C. 379. *See also* (1937) 2 M.L.J. 296=1937 M. 787. As to effect of order under sec. 144, Cr. P. Code, *see* 53 L.W. 315=1941 M. 498 =(1941) 1 M.L.J. 322=I.L.R. 1941 M. 544. Art. 120 applies to a suit by a landlord challenging a transfer of an occupancy right in contravention of the provisions of the Punjab Tenancy Act. 39 P.L.R. 771=1937 L. 824. Art. 120 applies to a claim under sec. 93 of the Punjab Land Revenue Act. 47 P. L.R. 122=1945 Lah. 164. Rents collected by defendants prior to compromise giving plaintiffs right to such rents—Kist falling later—Suit by plaintiffs to recover same from defendant — Limitation — Starting point. 16 P. 184=18 P.L.T. 162=1937 P. 237. Claim for mesne profits in a suit for partition and profits is within Art. 120. 29 C.W.N. 270=1925 P.C. 93 (1) (P.C.). So also suit for joint possession for common enjoyment. 1928 N. 96=10 N.L.J. 174. suit for partition of joint property. 1 C. L.J. 73. *See also* 28 I.C. 953=37 A. 318= 13 A.L.J. 407. There is a continuing right of suit so long as the parties are co-owners. 30 M.L.J. 104; 28 A. 627=3 A.L.J. 379. *See also* 1939 R. 365; 55 L.W. 196=(1942) 1 M.L.J. 408=1942 M. 514=20 C.W.N. 481; 1927 M.W.N. 696. Suit by a Mahomedan heir for his share of the inheritance. 44 A. 244=20 A.L.J. 71=1922 A. 525; 63 I.

C. 685=14 S.L.R. 137. Suit for share of profits—Suit by members of joint family against purchaser of another member's interest in property. 1935 M. 731=41 L.W. 138=68 M.L.J. 487. Alienation by father —Suit by sons to set aside—Decree declaring invalid and awarding share to sons—Alienee continuing in possession—Suit by sons for profits—Art. 120 and not Art. 109 applies. 1936 M. 654=162 I.C. 771=43 L. W. 706. Joint Hindu family—Collection of outstandings by one member—Suit for share. 42 M.L.J. 507=45 M. 648=1922 M. 150. *See also* 30 M.L.J. 104=32 I.C. 83 (Suit by Mahomedan co-heir); 1937 O. 394 =168 I.C. 472. (Claim against co-sharer in respect of improvements made to joint property). Suit against co-heirs for share—Estate consisting of immovable property and business—claim to immovable property is governed by Art. 144 and that for accounts is governed by Art. 120. 1936 R. 407. Suit by co-mortgagee for his share and the money realised by another. 79 I.C. 294=1921 Lah. 196. Suit for contribution as between co-mortgagors is not governed by this article. 10 O.W.N. 919= 1933 O. 478. Where some of the properties furnished as security under a bond executed as a condition for stay of execution were sold in execution of another decree subject to a charge, and on the failure of the purchaser to pay off the charge, the owner of the properties brought a suit in effect praying for a declaration of his right to indemnity and for its enforcement by the sale of the property. *Held*, that it was not necessary for the plaintiff to pray specifically for a declaration which was involved in the prayer for sale of the property, that the main relief was the enforcement of the charge and that the suit was governed by Art. 132 and not Art. 120. 57 M. 218 =66 M.L.J. 4=1934 M. 1. Suit for contribution under sec. 70, Contract Act. 43 M. L.J. 271=1923 M. 64; 1921 C. 93=25 C. W.N. 813=62 I.C. 615. *See also* 1937 O. 394. Suit to recover father's debts from the . . on basis of the son's pious obligation under Hindu Law. 42 C. 1068=19 C.W.N. 849=29 I.C. 629 (F.B.). Time runs when the debt became payable by the deceased. 23 M. 292 (F.B.). *See also* 23 A. 206; 3 A. L.J. 274=28 A. 508. Suit to enforce an award. 49 B. 693=1925 B. 519; 45 B. 329 =59 I.C. 755=1921 B. 389; 102 P.R. 1015 =32 I.C. 88; 31 I.C. 816 (M.). *See also* 1928 B. 264 (Suit to recover instalments fixed by award). It cannot be said that all suits, irrespective of their nature, which are based on an award must be governed by Art. 120. 1929 R. 275 (2). Suit to recovery compensation for breach of the award. 19 I.C. 376=6 S.L.R. 148. *See also* 34 A. 43 =8 A.L.J. 1138. [5 A. 263 and 16 A. 3, holding that an award is a contract to which Art. 113 would apply are no longer good law.] Agreement that defendant should render account of income to plaintiff in case plaintiff wins certain Will suit—Plaintiff bringing suit for accounts after winning first suit. Art. 120 applied, and under that article, the right to sue did not accrue until the date of the decree of the first Court in the will suit, which is the proper starting point for limitation. 161 I.C. 843=1936 M. 170. Suit by tenant against landlord to apportion rent. 11 C. 284. Suit in respect of public charities. 24 I.C. 360; 33 I.C. 45=38 M. 1064. Suit by District Board for subscriptions collected by defendant from the public for the construction of a bridge over a river—Cause of action arose only when definite steps had been taken towards the construction of the bridge. 143 I.C. 496=1933 M. 524=64 M.L.J. 574=37 L.W. 631. *See also* 1939 M. 877=50 L.W. 466= (1939) 2 M.L.J. 579=I.L.R. 1940 M. 50. Bihar Municipality granting right to collect tolls from market on contract for payment of fixed sum—Suit against grantee for recovery of amount—Art. 115 and not Art. 120 applies. 18 P.L.T. 252=1937 P. 360=16 P. 302. But suit for recovery of licence fee due in respect of demise or lease of premises under sec. 30, Bom. Mun. Boroughs Act, 1925 is governed by this article and not Art. 110. 1936 S. 184=30 S.L.R. 146=165 I.C. 369. *See also* 1938 P. 192; 173 I.C. 678=1938 Sind 48 (Suit for terminal tax). Suit against Municipality to recover licence fees and profession tax wrongly levied. *See* 55 L.W. 783=(1942) 2 M.L.J. 663=1943 M. 191. A suit by a District Board to realise a certain amount as tax on circumstances and property, is not really a suit for recovery of money but for the recovery of a liability under a particular suit. To such a suit the three years rule of limitation would not apply. It is governed by Art. 120. I.L.R. (1941) All. 276=1941 A.L.J. 28=1941 A. 152. Suit for construction of will. 1 C.L.J. 73; 20 C. 906; 33 I.C. 45=38 M. 1064; 37 C.L.J. 482=1924 C. 411 (The right is a continuing right so long as the estate is in the hands of the executor and the administration not completed). Suit against Secretary of State to recover surplus sale proceeds in a sale for arrears of revenue. 20 C. 51 (F.B.), Overr. 18 C. 234. Suit claiming exclusive right of worship of an idol. 4 C. 683; or a turn of worship. 46 C. 455= 47 I.C. 25=22 C.W.N. 994. Suit to recover profession tax. 13 M. 124. A claim by a liquidator of company under sec. 235, Companies Act. 47 A. 669=23 A.L.J. 473= 1925 A. 519. *See also* 1935 L. 335=16 L. 1055; 1937 P. 293. Application to annul transfer under sec. 4, Pro. Ins. Act. (1943) 1 M.L.J. 125. Suit to recover revenue as Government's assignee. 26 M. 730=13 M. L.J. 248. As to applicability of the article to suit for redemption after sale of equity of redemption contrary to the provisions of O. 34, r. 14, C. P. Code. *See* 47 C. 377= 24 C.W.N. 229. Suit by auction-purchaser to recover the purchase money under sec. 315, C. P. Code, 1882 (now O. 21, r. 93) on the ground that the judgment-debtor had no saleable interest. 35 A. 419=19 I.C. 986; 50 C. 115=27 C.W.N. 183=1923 C. 85; 23 M.L.J. 487=17 I.C. 437; 3 M.L.J. 134=16

M. 361; 40 C. 187. Where an auction purchaser who under a decree obtained by a third party loses a part of the property purchased by him, brings a suit against the decree-holder for refund of the purchase money, the suit is governed by Art. 62 or 97 and not by Art. 120. 1937 O. 286=1937 O.W.N. 83. Suit by judgment-debtor to recover excess amount realised in execution. 140 I.C. 472=1933 L. 112. Suit by trustee for reimburesement out of the trust estate for money spent out of his pocket for purposes of the trust. 38 M. 260=28 M.L.J. 347. [37 C. 220 (P.C.), Foll.]. Suit for reimbursement, by a person *C* put in charge of the property, pending determination of the rights of *A* and *B* of the wages of watchmen of the property paid by him. 128 I.C. 66=7 O.W.N. 760=1930 O. 420. *See also* 1926 P. 205=5 P. 249=94 I.C. 826. Suit for declaration of validity of appointment to office of karnam of new group of villages formed on regrouping, is governed by Art. 120. 99 I.C. 634=1927 M. 148=51 M.L.J. 678. Suit by a partnership consisting of some of the members of a joint Hindu family against the family for advances made to it out of the partnership funds. 44 I.C. 428=34 M.L.J. 32. *See also* 45 L.W. 749 =1937 M. 509. Suit to remove a Pandara Sannadhi from office. 40 I.C. 627=32 M. L.J. 271. Where the office is not hereditary, a suit to oust a person wrongly holding the office of Mutawalli is governed by Art. 120. 44 C.L.J. 339=99 I.C. 205=1927 C. 130. So also a suit for a declaration that the plaintiffs are the Mutawallis of the trust property or a suit for possession of the office of the Mutawalli. 1930 A. 866. *See also* 42 C.W.N. 1138=1938 C. 709; 40 Bom.L.R. 1288=1939 B. 56. Right to conduct festival in temple—Dispute between Vadagalais and Thengalais—Former getting order under sec. 144, Cr. P. Code, against latter—Festival not performed from 1914 to 1927—Subsequent order under sec. 144, Cr. P. Code, in 1930—Suit by Thengalais in 1930 to declare illegal not barred. 53 L.W. 315=I.L. R. (1941) M. 544=1941 M. 498=(1941) 1 M.L.J. 322. [A claim to hereditary office is governed by Art. 124. 1931 M.W.N. 8= 133 I.C. 193=1931 M. 505.] *Maharki watan* falls under the term 'hereditary office'. In a *Maharki watan* having several branches, each one claims a share for his branch alone to the exclusion of others, and the alternative working of a branch year by year is also exclusive of others. A suit by a branch for possession of its share is therefore governed by Art. 124 and not by Art. 120. I.L.R. (1937) N. 151=168 I.C. 351=1937 N. 84. A suit claiming a share in the proceeds of a Moglai Hak (grant of revenue of certain villages) is governed by Art. 120, and limitation begins to run from the date of demand and refusal. 39 Bom.L.R. 277= 1937 B. 217. *See also* 1939 C. 468=69 C. L.J. 220=43 C.W.N. 469. Suit to enforce pledge of movable property where no personal decree is sought for, is governed by Art. 120. 40 A. 512=16 A.L.J. 449. *See also* 22 C. 21; 17 A. 284=27 M. 528 (F.B.) 37 Bom.L.R. 165=1935 B. 213. Suit for price of goods sold where the seller seeks only a personal decree and not the enforcement of any charge on goods with him is governed by three years' rule of limitation and not by Art. 120. 132 I.C. 422=1931 A. 229. Suit by mortgagor for recovery of the mortgage money left with the mortgagee for payment of prior creditors, on default being made by the latter in such payment is governed by Art. 120. 133 I.C. 615=1931 A.L.J. 533=1931 A. 549. *See also* I.L.R. (1941) Kar. 495=1942 S. 37; 1932 A.L.J. 556=1932 A. 454 (Purchaser failing to pay a mortgage debt). Suit for the recovery of the price of work done and materials supplied on a contract to build a house. 103 P.R. 1913=22 I.C. 576. But *see* 2 L. 376 =1922 L. 198 holding that such a suit falls under Art. 115. Claim by solicitor for costs decreed to him mentioning him by name. 34 Bom.L.R. 670=1932 B. 378. Art. 120 is the relevant article as regards *malikana*, and there is no right of action at all in respect of such a subject-matter as *malikana*, unless and until a certificate under the Pensions Act has been obtained. A suit brought within six years from the grant of the certificate is not barred under Art. 120. 56 I.A. 267=51 A. 439=1929 P.C. 166=57 M. L.J. 160 (P.C.). In the case of a claim for payment of *zarichaharum* to the owner of the site, the suit should be brought within six years from the date of the confirmation of the sale. 52 A. 921=130 I.C. 12=1930 A.L.J. 1284=1931 A. 25. A suit by a junior member of a family governed by rule of primogeniture for a plot of land in lieu of maintenance on the strength of family custom is governed either by Art. 120 or 144, the choice between the two provisions of law depending upon the question whether the suit is treated as one for declaration or for possession. 11 L. 99=1929 L. 872 (2). Arts. 129 and 131 do not apply to such a case, as Art. 129 is restricted in its operation to a suit for maintenance in which the right is based on Hindu Law and not upon custom, and Art. 131 is confined to a suit in which the plaintiff seeks simply to establish his right to maintenance and does not ask for a consequential relief. (83 P.R. 1906, Foll.) 1929 L. 872 (2). Suit against directors for misapplication of the company's funds in *ultra vires* transaction falls under this article. Time runs from the earliest date when specific injury actually arose. 54 B. 226. A right to sue for misfeasance of directors of companies arises from the date of misfeasance and is governed by Art. 36 or Art. 120. 54 M. 153=1931 M. 58=60 M.L.J. 280. Article applies to suit for damages for enticing away plaintiff's wife. 1936 A.L.J. 574= 163 I.C. 974=1936 A. 454. Also to suit for restitution of conjugal rights against wife, and this is a continuing wrong. 38 Bom.L. R. 502=164 I.C. 628=1936 B. 289. A suit by the mortgagee to recover the mortgage money under sec. 68 (*b*) of the T. P. Act R. 223; 161 I.C. 461=1936 R. 80. 7 O.W.N. 1045=1931 O. 5; 3 R. 60=1925

Description of suit.	Period of limitation	Time from which period begins to run.
	Part VIII—Twelve years.	
121. To avoid incumbrances or under-tenures in an entire estate sold	Twelve years ..	When the sale becomes final and conclusive.

R. 223; 161 I.C. 461=1936 R. 80. Posses- Application by mortgagee for correction of entry rejected—Limitation for suit governed by Art. 144 and not Art. 120. 1936 O.W.N. 243=1936 O. 168. Suit by mortgagee auction-purchaser for possession—Property in possession of lessee of mortgagor—Art. 144 applies and not Art. 120. 1936 O.W.N. 399=12 Luck. 161=1937 O. 145. Subrogation—Suit to enforce right—Limitation. *See* (1945) 1 M.L.J. 341. As to whether an application for revocation of probate is governed by Art. 120, *see* 35 C. W.N. 387=1931 C. 713. If one entitled to use a land as *sehan darwaza* uses it for a purpose like starting a sugar mill he is increasing the burden and the article applicable would be Art. 120 and not 32. 1937 A.L.J. 1231=1938 A. 20.

ARTS. 120 AND 125.—A deceased had made a gift of his land to certain person. His daughter unsuccessfully contested the registration of the land in alienee's name, but did not bring any title suit afterwards. The reversioners of the deceased subsequently brought a suit for a declaration that the alienation was void against them. *Held*, that the mere failure on the daughter's part to bring a title suit after failure in registration proceedings did not amount to constructive alienation for purposes of Art. 125, which, therefore, did not apply; and the suit by the reversioners brought more than six years after the land registration entry was barred under Art. 120. 165 I.C. 21= 1936 P. 535. Where a Hindu widow and her daughter execute a sale-deed in respect of property inherited from the last male owner, the daughter having only a *spes successionis*, the alienation has to be regarded as one by the widow alone. A declaratory suit by the daughter's son after the death of the widow, but during the lifetime of the daughter, his mother, is governed not by Art. 125, but by Art. 120, and is barred unless brought within six years of the date of the alienation. 165 I.C. 448 =1936 M.W.N. 339=44 L.W. 208. *See also* 1941 C. 41.

ARTS. 120, 127 AND 132.—*See* 1938 P. 16. The right of a member of a Malabar tarwad to maintenance is a proprietary right and based on co-ownership in the property of the tarwad. The claim to recover maintenance or arrears of maintenance falls within Art. 127, even if based on a *karar* executed by the members of the tarwad. But Art. 127 cannot be availed of by an assignee of the right from a member; the article is restricted in its scope to the members of a joint family. The article applicable to a suit by an assignee is Art. 120. Where the maintenance is charged on the tarwad income under a *karar* entered into by the members of the tarwad, the claim so far as it is sought to be enforced against the income of the immovable property of the tarwad would be governed by Art. 132. 163 I.C. 190=43 L.W. 711=1936 M. 573.

ARTS. 120 AND 131.—A suit by the holder of the office of mutawalli or katheeb of a mosque against the Secretary of State for India for a declaration that he was entitled to the *yeomiah* allowance as the lawful holder of the office is a suit to establish a periodically recurring right attached to the office of mutawalli and is governed by Art. 131 of the Limitation Act, Art. 120 does not apply to such a suit. A suit brought within 12 years of the Secretary of State's refusal to recognise the validity of the plaintiff's claim would be in time. I.L.R. (1941) M. 587 =1941 M. 428=(1941) 1 M.L.J. 374.

ARTS. 120 AND 142.—Where in proceedings under sec. 145, Cr. P. Code, the Magistrate passed an order for attachment of the property which was taken possession of by a Tahsildar as receiver, his possession is in the eye of law the possession of the true owner and the plaintiff could maintain a suit for a mere declaration of his title and it is not necessary for him to institute a suit for possesion. The suit being neither in substance nor in form a suit for possession of immovable property, Art. 142 has no application and falls under sec. 120. 164 I.C. 118=1936 O.W.N. 784=1936 O. 387= 12 L. 371.

ARTS. 120 AND 134 AND SEC. 10.—A suit for ejectment against the mortgagees of property dedicated to an endowment more than six years after the dates of mortgages being governed by Art. 120 is barred. It cannot come under sec. 10 of the Act as that section expressly excludes assignees for consideration. Nor does it come under Art. 134 as a Hindu Religious Endowment does not constitute a trust within the meaning of the article and secondly the suit is not for possession but merely for ejectment. 165 I.C. 48=1936 L. 784. *See also* 48 I.A. 302=44 M. 831=1922 P.C. 123=41 M.L.J. 346 (P.C.).

ARTS. 120 AND 144.—Art. 144 and not Art. 120, applies to a suit for possession by an auction-purchaser of a particular joint family property described with boundaries in his sale cerificate, sold in enforcement of a decree obtained by a creditor against, *inter alia*, the manager of the family. 47 Bom.L.R. 1102=1946 Bom. 192.

ART. 121.—"Incumbrance" does not include adverse possession. 44 C. 412=39 I.C.

Description of suit.	Period of limitation.	Time from which period begins to run.
for arrears of Government revenue or in a patni taluk or other saleable teunre sold for arrears of rent.		
122 Upon a judgment obtained in British India, or a recognizance.	[1][Twelve years] ..	The date of the judgment or recognizance.
123. For a legacy or for a share of a residue bequeathed by a testator, or for a distributive share of the property of an intestate.	[1][Twelve years] ..	When the legacy or share becomes payable or deliverable.

LEG. REF.

[1] Substituted by Act XI of 1923, sec. 2 and Sch. I, for "Ditto".

213. *See contra* 25 C. 167. [Followed in 43 C. 779=31 I.C. 801.] Article applies also to an assignee of a purchaser. 22 W.R. 29.

ART. 122 applies only where a suit is maintainable on a judgment. 20 C.W.N. 58; 38 A. 509. As to what judgments can be sued upon, *see* 8 B. 1; 7 C. 74; 9 C.W.N. 952=33 C. 560; 24 C. 473. Where a former suit ended in a declaratory judgment, and the decree was not framed in an executable form, a suit will lie to enforce the rights so declared, and such a suit will be governed by Art. 122. 40 L.W. 792=1934 M. 665=67 M.L.J. 413.

ART. 123: SCOPE.—*See* 9 C. 79; 14 B. 236; 25 M. 361. When a suit is barred by this article the right to property is extinguished. 23 B. 80. Suit for legacy falls under this article. 36 B. 111=12 I.C. 702=13 Bom.L.R. 1025; 41 C. 271=25 I.C. 370 (residuary legatee suing); 25 M. 361; even if administration is also prayed for, it is only ancillary to the claim for legacy, and article would apply. 25 M. 361.

APPLICABILITY.—Art. 123 applies only where the suit is brought against an executor or administrator or some person *legally charged with the duty of distributing the estate.* 59 I.A. 74=54 A. 93=1932 P.C. 81=62 M.L.J. 371 (P.C.). *See also* 14 B. 236; 12 M. 487; 16 M. 61 (F.B.); 34 M. 511=20 M.L.J. 288 (F.B.); 9 C. 79; 17 O.C. 157=24 I.C. 45; 44 C.W.N. 221=1940 C. 93, Art. 123 does not apply to the claim for profits in the estate of a deceased in respect of movable property. 178 I.C. 475=1938 R. 416. "Payable" or "deliverable"—Bequest of land subject to mortgage—Direction to executor to discharge mortgage and to convey land—Legacy, if becomes payable before discharge of mortgage. I.L.R. (1943) Mad. 477=1943 Mad. 276=(1943) 1 M.L.J. 36. The words "payable" and "deliverable" in Col. 3 of Art. 123 indicate that there must be some person who is under a duty to pay the legacy or to deliver the distributive shares. It is not necessary however that the persons liable to pay must be executors or administrators. They must be persons in possession of the estate and legally bound to pay the legacy or hand over the distributive shares. Hence, where a testator has in his will directed that the person in possession of his estate would pay maintenance allowance to certain lady, a suit to recover that allowance is governed by Art. 123. 44 C.W.N. 221=1940 C. 93. (Article inapplicable to suit against co-heir). 12 R. 409=152 I.C. 768=1934 R. 318; *see also* (1943) 1 M.L.J. 36. But *see* 40 M. 190=43 M.L.J. 486=1922 M. 457, holding that article applies to suits for legacies against any person rightly or wrongly in possession of the estate. A suit by the plaintiff to recover possession of certain Government Promissory Notes in accordance with the terms of a will left by the original owner against the defendant alleged to have the notes in his custody contrary to the terms of the will is not governed by Art. 123, as the defendant is not charged with any duty of distributing the estate. [59 I.A. 74 (P.C.), and Fol. Appl.] 36 C.W.N. 758=55 C.L.J. 420=1933 C. 253. A suit by the heirs of the deceased owners for possession of the property from the defendants in possession of the propety, without any colour of title and not claiming under the original owner is not governed by Art. 123. 10 R. 82=137 I.C. 200=1932 R. 55. *See also* 164 I.C. 556=1936 R. 388. But a suit for recovery of a legacy from persons who are in possession of the estate and who are legally bound to pay the same is governed by Art. 123; 1934 A.L.J. 230=56 A. 711=1935 A. 239. *See also* 185 I.C. 626=1940 P. 254 (suit for annuity under a will). *See also* 17 P. 350=19 P.L.T. 202=1938 P. 600. Where a Muhammadan dies intestate, his estate vests in his heirs as tenants-in-common and no one is charged by law with its distribution, and if a suit is brought by one of the heirs to recover his share, Art. 144 and not Art. 123 applies. 14 L. 794=1933 L. 784 (2); 11 L. 29=117 I.C. 803=1929 L. 549; 59 I.A. 74=54 A. 93=1932 P.C. 81=62 M.L.J. 371 (P.C.). *See also* 1929 B. 141; 45 B. 519=59 I.C. 780=22 Bom.L.R. 1429; 44 B. 943=22 Bom.L.R. 936=58 I.C. 48. *See also* 4 L. 402=1923 L. 519; 34 M. 511 (F.B.); 30 M.L.J. 104; 51 A. 101=1928 A. 467; 31 Bom.L.R. 199=1929 B. 141; 17 O.C. 157=24 I.C. 45. The decisions in 5 R. 582=106 I.C. 828=1928 R. 6 and 3 R. 77=1925 R. 228 are no longer good law in view of the Privy Council decision in 59 I.A. 74, *supra*, A suit for accounts by an heir of an intestate or an administrator against an executor *de son tort* is governed by Art.123 and the latter is liable to account for mesne profits for a period of

Description of suit.	Period of limitation.	Time from which period begins to run.
124. For possession of an hereditary office.	[1][Twelve years] ..	When the defendant takes possession of the office adversely to the plaintiff. *Explanation.*—An hereditary office is possessed when the profits thereof are usually recieved or (if there are no profits) when the duties thereof are usually performed.

LEG. REF.

[1] Substituted by Act XI of 1923, sec. 2 and Sch. I, for "Ditto".

twelve years before suit. 30 Punj.L.R. 503 =1929 L. 753. Article is inapplicable to suit against a person who is a representative only for the purposes of management. 14 Bom. 236. A suit to recover an undistributed share of an intestate is governed by Art. 123. 43 B. 845=51 I.C. 209=21 Bom.L.R. 384; 1 R. 405=1924 R. 155. *See also* 42 I.C. 809; 1923 R. 110; 88 I.C. 609=1925 R. 233. As to suit for whole of intestate's property, *see* 16 P.R. 1897; 10 Bom.L.R. 210 at 229. As to suit by an heir to recover money or movable property, *see* 21 C. 157 (P.C.); 34 M. 511; 34 P.R. 1914; 19 A. 169. Where the amount of maintenance granted under a will is to come out of income of particular property and the defendants are in possession of the property under the will, the proper article to apply to the suit for arrears of such maintenance against the defendants is Art. 123 and not Art. 62. 132 I.C. 684= 35 C.W.N. 347=1931 C. 670. As to commencement of limitation in cases of testate and intestate succession, *see* 8 C. 788; 19 M. 425 (case of Parsis). Time does not run until person liable to deliver or to pay has the share or money in his hands. 48 M. 312 =52 I.A. 214=48 M.L.J. 627=1925 P.C. 105 (P.C.). *See also* 1937 R. 354. Suit for legacy under will—Defendants appointed executors under will and trustees of testator's estate—Suit, if one under sec. 10, Lim. Act. *See* I.L.R. (1942) Kar. 392=1942 S. 145. Mahomedan co-heir—Suit by for share in sale proceeds of property of deceased from person engaged to distribute same among heirs— Limitation — Starting point. I.L.R. 1946 M. 423=1946 M. 116=(1945) 2 M.L.J. 422.

ARTS. 123 AND 131.—Where the right to receive an annuity under a will is repudiated, Art. 131, and not Art. 123 applies to a suit to recover such annuity. A suit to recover such annuity brought after 12 years from the date of repudiation is barred by limitation, even if the annuity is in the nature of a legacy. Once the right to receive recurring payment is repudiated, Art. 131 is the appropriate article to be applied. A person who has taken no action for more than 12 years since the denial or repudiation cannot claim to enforce his right after the lapse of the period of limitation fixed by Art. 131 and say that under Art. 123, he is entitled to the annuity for the last 12 years. 1947 P. 47 =25 Pat. 311.

ART. 124: HEREDITARY OFFICE.—*See* 19 C. 776; 26 M. 113; 14 C.W.N. 497=37 C. 263. The words "hereditary office" have been used in Art. 124 in contradistinction to cases where the office is to be filled in by nomination. Accordingly this article applies to a suit for possession of the office of shebaitship, where there is no suggestion that the appointment of the shebait is to be made by nomination and the rights of shebaitship, therefore, vest in the heirs of the founder. 13 Luck. 844=1937 O.W.N. 745=1937 O. 373. As to scope of the explanation in the third column, *see* 10 I.C. 573=20 M.L.J. 781. Intention of Art. 124 was to treat hereditary offices like land for the purposes of barring suits for possession of the office and extinguishing the right to possession after a certain period. The inheritor of such an office cannot deny that he derives his right from or through his predecessor. 37 C.W. N. 29=1932 C. 791=60 C. 452 (F.B.).

ADVERSE POSSESSION.—Title can be acquired by adverse possession. 24 M. 219= 11 M.L.J. 1; 27 M. 192. Suit to be brought within twelve years of defendant's adverse possession. 6 M.L.T. 167=19 M.L.J. 257; 9 M.L.T. 485; 1931 M.W.N. 8=133 I.C. 1937=1931 M. 505. Defendant can tack on to his possession that of a person through whom he claims. 39 A. 636=42 I.C. 77; 9 M.L.T. 485; 24 M. 219; 1 M. 343; 49 I.C. 393=36 M.L.J. 93. But not so in the case of independent trespassers. 23 M.L.J. 134 =16 I.C. 225. Nor can the vacant period preceding defendant's possession be tacked on to it. 10 I.C. 95=9 M.L.T. 485. As to claim to an hereditary office and to the property attached thereto, *see* 23 M. 271 (P.C.); 6 A. 1 (P.C.); 27 M. 192; 28 M. 197; 25 C. 354; 1936 C. 291. If the former claim is barred, the right to the latter also is lost with it. 23 M. 271 (P.C.); 35 M. 92; 28 M. 197; 36 M. 418=24 M.L.J. 630. But conversely mere possession of the properties attached to the office without performing the duties of the office is not adverse possession of the office. 29 M.L.J. 558=30 I.C. 962; 20 M.L.J. 781=10 I.C. 573; nor mere receipt of emoluments. 42 C. 244=18 C.W.N. 1022 =41 I.A. 267=27 M.L.J. 100 (P.C.) reversing 39 C. 287. Plaintiff not alleging that his office is being held adversely by another— Art. 124 does not apply. 1928 M. 377. In

Description of suit.	Period of limitation.	Time from which period begins to run.
125. Suit during the life of a Hindu or Muhammadan female by a Hindu of Muhammadan who, if the female died at the date of instituting the suit, would be entitled to the possession of land, to have an alienation of such land made by the female declared to be void except for her life or until her re-marriage.	[1][Twelve years] ..	The date of the alienation,

LEG. REF.

[1] Substituted by Act XI of 1923, sec. 2 and Sch. I, for "Ditto.".

the case of a suit for possession of an heredi tary office, time runs against the plaintiff from the time when the defendant takes possession of the office adversely to the plaintiff. If the predecessor of the present plaintiff has allowed his rights to the office to get barred by limitation, those who are next in succession to him should also be deemed to have lost their rights. [23 M. 271 (P.C.), Foll.] 1931 M.W.N. 8=133 I. C. 193=1931 M. 505. Co-owners—Stranger alienee from one—Possession if adverse. *See* 50 C.L.J. 382=1930 C. 180.

SUITS GOVERNED BY THE ARTICLE.—Suit by trustee of a choultry for recovery of possession of the building. 46 M. 525=43 M. L.J. 737 (2)=1923 M. 88. Suit by a Malabar *stani* for possession of *stanom* property from a person claiming adversely thereto. 41 M. 4=33 M.L.J. 26=42 I.C. 22. Suit for possession of the hereditary office of shebait. 3 P.L.J. 327=47 I.C. 290. Where the management once reverts to the representatives of the founder on his death, and a certain person succeeds as heir-at-law, it would be in contravention of the Hindu Law of Inheritance to say that the endowment should be held in a series of successive life-estates by the inheritors. The office becomes hereditary in the hands of the heir and a suit by him for possession would be governed by Art. 124 and not by Art. 144. There is no distinction as regards limitation between a claim to an office and a claim to the property of endowment. 1940 A.L.J. 705=I.L.R. (1940) All. 815=1941 A. 1. As to suit in respect of *Maharkiwatan,, see* 1937 N. 84=I.L.R. 1937 N. 151.

ARTS. 124 AND 144.—A co-shebaiti claim in respect of a family idol will be barred by 12 years' adverse possesson under Art. 124 or Art. 144, respectively, whether the claim is regarded as one to a share in the office or as one to a share in the endowed property. The fact that the elder brother who managed the family properties saw to the *debsheba,* collected the income and defrayed the proper expenses, is very far from being cogent proof of ouster. 57 L.W. 235 =1944 A.L.J. 143=1944 A.W.R. (P.C.) 24 =A.I.R. 1944 P.C. 24=48 C.W.N. 304= (1944) 1 M.L.J. 344 (P.C.).

ART. 125: SCOPE.—Art. 126 applies only when the possession of the female concerned is that of a Hindu or Mahomedan female as such, that is to say, by virtue of her being a Hindu or Mahomedan female; it does not apply if her possession is by virtue of a grant or transfer made *inter vivos* or by virtue of a bequest. The article cannot apply to cases where the claim and the possession are independent of the status of the parties. The mere fact that by accident the life-estate holder and the plaintiff happen to be Hindus or Mahomedans as the case may be is not sufficient to attract the application of Art. 125. 15 P. 151=163 I.C. 940=17 P.L.T. 131=1936 P. 323. Article applies to suits only by persons who, if the female died at the time of instituting the suit, would be entitled to the property. 38 M. 406=42 I.A. 125=1915 P.C. 124=28 M.L.J. 535 P.C.; 40 M. 818=38 I.C. 223; 5 L.W. 482=38 I. C. 270; 29 M. 390 (F.B.); 32 C. 473; 25 I.C. 463; 1928 L. 242=108 I.C. 184; 8 L. 215=100 I.C. 84=1927 L. 198. This rule may not apply if the nearer heir is a female and only a limited owner. *See* 40 M. 818. Suit by such limited owner is governed by article. 2 L. 5=58 I.C. 333=1922 L. 98. A remote reversioner, however, has a right to join as plaintiff along with or in substitution for the presumptive reversioner. 38 M. 406=42 I.A. 125=28 M.L.J. 535 (P.C.). Article covers suits in respect of alienations of land only. 70 P.R. 1914=25 I.C. 463. Equity of redemption is not covered by the terms. 108 P.R. 1912=17 I.C. 864. House and site covered by the term. (*Ibid.*) 32 P.R. 1904.

ALIENATION.—Gift also is alienation. 20 W.R. 1; 1923 L. 53; 58 I.C. 333=2 L. 5; 1936 P. 535; also mortgage, 40 I.C. 63=25 P.R. 1917; 88 I.C. 578=1925 M. 567. The word 'alienation' in Art. 125 has not been used in the restricted sense of a transfer by means of a registered instrument. The article applies to all cases in which the widow has directly or indirectly parted with her proprietary right in the estate and passed the same to some third person. The entry of the names of her illegitimate children in the revenue papers followed by her possession of the property is enough to constitute an alienation of the estate by the widow. 184 I.C. 169=1939 All. 526. As to Court-sale brought about by the collusion of the wdow, *see* 35 M.L.J. 364=47 I. C. 578; 19 A. 524. *See also* 80 I.C. 534= 1924 M. 617, holding that it amounts to alienation. Article does not apply to a suit to

Description of suit.	Period of limitation.	Time from which period begins to run.
126. By a Hindu governed by the law of the Mitakshara to set aside his father's alienation of ancestral property	[1][Twelve years] ..	When the alienee takes possession of the property.

LEG. REF.

1 Substituted by Act XI of 1923, sec. 2 and Sch. I, for "Ditto.".

set aside surrender by Hindu widow. 101 I.C. 275=1927 N. 193. Suit to set aside a gift by a Hindu widow to her daughter and a stranger is not governed by this article, but by Art. 120. 146 I.C. 977=1933 A.L. J. 1305=1933 A. 856. *See also* 40 P.L.R. 131=1937 L. 760. The word 'reversioner' should not be imported into Art. 125. Art. 126 is not restricted to suits by reversioners. A suit by certain members of the proprietary body of the village to declare that an alienation by a widow shall not affect their reversionary rights is governed by Art. 125. 40 P.L.R. 786=1938 L. 457; 44 L.W. 208 =1936 M. 47; 17 P.L.T. 16.

ILLUSTRATIVE CASES.—Suit by reversioner not born at date of alienation—Time runs from the date of alienation in the absence of fraud or collusion on the part of the nearer reversioners. 41 M. 659=35 M.L. J. 57=46 I.C. 202 (F.B.). But *see* 22 A. 33 (F.B.). *See also* 1936 P. 535. Disability provisions have no application in such cases. 22 P.R. 1907; 27 C. 379. But see *contra* 28 M. 57; 9 C.W.N. 795; 36 M. 570=23 M.L. J. 269=16 I.C. 839; 22 A. 33 (F.B.); 32 C. 62. *See also* 1927 M. 216=25 L.W. 161. As to suit by an adopted son in respect of alienation made by adoptive mother before adoption, *see* 21 M. 288; 8 M.L.J. 121. *See also* 26 M. 143=12 M.L.J. 197.

COMMENCEMENT OF LIMITATION.—Time runs from the date of alienation and not when the plaintiff has knowledge of it. 16 I.C. 547 (C.). *See also* the decisions on the point under Art. 120 in the case of suits by remote reversioners falling under that article. It is the date of mortgage and not the date of the decree that furnishes the starting point. 86 I.C. 1016=1925 M. 941. As to confirmation of an alienation, *see* 25 M. 731; 26 P.R. 1896. Mortgage by Hindu widow's mother—Later mortgage by widow after attaining majority in renewal of it —Death of widow——Suit by reversioners for declaration that alienation was invalid —Suit filed after twelve years of first mortgage but within twelve years of later mortgage is barred. 31 L.W. 336=1931 M. 274 =58 M.L.J. 417. In a suit to set aside an alienation by a Hindu widow, if the property was ancestral property of the husband and the contesting reversioner, Punjab Act I of 1920 is applicable and period of limitation is 6 years. If the property was non-ancestral, *qua* the plaintiff, the suit would be governed by this Art. 125. 146 I.C. 350= 1933 L. 945.

ART. 126: SCOPE.—Article inapplicable to Hindus governed by Dayabhaga Law. 23 W.R. 419. The words *"set aside"* do not include a suit for declaration that the alienation does not affect the plaintiff's rights. 70 P.R. 1914=25 I.C. 463. Suit to set aside alienation of father when the alienee is not in possession is governed by Art. 120 and not by Art. 126. 25 A.L.J. 734=1927 A. 702=50 A. 163; 1928 B. 283. The expression "ancestral" in Art. 126 has been used in the ordinary sense of Hindu Law, and cannot be given a wider sense for Limitation Act. 150 I.C. 963=36 P.L.R. 214 =1934 L. 397.

APPLICABILITY.—*See* 26 I.C. 873; 3 L. 426=1923 L. 268. Article applies whether the alienee had the knowledge that the land purchased formed part of ancestral property or not. 23 B. 137 (F.B.). Suit by after-born son and the son in existence at the time of alienation—Maintainability. 40 C. 966=40 I.A. 213=25 M.L.J. 512 (P. C.); 34 I.C. 794=30 M.L.J. 592. *See also* 1935 A. 742. The after-born son does not acquire a fresh cause of action and a fresh period of limitation does not start from his birth. 8 W.R. 15 (F.B.); 66 I.C. 938= 1923 O. 52; 24 O.C. 330=64 I.C. 757=1921 O. 196; 79 I.C. 1010=1924 A. 677; nor is there any extension in favour of minors. 90 I.C. 184=1925 O. 678. Sec. 6 does not apply to the case of a son who was begotten before but born subsequent to the alienation sought to be set aside, and a suit to set aside an alienation brought by such son more than twelve years after the alienee took possession of the property is barred by Art. 126. 1931 M. 456=60 M.L.J. 521. Alienation by father and uncle jointly is covered by this article. 1927 A. 54. *See also* 1940 B. 136 (Alienation by grandfather). Father and son mortgaging family property—Father selling the equity of redemption and the alienee redeeming and taking possession—Suit by the son's alienee for a moiety of the property on payment of half the mortgage money—Article applies. 41 M. 650=34 M.L.J. 528=45 I.C. 867. As to commencement of limitation, *see* 14 P.R. 1915=25 I.C. 33; 79 I.C. 666=1924 O. 205. Where certain property which was the exclusive property of the minor was sold by the guardian, Art. 126 does not apply to a suit by the ward or his transferee to set aside such alienation. (13 L.W. 416, Rel. on.) 118 I.C. 481=1929 M. 313=56 M.L. J. 332. Mortgage with possession by Hindu father—Subsequent sale to mortgagee—Suit

Description of suit	Period of limitation.	Time from which period begins to run.
127. By a person exeluded from joint family property to enforce a right to share therein.	[1][Twelve years] ..	When ihe exclusion becomes known to the plaintiff.

LEG. REF.

1 Substituted by Act XI of 1923, sec. 2 and Sch. I, for "Ditto.".

by sons to redeem mortgagee, ignoring sale after 12 years from the date of sale is not maintainable and is barred by Art. 126. 112 I.C. 151. A suit by a Hindu grandson to set aside an alienation of joint family property made by his grandfather before his birth, without any justifying cause, would be barred by limitation if instituted more than 12 years after the date of the alienation, under Art. 144. The suit is governed by Art. 144, and not Art. 126, which applies only to cases of alienation by a father and not by a grandfather. I.L.R. (1940) B. 109=42 Bom.L.R. 208=1940 B. 136.

ART. 127: APPLICABILITY.—*See* 77 I.C. 697=26 O.C. 191=1922 Oudh 15. Art. 127 would come into play only where the claim is made by the plaintiff as a member of a coparcenary; where he puts up his claim on the ground of co-ownership and not as a member of a coparcenary, the case is governed by Art. 144 and adverse possession for twelve years from the date of denial by the defendant of the plaintiff's title would extinguish his claim. 31 N.L.R. (Supp.) 191=162 I.C. 577=1936 N. 80. Article governs the question of adverse possession between coparceners. 37 B. 84=17 I.C. 657=14 Bom.L.R. 931. *See also* 159 I.C. 453=1936 P. 68. Exclusion from joint family property, *see* 1924 A. 812; 15 I.C. 184=16 C.W.N. 466 (P.C.); 5 C. 938; 21 B. 325; 49 A. 763=102 I.C. 66=1927 A. 454; 11 M. 380 (392); on appeal 14 M. 237 (P.C.); 11 C. 127 (P.C.); 30 M. 201; 1927 M. 595=102 I.C. 300; 116 I.C. 849=27 A. L.J. 324=1929 A. 302. Where one of two brothers forming a joint family is in possession of the property, though the other never actually joined in cultivation with his brother he must be held to have been in possession through his brother and hence a suit by the latter to enforce his right to share in the property is governed by Art. 127. 1942 O.W.N. 639=1942 O.A. 527=1943 Oudh 177. A claim to either joint possession or enjoyment by turns or rotation of a right to worship and take part in the service of a deity must stand in the same way as a claim to immovable property, and is governed for purposes of limitation by Art. 127. It is a *vritti* or *nibandha*. 39 Bom.L.R. 94=1937 B. 202. Where plaintiff's claim as coparcener is distinctly denied, residence as dependent in the family house does not prevent time from running. 42 M. 431=36 M.L.J. 612=52 I.C. 470; 43 L.W. 711=1936 M. 573 (Assignment of arrears of maintenance by member of Malabar tarwad), as to what constitutes exclusion, *see also* 1923 O. 61 "Right to share"—Meaning, *see* 15 I.C. 394=15 O.C. 111. The suit contemplated by Art. 127 is a suit by a member of a joint family against other members to be restored to joint enjoyment. 15 I.C. 394. Coparcener excluded from enjoyment of joint property—Suit by for declaration of rights and for injunction—Limitation. 1935 Pesh. 95. Partition suit —Income accruing between preliminary and final decrees—Suit for share in—Limitation. 1935 N. 137=156 I.C. 672. A purchaser of a share in the joint family is not a member of the joint family. 14 C. 544;9 M.L.T. 397. *See also* 18 C. 642; 23 B. 137 (F.B.); 12 M. 292 as to who can sue under the article. The article does not apply to a suit for possession of property by right of inheritance. 10 A. 343. Suit to recover property sold by one coparcener—Article applies. 42 M.L.J. 364=1922 M. 369. Art. 127 does not apply where a stranger has acquired the property. Where the managing member of a joint family and a minor represented by his mother sold the property in 1904 to a stranger who in turn sold it to another stranger in 1917, a suit brought by the minor on his attaining majority in 1924 is barred under Art. 144. 137 I.C. 367=34 Bom.L.R. 354=1932 B. 255. Suit by heir of one tenant-in-common against the heir of another tenant-in-common. Article does not apply. 43 M. 288=38 M.L.J. 149. Does not apply to undivided property of a family governed by Mahomedan Law. 80 I.C. 118. *See also* 41 B. 588=19 Bom.L.R. 579 (F.B.); 38 B. 449=22 I.C. 195; 38 I. C. 25; 32 I.C. 1002=38 M. 1099. As to suit by person converted to Islam, *see* 57 P.R. 1916=35 I.C. 549. Nor to suits by Burmese Buddhists, L.B.R. (1903) 194; U.B. R. (1897-1901) 458. Where the suit was filed for a declaration in respect of family property divided at partition, *held* that the suit was not governed by Art. 127. 54 B. 4=31 Bom.L.R. 1240=1930 B. 61. A suit to reopen a partition and to re-adjust the shares of the parties thereto on the ground that certain properties really belonging to third parties were allotted to the plaintiff is governed by Art. 96 and not Art. 127. 54 M. 883=61 M.L.J. 430=1931 M. 707. Art. 127 does not apply to a suit for possession of immovable property by one member of a family against another who is separate from him, if the property claimed is not joint family property. Such a suit is governed by Art. 144. Even property which has continued undivided after a division between brothers is not "joint family property" within the meaning of Art. 127 and

Description of suit.	Period of limitation.	Time from which period begins to run.
128. By a Hindu for arrears of maintenance.	[1][Twelve years] ..	When the arrears are payable.
129. By a Hindu for a declaration of his right to maintenance.	[1][Twelve years] ..	When the right is denied.
130. For the resumption or assessment of rent-free land.	[1][Twelve years] ..	When the right to resume or assess the land first accres.
131 To establish a periodically recuring right.	[1][Twelve years] ..	When the plaintiff is first refused the enjoyment of the right

LEG. REF.

[1] Substituted by Act XI of 1923, sec. 2 and Sch. I, for "Ditto.".

a suit to recover possession of his share in such property by the separated member is governed by Art. 144. 58 I.A. 106=1931 P.C. 48=60 M.L.J. 386 (P.C.).

COMMENCEMENT OF LIMITATION is from the time that one is excluded from enjoyment to his knowledge. 37 B. 64=17 I.C. 642; 45 M. 648=42 M.L.J. 507 (F.B.); 18 B. 197. In the case of a minor, the time can be computed at best from the date of his attaining majority. 116 I.C. 849=1929 A. 302.

EXCLUSION, WHAT CONSTITUTES.—25 L.W. 1=28 Bom.L.R. 1409=48 A. 529=1926 P. C. 100=51 M.L.J. 836 (P.C.). There is no definition of the word "exclusion" in the Act and the question whether a person has been excluded from joint family, must depend upon the facts of the particular case. An intention to exclude is an essential element. Court is to be satisfied that there was an intention on the part of those in control of the joint family property to exclude the person and that exclusion was to his knowledge. 56 I.A. 316=53 B. 699=1929 P.C. 231=57 M.L.J. 287 (P.C.). Knowledge of guardian of minor sufficient. 37 M.L.J. 256=52 I.C. 725.

BURDEN OF PROOF.—It is for the defendant pleading limitation to show that the plaintiff was excluded from joint estate for more than 12 years and that the exclusion was known to the plaintiff. 22 B. 259; 18 B. 197; 25 B. 367; 105 I.C. 410=1927 O. 499. Rule as to adverse possession as between members of a joint Hindu family discussed. 145 I.C. 780=35 Bom.L.R. 779 =1933 B. 386.

ARTS. 127 AND 144.—The exclusion or ouster by a lunatic brother of his joint sane brother if open and continuous bars the sane brother's claim under Art. 127. If after the death of the lunatic brother the Court of Wards openly retains possession on behalf of his widow then Art. 144 applies. I.L.R. (1942) All. 518=1942 A.L.J. 197= 1942 A.L.W. 245=A.I.R. 1942 All. 267 (2).

ART. 128.—*See* 107 I.C. 641=1928 M. 561; 1924 N. 176=75 I.C. 833; 12 P. 869= 1934 P. 99. Art. 129 is intended to apply to cases where the status of a person on the basis of which maintenance is claimed is denied and the person *inter alia* wants to establish that status; but where such status is not denied, Art. 128 applies. 14 L. 759=1933 L. 747.

ART. 129.—Where there is no denial there is no bar under the article and proof of denial lies on him who pleads the bar. 26 M.L.J. 205=23 I.C. 831. Article does not apply to claim for maintenance under contract. 23 C. 645; 12 P. 869.

ART. 130: ADVERSE POSSESSION BETWEEN LANDLORD AND TENANT.—Where a tenant claimed land as rent free to the knowledge of the plaintiff and no suit for resumption or assessment was brought till 12 years after, the suit is barred. 39 C. 453=15 C. L.J. 203; 13 I.C. 517. *See also* 1936 C. 289. Suit for resumption of a life jagir must be brought within 12 years of the death of the grantee. 1924 P. 298. Suit by a saranjamdar to levy assessment upon rent free lands falls within article. 45 B. 694=61 I.C. 40.

ARTS. 130 AND 131.—Art. 130 applies only if the land is found to be rent free. 38 C. L.J. 207=1923 C. 392; 47 I.C. 420=28 C. L.J. 254. Mere non-payment of rent for any period does not bar the landlord's right to have the rent assessed and to recover rent. Such a suit would fall under Art. 131 and for the bar of limitation, there must be some overt act such as refusal to pay the rent or assessment before time begins to run. 38 C.L.J. 207=1923 C. 392. *See also* 1936 A.L.J. 1384=I.L.R. (1937) All. 140 =1937 A. 57; 17 P.L.T. 819=1937 P. 96; 22 C.W.N. 685=46 I.C. 428; 19 I.C. 64. Suit to recover assessment on land held by the defendant adversely to the plaintiff for over 12 years is barred. 40 B. 606=36 I.C. 505.

ART. 131.—Test as to applicability of article. 1933 P. 695=150 I.C. 242. Under Art. 131 the mere exclusion from the enjoyment of a right does not cause time to run, unless the exclusion is the result of a refusal made upon a demand. 18 L.L.T. 5. Where the particular Art. 102 applies, the more general Art. 131 will be excluded. 43 L.W. 431=1936 M. 149=70 M.L.J. 220. Plaintiff sued in Civil Court for a declaration that defendant was an under-raiyat under him, that he (defendant) had denied that relationship and refused to pay rent to him and further prayed for his eviction. *Held*, the Civil Court had jurisdiction only to decide whether the relationship of land-

lord and tenant existed, but not to grant relief of possession as this was within the jurisdiction of Revenue Courts under the Chota Nagpur Tenancy Act and that the article to be applied for deciding the question of limitation was Art. 131, and not Art. 142 or 143. 1933 P. 695. This article applies to suits to recover moneys due under a periodically recurring right, whether or not there is prayer for declaration that the plaintiff is entitled to such a rent. 38 M. 916=26 M.L.J. 377. Right to recover rent is periodically recurring right. 28 I.C. 600=13 A.L.J. 333; 16 W.R. 201; 14 M.L.J. 477. Article not confined to suits for declaration of title but includes the recovery of arrears in respect of the right. 34 A. 246=9 A.L.J. 297; 38 M. 916 =26 M.L.J. 377. But *see* 55 B. 193 below. Where a claim is expressly for arrears of revenue and not for the establishment of a right, Art. 62 and not Art. 131 applies. Art. 131 applies in express terms to a suit to establish periodically recurring right and not to recover sums due under such a right. A suit may claim both the reliefs, but while the former claim falls under Art. 131, the latter claim falls under Art. 62. 55 B. 193=131 I.C. 465=1931 B. 189, as to scope and application of article, *see also* 16 M. 294=3 M.L.J. 98. Article does not apply where there is no relationship of landlord and tenant. 45 B. 638=60 I.C. 892 =1921 B. 175. Perpetual and periodically recurring right—Distinction. *See* 39 M.L. J. 492=58 I.C. 788. Right of mutawalli to *yeomiah* allowances received by another—Article not applicable. 58 I.C. 788. A claim to get a manibam or an annual allowance from and out of the revenue collections is a periodically recurring right, within the meaning of Art. 131. 164 I.C. 794=44 L. W. 250=1936 M. 704. Annuity in the nature of legacy payable under will—Suit to recover more than 12 years after repudiation of right—Maintainability — Limitation. 25 Pat. 311=1947 P. 47. Where the essence of the claim in a suit is the establishment of the title of the plaintiff, as against a rival claimant, to an office to which a remuneration periodically payable by Government is attached, and not the establishment of the liability of the Government to make the recurring payment in question, Art. 131 cannot have any application. Though the Government is a party to the suit, if there is no prayer for recovery of specified sums from the Government, and if all that the plaintiff asks is to make binding on the Government a decision as to the rival claims of himself and another to an office to which certain emoluments payable periodically by the Government are attached, it cannot be said to be a suit against the Government to establish a right to receive emoluments, because the essential question in the suit is not the liability of the Government to make a payment under a periodically recurring right. 1939 M. 570 =(1939) 1 M.L.J. 476. *See also* 53 L.W. 325=I.L.R. (1941) M. 587=1941 M. 428= (1941) 1 M.L.J. 374; 1941 P. 116; Suit to establish right to offerings of temple—Article applied. 22 O.C. 346=54 I.C. 540. The following have also been held to be periodically recurring rights:—A claim to worship an idol for a particular period in the year. 8 C. 807; a right to recover burial fees. 24 W.R. 385; a right to receive a monthly allowance from a zemindari. 7 M. 341; A claim to recover water cess illegally levied is not a suit to establish periodically recurring right. 37 M. 322=24 M.L.J. 365; a suit for a declaration that plaintiff is entitled to a certain share in the offerings of a temple is a suit to establish a periodically recurring right. 22 O.C. 345=54 I.C. 540. If a decree for rent has been passed within 12 years before the subsequent suit for rent has been instituted, the claim is not barred by time. 12 I.C. 329. *See also* I.L. R. (1937) A. 140=1937 All. 57 (Suit for ground rent where plaintiffs' right was denied 12 years before suit). 1941 P. 201. A claim to enhance rent is a recurring cause of action and limitation runs from the date of refusal. Where the right to enhance the rent is based not on a contract but on statute, the article would not apply. 1924 P. 193. *See also* 2 P.L.J. 124=39 I.C. 85. A party whose right to *malikana* is denied must sue within 12 years of refusal. The article does not apply where in a previous suit plaintiff has got a declaration of his title. 40 I.C. 864=2 P.L.W. 64. In 1889, the right to 2 per cent. of the Government assessment conferred on the plaintiff's ancestor was altered into one for a fixed annual sum. In 1913, his claims to the old percentage were definitely negatived. *Held*, that Art. 131 and not Arts. 14 or 120 applied and the suit was well in time, as it was within 12 years of the refusal by the Government in 1913, to admit any right in the plaintiff to a variable annual sum. 61 I.A. 190=58 B. 306=1934 P.C. 108=66 M.L.J. 614 (P.C.). There must be a definite demand and refusal. Mere omission to exercise the right will not start adverse possession. 41 B. 159=38 I.C. 54. *See also* 21 I.C. 179=19 C.W.N. 386; 46 P.W.R. 1914 =23 I.C. 445. As to what constitutes refusal, *see* 7 M. 341. Mortgage and lease—Expiry of lease—Suit by mortgagee for mortgage money and profits after 12 years. *Held*, barred and that this article did not apply. 41 L.W. 398=1935 M. 377.

ARTS. 131, 110 AND 120.—Art.131 contemplates a case where the plaintiff's right to the property has not been already extinguished by adverse possession of the defendants. If there was never any relationship of landlord and tenant between the plaintiff and the defendant, and the latter held the land adversely to the former for more than 12 years, the plaintiff would be no more competent to sue for assessment of rent than he could institute a suit for eviction against the defendant. 75 C.L.J. 440. A perpetual right to receive year after year a particular sum of money is not a periodically recurring right, the quantum of the right

Description of suit.	Period of limitation.	Time from which period begins to run.
132. To enforce payment of money charged upon immovable property. [2][*Explanation.*—For the purposes of this article— (*a*) the allowance and fees respectively called *malikana* and *haqqs* and (*b*) the value of any agricultural or other produce the right to receive which is secured by a charge upon immovable property, [3][and (*c*) advances secured by mortgage by deposit of titles] deed shall be deemed to be money charged upon immovable property.]	[1][Twelve years] ..	When the money sued for becomes due.

LEG. REF.

[1] Substituted by Act XI of 1923, sec. 2 and Sch. I, for "Ditto.".

[2] Explanation substituted by Act I of 1927.

[3] Added by Act XXI of 1929.

being defined once for all and not varying according to the circumstances each time it accrues. Where the right is to recover a fixed sum which is not dependent upon the income of the property and the payment of which is an obligation cast upon the person, who is the holder of the property for the time being to pay that particular sum every year, it cannot be said to be a periodically recurring right and hence Art. 131 can have no application to a suit to recover arrears of such sum. Where it is found that there is no relationship of landlord and tenant between the parties and the amount claimed was not by way of rent, Art. 110 cannot apply. The only article that can apply is Art. 120. 57 L.W. 531=(1944) 2 M.L.J. 250=1945 M.W.N. 17=1945 Mad. 20.

ART. 132: WHAT IS IMMOVABLE PROPERTY. —*See* 18 P.L.T. 801=1938 P. 16. Standing trees are immovable property within Art. 132. 9 I.C. 478. A turn of worship is not an interest in immovable property and a suit to enforce a mortgage of such a right is governed by Art. 120 and not by Art. 132. 46 C. 455=22 C.W.N. 994. An ice factory and interest under mortgage deed are immovable properties. 103 I.C. 742=1927 L. 373. A suit to recover malikana is governed by Art. 132 where the plaintiff seeks to recover it in respect of an interest in land; and to such a suit, Art. 131 does not apply. 1934 P. 44. *See also* 40 I.C. 864=2 P.L.W. 64; 14 Luck. 467=1938 O.W.N. 1368=1939 O. 57; 46 L.W. 358 (Suit for arrears of *kavimera* or percentage of melwaram of zemindari villages).

APPLICABILITY OF ARTICLE TO INSTALMENT BOND.—Where under a bond the whole amount becomes payable on default in the payment of instalments, the money becomes due under Art. 132 when a default is made and time runs from the date of default. 43 A. 671=1921 A. 192=63 I.C. 886=19 A.L.J. 712; 8 Luck. 240=142 I.C. 64=1933 O. 66 (F.B.). The test is obligation undertaken by the borrower under the bond. 43 A. 671=19 A.L.J. 712. *See also* 63 I.C. 25=19 A.L.J. 456; 37 A. 400=28 I.C. 910. Unpaid purchase money—Suit to enforce lien—Payment made towards the amount—If extends period. *See* 1943 M. 283=(1942) 2 M.L.J. 482. Art. 132—Charge declared by decree in favour of subrogee—Suit to enforce charge—Starting point of limitation. (1946) 1 M.L.J. 379. Acceptance of overdue instalments, if amounts to waiver. 27 C.W.N. 893=1924 C. 139. Where there is an option to the mortgagee to sue for the whole amount on default of payment of interest or to wait until the period fixed, he must sue for the whole amount as to when the cause of action therefor accrued. 31 I.C. 808=153 P.W.R. 1915; 45 I.C. 613; 32 I.C. 551 (*contra*). *See also* 59 I.A. 376=63 M.L.J. 187=1932 P.C. 207=7 Luck. 442 (P.C.); 1934 M. 227=64 M.L.J. 606=37 L.W. 751. Instalment bond—Arrears of interest—Omission to sue, if amounts to waiver. 29 I.C. 854=113 P.L.R. 1916. *See also* 62 I.C. 762=1921 M.W.N. 384; 20 A.L.J. 346=1922 A. 524. Right to action when accrues—Instalment bond. 39 M. 981=31 M. L.J. 865; 47 I.C. 655.

TO LOANS IN KIND.—A suit to recover the value of paddy charged upon immovable property is governed by Art. 132. 64 I.C. 310; 64 I.C. 210=25 C.W.N. 57; 48 C. 625=1921 C. 172; 58 I.C. 995 (2)=23 C.W.N. 951. *See also* 32 C.L.J. 221; 47 C. 125=23 C.W.N. 949; 51 I.C. 241; 33 A. 708; 50 I.C. 608=29 C.L.J. 368.

TO MORTGAGES.—Where a mortgage is for a definite period, it means that during that period neither the debtor is liable to pay nor the creditor entitled to recover the debt. For the debtor's default during the term of the mortgage to be regarded as a cause of action for the suit, the default ought to be such as would entitle the mortgagor to redeem before the expiry of the term. Where it is clear from the document that there was no intention that the mortgagee

should be given the right to recover the entire amount of the mortgage debt simply on the occurrence of a default in payment of the annual interest, the right to sue for the entire amount cannot arise till the expiry of the term fixed. Art. 132 would come into operation only when the mortgagee is bound to sue and not when he has the option to sue. I.L.R. (1939) N. 515=1939 N. 242. A default clause in a mortgage bond which provides that in default of payment of any instalment stipulated the whole money should become due is exclusively for the benefit of the mortgagee and it gives him an option either to enforce his security at once on default or, if the security is ample, to stand by his investment for the full term of the mortgage. If the mortgagee accepts payments of overdue instalments which are tendered to him he must be taken to have waived his right of enforcing the default clause in the bond, and limitation does not run. 1938 M. 836=(1938) 2 M.L.J. 251. *See also* 40 Bom. L.R. 47. Suit on mortgage—Stipulation in bond that whole amount would become payable on default to pay interest for 3 years—Default committed—Subsequent payment of interest—Limitation—Terminus a *quo*. 40 P. L.R. 571=1938 L. 570. *See also* 43 C.W.N. 38=1939 C. 26. Money charged on immovable property—Suit to enforce puisne mortgage against balance of sale proceeds in the hands of prior mortgagee—Suit governed by Art. 132. 41 C. 654=41 I.A. 45=26 M.L. J. 243 (P.C.). *See also* 1941 S. 158 (Suit for money due under mortgage by conditional sale). English mortgage—Provision that in certain event date of payment is to be changed and that mortgagor shall pay costs of insurance, etc.—Suit on—Limitation. *See* I.L.R. (1942) M. 851=55 L.W. 417=1942 M. 628. Anomalous mortgage falling under sec. 58 (*g*), T. P. Act—Personal covenant to pay on fixed date—Dispossession of mortgagee before term—Suit for sale within 12 years of date fixed for payment but beyond 12 years of dispossession—If barred. *See* I.L.R. (1942) Kar. 452. Where a third mortgagee pays off the first mortgage to which he becomes entitled by subrogation and claims to enforce his priority against the mesne incumbrancer, the claim is barred if brought more than 12 years after the expiry of the term of the first mortgage. 39 I.A. 68=39 C. 527=22 M.L.J. 468 (P.C.); 50 M. 626=52 M.L.J. 532=1927 M. 631. *See also* 1930 N. 166; 7 Luck. 26=1932 O. 314=8 O. W.N. 522. The starting point for the enforcement of a charge acquired by one of the mortgagors who redeemed the whole mortgage is the date of payment. 137 I.C. 86= 1932 A. 250. [28 A. 482 (P.C.), Foll.]; 105 I.C. 302=1927 O. 552. *See also* 50 A. 569=1928 A. 241=109 I.C. 38=26 A.L.J. 298; *see* 35 C.W.N. 409=1931 C. 251 (F. B.) overruling the decision in 25 C.W.N. 283 and holding that a suit by a redeeming co-mortgagor for contribution can be filed within 12 years of the date on which the original mortgage was paid and is not barred if instituted beyond the period within which the original mortgagee could institute his suit on the mortgage, had it not been redeemed. *See also* 1936 M. 500=70 M.L.J. 532; 1936 M. 782=44 L.W. 135; 10 Luck. 690=154 I.C. 267=1935 O. 245; 13 P. 356=1934 P. 612; 1938 O.W.N. 290. Where a subsequent mortgagee pays off a prior mortgage and acquires rights of subrogation under that mortgage, he must enforce the rights so acquired before a suit on that mortgage would be time barred. 58 A. 912=1936 A.L.J. 586=1936 A. 636. A puisne encumbrancer who satisfies a decree obtained by a prior mortgagee, though he cannot execute the decree unless his rights are properly declared in the decree itself, can institute a suit to enforce his rights under the decree, and if the decree paid off by him was one for sale, he can in the suit brought by him pray for sale of the property to which the decree relates, for the discharge of the decretal debt. As the decree is a mortgage decree, the suit should be regarded as one to enforce the payment of money charged on immovable property, and Art. 132 of the Limitation Act is the proper article to be applied in such cases. The starting point of limitation in such suits is not the date of payment of the decretal dues by the puisne mortgagee but the date of payment specified in the preliminary decree. 49 C.W.N. 104=1945 Cal. 194. In the case of a mortgage deed directing the payment of the amount in instalments and containing a default clause, time does not begin to run immediately on the default; the mortgagee can waive the benefit reserved to him under the document. Where a default occurs, and after demand by the creditor for payment of the full amount, both parties agree that the creditor should accept payment of the overdue instalments and receive the further instalments according to the terms of the bond, this arrangement would restore the old state of things and thereafter the creditor on the one side cannot take advantage of the default and ask for the entire amount and on the other side, limitation does not run as against the creditor by virtue of the default which is condoned by consent of parties. 57 L.W. 20 (2)=1944 M.W.N. 109=1944 Mad. 172= (1944) 1 M.L.J. 49. A suit by a simple mortgagee for sale against the morgagor or persons claiming under the mortgagor is governed by Art. 132. 59 M. 312=44 L.W. 887 =1936 M. 70. Where a decree for sale on a mortgage has been converted into immovable property, the mortgagee of such decree is entitled to the benefit of not only the new security, but also of Art. 132. 37 I.C. 4=39 A. 74. *See also* 63 I.C. 504=1921 A. 301= 43 A. 532. A suit for sale of ancestral property mortgaged by Hindu father is governed by Art. 132. 19 I.C. 878=17 C.W.N. 1022. Art. 132 applies to a suit to enforce a second mortgage executed in consideration of a prior mortgage and a fresh advance. 1921 L. 293. Claim for personal decree is under Art.. 116. 1930 L. 993. Art. 132 does not apply to a suit for redmption of the prior mortgage brought by the puisne mortgagee who was authorised by the mortgagor to redeem the

earlier mortgage. 34 P.L.R. 502=1933 L. 503=14 L. 596; *see also* 1934 A. 946=153 I. C. 604; 153 I.C. 808=10 Luck. 531=1935 O. 139. A suit by a principal to enforce a charge on immovable property created by an agent to secure monies which might be found to have been defalcated by him, is governed by Art. 132. 44 C.W.N. 793=72 C.L.J. 480 =1941 C. 257. Where a portion of the mortgaged property is acquired under the Land Acquisition Act and the mortgagor withdraws the compensation money, a suit filed by the mortgagee to enforce his security and claiming a simple money decree in respect of the compensation money withdrawn, is a suit 'to enforce payment of money charged upon immovable property within the meaning of Art. 132. The cause of action is not the withdrawal of the compensation money, but the non-payment of the mortgage debt. I.L.R. (1938) All. 513= 1938 A.L.J. 313=1938 A. 221 (F.B.). Where in pursuance of a default and option clause in a simple mortgage of 1916, the mortgagee sues for and obtains possession in 1924 and on the mortgagor applying under the encumbered Estates Act, makes an application for the inclusion of his claim for interest for the period of his non-possession, it is not barred by limitation because under the document the mortgagor intended to give the mortgagee an option as regards the time for suing for interest and as such it could be sued for along with the claim for principal. 1944 O. W.N. 509=1945 A.W.N. (C.C.) 32=1945 Oudh 70. The properties in the suit, numbering seven villages, belonged to B who mortgaged them to A and then sold an eight annas share in four of the seven villages to the plaintiff. Subsequent to the sale, B executed a mortgage of the remaining eight annas share of the four villages and of the three entire villages in favour of the defendant. The plaintiff paid off the mortgage decree obtained by A and also redeemed another mortgagee of the entire properties executed by B in favour of another party after the mortgage in favour of the defendant. In a suit for foreclosure instituted by the defendant on the basis of his mortgage, a decree was passed declaring that the foreclosure would be subject to a charge in the plaintiff's favour for the two sums paid by him in respect of the two mortgages, operating on 16 annas share in three villages and 8 annas share in four villages. The plaintiff instituted a suit to recover those sums by enforcement of the charge within 12 years from the date of the decree. *Held*, that the plaintiff by making the two payments mentioned above had subrogated himself to the rights of the mortgagees whom he paid off, and the rights which he had thus obtained became merged in the foreclosure decree which did not merely declare a charge which had existed before but created one, and the suit to enforce that charge was within time under Art. 132. 48 C.W.N. 830=57 L.W. 565= 1944 A.L.J. 463=1944 P.C. 85=(1944) 2 M. L.J. 330 (P.C.)=71 I.A. 153=I.L.R. (1944) All. 654 P.C.

OTHER MISCELLANEOUS SUITS.—This article applies also (1) to foreclosure suits. (20 I.C. 465=16 O.C. 157; 9 O.W.N. 1081=1933 O. 81; 1932 O. 178); (2) suit by first mortgagee against second mortgagee, who has foreclosed the mortgage (34 I.C. 704=12 N. L.R. 90); (3) suit or application under sec. 48 of the Dec. Agri. Rel. Act (10 I.C. 910 =13 Bom.L.R. 284); (4) suit to enforce existing charge (45 B. 597=60 I.C. 903=1921 B. 182. *See* 22 Pat. 187=1943 Pat. 305 (suit to enforce right to subrogation). Sums claimed by the Municipality on account of house-tax and water-tax are declared by statute to be a first charge upon the buildings or lands with reference to which the tax is imposed. Consequently, Art. 132 applies to a suit to recover such sums. 123 I.C. 379= 1930 A. 530. *See also* 1939 A. 510. Even though money is payable "on demand" actual demand is not necessary under this article. 31 I.C. 335=1916 M.W.N. 121. Suit against the surety on a mere money bond is not a suit for payment of money charged on immovable property. 105 I.C. 168=1927 M. 945=53 M.L.J. 453. Where plaintiff asks for money decree only and does not seek to enforce a charge on immovable property, Art. 132 does not apply. 56 A. 711=1935 A. 239. The period of limitation for a suit by one of several heirs of a mortgagor or by one of the several subsequent transferees of the mortgaged property who has paid the entire mortgage decree for contribution against the other heirs or transferees in which the sale of the defendant's share in the mortgaged property is sought is twelve years from the from the date of payment and not from the date when the original mortgage money became payable. 1942 A.W.R. (C.C.) 319= 1942 O.W.N. 762=1942 Oudh 449 (F.B.). A suit by the shebait of a temple who made certain payments under sec. 170, B. T. Act, to enforce a statutory mortgage under sec. 171, is governed by Art. 132. 35 C.W.N. 678=1931 C. 493. *See also* A.I.R. 1939 A. 510. (Suit under U. P. Mun. Act, sec. 177). Suit for the enforcement of a charge over properties furnished as security under a bond executed as a condition for stay of execution is governed by Art. 132. 1933 M.W. N. 486=1934 M. 1=66 M.L.J. 4. *See also* 1936 L. 784 (Suit to eject mortgagee of endowed property). Vendee directed to pay mortgagee debt—Failure to pay—Suit on the basis of breach of contract is governed by Art. 132. 107 I.C. 679=1929 A. 121. *See also* 1936 A. 870. A suit to recover royalties charged upon lease-hold premises is subject to 12 years' limitation period (Art. 132). 38 C.W.N. 481=1934 P.C. 119=66 M.L.J. 479 (P.C.). The vendor has a statutory charge over property in the hands of the vendee for purchase-money left with the vendee, and limitation is 12 years under Art. 132. 1934 A.L.J. 682=1934 A. 525. *See also* 1936 A. 870. A Hindu widow's maintenance is not a charge on her husband's properties and a suit to recover arrears of main-

Description of suit.	Period of limitation.	Time from which period begins to run.
133 [*Omitted by Act I of 1929*].		

LEG. REF.

[1] Article which has been omitted by Act I of 1929 ran as follows:—

133. To cover moveable property conveyed or bequeathed in trust, deposited or pawned, and afterwards bought from the trustee, depositary or pawnee for a valuable consideration.	[Twelve years]	The date of the purchase.

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tenance is not governed by Art. 132. 12 P. 869=1934 P. 99. *See also* 43 L.W. 71=1936 M. 573. (Malabar tarwad). 1936 O.W.N. 982.

STARTING POINT OF LIMITATION UNDER THIS ARTICLE.—See 44 A. 360=20 A.L.J. 140=1922 A. 37; 19 A.L.J. 827=1922 A. 197; and 406; 59 M. 312=1936 M. 70; 17 A.L.J. 1068=42 A. 70; 12 A.L.J. 982=36 A. 567; 8 A.L.J. 233; 35 B. 438; 1 P. 780=1922 P. 499. Where mortgage is evidenced by a promissory note accompanied by deposit of title-deeds, 12 years' limitation does not run from date of execution of promissary note, merely because promissory note is payable on demand. The question to be considered is whether the words "on demand" are mere words, or whether, looking at the whole document, it is really intended that the demand should be made before the liability to pay arises. 148 I.C. 721=1934 R. 51. Under Art. 132 money can become due only when the mortgagee can sue for his money and also the mortgagor can redeem the mortgaged property. 56 A. 496=1934 A.L.J. 371=1934 A. 152. Art. 132 is not applicable to a suit by a municipality for recovery of propety tax which is made a first charge on the property under sec. 85 of the Madras District Municipalities Act of 1920. Such a suit is governed by sec. 345 of the Madras District Municipalities Act and must be instituted within three years from the date of the cause of action. 41 L.W. 457=1935 M. 378. A suit to recover arrears of house-tax and sanitary cess which is made a rate on lands or buildings, is governed by Art. 132 and would be in time if instituted within 12 years when they became recoverable. Art. 62, does not apply. 44 Bom.L.R. 849=1943 Bom. 21. The question when money sued for becomes due has to be decided with reference to the terms of each bond. 134 I.C. 609=1921 P. 285. Suit on mortgage—Option given to mortgagee to enforce payment of whole in default of instalment—Time begins to run from the date of the first default in payment. 1927 A. 244=99 I.C. 762. On this point, *see also* 1928 M. 637=107 I.C. 650; 108 I.C. 786=6 O.W.N. 925=1929 O. 536; 138 I.C. 145=1932 O. 253. But *see* 7 Luck. 442=63 M.L.J. 187 (P.C.) *infra*. Suit on simple mortgage bond providing for annual payments and recovery of whole on default—Starting point. 1946 A.L.J. 315=1947 A. 7. In the case of a mortgage deed payable on demand time runs from the date of the loan and not from the date of demand. 6 R. 297=1928 R. 189. Where period is fixed, time runs from that date. 1928 O. 289=3 Luck. 439 (F.B.); *see also* 1941 Sind 158; notwithstanding any option given to the mortgagee to sue in case of any default by mortgagor. 50 A. 328=1928 A. 159. *See also* 1935 A.L.J. 515=1935 A. 421; 1928 O. 493; 1931 A.L.J. 29=133 I.C. 311=1931 A. 203; 131 I.C. 547=1931 A. 537; 43 C.W.N. 38=68 C.L.J. 109=1939 C. 26. Clause empowering the mortgagee to sue on default should be deemed to have been inserted exclusively for his benefit and as such it would give him an option to enforce the security at once or stand by his investment for the full term of the mortgage. 64 M.L.J. 606=37 L.W. 751; 59 I.A. 376=7 Luck. 442=63 M.L.J. 187 (PC.); 30 N.L.R. 290=1934 N. 191. In such a case, the mortgagee has successive or recurring causes of action, and it is left to his option to avail himself of any one of these causes of action, and base his suit upon any of them. 11 P. 112=1931 P. 285. When the deed entitles a mortgagee to sue on default being made in payment of interest agreed to be paid yearly, limitation runs from the date of such default in spite of a covenant that the mortgagee may not sue on such a default. 8 Luck. 240=1933 O. 66 (F.B.). The mortgage money does not become due within the meaning of Art. 132 until the mortgagor's right to redeem and the mortgagee's right to enforce his security have accrued. *See* 7 Luck. 442 (P.C.), *supra*. The rule as to starting point is the same even in respect of applications under O. 34, r. 6, C. P. Code, for personal decree. 56 A. 954=1934 A.L.J. 261=1934 A. 397 (F.B.). Applicability—Puisne mortgagee obtaining decree for sale without impleading prior mortgagee—Subsequent suit to redeem prior mortgage. Art. 148 applies and not Art. 132. 33 C.W.N. 1067=1929 C. 609 (F.B.). *See also* I.L.R. (1937) N. 367=1937 N. 205. Where the mortgage is a combination of usufructuary with simple mortgage, a suit to recover mortgage money from lands

Description of suit.	Period of limitation.	Time from which period begins to run
134. To recover possession of immovable property conveyed or bequeathed in trust or mortgaged and afterwards transferred by the trustee or mortgagee for a valuable consideration.	[Twelve years.] ..	[1][When the transfer becomes known to the plaintiff.]

LEG. REF.

1 Substituted by Act I of 1929.

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brought after 12 years of the execution of the mortgage deed is barred by Art. 132. 1929 S. 235. The amount due on a simple mortgage was payable in 1909. In 1914 the simple mortgagee brought a suit for sale in which he omitted to implead certain subsequent purchasers of the equity of redemption. In 1924 the properties were in execution of the mortgage decree sold by Court and purchased by the plaintiff. In 1926 the plaintiff sued to recover possession from the purchasers of the equity of redemption and subsequently applied to amend his plaint and add a prayer for a decree for sale: *Held*, a suit for sale should have been brought within twelve years from when the amount fell due (*i.e.*, 1909) and not from the date fixed by the mortgage decree; the relief sought by the amendment was time barred even at the date of plaint. 61 M.L.J. 316=133 I.C. 497=1931 M. 542. *See also* 60 C. 1193=1933 C. 912. Where twelve years have expired from the date of repayment fixed in the mortgages, a suit whether for sale or for foreclosure is *prima facie* barred by limitation under Art. 132. The receipt however, of rent by the mortgagee of a portion of the mortgaged property will save limitation under sec. 20 of the Act. Similarly a valid acknowledgment will extend the period of limitation by virtue of sec. 19. 6 O.W.N. 393=118 I.C. 835=5 Luck. 53=1930 O. 178. Where there is breach of warranty as to possession before the expiry of the term fixed and the mortgagee is dispossessed, starting point of limitation is the date of dispossession. 1930 C. 703. Where a mortgagee is not bound by the terms of the mortgage to enter into possession of the mortgaged property and to apply the rents and profits towards the payment of the debts though he has power to do so, the mere fact that the mortgagee permits the mortgagor to receive the rents and profits from a certain year does not give rise to a cause of action. No specific time having been fixed for the payment of the debt, the money does not become due and the cause of action does not arise until demand for the payment of the mortgage debt is made by the mortgagee and is refused by the mortgagor. 57 I.A. 134=54 B. 495=1930 P.C. 188=59 M.L.J. 379. A claim to enforce contribution is governed by Art. 132 and the starting point is the time when the money sued for becomes due. 7 O.W.N. 461=1930 O. 260. Mortgage suit—Submersion of mortgaged property—No suspension of limitation. 146 I.C. 856=1933 P. 693.

ART. 134: SCOPE OF ARTICLE.—*See* 36 C.L.J. 35=50 C. 49=1923 C. 1. Where the mortgagee sells the property to a stranger and then repurchases it, his possession is not as representative of the purchaser, but only as a mortgagee and is liable to be redeemed within 60 years. 58 I.C. 39=44 B. 848; 29 I.C. 403; 45 I.C. 549. A person in possession of trust property under an invalid mortgage deed cannot acquire a valid mortgagee's right by prescription as against the trust. 17 L.W. 521=1923 M. 545. The transferee from a trustee or mortgagee can take advantage of Art. 134 so long as the legal title and possession have been transferred to him. 32 M.L.J. 85 affirmed by P. C. 46 M. 751. *See also* 1936 L. 784. 190 I. C. 405=1940 C. 228. Art. 134 does not apply to a suit for redemption against donees from mortgagees. 13 I.C. 375=4 Bur.L.T. 265. *See also* 26 O.C. 197=1924 O. 44; 1923 O. 246.

APPLICABILITY.—Absolute transfer is necessary. 1927 M. 1028. In a case of conflict between Art. 134 and Art. 141, only Art. 134 will be applied. 44 M. 951=1921 M. 272=41 M.L.J. 163. Art. 134 cannot apply to a transfer in *invitum* or by operation of law or in execution. 1927 M. 1028; 1927 A. 619=102 I.C. 891. Dedication of property for religious purposes—Subsequent mortgage by heir of settlor—Decree—Transfer in discharge of—Suit by sons of mortgagor to recover possession from transferee—Limitation—Starting point—Art. 132 and not Art. 134 applies. 1940 M. 920=(1940) 2 M.L.J. 409. Art. 134 applies only to cases where a transferee for value from a mortgagee takes that which is *de facto* a mortgage upon a representation made to him. 99 I.C. 280=1927 A. 177. *See also* 102 I. C. 135=1927 O. 807; 34 C.W.N. 961=1931 C. 113=58 C. 234. The article does not apply to cases of transfers by sub-mortgagees. 99 I.C. 280=1927 A. 177. *See also* 1 Luck. 529=1926 O. 594. Title adverse to original mortgagor must have been set up. 1927 A. 689=103 I.C. 255. Art. 134 is not applicable where the mortgagee did not pur-

port to do anything outside or opposed to his mortgage. 134 I.C. 366=33 Bom.L.R. 603=1932 B. 23. Question of *bona fides* or good faith does not arise. 1927 M. 1023; 1929 N. 267; 1931 C. 113=58 C. 234. Art. 134 does apply even where the mortgagee has ceased to be a mortgagee by getting the equity of redemption and has obtained possession not under the mortgage but under the purchase of the equity. It is immaterial that the mortgagee should have thought that he was absolute owner if in fact he was mortgagee. It is also immaterial whether he gets possession before, under or after the mortgage, if in fact he purported to transfer the property to the transferee. 56 I.A. 192=51 A. 367=1929 P.C. 158 (P.C.). The object of Art. 134 is to enable the filing of suits for possession of properties primarily mortgaged and subsequently transferred by the mortgagees in excess of their rights. Since Art. 134 contains a stringent provision of law the onus of proving facts which would attract its provisions in preference to Art. 148 or even possibly Art. 144, would lie heavily on the party who wishes to claim the benefit of an abridged period of limitation. 1938 M. 394=(1938) 1 M.L.J. 101. The transfer of property mortgaged contemplated by Art. 134 is something other than an express transfer of the original mortgage. Art. 134 contemplates a transfer by a mortgagee purporting to transfer a larger interest than that given by the mortgage or at any rate an interest unencumbered by a mortgage. 56 I.A. 192=51 A. 367=1929 P.C. 158 (P.C.). Art. 134 applies even to transfers by trustees and mortgagees and there is no distinction between transfers by these two classes. (1926 M. 81, Rel. on). 118 I.C. 682 =1929 N. 267; 34 C.W.N. 961. Under Art. 134 there must be a valid transfer between the transferor and the transferee though it might not be operative as against a trust or any other person, and time runs only from the date of the transfer. 1930 M. 298. The starting point of limitation is the date of transfer and not the date of taking possession by the transferee. 118 I.C. 659. [But now *see* the amended Act.] *See also* 1930 M.W.N. 1148. The Amending Act I of 1929 does not revive a suit which had become barred before that date. 140 I.C. 182 =9 O.W.N. 835. Under Art. 134, the onus initially lies on the plaintiff to prove as to when he came to know of the transfer. He must show that he had knowledge of the transfer within 12 years of the suit. If he shows this, the onus is shifted to the transferee to prove that the transfer was before 12 years of suit and that the plaintiff had knowledge of it. 200 I.C. 732= 1942 Pesh. 39. It is the duty of the plaintiff to give the date on which he alleges that he came to know of the transfer. 9 O.W.N. 835=1933 O. 38 (2); *see also* 1939 C. 26. In a suit under Art. 134, it cannot be said that extraneous evidence, which of course includes the knowledge of the parties, cannot be taken into consideration in finding out what was the intention of the parties to the deed of 'transfer'. Sec. 92, Evidence Act, does not apply and it is open to the mortgagor to show that what purports at first sight to be a transfer of an absolute title was in the intention of the parties to the deed only a transfer of mortgagee rights. Once the nature of the transaction has been determined, the question of good faith is immaterial. Where the deed on the face of it appears to be a sale of absolute rights, the burden of proving that it is something different lies upon the person who asserts it. 1945 A.L.W. (C.C.) 167=1945 A.W.R. (C.C.) 144=1945 Oudh 258.

CONSTRUCTION.—Art. 134 should be construed strictly. 39 I.C. 582=20 O.C. 164. *See also* 52 I.C. 159=22 O.C. 72.

NECESSITY FOR GOOD FAITH—CONFLICT OF RULINGS.—The omission of the words "in good faith" in the Act does not enable a person who purchases with full knowledge that his vendor's title is merely that of mortgagee, to get the benefit of Art. 134. 37 A. 660=30 I.C. 956; 118 I.C. 639; 32 P.L.R. 359=1931 L. 464; 1942 Pesh. 39. But *see* 47 C. 866. It is the first principle of the interpretation of statutes that nothing extraneous should be considered in interpreting a statute when its meaning is unambiguous on the face of it and as the meaning of Art. 134 is clear, no question of *bona fides* or notice of the transferee arises under it. 200 I.C. 732=A.I.R. 1942 Pesh. 39. Art. 134 applies only when the transferee from the mortgagee obtains the transfer with the belief that the transferor had an absolute title to make the transfer. 1 L.W. 687=26 I.C. 1; 57 I.C. 497; 1929 M. 145=115 I.C. 149; 118 I.C. 659. Art. 134 is applicable to cases where the transferee from the mortgagee professedly takes an absolute title to an interest in the property transferred. 7 L.W. 482=34 M.L.J. 431. *See also* (1916) 1 M.W.N. 28=32 I.C. 265=3 L.W. 19. Under Art. 134 the transferee without notice and the transferee with notice are on the same footing. 47 C. 866=58 I.C. 705=24 C.W.N. 690; 140 I.C. 182=1933 O. 38 (Oudh). But *see* 37 A. 660=13 A.L.J. 945; 24 Bom.L.R. 319 =1922 B. 234=46 B. 903. Alienation of debutter property by a shebait, though in excess of his powers falls under Art. 134 if the transferee was ignorant of the fact that the transferor had exceeded his powers. 9 I.C. 133. *See also* 71 I.C. 577=1923 L. 219. A purchaser by private treaty from an auction purchaser of the rights of a mortgagee is entitled to the protection afforded by Art. 134 if he purchased in the *bona fide* belief that he was purchasing an absolute proprietary title, and limitation begins to run from the date of purchase by private treaty. 1930 A. 417=124 I.C. 405; 30 I.C. 564=13 A.L.J. 877. Knowledge of the limited nature of the transferor's title will not disentitle the transferee from taking advantage of Art.

Description of suit.	Period of limitation	Time from which period begins to run.
[134-A To set aside a transfer of	[1][Twelve years]..	When the transfer becomes

LEG. REF.

[1] Arts. 134-A, 134-B and 134-C inserted by Act I of 1929, sec. 3.

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134. 40 M. 745=32 M.L.J. 24. The purchaser need not prove that he purchased "without constructive notice of the limited title of the vendor". 5 L.W. 250=1917 M.W.N. 5=38 I.C. 194. Art. 134 is not restricted in its application to purchaser in good faith, but applies also to an alienee from a trustee who takes the property with full knowledge that the alienor was acting in excess of his power. 130 I.C. 780=1931 L. 129=32 P.L.R. 17.

INVOLUNTARY TRANSFER.—Execution sale of trust property for personal debts of trustee—Limitation for recovery of trust property. 45 M.L.J. 588=46 M. 751 (P.C.). *See also* 1921 A. 389=43 A. 164=61 I.C. 546. The article does not apply to a purchaser in Court-auction. 5 L.W. 690=32 M. L.J. 85; 1923 C. 1=50 C. 49; 1927 A. 619 =102 I.C. 891.

TRANSFER BY TRUSTEE.—The head of the Mutt is not a trustee with regard to the endowed properties and therefore Art. 134 does not apply to an alienation by the head of a Mutt. 44 M. 831=41 M.L.J. 346 (P.C.)=1922 P.C. 123; 104 I.C. 125=53 M.L.J. 306=1927 M. 850; 60 I.A. 124=12 P. 251=1933 P.C. 75=64 M.L.J. 505 (P. C.) (Suit by a mahant to avoid an alienation by his predecessor and recover possession of the properties alienated is governed by Art. 144). But *see* 1928 M. 614; 44 M. 831= 1922 P.C. 123. The Dharmakartha of a temple is not a "trustee" within the meaning of the article and a suit to recover possession of lands improperly alienated by him is governed by Art. 144. 62 M.L.J. 496 =137 I.C. 487=1932 M. 328. Under the article each succeeding shebait does not acquire a fresh start for the purpose of limitation. 17 C.W.N. 873=16 I.C. 927. A Matadhipathi can set aside an alienation made by his predecessor within 12 years of his becoming Matadhipathi. 38 M. 356=25 M.L.J. 393. *See also* 52 I.C. 914=37 M.L. J. 231; 1922 L. 271 (2); 53 M.L.J. 306= 1927 M. 850=1931 P.C. 186=12 P. 251 (P. C.), *supra*. Art. 134 does not apply where the head of a Mutt has alienated the properties not proved to be subject to a specific trust. 1 P. 475=1922 P. 243. Where the property transfered is claimed in the suit by a Mahant who alleges that it belongs to a religious institution, the rule of limitation governing the suit depends upon the nature of the property. 1930 L. 191 (2). Art. 134 does not apply to suits to avoid alienations of the generally endowed property vested in the *sajjadanashin* and mutawalli of a wakf. 35 Bom.L.R. 252= 1933 B. 217=57 B. 709. A mutawalli has a beneficial interest in the endowed property and an alienation made by him is valid during his lifetime and a suit by succeeding mutawalli to recover possession of the property alienated is governed by Art. 144. 1933 M. 533=64 M.L.J. 706. But *see* 60 I.C. 689. Art. 134 does not apply to a wakf. 50 C. 329=44 M.L.J. 624=1923 P. C. 44 (2).

PERMANENT LEASE.—A suit brought by a shebait of some family idols to recover possession of debutter property dedicated to the service of the idols, but of which plaintiff's predecessors had granted a permanent lease, more than 12 years before suit is not barred by Art. 134. 38 C. 526=21 M.L.J. 1145 (P.C.). *See also* 44 I.C. 567=27 C.L. J. 201; 43 C. 34=29 I.C. 337. The word "transfer" in Art. 134 is wide enough to include a lease in perpetuity. (43 C. 34 and 40 M. 745, Foll.). Where property belonging to the idol is transferred and the rent reserved in favour of the idol of the temple is only eight annas, such rent is not valuable consideration within the meaning of Art. 134. 126 I.C. 279=1930 M. 298.

POSSESSION UNDER TRANSFER.—A suit by a succeeding trustee to recover possession of trust property, mortgaged by his predecessor and foreclosed by the mortgagee is governed by Art. 134. 47 C. 866=58 I.C. 705. Art. 134 is inapplicable to a transfer from a trustee or mortgagee under which possession is not taken by the transferee. 40 M. 1040=33 M.L.J. 320 (F.B.).

MISCELLANEOUS.—Art. 134 does not apply to a person, who being interested in part of the mortgage redeems the whole, he being only a charge-holder and not a mortgagee. 38 A. 138=34 I.C. 244. Though under Art. 134 the possession derived under a mortgage could be perfected by twelve years' adverse possession, yet if a new right accrued before 12 years were over, to the ownership of the properties, the adverse possession is broken. 39 M. 879. *See also* 36 A. 327=12 A.L.J. 457. The operation of the article begins only from the date on which the purchaser takes possession. 1930 M.W.N. 1148. *See also* 40 M. 1040=33 M. L.J. 320 (F.B.).

ART. 134-A: APPLICABILITY.—Where a

Description of suit.	Period of limitation.	Time from which period begins to run.
immovable property comprised in a Hindu, Muhammadan or Buddhist religious or charitable endowment, made by a manager thereof for a valuable consideration.		known to the plaintiff
134-B. By the manager of a Hindu Muhammadan or Buddhist religious or charitable endowment to recover possession of immovable property comprised in the endowment which has been transferred by a previous manager for a valuable consideration.	Twelve years ..	The death, resignation or removal of the transferor.
134C. By the manager of a Hindu, Muhammadan or Buddhist religious or charitable endowment to recover possession of movable property comprised in the endowment which has been sold by a previous mananger for a valuable consideration.	Twelve years ..	The death, resignation or removal of the seller]

suit was instituted by *A*, a Hindu idol, for injunction against *B* restraining him from disturbing *A* in his possession, on the basis of an alleged transfer to *B* by a former mahant of the plaintiff, *held*, that what *A* asked for was not only an injunction but the setting aside of the transfer to *B* and the suit was governed by Art. 134-A. *Held further* that if however *B* filed a suit against *A*, no period of limitation would run against *A*. 178 I.C. 806=1938 L. 752. The word "plaintiff" in the third column of Art. 134-A must, in the case of a representative suit brought on behalf of the general body of worshippers or beneficiaries or persons interested in an institution, be understood to refer only to the plaintiff or plaintiffs *eo nomine* on record, and cannot be taken to mean every individual member of the community or body of persons who are represented by the plaintiff or plaintiffs on record. 50 L.W. 658=1940 M. 81=(1939) 2 M.L.J. 920. Where an owner of property enters upon possession as mutawalli, his position becomes that of a trustee, and Art. 134-A, becomes applicable to a suit to set aside a subsequent transfer of that property effected by him on the footing that he is a full owner, and the plaintiff has twelve years from the date of his knowledge of the transfer. A plaintiff who derives his title as beneficiary from the deed of wakf and not as the son of the last mutawalli has an independent right of suit. I.L.R. (1946) Lah. 300. Where in a suit on behalf of an idol for a permanent injunction restraining the defendant from dispossessing the plaintiff from a certain land the substantial relief claimed by the plaintiff is to set aside a transfer of the land made by a previous mahant in favour of the defendant, the suit falls under Art. 134-A and as limitation begins to run from the time when the transfer becomes known to the plaintiff, the initial onus of proving that his suit is within time is on the plaintiff. If neither in the plaint nor at any subsequent stage of the case the plaintiff has ever fixed any date on which he alleges that he came to know of the transfer to the defendant, the suit must fail on that account. 40 P.L.R. 184=1938 L. 470.

ART. 134-B.—[*See* 73 C.L.J. 475=1942 C. 7 cited under Art. 144 *infra*.] Under Art. 134-B, a suit to recover debutter property alienated by a shebait is barred after the expiry of twelve years from the date of the death or cessation of office of the alienating shebait. 48 C.W.N. 172 (2)= 1944 Cal. 211.

ARTS. 134-A, 134-B AND 144.—Trustee of temple—Alienation by mortgage of certain items—Again sale of certain other items without authority and falsely representing the items to be his private property—Suit to declare them not binding on trust by successor in office—Article of limitation applicable to the transaction. (1946) 2 M.L.J. 123=1947 M. 3. Where an estate known as the Patdi estate is held for life by each holder for the time being and passes on his death to the next holder unencumbered by debts or charges except those imposed by Government, and the estate is made inalienable and impartible by rules framed by the Government on the lines of the Bombay Saranjan Rules which Saranjan Rules do not apply to the estate, and there is no rule that there is to be formal resumption on the death of each holder and re-grant to the successor, if any alienation of a part of the estate is made by a holder it will be invalid from its inception and not merely from his death. But if the alinee continues in possession of the part transferred to him for over 12 years during the lifetime of the alienor or his successor, he acquires a title to it by adverse possession not only against the holder during whose tenure he completes 12 years' possession but as against all subsequent successors. Though the successor does not claim through his predecessor but claims in his own right, the suc-

Description of suit	Period of limitation	Time from which period begins to run.
135 Suit instituted in a Court not established by Royal Charter by a mortgagee for possession of immovable property mortgaged.	[1][Twleve years] ..	When the mortgago 's right to possession determines.

LEG. REF.

1 Substituted by Act XI of 1923, sec. 2 and Sch. I, for "Ditto.".

cessor gets the estate as it was at the time of the death of the predecessor. If, therefore the estate had lost by adverse possession a particular part of it, and if the alienee had become its owner by the extinction of the holder's title thereto, the estate which comes to the successor is the estate minus the part the ownership of which had passed from the estate to the alienee's family. It would be open to a person to acquire title by adverse possession for over 12 years, and the fact that the alienor holder had only a life estate would not come in the way of the acquisition of title by adverse possession. Even if the analogy of the head or mahant of a math is applied to the holder of the estate, it would make no difference. On that analogy Art. 134-B would apply, and if the alienee completes 12 years' possession after the death of the alienating holder, he perfects his title by adverse possession. 44 Bom. L.R. 146=1942 B. 138=200 I.C. 889. Where a perpetual lease is granted of trust property the lease is void and a suit by the succeeding manager to recover possession is governed by Art. 134-B, and time commences from the death or removal of the previous manager who effected the transfer. 14 L.R. 905 (Rev.) Art. 134-B applies to a transfer of endowed property made, whether before or after the Amending Act of 1929 which introduced this article in the Limitation Act came into force.

The word 'transfer' in the article is wide enough to include a lease. 41 C.W.N. 693=1937 C. 305=I.L.R. (1937) 2 C. 242. *See also* (1941) 1 M.L.J. 644 (F.B.)=1941 M. 449=I.L.R. 1941 Mad. 599. The general rule is that the law of limitation applicable to a suit or proceeding is the law in force at the date of the institution of the suit or proceeding, unless there is a distinct provision to the contrary. So a suit brought in 1930 by the Sajjadanashin of a Takia to recover possession of immovable property comprised in the wakf which had been transferred by trustee *de son tort* is governed by Art. 134-B as inserted by Act I of 1929. 39 P.L.R. 222=1937 L. 9. *See also* 73 C.L.J. 475=1942 C. 1. A suit by a committee of management of a *thakardwara* to recover possession of property originally belonging to the *thakardwara* which had been alienated by the previous mahant is governed by Art. 134-B and the time is twelve years from the death, resignation or removal of the transferor. 39 P.L.R. 355=1937 L. 660. *Held*, by the Full Bench (Abdur Rahman and Krishnaswami Iyengar, J., diss.) (1) where a manager of a Hindu Religious institution makes an alienation of the property of the institution for valuable consideration and the succeeding manager seeks to impeach the alienation by suit. Art. 134-B and not Art. 144 will apply even when there is an interval of time between the death, resignation or removal of the previous manager and the election or appointment of the subsequent manager; (2) that even assuming that Art. 144 is applicable to such a case, adverse possession commences from the date of the death, resignation or removal of the previous manager who effected the alienation and not from the date of the election or appointment of the succeeding manager; and (3) that if the succeeding manager happens to be a minor at the date of the election or appointment, he will be entitled to the benefit of sec. 6 of the Act, but where his appointment is made after the period of limitation has started to run, sec. 6 will not help him. I.L.R. (1941) M. 599=1941 M. 449=(1941) 1 M.L.J. 644 (F.B.). "Removal"—Decree removing mahant from office— Execution pending appeal— Appeal subsequently dismissed—Suit to declare invalid alienation by mahant—Starting point of limitation— Adverse possession— Interruption. 24 Pat. 208=1945 Pat. 326. Inam grant burdened with service of Acharya purusha in temple—Usufructuary mortgage —Suit by successor to declare void—Limitation. 1940 M.W.N. 404=1941 M. 217.

ART. 135.—A suit by a mortgagee against the mortgagor or his successors-in-title is governed by Art. 135. 50 I.C. 762; 63 I.C. 579. *See also* 1939 L. 212=41 P.L.R. 529. A suit by a mortgagee without possession for possession of the mortgaged property on the basis of ownership is well within time, if lodged within twelve years of the foreclosure proceedings under Ben Reg. XXII of 1806. 40 P.L.R. 798=1938 L. 809. For the purpose of Art. 135 the mortgagor must either have actual possession or an unconditional right to recover possession from somebody who has in fact got it and unless and until he has that right, time does not start to run. 57 B. 593=35 Bom.L.R. 956=1933 B. 439. The time for a puisne mortgagee to sue for possession begins to run from the date of redeeming the prior mortgagee who was in possession of the property and not from the date of his mortgage. 48 I.C. 916 =8 P.W.R. 1919. Where according to the terms of a mortgage deed the mortgagee is entitled to obtain possession of the mortgaged property in default of payment of interest, and the mortgagor fails to pay interest in the very first year after the mortgage, the cause of action for a suit for possession accrues in that year. The fact that interest

Description of suit.	Period of limitation	Time from which period begins to run.
136. By a purchaser at a private sale for possession of immovable property sold when the vendor was out of possession at the date of the sale.	[Twelve years] ..	When the vendor is first entitled to possession.
137. Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was out of possession at the date of the sale.	[1][Twelve years] ..	When the judgment-debtor is first entitled to possession.

LEG. REF.

[1] Substituted by Act XI of 1923, sec. 2 and Sch. I, for "Ditto.".

was paid and accepted by the mortgagee in certain subsequent years cannot by itself be held to be sufficient to show that the default was condoned and the parties were restored to their original position. 40 P.L.R. 48. But *see* (1938) 2 M.L.J. 251=1938 M. 836; 1939 N. 242=I.L.R. 1939 N. 515; 1938 L. 570=40 P.L.R. 571. Mortgage—Stipulation for the mortgagor retaining possession on paying a certain sum to the mortgagee at every harvest—Further stipulation for recovery of possession in default of payment of interest—Default in payment of interest—Suit for possession 14 years after the execution of the mortgage. *Held*, the mortgagor's right to possession determined as soon as there was default and time began to run against the mortgagee, and the mere fact that the mortgagee might, but did not, apply, for the personal remedy against the mortgagor was not an impediment either to the starting or to the running of the time. 121 I.C. 190=1930 L. 327. *See also* 1934 L. 993.

ARTS. 135 AND 144.—Sale of mortgaged property in execution of money decree in ignorance of mortgage and without impleading mortgagee in suit or execution—Subsequent suit on mortgage for sale—Purchaser under money decree sale not impleaded—Sale and purchase by mortgagee—Suit by mortgagee for possession from prior purchaser—Frame of—Limitation. I.L.R. (1943) Kar. 315=1943 Sind 242.

ART. 136.—The expression "out of possession" in Art. 136 implies that some person is in possession adversely to the vendor some person holding in a character incompatible with the idea that the ownership remained vested in the vendor. 51 I.C. 123=29 C.L.J. 241. *See also* 64 I.C. 552=23 Bom.L.R. 967=1921 B. 77. Possession contemplated by Art. 136 is not confined to actual occupation only; it also includes constructive possession. 151 I.C. 357 (2)=1934 R. 223. Article applies to such possession as a member of the joint family is presumed to have, in the family property, until excluded therefrom. 51 I.C. 123=29 C.L.J. 241; (1911) 2 M.W.N. 175; 1915 M.W.N. 29. Where there have been transfers by successive vendors, all out of possession the term 'vendor' includes the first in the series of vendors entitled to sue for possession. 24 I.C. 216. Delivery of symbolical possession is operative against the judgment-debtor but is wholly ineffectual to affect the title or interrupt the actual possession of others. 29 I.C. 841=22 C.L.J. 574. The possession of one co owner is in itself rightful and does not imply hostility as would be the possession of a stranger. If a co tenant were to sell his share in joint property to a stranger some time after twelve years from the date when he and other co-sharers became entitled to the property, it would not be proper to defeat the right of the purchaser by saying that the suit was barred because his vendor first became entitled to possession on the date on which co-sharers became entitled to the property. 58 B. 410=36 Bom.L.R. 281 =1934 B. 273. Starting point is the time when the vendor is first entitled to possession. 67 C.L.J. 294=1938 C. 790.

ART. 137.—When an auction-purchaser at a Court-sale has obtained judicial possession, he or his assigns may sue the judgment-debtor for actual possession within 12 years from the date of obtaining such possession. 17 I.C. 518. Suit for possession against remainderman — Partition — Life-estate given to father with remainder to his son—Rights of son. 25 Bom.L.R. 456= 1923 B. 415. Art. 137 is not applicable to a suit for possession after confirmation of Court-sale where judgment-debtor is in possession at the date of sale. 1921 C. 385 (2) =26 C.W.N. 364. Art. 137 does not apply to a purchaser at a sale held in execution of mortgage decree. 50 M.L.J. 183=1923 M. 160 (2). A suit for actual possession of property obtained in execution of a decree when symbolical possession was given, falls under Art. 144 and not under Arts. 136 and 137. 35 I.C. 87.

ARTS. 137 AND 142.—*See* 19 P.L.T. 250= 1938 P. 321.

ART. 137.—The words "entitled to possession" in Art. 137, mean "able to exercise his right of possession" and the words "out of possession" imply that the judgment-debtor at the time of the sale was not in a position to exercise his right of possession. 1938 R. 65. Sale by person of property subject to lease—Suit by vendee for possession —Starting point. *See* 58 L.W. 136=1943 Mad. 413=(1943) 1 M.L.J. 207.

Description of suit.	Period of limitation.	Time from which period begins to run.
138 Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was in possession at the date of the sale.	[1][Twelve years] ..	The date when the sale becomes absolute
139. By a landlord to recover possession from a tenant	[1][Twelve years] ..	When the tenancy is determined.

LEG. REF.

[1] Substituted by Act XI of 1923, sec. 2 and Sch. I for "Ditto".

ART. 138.—Art. 138 applies only to suits between the auction-purchaser and the judgment-debtor or his representative in interest. 35 A. 432=18 I.C. 465. Art. 138 does not apply to a case where the judgment-debtor was not in possession at the date of the sale. 67 C.L.J. 294=1938 C. 790. The scope of Art. 138 is not limited to the case of a stranger auction-purchaser. 46 P.L.R. 357=1944 Lah. 402=I.L.R. 1945 Lah. 252 (F.B.). The expression "purchaser at a sale in execution of a decree" in Art. 138 does not cover the case of a judgment-debtor who purchases the property in execution of his decree. 52 M.L.J. 1=50 M. 403=1927 M. 288; 1932 P. 145=11 P. 165. (Art. 138 makes no distinction between a decree-holder purchaser and a third party purchaser.) The former as well as the latter has twelve years within which to bring a suit for recovery of possession of the property purchased in execution of the decree. But *see* 10 P. 670 (F. B.)=1932 P. 80. It will not be doing any violence to the language of Art. 138, if the word "purchaser" in it is limited to a stranger, *i.e.*, to a person who is not a party to the decree and who is not a decree-holder. 1936 Pesh. 85. Possession—Suit by auction-purchaser—Limitation. 15 I.C. 10=10 A.L. J. 13. Judgment-debtor in possession—Formal possession with purchaser—Effect of. 36 B. 373=14 I.C. 447. *See also* 19 P.L. T. 95=1938 P.W.N. 177=1938 P. 189. Art. 138 should be read with sec. 47, C. P. Code. The one does not override the other. 35 B. 452=11 I.C. 987. A suit by decree-holder auction-purchaser against a person who has not acquired a title from the judgment-debtor is not governed by Art. 138. 1922 C. 176=36 C.L.J. 140=27 C.W.N. 259. Art. 138 is applicable only to cases where purchaser has not obtained possession. 26 C.W.N. 364. *See also* 40 I.C. 662. Article applies to a suit by the auction-purchaser, though the sale took place before the passing of the Act provided the plaintiff had time enough under that article after the passing of the Act to bring his suit. 38 I.C. 609. A suit by a purchaser in a Court-auction for recovery of possession of the properties, after confirmation of the sale is governed by Art. 138 and not by Art. 180. 47 I.C. 844. Whatever might be the effect of the formal delivery of possession under the C. P. Code as against the judgment-debtor himself, such formal delivery of possession cannot take effect as actual possession against a purchaser of the rights of the judgment-debtor who has previously obtained actual possession. Where the plaintiffs did not bring the suit within 12 years of the purchase but only brought it within 12 years from the date of obtaining formal delivery of possession through Court, *held*, that the suit was not in time. 3 Luck. 668=5 O.W.N. 616=1928 O. 391. Mortgagee of tenure purchasing property in execution of decree—Tenure sold for arrears of rent during mortgage litigation—Suit by mortgagee alleging that certificate of sale was fraudulent and did not affect the encumbrances. Art. 138 and not Art. 95 applies. 107 I.C. 481= 1937 P. 331.

ARTS. 138 AND 144.—Art. 144 and not Art. 138 applies to a suit for possession by an auction-purchaser of property at a Court-sale after he has already obtained formal or symbolical delivery of possession. The suit is not by him as auction-purchaser, but as owner. Sec. 16 of the Limitation Act cannot apply so as to entitle him to deduct the period taken in proceedings for setting aside the sale. Sec. 16 can only be helpful to a plaintiff where he has not gone to the executing Court to obtain possession and the time from which limitation starts is the date when the sale becomes absolute. But when the purchaser at the execution sale has gone to the executing Court and obtained delivery of possession, whether formal or actual and is then dispossessed, a suit for recovery of possession by him is not a suit by him as auction-purchaser but an ordinary suit for possession by an owner on title. In such a case Art. 144 applies and there is no scope for invoking sec. 16. 1946 P. 202=24 Pat. 717.

ART. 139.—Art. 139 applies even to suits brought against the representatives of the original tenant after the determination of the original tenancy to recover the property leased. Where a rent deed in respect of certain houses created a tenancy for an indefinite period in favour of the tenant and it was stated to be terminable at the will of the lessor, it was held that at best a tenancy for life was created in favour of the tenant and that it came to an end with his death and further that a suit by the lessor for recovery of possession of the property would be barred, if not brought within 12 years of the date of the death of the tenant. 1941 A.L.J. 327=1941 A. 306. *See also* 41 P.L.R. 457=1939 L. 455. Defendants who were let into possession of the suit lands belonging to a Mahomedan darga

Description of suit.	Period of limitation.	Time from which period begins to run.
140. By a remainderman, a reversioner (other than a landlord) or a devisee, for possession of immovable property.	[1][Twelve years] ..	When his estate falls into possession.

LEG. REF.

1 Substituted by Act XI of 1923, sec. 2 and Sch. I, for "Ditto.".

in consideration of their services as *mujawars* (attendants and servants of the shrine) were dismissed in 1898, but continued in possession. In a suit brought in 1926 by the *sajjadanashin* to recover possession of the lands, the defendants pleaded adverse possession. *Held*, that the defendants' plea of adverse possession was inconsistent with the application of Art. 139. 61 I.A. 50=56 A. 111=66 M.L.J. 431 (P.C.)=1934 P.C. 77. Expiry of lease more than 12 years before suit—Suit for possession barred. 26 C.W.N. 722=1922 P.C. 184 (P.C.). *See also* 37 I.C. 955; 42 P.L.R. 535=1940 L. 410. While it is true that a tenant who holds over cannot set up an adverse title to the landlord, still the landlord can recover possession only if he sues within 12 years of the expiry of the period of lease. 20 A.L.J. 696=1922 A. 423. *See also* 26 C.W.N. 722; 44 A. 583 =20 A.L.J. 593=1922 A. 318; 1927 A. 821 =102 I.C. 231; 105 I.C. 859=1927 B. 650. But *see also* 68 M.L.J. 552=1935 P.C. 59 (P.C.) noted below. Lessee not paying rent after expiry of lease—Adverse possession 18 I.C. 899=8 N.L.R. 190. Landlord and tenant—Denial of title—Non-payment of rent —Effect. 36 I.C. 829. *See also* 57 I.C. 269; 46 L.W. 848=1938 M. 73; 41 P.L.R. 457=1939 L. 455. A tenancy on sufferance does not fall within Art. 139. 97 P.R. 1915 =32 I.C. 35; 16 I.C. 546. Under Art. 139 the cause of action in cases in which the Malabar Tenants Improvements Act applies, does not arise till the value of improvements is paid to the tenant. 38 I.C. 651 (1)= (1916) 2 M.W.N. 324. *See also* 1938 M. 581=(1938) 1 M.L.J. 313=47 L.W. 236. An intention to hold adversely to the landlord need not necessarily follow a holding over. 3 L.W. 408=30 M.L.J. 492. A tenant continuing in possession after expiry of the lease cannot be said to be in adverse possession unless he actually surrenders possession to his landlord. 1914 M.W.N. 728; 53 I.C. 212; 1923 P. 201. Where, after the expiry of a lease, the tenant continues as tenant on same terms, he cannot claim adverse possession and there is no period of time from which it can be said that the statute runs so as to debar the lessors from their remedy for the recovery of the property. 39 C.W.N. 552=1935 P.C. 59=68 M.L.J. 552 (P.C.). The landlord must sue a stranger dispossessing his tenant from year to year and holding the land absolutely against them both within 12 years from the date of such dispossession. 15 I.C. 146= 1912 M.W.N. 669. In the case of tenancy from year to year, limitation runs in favour of a person asserting permanent right in the property only from the date of the end of the tenancy under Art. 139. 9 I.C. 141= 21 M.L.J. 166. The relationship of landlord and tenant between the parties has not been established. Art. 139 does not apply to a suit in ejectment of defendants by plaintiff. (1926 C. 193, Affir.) 1929 P.C. 99=56 M.L.J. 562=56 I.A. 119=56 C. 1003 (P.C.). Whatever possessory rights a tenant-at-sufference may have against a rank trespasser, it cannot be claimed that the "tenancy-at-sufference" is heritable. The son of such tenant cannot style himself as a tenant holding over. His possession is nothing better than that of a trespasser. His possession is clearly adverse to the owner of the land and would ripen into a prescriptive title by 12 years' possession. Limitation runs against the landlord from the date when tenancy comes to an end. 1934 N. 67=30 N.L. R. 155=148 I.C. 561.

ART. 140.—Art. contemplates a suit by a remainderman or reversioner for possession of immovable property when his estate falls into possession. 65 I.C. 826=34 C.L.J. 129. By the expression "falls into possession" is meant the time when a reversioner or a remainderman becomes entitled to the actual possession of the estate. 8 O.W.N. 349= 1931 O. 177. The possession of one trespasser can be tacked on to that of another and a continuity of adverse possession may result thereby only when the interests of both are not different and antagonistic. 119 P. L.R. 1914=22 I.C. 855. Art. 140 governs suit against a trespasser by a lessor for the recovery of his leased-out land. 15 I.C. 146=1912 M.W.N. 669. Art. 140 has no application against a tenant as Art. 139 governs such suits. 15 I.C. 146. Art. 144 applies when the purchaser of the rights of a devisee sues to obtain possession of the property if the devisee or his transferee has once obtained possession, and Art. 140 applies if the devisee has not obtained possession. 56 I.C. 929. A person claiming only an equity of redemption does come within the meaning of remainderman. 56 I.A. 192 =51 A. 367=33 C.W.N. 761=1929 P.C. 158 (P.C.). If the plaintiff succeeds in making out a *prima facie* case under Art. 140 the burden is on the defendant to show that the dispossession took place at a time when the property was in possession of the last male owner. 43 C.W.N. 772.

Description of suit.	Period of limitation.	Time from which period begins to run.
141. Like suit by a Hindu or Muhammadan entitled to the possession of immovable property on the death of a Hindu or Muhammadan female.	[1][Twelve years] ..	When the female dies.

LEG. REF.

[1] Substituted by Act XI of 1923, sec. 2 and Sch. I for "Ditto".

ART. 141: APPLICABILITY—(1) GENERAL.—The word "Hindu" in Art. 141 means not only a person who is ethnologically a Hindu but also a person who has the legal status of a Hindu and is governed in the matter of inheritance by the Hindu Law. 1946 N. 277 =I.L.R. (1946) Nag. 159. Article applies only when a reversioner is entitled to possession on the death of the female. 18 I.C. 811=11 A.L.J. 179; 25 C.W.N. 585=1922 C. 321; 25 A.L.J. 861=1927 A. 818. Where on the death of the widow, the reversioner is deemed to be in constructive possession, no one else being in possession, Art. 141 is not applicable to a suit instituted by him after mutation of names in defendant's favour some years after. 36 C.W.N. 326=138 I.C. 349=1932 C. 504. Art. 141 is extension of Art. 140 and specially refers to reversioner succeeding to the estate after widow's death. 40 B. 239=33 I.C. 484. Art. 141 applies only to cases where it is proved that the last full owner was in possession at the time of his death. 27 I.C. 954=19 C.W.N. 1280. *See also* 27 I.C. 250=18 C.W.N. 904; 1941 C. 632. There is no warrant for the contention that the death of a female referred to under Art. 141 includes death by influx of time, though it may include civil death. (1946) O.A. (C.C.) 120. Where succession vests jointly in two female heirs between whom no partition of the property is made, a suit by one on death of the other for the property cannot be said to be one for recovery of possession under Art. 141. 27 I. C. 83. Article does not apply to cases in which the Hindu or Mahomedan female had been in possession of the full estates. 44 I.C. 308=41 M. 538. *See also* 18 I.C. 289; 18 O.C. 289=33 I.C. 371. Where a widow is found to have been lawfully holding her husband's estate for life, whether under a will or under the provisions of sec. 22 of Act I of 1869, no question of adverse possession arises and the suit for possession by a reversioner is governed by Art. 141. 6 Luck. 282=7 O.W.N. 1010=1930 O. 481 (26 I.A. 71 and 56 I.C. 267, Foll.). Art. 141 does not contemplate the same kind of estate as one under Art. 140, *i.e.*, by grant or devise. 33 I.C. 371. The argument that the word "entitled" in Art. 141 necessarily means "entitled under the law and not extinguished by limitation", and that the article applies only to a suit brought by the first Hindu entitled to possession on the death of the first female heir is not supportable. 26 A.L.J. 1049=1928 A. 561 (F.B.). Where adverse possession commences to run against the last male owner himself the intervention of the limited estate will not prevent time running and will not enable the reversioner coming after the limited owner to say that he has got a fresh cause of action on the death of the owner of the limited estate. 1942 A.W.R. (C.C.) 139=1942 O.W.N. 191 =A.I.R. 1942 Oudh 303.

(2) CO-WIDOWS.—Under Art. 141 time begins to run only on the death of all the female co-heirs. There can be no acceleration of the right of a reversioner without his knowledge and consent by any agreement between the female co-heirs. 12 L.W. 656 =39 M.L.J. 567=1921 M. 246=43 M. 855. *See also* 42 B. 714=47 I.C. 153. Suit by a widow to set aside gift of husband's property by her co-widow—Limitation runs from the date of co-widow's death. 1927 N. 226.

(3) REVERSIONER.—A suit by a reversioner challenging the alienation of a Hindu widow should be instituted within 12 years of the widow's death. 10 O.W.N. 147=8 Luck. 538=1933 O. 170 (2). *See also* 1937 P. 105=17 P.L.T. 16. The general principle is that adverse possession, however long held, cannot impair the right of a person who was not, during the continuance of that adverse possession, entitled to possession. As the right of a reversioner is only a *spes successionis* and his reversionary interest falls into possession only on the death of the widow, adverse possession against the widow can hardly be regarded as hostile to the reversioner whose right is until the widow's death, only an expectancy. I.L.R. (1939) N. 624=1939 N.L.J. 391=1939 N. 260. *See also* 20 N.L.J. 278. The article applicable to a suit by an adoptee for possession of immovable property on the death of a Hindu female who was in possession as the adopted mother under an agreement is Art. 141, even if it is necessary to decide in the suit whether an adoption was or was not valid. 58 B. 280=36 Bom.L.R. 185= 1934 B. 110; 1935 L. 213 (2)=149 I.C. 434 =35 P.L.R. 338 (Suit by reversioner). But a suit by an adopted son after the death of a Hindu widow for possession, alleging previous possession and dispossession is governed by Art. 142. 60 C.L.J. 391=1935 C 228. Adoptive mother dedicating by will husband's properties to idol during adopted son's minority—Latter consenting to it after attaining majority—Adoptive mother in possession of those properties for over 12 years thereafter before death—Effect of. *See* 47 C.W.N. 607 (P.C.)=1943 P.C. 83=1943

Description of suit.	Period of limitation	Time from which period, begins to run.
142. For possession of immovable property when the plaintiff while in possession of the property, has been dispossessed or has discontinued the possession-	[1][Twelve years] ..	The date of the dispossession or discontinuance.

LEG. REF.

1 Substituted by Act XI of 1923, sec. 2 and Sch. I for "Ditto".

M.L.J. 58. Possession taken by a trespasser during the lifetime of a Hindu female with a life-interest is not adverse as against the reversioners until after the death of the widow. 41 A. 154=47 I.C. 222. *See also* 50 C.L.J. 260=1930 C. 165=57 C. 289. But *see* 1929 O. 153=4 Luck. 592. *See* 32 C.W. N. 913=55 C. 903=1928 C. 670 in which the case-law in the point is fully discussed. A suit by a Hindu daughter for possession of her father's property after her mother's death falls under Art. 141. 20 I.C. 179=11 A.L.J. 333. *See also* 14 A.L.J. 11=38 A. 117. The fact that some person other than the daughter was in possession of the property during her lifetime adversely to her, does not affect the right of the reversioner to sue for possession of that property under Art. 141, when no decree was obtained against her. I.L.R. 1943 Nag. 213=1943 N.L.J. 237=1943 Nag. 193. A suit for possession of immovable property by a Hindu female succeeding as a reversioner to another Hindu female owner is governed by Art. 141 [26 A.L.J. 1049 (F.B.), Foll.] 167 I. C. 527=1936 A.W.R. 1279=1937 A. 188. In a case where there have been more than one female heir in succession, the suit has to be brought within 12 years of the death of the last female holder. 20 N.L.J. 278. Art. 141 is inapplicable when time has once commenced to run against the last full owner. 1923 B. 364. The special period provided by Art. 141 overrides the general provisions of Art. 144. 42 B. 69=43 I.C. 233. The reversioner has a fresh cause of action on the date of the death of the limited owner. 30 I.C 991= 2 L.W. 751; 42 I.C. 228=32 M.L.J. 627; 17 I.C. 136. Limitation can never begin to run against a reversioner in consequence of dispossession of the limited owner and the reversioner has 12 years from the death of the widow or daughter or mother to sue for possession of property from which the Hindu female was dispossessed. The only case where adverse possession will run against the reversioner is where it is the result of a decree which is binding against the reversioner. 50 C.L.J. 260. *See also* 1928 A. 561 (F.B)=26 A.L.J. 1049; 1930 A. 307; 139 I.C. 28=34 Bom.L.R. 385=1932 B. 434. So also in the case of surrender by widow. Where a widow made a surrender of her estate in 1884, in favour of her daughter, who died in 1894, the right of the male reversioners to sue arises on the daughter's death and is barred under Art. 141 if brought more than 12 years thereafter, though in time if the computation is made from the subsequent death of the widow. (46 A. 59, Appr.) 61 I.A. 200=57 M. 749 =1934 P.C. 105=67 M.L.J. 20 (P.C.). The basis of the doctrine of surrender is the effacement of the widow's interest, and not the *ex facie* transfer by which such effacement is brought about. There is therefore no difference between surrender to a daughter and surrender to the nearest male reversioner. 67 M.L.J. 20 (P.C.). This rule is applicable also to the case of a Mahomedan occupying a similar position. 108 I.C. 817 =1928 O. 155. Whether the adverse possession against the widow runs against the reversioner is a question of fact. 1928 A. 561 (F.B.); 6 Luck. 365=1931 O. 25. A suit by a reversioner to recover possession of the properties of a limited owner sold in execution of a decree obtained against her husband is governed by Art. 141 and not by Art. 144. 1929 C. 93=48 C.L.J. 368. Where there has been no decree against widow or other act in law in the widow's lifetime depriving the reversionary heir of the right to possession on the widow's death, the heir is entitled after the widow's death to rely upon Art. 141 for the determination of the question whether the title is barred by lapse of time. 56 I.A. 267=51 A. 439 =1929 P.C. 166=57 M.L.J. 160 (P.C.). *See also* 9 P. 634=1930 P. 573; 139 I.C. 28= 34 Bom.L.R. 385=1932 B. 434. Suit for partition between alienee from one member and reversioners. *See* 53 B. 472=1929 B. 345. Widow's alienation—Subsequent adoption—Death of adopted son as minor—Succession by widow—Suit by reversioner after widow's death is not barred. 1931 M. 273 =1930 M.W.N. 811. *See also* 17 P.L.T. 16 =1937 P. 105. Adverse possession against woman holding a widow's or a daughter's estate is binding against the reversionary heirs. 51 C.L.J. 23. Suit by reversioner to recover possession on the death of widow. Art. 141 applies and not Art. 2, Sch. II of the Punjab Act I of 1920. 1930 L. 111. *See also* 51 C.L.J. 23. On the death of the last taluqdar to an estate, succession to which was governed by the terms of the primogeniture sanad, his wife entered into possession and in mutation proceedings, claimed the estate under sec. 22 (7) of the Oudh Estates Act, *i.e.*, as a limited owner. So the right of the next heir to sue for complete proprietary title accrued only after, and not before, the death of the limited owner. A suit for possession by him is

governed by Art. 141. 150 I.C. 495=11 O. W.N. 351=1934 O. 190=9 Luck. 484.

(4) LIMITED OWNERS (MORE THAN ONE).—Article applies where the reversioner is entitled to the property on the death of more than one limited owner taking jointly, and time runs from the death of the last limited owner. 42 M. 855=39 M.L.J. 567=1921 M. 246.

SUIT FOR POSSESSION.—Suit for possession on declaration of title by plaintiff as reversionary heir on his mother's death against defendant—Art. 141 applies. 23 C.W.N. 977=47 C. 274.

SUIT FOR SHARE IN INHERITANCE.—A suit for the share in inheritance is barred after lapse of twelve years of the death of the last male owner. 33 I.C. 742=84 P.R. 1916.

STARTING POINT.—The starting point is the death of the last surviving widow. 33 A. 312=9 I.C. 50; 1930 O. 481=7 O.W.N. 1010. The reversioner's right to sue accrues from the time of the death of the widow and possession for 12 years under a gift from the widow during her lifetime does not bar the suit. 1922 A. 421. *See also* 65 I.C. 966 =34 C.L.J. 141=1921 C. 687. When time has once commenced to run against the last male holder, it continues to run and is not suspended or affected by the mere circumstance that the owner is succeeded by a female entitled to a woman's limited estate. After twelve years have run from the date of the oiginal entry of the trespasser in the lifetime of the last male owner all persons claiming through or under him are barred. Art. 141 of the Limitation Act is inapplicable to such a case. 43 P.L.R. 308=1941 L. 271. *See also* 1942 O.W.N. 191=1942 O. 303.

ARTS. 141 AND 143.—Applicability—Award giving properties to Hindu widow for maintenance for life—Clause providing for forfeiture on widow becoming unchaste—Properties to go to husband's brothers on death of widow—Suit for possession of the properties by the reversioners within 12 years of the widow's death but beyond 12 years of unchastity—If barred—Limitation applicable—Death of widow gives fresh cause of action for suit. 1937 A.L.J. 139=1937 A. 268=I.L.R. (1937) All. 424.

ARTS. 141 AND 144.—Where under a special custom, a widow is entitled to possess the property of her husband during her life, her possession, however long, could not be adverse to the ultimate heirs so as to create an absolute right to the property in her favour after the expiry of 12 years. This is so even though the husband had executed an invalid will in her favour giving full ownership in the property. Accordingly a suit for possession of the property by the ultimate heirs is governed by Art. 141, and not by Art. 144 and a suit within 12 years of her death is within time. 165 I.C. 322 (2)=1937 O. 4=12 Luck. 592. *See also* 50 L.W. 571=1940 M. 102.

ARTS. 142 AND 144.—It may be that Arts. 142 and 144 are not limited to suits for possession based on proprietary title, but they certainly contemplate suits for possession in which some interest in immovable property is claimed. They can have no application to a suit by a mere licensee who does not assert any claim to any interest in immovable property. 75 C.L.J. 236=1943 Cal. 143. *See also* 1946 A.L.W. 196=223 I.C. 467. Arts. 142 and 144 have to be interpreted as they stand in deciding as to whether a particular case attracts the provisions of this article or that article. So far as Art. 142 is concerned, it is not stated there that the suit should be one in which the plaintiff should allege that he has been in possession and dispossessed. It is not the form of allegations of the plaintiff which will determine the nature of the suit, but it is the substance and the actual facts found by the Courts which will go to decide whether the suit is one which comes within the purview of ei her Art. 142 or Art. 144. 222 I.C. 378=1946 Pat. (Rul.) 102= 12 B.R. 260. In all cases in which the applicability of Art. 142 or Art. 144 is in contro versy, it is necessary to scrutinize the pleadings of the plaintiff and to ascertain exactly the allegations on which the plaintiff has come to Court and the reliefs sought by him. Sometimes the pleas raised in defence by the defendant are also relevant to the enquiry. 1935 L. 507=37 P.L.R. 171; 152 I.C. 906=1934 P. 593; 152 I.C. 1=1934 A.L.J. 973=1934 A. 993 (F.B.)=57 A. 278; 147 I.C. 805=11 O.W.N. 104=1934 O. 21; 1937 L. 226=30 S.L.R. 472. In a case which falls under Art. 142, the plaintiff must prove not only title but also possession within 12 years of suit. But before that article can apply, it must be shown, either that the plaintiff was dispossessed, or that he discontinued the possession. This can be established either by the facts admitted in the plaint or pleadings, or by the facts actually found. But unless that is done the case cannot come under Art. 142 and so the residuary Art. 144 would apply. 1938 N.L.J. 418=1939 N. 7. *See also* 1942 N.L.J. 99; 1942 A.L.W. 225=1942 O.W.N. 281. The essential difference between Arts. 142 and 144 is that, in the first case the owner bases his claim from the date of his dispossession, and in the second he bases his claim on his title without regard to his possession or dispossession and time begins to run from the date that the defendant's possession became adverse to the plaintiff. Where the plaintiff sued on the basis of his title which was admitted, it was not for him to prove possession on his own part within 12 years, but it was for the trespasser to prove his adverse possession. [45 B. 1020 (P.C.), Rel. on.] 108 I. C. 109=1928 O. 246. *See also* 1928 L. 306 (a case of waste land); 1937 Sind 226; 1940 Sind 49=I.L.R. 1939 K. 793; 1940 M. 798 =(1940) 2 M.L.J. 190=I.L.R. 1940 M. 953; I.L.R. 1938 L. 558=1938 L. 241; 1939 L. 172. Where the plaintiff prays for possession, alleging recent forcible dispossession, the suit is governed by Art. 142, and it is for the plaintiff to establish his previous possession and dispossession by the defendant; it is not for the defendant to prove his ad-

verse possession for more than twelve years. 143 I.C. 428=1933 L. 627. *See also* 161 I. C. 833=1936 R. 124; 1941 C. 632; 1941 O. W.N. 615=1941 O. 415; 1940 O.A. 1251 (Suit for possession of property transferred by *pardanashin* guardian). 65 C.L.J. 603 =1938 C. 150; 1938 C. 206; 1940 A. 428. *See also* 1937 N. 129=I.L.R. 1937 N. 254; 1940 C. 194; 38 P.L.R. 365; 42 P.L.R. 531; 44 C.W.N. 935; 1928 Pat. 128; 1928 Pat. 653; 30 Bom.L.R. 1463=1929 B. 14. Where in a suit for possession the plaintiff alleged that the defendants and their predecessors in interest had been his tenants and that recently, that is, within twelve years before suit, they had denied his title and the defendants not only denied the contract of tenancy but also pleaded title in themselves by adverse possession and the plaintiff failed to prove the contract of tenancy or that he was in possession within twelve years of the suit it was *held* that the plaintiff's suit was barred even assuming the original title was in him. 1943 A.L.W. 328. Art. 142 applies to a suit for possession when the plaintiff while in possession of the property has been dispossessed or has discontinued the possession. Art. 144 is a residuary article applying to suits for possession not otherwise provided for. A period of 12 years runs in the case of Art. 142 from the date of the dispossession or discontinuance; in the case of Art. 144 it runs from the date when the possession of the defendant becomes adverse to the plaintiff; when a plaintiff's case is that he was dispossessed, it is Art. 142 and not Art. 144 that would apply and if the plaintiff does not prove his possession within 12 years before suit, his suit should fail. 1942 O.W.N. 753=1942 O.A. 599.

The person seeking to displace the rights of the person in possession has to establish that that person has no title and that the title resides in the plaintiff. It is always assumed that the person in possession is in rightful possession and so his possession is always referred to a lawful title whenever that is possible. A trespasser does not displace the rightful owner's title unless he intends to prescribe for a hostile title and he does not necessarily intend so to prescribe simply by remaining in occupation. His attitude may be a purely negative and passive one. All the usual presumptions about possesion being adverse and so forth do not arise except in favour of the person in possession and those who claim through him. If the rightful owner succeeds in getting into possession and an attempt is made to oust him by those who do not claim through the trespasser, then the presumptions are in favour of the rightful owner. 1942 N.L.J. 431. *See also* 1942 N.L.J. 99=153 I.C. 371 =1935 O. 88=10 Luck. 513. Where the plaintiff does not claim to have been dispossessed or to have discontinued possession, Art. 144 and not Art. 142 applies. 30 N.L. R. 284=148 I.C. 62=1934 N. 36. *See also* 151 I.C. 490=1934 L. 576; 1937 P. 252 (Plot incapable of possession by actual user). In cases where the plaintiff sues for possession of immovable property *both* on the ground of title and on the ground of his possession having been disturbed by the defendant if he proves his title, the burden of establishing title by adverse possession lies upon the defendant, and if the defendant succeeds in proving that fact, the suit must fail, otherwise the plaintiff is entitled to a decree. To this extent, Art. 144 will apply to such a suit but it may be that the plaintiff, though not able to substantiate his title, is in a position to prove his possession and dispossession by the defendant within 12 years. If that be the case, Art. 142 will apply and the burden will be on the plaintiff. 11 O.W.N. 104=1934 O. 21. Whether Art. 144 or 142 applies, depends on frame of suit but plaintiff has to justify such frame. 1930 L. 330. Property standing in Hindu woman's name in possession of tenants—Muchilkas taken and rent collected by adopted son who lived amicably with adoptive mother—Death of adopted son—Strained relationship between mother-in-law and daughter-in-law and scramble for possession—Suit for possession by donee from mother-in-law—Limitation—Art. 144 and not Art. 142 applies. I.L.R. (1938) M. 220= 1938 M. 8=(1937) 2 M.L.J. 606. The effect of Art. 142 of the Act of 1871 and Art. 141 of Act of 1877 was to create a fresh rule in regard to limitation in all cases in which the prescriptive right arising out of adverse possession had not already ripened into an absolute title. I.L.R. 1942 A. 259=1942 O.A. (Supp.) 145 (2)=1942 A.W.R. (H.C.) 84 (2)=200 I.C. 269=1942 A. 175.

ART. 142.—[*See also* under Art. 144]—APPLICABILITY OF ARTICLE.—Art. 142 is restricted to suits which are in terms and substance based on the plaintiff's prior possession which he has lost by dispossession or discontinuance of possession. Where the suit is based on plaintiff's title acquired by inheritance. Art. 144 is applicable. 134 I.C. 599=1931 O. 382 *See also* 1937 N. 159; 30 S.L.R. 472; 1932 O. 46=8 O.W.N. 1153; 136 I.C. 256=1932 O. 122; 1933 A.L.J. 105=1933 A. 775=55 A. 209; 1933 N. 274, 1939 N. 7=I.L.R. (1941) Nag. 655; 73 C. L.J. 47. "Dispossession" and "discontinuance"—Meaning of. *See* 1936 M. 919=71 M.L.J. 749; 1942 C. 180=74 C.L.J. 261; 1939 All. 257=1939 A.L.J. 94=I.L.R. (1939) A. 454; 1939 C. 354; 50 C. 49; 20 C.W.N. 481=31 I.C. 242; 60 I.C. 860; 45 I.C. 548; 1923 M. 160=99 I.C. 831. "Discontinuance" in Art. 142 means that a person in possession goes out and is followed into possession by another person, because unless he is so followed he will in law be deemed to continue in possession and there will be no discontinuance. I.L.R. (1939) All. 454=1939 A.L.J. 94=1939 A. 257. *See also* 1942 Cal. 189. The word "discontinued" connotes three elements—two physical and one mental. There must be (1) actual withdrawal (2) with an intention to abandon and (3) that another should step in, begin to occupy after the withdrawal. Dispossession signifies expulsion, an

adverse act which has the effect of putting out. It presupposes physical contact, a collision, either with another person or with his physical acts. The physical presence on the property of the person affected is not necessary but the adverse act of the other party must have the quality of destruction. 56 Cal. 914=1929 Cal. 297=69 C.L.J. 28=1939 C. 354. *See also* 1938 Sind 198; 1938 N.L.J. 418=1939 N. 7; 1942 N.L.J. 99; 5 Pat.L.J. 592=1921 Pat. 36; 61 I.C. 78=1921 P. 277. If a person discontinued his possession and never resumed it, it is a case governed by Art. 142 and not Art. 144. 59 I.A. 130=11 P. 272=1932 P.C. 55=62 M. L.J. 296 (P.C.). Where the plaintiff alleges possession of land and it is found that part of the land is *de facto* in the possession of another person, the suit must fall under Art. 142. 39 B. 335=28 I.C. 24. *See also* 8 O. W.N. 349=1931 O. 177. A suit for possession of immovable property of which the plaintiff while in possession of the property has been dispossessed or has discontinued possession is governed by Art. 142 and does not raise an issue of adverse possession but adverse possession for twelve years, if made out by the defendant, may imply dispossession of the plain iff. 58 I.A. 29=10 P. 407 =1931 P. 186=60 M.L.J. 183 (P.C.) (Adverse possess on of mining rights in a village granted on lease to defendent). Suit by reversioner for possession from trespassers against widow—Art. 142 applies. 65 I.C. 826=34 C.L.J. 129. Also to a suit by an adopted son for possession from trespassers against widow. Time runs from date of adoption. 1 Luck. 733=1928 O. 155. In a suit governed by Art. 142, the plaintiff must prove his possession within twelve years from the date of suit and on failure to do so, the suit should be dismissed. 56 I.C. 951; 1921 P. 31=6 P.L.J. 51=61 I.C. 46; 1924 P. 341; 1927 L. 186=101 I.C. 254; 108 I.C. 732; 1928 P. 653; 107 I.C. 779 (2); 1931 O. 177; 134 I.C. 475 (Oudh); 1933 R. 48; 1933 S. 279 (F.B.) The act of a person who takes possession, either forcibly or otherwise than in due course of law, may be high-handed and not legal in the sense that it is not authorised by law, but if he happens to be the rightful owner, there is no justification for holding that the period during which he had both title and possession should not be taken into account for purposes of deciding whether he was in possessin within 12 years of his suit. The fact that the trespasser from whom he wrested possession had succeeded in a suit under sec. 9 of the Specific Relief Act cannot make any difference in the position of the real owner so obtaining possession. 55 L.W. 515=1942 M.W.N. 478=1942 Mad. 728=(1942) 2 M.L.J. 266. Though the right of a Mahomedan widow to hold possession of her husband's property in lieu of her dower does not give her any title to the property, it is yet heritable. Hence her heirs who have inherited such a right can sue a trespasser for possession within 12 years allowed by Art. 142. They are not bound to sue under sec. 9, Specific Relief Act, within the six months period. The widow's right against a trespasser is certainly something more than that what can be vindicated only by means of a suit under sec. 9, Specific Relief Act. 1943 A.W.NR. (H.C.) 283=1943 A.L.J. 590=1943 A.L.W. 623=1944 All. 36=I.L.R. (1944) All. 68. Art. 142 is very general in its scope, and the only conditions necessary are that the suit should be for possession of immovable property and that the plaintiff while in possession of the property must have been dispossessed or must have discontinued his possession. Obviously the word "plaintiff" in this article includes his predecessor-in-title as well. There are no words in this article which would confine its applicability to suits based on possessory title only, or confine it to plaintiffs who claim the property wholly and are not co-sharers or co-owners with the defendants. (51 A. 1042 and 1933 A.L.J. 105, Overr.) 1934 A.L.J. 973=1934 A. 993 (F.B.)=57 A. 278. *See also* 42 P.L.R. 597; I.L.R. (1940) M. 953 =52 L.W. 149=1940 M. 798=(1940) 2 M. L.J. 190 (F.B.) (Plaintiff suing as purchaser at Court auction sale held in execution of mortgage decree is not outside the scope of Art. 142). Where therefore a plaintiff, who was a co-sharer with some of the defendants who transferred a part of the property to third parties, admits in the plaint that he was dispossessed by the transferees sometime prior to the institution of the suit, Art. 142 applies and not Art. 144. 1934 A. 993 (F.B.). If Art. 142 applies, the *onus* would be upon the plaintiff to prove that his suit is not time barred; it is otherwise if the case falls within Art. 144; for in such a case the *onus* would be upon the defendant to prove that his possession had been adverse to that of the plaintiff for more than 12 years. 8 R. 556=1931 R. 40; Proof of possession. 17 R. 85=1929 R. 153. *See also* 1935 C. 151=38 C.W.N. 1126.

PROOF OF POSSESSION.—The proof by plaintiff of his possession may be such as the land is capable of by exercising acts of ownership thereon. The acts of ownership need not be continuous; nor need they be frequent . A party may be said to be in possession of land when he exercises such acts of ownership in respect of the case as might be expected in the circumstances of the case or having regard to the purpose for which land can be used. 149 I.C. 1109 (2)=1934 C. 294. Defendant proved to be in possession for 15 to 20 years —Plaintiff relying on defendant being in permissive possession—Plaintiff to prove possession within 12 years. 7 R. 85. *See also* 1933 R. 413. Suit for possession against alleged tenant—Tenancy not proved and defendant found to be in possession for more than 12 years before suit—Suit barred. 35 P.L.R. 144=1933 L. 893. Legal possession remains with the true owner even though property is attached under sec. 146, Cr. P. Code. *See* 20 C.W.N. 481=31 I.C. 242. *See also* 1922 C. 234=26 C.W.N. 391; 45 I. C. 548=1922 C. 419=49 Cal. 544; 22 C.L.J. 283=20 C.W.N. 481. An isolated act of

trespass does not constitute dispossession. 20 I.C. 79. Of successive independent trespassers who have been continuously in possession for the statutory period, the first trespasser gets the title and not the last, who is in possession at the time when the title of the real owner is extinguished. 40 I.C. 50=32 M.L.J. 85. *See also* 45 M. 370 =1922 M. 59=42 M.L.J. 319. Whether the last of several but independent trespassers can defeat the owner's title although he himself has been in possession for only a few days before the date. 40 Bom.L.R. 166= 1938 B. 210. *See also* 1940 O. 184=1940 O.W.N. 291. Art. 134 does not apply to suits to avoid alienations of the general endowed property vested in the *sajjadashin* and *mutawalli* of a wakf. Such suits are governed by Art. 144. Where as a result of the alienations the previous encumbrances have been paid off, it cannot be said that there were several trespassers in succession so as to bar the true owner under Art. 142 after the lapse of 12 years from the date of the earlier mortgage. 35 Bom.L.R. 252 =1933 B. 217. Where a trustee or manager of a religious endowment grants a tenancy of property belonging to the trust in excess of his powers, the alienation is good for the alienor's tenure of office and the alienee's adverse possession commences under Art. 144 only from the cessation of office of the alienating trustee. But where the trustee in effecting by way of sale purports to deal with the trust property as his own, his act amounts to a repudiation of the trust and the possession of the vendee will be adverse from the date of the alienation. 47 L.W. 165=1938 M. 415=(1938) 1 M.L.J. 113. If a trespasser admits that a portion of the land belongs to the owner when the owner challenges his possession but declines to vacate the land in spite of demands, there is open dispossession and the owner must bring his suit within 12 years of dispossession. The admission of the trespasser cannot give further time to the owner unless such admissions come within sec. 19 of the Limitation Act. 60 C. 404=1933 C. 414= 144 I.C. 177. Suit to recover possession— Plaintiff's possession within limitation period not proved—Defendant's title by adverse possession not perfected—Plaintiff cannot recover. 5 Luck. 410=1930 O. 46=6 O.W. N. 908. *See also* 8 O.W.N. 349=1931 O. 177; 1941 A.M.L.J. 48. Encrochment on common land by defendant—Defendant in possession for over 12 years and in ouster of plaintiff—Limitation—Continuing wrong— Right of suit after 12 years. *See* 22 P.L.T. 1001=1942 P. 188. The presumption is that the possession of one tenant in common is the possession of all. 10 I.C. 554=5 S.L.R. 49. Landlord and tenant—Adverse possession—Limited interest—Permanent tenancy —Acquisition. *See* 9 Cut.L.T. 57. Land proved to be under water within twelve years of suit—Suit by owner to recover possession —Burden of proof—Art. 144, not Art. 142 is the governing article. 10 P.L.T. 122= 34 C.W.N. 722=1930 P.C. 198; 1942 Cal. 180. *See also* 72 C.L.J. 320=1941 C. 193. Where the plaintiff was actually dispossessed long after the date of the order dismissing his application under O. 21, r. 100, C. P. Code, limitation for a suit to establish title and recover possession is that provided under Art. 142 and not Art. 11-A. 1929 P. 553 =117 I.C. 634. Where a minor sued on majority to set aside a void lease, *held*, that Art. 142, and not Art. 44 or Art. 91 applied to the case. 1930 C. 748=34 C.W. N. 642. Transferee from Court auction-purchaser—No possession through Court— Suit for possession—Art. 142 applies. 1930 C. 586. A suit to set aside a revenue sale and for possession is governed by Art. 142. 1932 C. 115=53 C.L.J. 524=133 I.C. 102 (2). Applicability of article—Occupancy raiyat—Suit for possession of holding from landlord—Limitation. *See* 39 C.W.N. 502.

DISCONTINUANCE OF POSSESSION— BURDEN OF PROOF AS TO.—62 I.C. 707. *See also* 17 L. 449=162 I.C. 330=1936 L. 208; 1936 M. 919=17 M.L.J. 749; 30 N.L.J. 18=1933 N. 274. Plaintiffs alleging to have let defendants into possession—Defendants pleading title by adverse possession—Allegations on either side not proved—Effect. 1927 M. 287; 58 B. 397 and 406=36 Bom.L.R. 445 and 451=1934 B. 207. In a suit falling under Art. 142, the fact that the date of dispossession is not given or proved is immaterial, for, if the plaintiff can show possession within twelve years, the fact that he is not in possession at the time he institutes his suit establishes that some time in the interval he has been dispossessed. (122 I.C. 81, Foll.) 144 I.C. 72=1934 L. 245. A suit was for possession of a property on the ground that the defendant was holding it as a licensee. The defendant denied the title of the plaintiff and pleaded his own title by adverse possession. *Held*, that in such a case the question of title was of paramount importance and that, if the title vested in the plaintiff, he would still be entitled to succeed, even though he had failed to establish the alleged tenancy or licence unless the defendant was able to establish his adverse possession under Art. 144. 117 I. C. 384. Where the agreement is that the plaintiffs should resume possession upon repayment of the loan, possession cannot be held to be discontinued within the meaning of Art.142. Where the mortgagee, who is in possession of the property claimed, cannot be said to be a mortgagee because the unregistered mortgage for over Rs. 100 in his favour cannot be legally proved, but it is clear that neither the mortgagor nor the mortgagee *ex hypothesi* intended that the possession of the mortgagor should be discontinued for ever, the case does not fall under Art. 142. 8 R. 556=1931 R. 40. The mere fact that a mine has not been worked by the owner does not amount to a discontinuance of possession within Art. 142. 44 I.C. 297=22 C.W.N. 441. If the owner leaves his land in the possession of a stranger for over twenty years and lives away cultivating other lands, it constitutes aban-

donment. 19 I.C. 3 (2)=1913 M.W.N. 218. Where two persons are in joint possession of land by mutual consent for twelve years in ignorance of the fact that one is entitled to the whole, limitation against the latter by discontinuance under Art. 142 or by adverse possession under Art. 144 arises. 18 I.C. 869=17 C.W.N. 595. But *see* 41 B. 5. Joint owners of occupancy holding—One of them leaving the village and settling elsewhere—Holding in the possession of the other joint tenant and his heirs—Suit by the heirs of the former for possession after more than twelve years is barred under Art. 142. 119 I.C. 8. *See also* 1939 B. 322=41 Bom.L.R. 631 (Suit for partition of share purchased from a Hindu coparcener).

CONSTRUCTIVE POSSESSION.—Constructive possession—Proof of title—Delivery of symbolical possession, effect of. 36 C.L.J. 140= =27 C.W.N. 259=1922 C. 176; 1936 Pesh. 7. The right of trespasser by adverse possession is confined to the land actually in his possession. 5 P.L.J. 273=56 I.C. 184. *See also* 16 L. 442=1935 L. 475 (F.B.). Even if the judgment-debtors continue in ths possession of the properties in spite of the delivery of the properties made through Court, yet, as against the judgment-debtors to the suit and persons represented by them, the effect of such delivery is that the decreeholder is in possession; and consequently a fresh cause of action arises against the judgment-debtors and limitation begins to run only from the date of the delivery made through Court. 122 I.C. 164=1930 M. 206. *See also* 1936 Pesh. 7; 1928 L. 910. Possession through tenants is sufficient. 1928 C. 765. Constructive possession delivered to auction-purchaser—Refusal to deliver actual possession by squatter—Suit for recovering possession—Art. 142 and not Art. 144 applicable. 1928 O. 251=3 Luck. 506=5 O.W.N. 372 (F.B.). *See also* I.L.R. (1940) Mad. 953=1940 M. 798=52 L.W. 149=(1940) 2 M.L.J. 190 (F.B.). Sec. 65, C. P. Code, creates a fiction of law by which it is deemed that the title in the property passes to the purchaser from the date of the sale. Nothing is said in it as to possession. That possession, as a matter of fact, remains with the judgment-debtor, till date of delivery of possession and there is no warrant for holding that the auction-purchaser will be deemed to have been in possession from that date. Hence where there is an auction sale of an undivided share, the co-owners who are not judgment-debtors could be deemed to be in constructive possession through the judgment-debtors till the date of delivery of possession aind a suit by them against the auction-purchasers would be governed by Art. 142, Limitation Act and time would run only from the date when possession was delivered. Art. 142 would be applicable whether the suit is based on title or on possessory title. 1943 A.L.W. 93.

SUBMERGED LAND—CONSTRUCTIVE POSSESSION.—Where a plaintiff sues to recover possession of lands as re-formation *in situ* alleging that he has been dispossessed from them, the burden lies on him under sec. 142 of the Limitation Act to prove that he was in possession within twelve years of the suit. He can discharge this burden by proving that he was in constructive possession within that period. He would be in constructive possession, if he was the rightful owner and would be in time if he could prove either that the lands had appeared above water within twelve years of the suit, or if they had appeared earlier that they had become first fit for user within that period. The fact that he had no physical possession at the time of the last submergence is not material for the purpose of enabling him to call to his aid the principle of constructive possession, provided that his title had not been extinguished by adverse possession before the last submergence. For, if a trespasser was in possession before submergence and had not perfected his title by adverse possession for 12 years or more, on submergence his possessio ceases and the possession of the owner revives and continues till the lands are again formed and become fit for user and occupied by another. 44 C. W.N. 935.

PERMISSIVE POSSESSION.—Permissive possession is not adverse possession. 41 B. 5 =36 I.C. 715; 2 L.L.J. 511. But *see also* 18 I.C. 869=17 C.W.N. 595.

POSSESSION FOLLOWING TITLE.—Where the plaintiff establishes his title to the property, he could rely upon the presumption that possession goes with the title. If there is no satisfactory evidence in rebuttal, the presumption must be given effect to. 24 Bom.L.R. 373=1922 B. 243=46 B. 920; 1927 L. 777=100 I.C. 336=9 L.L.J. 9; 1929 P. 529 (1) (Case of parti land). *See also* 117 I.C. 384. In a case with evidence equally strong on both sides, the presumption of possession arises on title. When there is no evidence on either side, presumption from title will save limitation under Art. 142 in the case of arable lands. 35 I.C. 554=1 P.L.J. 146. *See also* 1921 P. 305 (F.B.); 1921 L. 276; 53 C.L.J. 411=1931 C. 501; 54 M. 622= 1931 M. 644=61 M.L.J. 224; 134 I.C. 319 =53 C.L.J. 411=1931 C. 501; 58 B. 397 =1934 B. 207. Where plaintiffs put forward a case of effective possession and adduced evidence in support of it, but the Court found against it, they cannot give up that case and rely upon the presumption of possession following title. 1931 M. 282 =60 M.L.J. 430. But *see* 54 M. 622 holding that even in such a case, the possession presumed by law must be displaced by proof of effective acts of possession by the defendant.

SYMBOLICAL POSSESSION.—A suit for possession of immovable property of which the plaintiff had obtained symbolical possession through Court alleging dispossession by the defendant is governed by Art. 142. If the allegation of dispossession is not proved, the period of limitation would run from the date when the plaintiff was given symbolical possession by the Court. 48 C.W.N. 187.

POSSESSORY TITLE.—In a case where the

suit is resisted on the ground of acquisition of title by prescription, it is not for the plaintiff to prove his possession within twelve years. It is for the defendant to prove his adverse proprietary title. 1923 A. 55=45 A. 107. *See also* 1923 B. 361=48 B. 504. Effect of entry as to possession in the settlement record. *See* 2 L.L.J. 230. Possession under an illegal order or decree of a Court is not possession that can avail plaintiff under this article. 29 I.C. 10.

EJECTMENT SUIT.—The plaintiff in an ejectment action must in order to succeed strictly prove his own title. 42 C. 384=27 M.L.J. 333 (P.C.)=1914 P.C. 1. In a suit for ejectment, the onus is on the plaintiff to prove not only his title to possession but the fact of his dispossession or discontinuance of possession within twelve years. 18 I.C. 17=25 M.L.J. 95 (P.C.); 8 L. 655; 98 I.C. 1061 (2); 33 C.W.N. 1160. Title must be strictly proved to entitle plaintiff to ejectment. 36 I.C. 890=20 C.W.N. 773. A plaintiff who comes to Court seeking a mandadory injunction for the removal of constructions upon a plot founds his suit upon the basis that he has a subsisting title in the plot. If he has no subsisting title then he is not in a position to maintain such a suit and if he goes further and shows that by reason of the act of the denfendants he has been ousted then he must clearly be under a duty to show that the ousting which has interfered with his possession and resulted in his dispossession has taken place within 12 years of the institution of the suit. Where the plaintiff has proved this, it then lies upon the defendant, to establish that he had exercised such exclusive possession as amounted to an ouster of the plaintiff from a date more than 12 years prior to the institution of the suit. 1942 A.L.W. 225=1942 O.W.N. 281. The period of limitation applicable to a suit for possession of a temple is that contained in Art. 142 and not Art. 131. 52 I.C. 67=41 A. 646. (4 Cal. 683, Dist.) In a suit for possession where the entry in the record-of-rights is in favour of defendants, plaintiff must prove his possession within twelve years of suit. 54 I.C. 960. A suit to set aside an invalid sale to the extent of the plaintiff's joint share and for possession thereof is governed by Art. 142 and not Art. 123. 42 I.C. 121. Court-sale—Formal delivery of possession to purchaser—Judgment-debtor continuing in possession along with co-owners—Suit for partition—Decree in favour of purchaser—Subsequent suit to recover actual possession after a lapse of 14 years from the formal delivery is barred—No case of possession and dispossession. 50 A. 813=1928 A. 412. *See also* 1928 L. 910. Death of adoptive father—Widow enjoying property as of right—Suit to recover property filed after twelve years. *See* 6 Luck. 365=129 I.C. 328=1931 O. 25; 131 I.C. 758=60 M.L.J. 619=1931 P.C. 84 (P.C.); 130 I.C. 849=1931 O. 89. Dedication to dharmasala by father—Son seeking to set aside the same after twelve years of father's death is barred. 1928 O. 348. Grant for maintenance—Grantor obtaining decree for resuming possession of property granted out possession remaining with grantee even thereafter for more than twelve years—Suit by grantor for possession is barred. 1928 P.C. 165 (1)=109 I.C. 818=55 M.L.J. 251 (P.C.). The plaintiff filing his suit in the Civil Court within the ordinary twelve year's period of limitation for ejecting a trespasser is *under no obligation to satisfy the Court* that he had sufficient cause for not filing his suit earlier. All that he need prove is that he came within twelve years of the accrual of his cause of action. 52 A. 50=1930 A.L.J. 253=1930 A. 193 (F.B.). The mere decision of a *Tanaza* or the mere passing of an order and a mere entry in the record-of-rights as well as a mere order under sec. 145, Cr. P. Code, do not necessarily constitute actual physical dispossession. 110 I.C. 623=1928 P. 653. Where a Hindu widow who had been enjoying the property as tenant-in-common along with her brothers in-law sued to establish her possession and it appeared that her title had not been denied and that she had been receiving rents and profits, *held*, that there was no dispossession under the Act and that the suit was not barred by limitation. 56 C. 914.

PARTICULAR CASES—(1) ALLUVION.—Where a plea of limitation and denial of plaintiff's title is set up in a suit for possession of accretions by alluvion, the onus is on plaintiff to prove title and possession within limitation. 34 A. 612=17 I.C. 94. Trespasser whose title is not perfected by adverse possession cannot tack on to his period of possession the period during which the land remained submerged. 19 O.C. 374=37 I.C. 715.

(2) WASTE LAND.—[*See* Vacant Land]. A suit for possession of waste land is governed by Art. 142. 1921 L. 202=59 I.C. 891=111 I.C. 533=1929 L. 34. Where the plaintiff alleges he had effective possession of a waste land till dispossession by defendant one year prior to suit, the onus is on him to prove his possession within twelve years of the suit. 60 M.L.J. 430=130 I.C. 845=1931 M. 282. As regards waste and unoccupied lands the presumption is that possession follows title. 39 I.C. 971; 42 I.C. 412. *See also* 17 L. 449=1936 L. 208; 53 C.L.J. 411=1931 C. 501. The mere fact that the land in dispute was such as was not capable of actual, continuous, physical possession does not necessarily make it waste land so as to attract the application of the principle that possession follows title. 58 C.L.J. 478=1934 C. 294. In respect of waste land allowed to remain so, there cannot be a discontinuance of possession and the onus is on the defendant to prove when his possession became aderse. 25 I.C. 12; 36 I.C. 207; 38 I.C. 120. *See also* 43 P.L.R. 222=1941 L. 241. (Suit by Government for possession of public street).

(3) JUNGLE LAND.—In waste and jungle lands, possession may be exercised by grazing of cattle, putting up boundary marks, fences, etc. They form no exception to the general rule that the plaintiff must prove possession

and dispossession within twelve years. 50 C. 574=27 C.W.N. 554=1923 C. 557; 1928 C. 118. In the case of jungle land it is not enough for the plaintiff to prove his title. But he can make a case by showing that the land in question was incapable of possession by any one or that in fact no one was interfering with his right. It is possession and not user that should be shown. In such a case the possession of the rightful owner must be held to continue up to the time when the lands are shown to be capable of being possessed. 33 C.W.N. 1160. *See also* 1937 P. 252. It was admitted that the lands were parti and jungle lands, that the plaintiffs had a title to it but the defendant claimed a limited tenancy interest only as against the admitted proprietor, the zemindar. *Held*, that the defendant must either show title to tenancy right by contract or by the fact that he has been in possession for the necessary period and the onus is equally upon him to show the date upon which he came into possession and his title began Such cases are governed by Art. 144 and not by Art. 142, and it is impossible for the judge in trying such a suit to raise any presumption against the plaintiff by reason of the absence of any witness on the part of the plaintiff. 149 I.C. 453 (2)=1934 P. 339.

(4) FISHERY RIGHTS.—Art. 142 applies to a suit for recovery of possession of a jalkar or declaration of plaintiff's title thereto. 34 I.C. 841. *See also* 23 I.C. 136; 2 P.L.J. 289 =39 I.C. 777.

(5) SERVICE TENURE.—A suit by a patnidar for possession of resumed lands is governed by Art. 142. 46 I.C. 895.

(6) VACANT LAND—*See* WASTE LAND.—In cases relating to vacant sites, possession follows title and the mere fact that a trespasser has taken possession of a portion of a vacant site cannot affect the constructive possession of the real owner on the portion not trespassed upon. In such cases, the wrongdoer can by lapse of time gain title only to the area actually possessed by him, and in suits governed by Art. 142, it is only with regard to the portion of the site actually in possession of the trespasser that the plaintiff will be required to prove his possession within twelve years. As regards the portion actually built upon by the trespasser, the plaintiffs must show that this portion was a vacant site within twelve years of the suit, and, if they succeed in proving this fact, their constructive possession within the statutory period will be presumed. 17 L. 449=1936 L. 208. *See also* 1938 O.W.N. 744=1938 O. 214. Waste land —Nature of possession—Absence of specific acts of possession—Effect—Land leased for cultivation—Lessee cultivating bulk of area—Small portion remaining waste but trespassed upon and reclaimed by others—Suit by lessee for possession—Limitation. Art. 142 applies. 17 P. 210=19 P.L.T. 133=1938 P. 222. Where a strip of land in question is a piece of waste land lying on the boundary of one's property, possession of such land must be presumed to be with the person who proves title to the property. 1938 O.W.N. 744=1938 O. 214. In a suit relating to waste lands which falls under Art. 142 it must be determined whether having regard to the evidence as to the nature of the lands and the possession, the plaintiff has been able to establish actual or constructive possession within the statutory period. 70 C. L.J. 534=1940 C. 185. Dispossession, referred to in Art. 142 is a forcible dispossession or ouster and the discontinuance referred to in it, being interpreter *ejusdem generis* with possession, means something of the nature of an abandonment. So where a suit is based on title and dispossession, Art. 142 or Art. 144 will apply, as the case may be, for a plaintiff may fail to prove possession within twelve years and win his suit. Where, however, a suit is based on title and an alleged permissive occupancy, Art. 144 applies and the case can be decided fairly on the question of adverse possession. Long and uninterrupted possession of jagir land without rent or term or conditions, in the full sight of the jagirdars, evidenced by permanent houses and not temporary huts, constitutes adverse possession in the full sense of that word. I.L.R. (1939) Kar. 111=1938 Sind 198. Vacant land is capable of physical possession being taken of, if it is enclosed and the owners are deprived of all power over it. 111 I.C. 533. A Court must rely upon the presumption that possession follows title in case of land that was vacant before dispossession occurred, where the evidence as to possession is conflicting. 1929 L. 34=111 I.C. 533; 38 L.W. 952=1933 M. 871=65 M. L.J. 769 (54 M. 622, Ref.). If the position of a small isolated plot of uncultivated ground is such that the attention of the zemindar would not be specifically directed to the question of whether it is in his mahal or in the mahal of another zemindar, the mere non-interference with the temporary occupation of this plot by the tenant of the other zemindar in the adjacent fields would not constitute any adverse possession. The plaintiff zemindar should be deemed to have continued his constructive possession and it could not be said that he was out of possession within the meaning of Art. 142. 1937 A.L.J. 131=1937 A. 238; 1938 O. 214; I.L.R. (1939) All. 454=1939 A.L.J. 94=1939 A. 257.

ENCROACHMENT LAND.—Where the dispute relates to certain encroachment land the onus is on the plaintiff who alleges himself to be owner and seeks to recover possession to establish that his possession was within twelve years. The initial fact of the plaintiffs' title comes to his aid in such a case with greater or less force according to the circumstances. 10 L.L.J. 517=115 I.C. 420.

MINING LAND.—As to adverse possession of mining rights in a village granted on lease to defendant, *see* 58 I.A. 29=10 P. 407= 60 M.L.J. 183=1931 P.C. 18 and 186 (P.C.).

ART. 142 AND ART. 141 OF 1871 AND 1877 RESPECTIVELY—SCOPE AND EFFECT OF.—The effect of Art. 142 of the Act of 1871 and Art. 141 of Act of 1877 was to create a fresh rule in regard to limitation in all cases in which

Description of suit.	Period of limitation.	Time from which period begins to run.
143. Like suit, when the plaintiff has become entitled by reason of any forfeiture or breach of condition.	[1][Twelve years] ..	When the forfeiture is incurred or the condition is broken.
144 For possession of immovable property or any interest therein not hereby otherwise specially provided for	[1][Twelve years] ..	When the possession of the defendant becomes adverse to the plaintiff.

LEG. REF.

[1] Substituted by Act XI of 1923, sec. 2 and Sch. I for "Ditto".

the prescriptive right arising out of adverse possession had not already ripened into an absolute title. I.L.R. (1942) All. 259=1942 A.L.J. 179=1942 A.L.W. 161=1942 A.W.R. (H.C.) 84 (2)=1942 All. 175.

ARTS. 143 AND 144.—Art. 143 does not apply to a case where there is no relationship of landlord and tenant. 22 I.C. 28=18 C.L. J. 553. *See also* 17 L. 403=1936 L. 394; 60 I.C. 312=24 C.W.N. 1064; 45 L. W. 347=1937 M. 295. A person holding under a permanent tenancy holds adversely from the day he denies his landlord's title and a suit for possession on the ground of forfeiture by the tenant falls under Art. 143. 36 I.C. 565=76 P.L.R. 1917. Under Art. 143, the starting point of limitation is the forfeiture itself; there is nothing in the article about the knowledge of the lessor. 1922 M. 290=38 M.L.J. 275=15 L.W. 164; 35 I.C. 235; 17 L. 403=38 P.L.R. 887=1936 L. 394. *See* 1928 C. 714, for a case of forfeiture on the ground of remarriage of a widow. Suit for possession by a widow who made a gift of the land on condition of the donee maintaining her, alleging that the condition was not fulfilled, is governed by Art. 143. I.R. 1932 L. 645. *See also* 1937 A. 268 =I.L.R. 1937 A. 424. Art. 143 is not limited in its application to those persons who have committed a breach of the condition against alienation which has entailed forfeiture, but also to those who are in possession by reason of the alienation which has entailed forfeiture. A suit to recover possession of properties demised on *adimayavana* tenure in Malabar, the claim being based on a forfeiture by reason of alienation and not upon the removal of the tenure at the expiration of twelve years as contemplated by the deed of tenure, is governed by Art. 143 and barred unless brought within twelve years from the date of the alienation. 30 L.W. 960= 1930 M. 430 (2)=58 M.L.J. 89. Alienation by kasavargamdar—Suit by landlord—Limitation. *See* 45 L.W. 347=1937 M. 295.

ART. 144: APPLICABILITY.—[*See also* under Art. 142]. Art. 144 is a residuary article and cannot be applied when some other article applies. I.L.R. (1937) N. 254=1937 N. 129; 1946 A.L.W. 196=1946 A. 389=I.L.R. (1946) A. 178. It is clear from the position in which Art. 144 occurs and from the words used in that article that it is a residuary article in respect of all suits for possession of immoveable property to which no other article specifically applies. Where the plaint in terms seeks possession of immovable property and the defence is one of adverse possession, the suit falls under Art. 144. I.L.R. (1939) B. 173=40 Bom.L. R. 1134=1939 B. 1; 1930 N. 300. Art. 144 applies to suit for posession based on title. 136 I.C. 256=1932 O. 122; 134 I.C. 599= 1931 O. 382; 8 O.W.N. 1153=7 Luck. 250= 1932 Oudh 46; 55 A. 209=1933 A. 775= 1933=A.L.J. 105; 1936 L. 530. When a plaintiff comes to Court saying that he was in possession of a field up to certain time as owner and claims possession thereof, the suit is one for possession after dispossession falling under Art. 142 and not Art. 144. 1937 N. 129; 40 Bom.L.R. 166=1938 B. 210. The question whether the article of limitation applicable to a particular suit is Art. 142 or 144 has to be determined by reference to the pleadings. 147 I.C. 805=1934 O. 21; 30 S. L.R. 472=1937 S. 226. Art. 142 must be applied in every case where the plaintiff alleges his own dispossession by the defendant prior to the suit, as also where he does not make any such allegation, but it is found, as a fact, that he was dispossessed by the defendant prior to the institution of the suit. (51 A. 1042 and 1933 A.L.J. 105, Over.). 57 A. 278=1934 A.L.J. 973=1934 A. 993 (F.B.). *See also* 1933 R. 413. A declaration of title may be made on proof of 12 years' adverse possession. 13 L. 677=410 I.C. 604 =1933 L. 25. Redemption of mortgage by one of the co-mortgagors—Suit by another for redemption of his share against the redeeming co-mortgagor—Art. 148 applies. 127 I.C. 889=1930 N. 300. But *see* 8 O.W. N. 637. *See also* under Art. 148. Art. 144 applies not to want of actual possession by the plaintiff but to cases where he has been out of, and another in, possession for the prescribed period. There must be both absence of possession by the person who has the right, and actual possession by another, whether adverse or not, to be proved to bring the case, within the article. 120 I.C. 792= 1930 L. 303. Art. 144 is applicable only to a possessory suit by the owner of the properties claimed against a person holding adversely to him without title. 10 P. 851= 58 I.A. 279=1931 P. 196=61 M.L.J. 78 (P. C.); 161 I.C. 585=1936 P. 147. Suit for possession by auction-purchaser after obtaining formal delivery of possession—Limitation. *See* 24 Pat. 717=1946 Pat. 202. Where the plaintiff alleges he was in possession of the property till dispossession by the

defendant who entered on it in his own right, the article applicable is Art. 142. 8 O.W.N. 349=1931 O. 177. *See also* 1933 R. 48=144 I.C. 274. So also where the plaintiffs allege that they had been dispossessed two months before the suit and the defendants did not plead adverse possession but pleaded possession under an irrevocable license. 55 A. 755=1934 A.L.J. 147=1934 All. 362. Adverse possession of predecessor-in-title can be tacked on to that of the present occupier. 130 I.C. 296=1931 A. 323. A true owner would be barred by twelve years continuous adverse possession, even if that possession be that of two or more independent trespassers, who do not claim under one another. 1940 O.W.N. 291=1940 O. 184. *See also* 1938 B. 210. A suit may comprise various reliefs and the different reliefs may be governed by different articles of limitation. So where a suit comprises a prayer for declaration and for possession, the whole suit cannot be governed by Art. 144. 1936 M.W.N. 351=1936 M. 804. Where an estate partly consists of immovable property and partly of business, a suit for share in the estate of a deceased ancestor, against heirs in possession and managing the same cannot be maintained, so far as it relates to immovable property if not brought within 12 years of the death of the ancester, under Art. 144, and that for an account of the business of the deceased ancestor, if not brought within six years under Art. 120. 1936 R. 407. A suit by the heir of a deceased person to recover property from a person who also claims as heir is governed by Art. 144. 45 B. 570=59 I.C. 805=1921 B. 48; 35 C.W.N. 465=1931 P.C. 84=60 M. L.J. 619 (P.C.). (a suit by Hindu widow to recover possession of her husband's estate). 31 N.L.R. (Supp.) 191=1936 N. 80. (claim to estate as co-owner but not as member of co-parcenery). A trespasser cannot be allowed to tack on his possesion to that of a former trespasser from whom he does not derive title. 45 B. 570=1921 B. 48. *See also* 49 I.C. 751 (Cal).; 2 P.L.J. 506=41 I.C. 114; 16 I.C. 43=37 M. 440; 109 I.C. 296=1928 C. 563; 1930 L. 809. But *see* 8 O.W.N. 349=1931 O. 177. Where Art. 144 applies, no deduction of period under sec. 16 is allowed 26 C.W.N. 364=1921 C. 385. Where the property of a minor member of a Hindu family is alienated during his minority by a person who is not his guardian, either in fact or law, a suit by him to recover possession after attaining majority would be governed by Art. 144 and not Art. 44. 1922 L. 386. *See also* 107 I.C. 516=1928 N. 151. Where Art. 144 applies, it is for the plaintiff to prove his title and then the onus of proving adverse possession lies on the defendant. 32 I.C. 568; 1929 A. 753=51 A. 1042=134 I.C. 461 (All.) Article does not apply to suits for assessment of fair and equitable rent. 50 I.C. 908. Where a *malikhana* right was not enjoyed for 12 years, the right to sue for the money due on account of it is barred. 21 I.C. 779=19 C.W.N. 410. Fishery right in another's water is not immovable property but an interest in immovable property. 12 I.C. 305=14 C.L.J. 572; 35 C.W.N. 1256=1932 C. 300=59 C. 344. Projection of eaves is not immovable property. 138 I.C. 458=34 Bom.L.R. 395=1932 B. 224. But right to collect assessment of endowed lands is immovable property. 34 Bom.L.R. 1469=1933 B. 26. Melwaram right of the land in a zemindar, when it consists of the imposition of the full assessment, would be an interest in immovable property. 1937 M.W.N. 189=1937 M. 303. Although the *equity of redemption in the case of a possessory mortgage* is an intangible thing, it is an estate in land and is fully capable of possession. A claim for it is one for possession of an interest in immovable property. A suit by the plaintiff as heir of the mortgagor for possession of a moiety share in the equity of redemption against the defendant who has obtained mutation exclusively in his favour is governed by Art. 144. 160 I.C. 920=1936 O. W.N. 243=1936 O. 168. Art. 144 would apply to a suit to recover a share by a Mahomedan heir from a person in management of the property. 31 Bom.L.R. 199=118 I.C. 785=1929 B. 141. Owner suing for possession—Jamabandis showing plaintiff as owner and defendants in possession—Land uncultivated for 12 years from two years prior to suit—Art. 144 applies and not Art. 142—Defendant must prove adverse possession. 1929 L. 596. *See also* 1937 C. 343=41 C. W.N. 763 (Chowkidari lands). Suit for possession based on agreement to deliver possession—Agreement embodied in compromise in suit which did not comprise the properties whose possession is sought—Limitation. *See* 46 Bom.L.R. 931=1945 B. 143. An inference of adverse possession may be drawn from circumstances, such as long possession and the absence of any proof of licence or agreement between the person in possession and the landlord. 130 I.C. 296=1931 A. 323. The word 'hostile' cannot be considered to mean that there must have been litigation on the subject between the parties. It is sufficient if it is proved that the title is entirely opposed to the interests of one and that the latter stood by and did nothing while the other person continued in possession in direct contravention of his alleged rights. 6 O.W.N. 829=1929 O. 433.

CONSTRUCTIVE POSSESSION.—Where lands are subject to periodical submersion, their possession is with the owner during submersion. The constructive possession is with the true owner. 44 C. 858=44 I.A. 104=1917 P.C. 18=32 M.L.J. 505 (P.C.); 29 I.C. 278; 29 I.C. 156=19 C.W.N. 565; 58 IA. 228=59 C. 80=61 M.L.J. 632=1931 P.C. 162. Continuous adverse possession is not possible in the case of lands subject to seasonal submersion. 44 C. 858=32 M. L.J. 505 (P.C.). A mere assertion of hostile title by a trespasser when the land is under water and cannot be actually occupied, cannot affect the possession of the true

owner. 20 I.C. 821=18 C.L.J. 274. *See also* 117 I.C. 202 (Pat.); 1930 L. 417 (1). Upon the grant of the surface rights by a zemindar, he is in constructive possession of the sub-soil. Cases as to adverse possession of mineral rights must ultimately fall to be decided under Art. 144, rather than under Art. 142. 50 I.A. 228=61 M.L.J. 632=1931 P.C. 162. The right of a trespasser by adverse possession is confined to land actually in his possession. 5 P.L.J. 273=65 I.C. 184. *See also* 16 L. 442=1935 L. 475 (F.B.); 1923 R. 23 (2); 1929 L. 625; 1930 L. 303. Breaking of continuous possession. *See* 140 I.C. 228=1932 S. 35.

SYMBOLICAL POSSESSION, EFFECT OF.—*See* 108 I.C. 396=1928 L. 719; 120 I.C. 602=1930 L. 384; 11 P. 165=1932 P. 145. Where *A* is in possession of the property adversely to the plaintiff, the plaintiff cannot by obtaining a decree against *B* and being placed in symbolical possession in execution of that decree thereby give himself a fresh start of limitation. 30 N.L.R. 284=148 I.C. 62=1934 N. 36. *See also* 48 C.W.N. 187; 47 Bom.L.R. 1102=1946 B. 192.

PERMISSIVE POSSESSION, EFFECT OF.—*See* 1927 O. 582; 6 Luck. 106=130 I.C. 65=1930 O. 510 (uncle managing for nephew). Where a person is in possession of the property claiming only a lien over it for certain payment to which it is charged, he should not be considered to be in adverse possession. 134 I.C. 493=1931 L. 313; 16 N.L.J. 248=1934 N. 51; 142 I.C. 582=1933 C. 544; 1935 A.L.J. 662=1935 A. 569; 1930 L. 384 (2). The mere tethering of cattle and storing of logs on a piece of waste land does not amount to a denial of the title of the true owner of the land; nor is it an indication of possession which is intended to be adverse to the title of the proprietor of the land. Where though foundations were laid, the land was never enclosed, it does not amount to an unequivocal assertion of an intention to appropriate the land. I.L.R. (1939) A. 217=1938 A.L.J. 1227=1939 A. 161.

COLLUSIVE POSSESSION.—*See* 32 C.W.N. 863=1928 C. 882.

ACQUISITION OF TITLE.—The onus is on the defendant to plead and prove adverse possession for the statutory period in a suit for declaration of title based on the defendant's alleged repudiation of it. 37 I.C. 794 (39 M. 617, Foll.) As to acquisition of mining rights by adverse possession, *see* 58 I.A. 29=10 P. 407=1931 P.C. 186=60 M.L.J. 183 (P.C.). In order to extinguish the right of the real owner, the adverse possession must be continuous. Acts of possession exercised at intervals over different portions of land in different years cannot amount to adverse possession. 57 I.C. 716=39 M.L.J. 58. As to essentials for acquisition of title by adverse possession, *see also* 8 O.W.N. 1153=7 Luck. 250=1932 O. 46. A defendant in order successfully to set up a title by adverse possession, must show that he was in possession of the land in such a manner as to indicate that he was claiming to be in possession as an owner and was intending to oust the plaintiff. 146 I.C. 987=1933 O. 462. Acquisition of title for limited interest. 19 I.C. 367=17 C. W.N. 748. *See also* 30 I.C. 931; 22 C.L.J. 153; 123 I.C. 195. There may be adverse possession of immovable property as well as any interest in it under Art. 144. 14 I.C. 212=16 C.W.N. 634; 1930 P. 476. A person in adverse possession of property claiming to hold it as *mutawalli* does not prescribe for more than a mutawalli's right in such property. 129 I.C. 375=1930 A. 866. The quantum of interest acquired depends upon the *animus* with which possession is held by the person in actual possession of the property. Where there was an agreement to execute a usufructuary mortgage and it was under that agreement that the mortgagee came into possession then, though the usufructuary mortgage contemplated had not been executed, it must be taken that the mortgagee had been in possession only as a usufructuary mortgagee for the amount of the loan advanced. 123 I.C. 195. *See also* 1931 A.L.J. 1931 A.L.J. 914=1932 A. 53; 14 P.L.T. 294=1933 P. 288; 54 A. 628=140 I.C. 653=1932 A. 393; 52 A. 976=130 I.C. 697=1931 A. 18. The right of the mortgagor is not lost by the adverse possession of a trespasser for more than 12 years during the continuance of a usufructuary mortgage. The period of limitation for his suit is 12 years to be reckoned from the date of redemption of the mortgaged property which he finds to be in possession of a trespasser who denies his title to it, and the trespasser's possession would not become adverse to him till after redemption. 1935 A.L.J. 496=1935 A. 542. Adverse possession—Knowledge—Principal affected by agent's knowledge. 16 I.C. 891=163 P.L.R. 1912. The possession of a judgment-debtor in spite of delivery of symbolical possession gives rise to a fresh cause of action for a suit for possession. 116 I.C. 70=1929 N. 298. So also possession of any person deriving subsequently title from judgment-debtor. 15 P. 372=17 P.L.T. 546=1937 P. 13. But where a party to the suit has symbolical possession given against him by methods informal, the said symbolical possession does not avail to stay adverse possession. 118 I. C. 391 (2)=1929 L. 545. *See also* 1933 A. L.J. 33=1933 A. 1733; 1933 P. 269. Where the land in actual possession of the judgment-debtor was in execution delivered to the decree-holder and subsequently the judgment-debtor dispossessed the decree holder and regained possession, the decree-holder has 12 years from such dispossession to bring another suit for recovery of possession of the land. 140 I.C. 530=1933 L. 22; 1917 P.C. 197 (2)=34 M.L.J. 97 (P.C.). A mere declaratory decree obtained in a suit under O. 21, R. 63 will not interrupt the adverse possession of the action-purchaser in execution of the decree. 18 L. 255=1937 L. 602.

Where the mother of an owner took possession of the property after her son's death and enjoyed to the exclusion of the son's widow who was the rightful heir, *held*, she had acquired title by adverse possession and that it was not affected by the order of the mutation Court to the effect that she should have no power of transfer over the property. 10 O.W.N. 42=1933 O. 427. Where a Hindu widow who was in possession of the house left by her husband leaves it and lives in a rented house, and her mother-in-law continues to reside in the house, and on the evidence all that can be suggested is that she found it more convenient to live apart from her mother-in-law, it cannot be said that the occupation of the house by the mother-in-law alone after she left amounts to dispossession of the widow or that the possession of the mother-in-law is adverse to her. 1935 A. 639. Previous suit for possession and mesne profits of submerged land—Possession and mesne profits refused but declaration of title granted—Subsequent suit again for possession—Actual possession need not be proved. Plaintiff having established his title in the previous suit and not being barred by limitation was entitled to a decree. 56 I.A. 305=1929 P. C. 225=57 M.L.J. 602 (P.C.). Where there has been an assertion of adverse title accompanied by the ouster of plaintiff, the mere fact that the plaintiffs subsequently obtained a declaratory decree, would not prevent the statute of limitation running against them. 120 I.C. 486=1930 L. 297. The possession by a vendee of *watan* lands becomes adverse from the date of the death of the alienor and a suit to set it aside will be barred if not brought within twelve years from that date by the *next watandar* or subsequent *watandar* claiming under the previous holder. 55 B. 21=1931 B. 24. District Fishery Board—Government prescribing as against District Fishery Board—Right of action vested in District Board not exercised —Collector being representative of Government and also President of District Board —Effect. *See* 31 L.W. 508=1930 M.W.N. 328=1930 M. 679. Hindu joint family—Possession of property as joint estate—Bar of plea as to separate estate. 32 Bom.L.R. 314=1930 B. 333. The space above the land is itself immovable property. So, a defendant who constructed a three-storied venrandah projecting over the land of the plaintiff more than 12 years ago, acquires a right to the space occupied by such projection and the right to maintain it in its position. 151 I.C. 1094 =1934 A.L.J. 846=1934 A. 1054. The mere planting of trees on another person's land does not amount to dispossession. 1930 O. 304. *See also* 1929 O. 328. But *see* 20 A.L.J. 208=1922 A. 50; or the erection of a *khurli* or a mud trough for feeding cattle. 134 I.C. 294=1931 L. 489. Possession by intruder— Relinquishment before acquiring title by possession for 12 years—Leaves the rightful owner in the same position he was in before the intrusion. 120 I.C. 792=1930 L. 303. Person who loses his right to a holding by adverse possession should also be taken to lose his right in *shamilat* land appurtenant thereto. 134 I.C. 1106=1931 L. 648 (2).

DECLARATION OF TITLE.—Art. 144 cannot apply to a suit for declaration. 54 B. 4=31 Bom.L.R. 1240=1930 B. 61. Where the property is in the actual possession of occupancy tenants, a suit for declaration and injunction regarding the right to collect rent is a suit for possession to which Art. 144 applies. 34 Bom.L.R. 1469=1933 B. 26. Suit for confirmation of possession is not governed by Art. 144 or 142. 36 C.W. N. 783=1933 C. 842. Art. 144 and not Art. 120 applies to a suit for a declaration that a certain pathway is a public one and that none can obstruct it. To such a case sec. 23 will apply. 69 I.C. 910=26 C.W.N. 587 =1921 C. 405. A suit for possession and mesne profits with a declaration that an entry in the record-of-rights is incorrect is governed by the 12 years' limitation. 52 I.C. 361. *See also* 108 I.C. 417=1928 P. 353. Suit by one co-sharer against another for declaration of title and for possession is governed by this article. 155 I.C. 824= 1935 A. 774. Where a transfer is inoperative and a mere paper transaction, a suit to recover possession ignoring the transaction is governed by Art. 144. 25 Bom.L.R. 1207=48 B. 166=1924 B. 174. So also a suit to set aside alienation of a debutter property by a shebait in excess of his power. 9 I.C. 133. The wife of a Hindu lunatic as such is not competent to execute a sale-deed of her husband's lands and a suit by a reversioner after the death of both the husband and the wife to set aside the alienation is governed not by Art. 125 but by Art. 144; 42 M.L.J. 262=45 M. 361=1921 M. 12. Art. 44 and not Art. 144 applies to a suit by a ward who has attained majority, for possession of properties improperly alienated by his guardian. The sale is not void for inadequate consideration. 28 I.C. 704=2 L. W. 365; 11 L.L.J. 108. *See also* 53 A. 738 =1932 A. 108=1931 A.L.J. 997. The possession of a purchaser under a void sale is adverse to the real owner. 47 I.C. 694.

POSSESSORY TITLE.—Possession of Government land for over 12 years throws the onus on the Government of proving possession or title within 60 years. But this rule does not apply to a public pathway even if possession is proved for over 40 years. 1 L.W. 758=27 M.L.J. 299.

POSSESSION PENDING SUIT.—Possession after institution of suit is not adverse. 29 I.C. 168.

PROOF OF TITLE.—Adverse possession must be adequate in continuity, publicity and extent so as to show that it is possession adverse to the true owner. 1922 P.C. 181= 41 M.L.J. 650=44 M. 883. *See also* 36 C. L.J. 472=1923 C. 82; I.L.R. (1939) Kar. 793; 1933 N. 274; 1933 M. 668; 144 I.C. 72=1933 L. 400; 50 I.C. 870; 1929 O. 328 (adjacent owner crossing boundary and planning trees and in possession for over 12

years). Where possession of the trespasser is open, visible and notorious in character, the Court may presume it to be adverse. 1932 O. 135=8 O.W.N. 1275. *See also* 142 I.C. 582=1933 C. 544 as to the essentials for adverse possession. Trespasser's possession of part of land—Adverse possession only of that area and not of the rest. 1929 L. 625.

BURDEN OF PROOF.—It is not necessary in order to establish adverse possession, that the proof of acts of possession should cover every moment of the requisite period. The nature of the requisite possession must necessarily vary with the nature of the subject possessed. The possession must be the kind of possession of which the particular subject is capable. 61 I.A. 78=61 C. 262=1934 P.C. 23=66 M.L.J. 134 (P.C.). Case of adverse possession against Government as to fishery right in a navigable river. 66 M.L. J. 134 (P.C.). As to burden of proof in cases where the suit is based both on the ground of title *and on dispossession, see* 147 I.C. 805=11 O.W.N. 104=1934 O. 21; 13 Luck. 266=1937 O.W.N. 585=1937 O. 328; 67 C.L.J. 115=1938 C. 689. Also as to the test of the applicability of Art. 142 or Art. 144 to any case, *see* 1934 O. 21. *See also* 1926 O. 313. If Art. 142 applies, the *onus would* be upon plaintiff to prove that his suit is not time-barred. It is otherwise if the case falls within Art. 144; for in such case, the *onus* would be upon the defendant to prove that his possession had been adverse to that of the plaintiff for more than 12 years. 8 R. 556=1931 R. 40. *See also* 7 R. 85=1929 R. 153; 1931 L. 251, 11 P. 165=1932 P. 145; 134 I.C. 599=1931 O 382; 1933 A.L.J. 105=1933 A. 775=55 A. 209; 1933 N. 274; 141 I.C. 234=1933 L. 105. *See also* 61 I.A. 50=66 M.L.J. 431 (P.C.) noted *supra*. 1933 L. 722; 146 I.C. 725=34 P.L.R. 1007; 1933 S. 279=146 I.C. 777 (F.B.). Art. 144 applies to a suit in which the plaintiff sues for possession of immovable property on the basis of his title, and in such a suit, if the plaintiff proves his title, he is entitled to a decree, unless the defendant succeeds in establishing his adverse possession for a period of more than 12 years. 55 A. 209=1933 A. 775; 168 I.C. 309=1937 O. 328. But where the trial Court requires the plaintiffs to prove in the first instance that they were in possession within 12 years of the suit and it only requires the defendants to prove adverse possession in the event of the plaintiff failing to establish this fact and the plaintiff accepts this but fails to discharge the burden. *Held*, that he cannot subsequently complain that onus has been wrongly placed on him and that his possession must be presumed from title. 1934 L. 1019 (2). Where a party raises a plea of adverse possession the first thing he has to establish is that he had been actually in possession of the property. 1933 O. 283=10 O.W.N. 366; 8 O.W.N. 349=1931 O. 177. Where it was admitted that the lands were parti and jungle lands and that the plaintiff had a title to it but the defendants claimed a limited tenancy interest only as against the admitted proprietor, the zemindar, *held*, that it was governed by Art. 144 and not by Art. 142 and that it was impossible for the judge in trying such a suit to raise any presumption against the plaintiff by reason of the absence of any witness on the part of the plaintiff. 149 I.C. 453 (2)= 1934 P. 339. *See also* 1941 L. 241. Where in a suit for ejectment the Court finds that the defendant's occupation was not independent of the plaintiff, that is to say, not on his own independent title but as a tenant under the plaintiff, it is necessary for the defendant, in order to succeed in the case to establish ouster, that is, assertion of hostile title as against the plaintiff and claiming title on his own account and after such assertion, to the knowledge of the plaintiff his remaining in possession for the statutory period of 12 years or more. 222 I.C. 378=1946 P. 185.

STARTING POINT.—A suit by a mortgagee auction-purchaser for possession of the mortgaged property against a lessee who is in possession thereof under a lease executed by the mortgagor after the execution of the mortgage, is governed by Art. 144 and not by Art. 120 as it is not necessary for the plaintiff to sue or pray for cancellation of the lease. 12 Luck. 161=1937 O. 146. *See also* 1937 P. 13; 1940 M. 798=(1940) 2 M.L. J. 190. An adverse decision in settlement proceedings was held to mark the starting of adverse possession despite the existence of fiduciary relationship between the parties before the event. 33 A. 125=21 M.L.J. 109 (P. C.). Survey officer's decision under Survey and Boundaries Act, sec. 11 or sec. 12—Adverse possession of unsuccessful party not affected by the decision—Computation of period of limitation. I.L.R. (1940) M. 501= 1940 M. 187=(1940) 1 M.L.J. 79. Starting point—Purchaser from Government—Adverse possession. 28 C.W.N. 66=1924 C. 394. Symbolicol possession is effective against a judgment-debtor though not so against a stranger to the suit. 18 I.C. 751=17 C.W. N. 324; 36 C.L.J. 472=1923 C. 82; 108 I.C. 396=1928 L. 719. The *terminus a quo* under Art. 144 is the date when the possession of the defendants became adverse to the plaintiff and not to any other person from or through whom he does not derive his right. 1923 L. 642. *See also* 56 I.C. 733=1 L. 210. Planting of trees on another person's land is active trespass and would be adverse possession. 1922 A. 50; 1929 O. 328. But *see* 1930 O. 304, *supra*. Art. 144 applies to a suit by an adopted son for the recovery of immovable property within 12 years from the date of adoption. 27 M.L.J. 569=25 I.C. 692. *See also* 133 I.C. 899=1932 A. 61. Where the transferee enters into possession under a deed of transfer which is *ab initio* void on the ground of immoral considertaion, the transferor cannot recover the property if the transferee has been in possession for more than 12 years. 35 Bom.L.R. 345=1933 B. 209. *See also* 1941 P. 354=22 P.L.T. 239.

SPECIAL CASES — CO-OWNERS.—Where a person has begun to hold possession of land adversely to two co-sharers, each being the owner of a moiety and before the expiration of the statutory period of limitation succeeds to one moiety upon the death of its owner, his possession continues to be adverse to the owner of the other moiety, although he has become jointly interested with the other. 46 I.A. 285=43 M. 244=1919 P.C. 44=38 M.L.J. 313 (P.C.). *See also* 1939 L. 315. But as a general rule, in the absence of proof of ouster, possession of one co owner or joint tenant is not adverse to other co-owners or joint tenants. 64 I.C. 462. *See also* 54 A. 628=140 I.C. 653=1932 A. 393; 16 R. D. 286; 42 P.L.R. 276=1939 L. 315; 1940 C. 93; 31 N.L.R. (supp.) 191; 15 R.D. 261; 1931 A. 551; 52 I.C. 629; 55 C. 653=1928 C. 535; 100 I.C. 650=1927 A. 410; 1 Luck. 82; 102 I.C. 161=1927 M. 111=52 M.L.J. 203; 2 Luck. 172=1926 O. 464; 1927 M. 176; 29 Punj.L.R. 131=1927 L. 886; 107 I.C. 211; 32 P.L.R. 649 (Rule as to adverse possession among co-owners stated); 1928 C. 396; 1927 N. 395; 1933 O. 439; 1933 O. 560. (Co-owners—Denial of title—Knowledge of person ousted necessary). 114 I.C. 497=1930 O. 103 C. 466=24 C.W.N. 246; 1929 P. 624; 31 P.L.R. 659; 1929 B. 424; 1929 A. 910; 1929 O. 257. *See also* 1929 B. 323. Co-sharers—Lessees from different co-owners—Adverse possession by one—Effect against tenure-holder. 60 C. 1212=1934 C. 71=37 C.W.N. 835. Where a person succeeds as a co-heir, Art. 144 applies if he claims adverse possession. But if the person takes the property as a customary heir according to the law then in force and not as a mere co-heir. his possession is adverse from the very beginning. A.I.R. 1944 Pesh. 45. Where brothers and sister are co-sharers and are living amicably together, the brohers cannot establish title by adverse possession against the sister unless they had expressly set up an adverse title to her knowledge. 1932 A.L.J. 621=54 A. 742=1932 A. 666. *See also* 14 L. 794=1933 L. 784; I.L.R. 1938 M. 220=1938 M. 8=(1937) 2 M.L.J. 606. In cases where the litigating parties are-owners or co-tenants having an equal right to use property for a specified purpose, the presumption of law is that the possession of one is the possession of all. Every such person is seized of the property *per my et per tout*, and anything short of denial of title cannot destroy the plaintiff's right. 14 L. 267=1933 L. 705 (F.B.). To suits between co-owners or co-tenants *inter se* where the title of one is denied by the other, Art. 144 or Art. 120 would apply, according as the relief claimed is one for possession or injunction. 14 L. 267. The mere statement by some of the co-heirs that they are the exclusive heirs of the deceased cannot amount to an overt at which would make the statute of limitation run against the other co-heirs. In such cases in order to prove title by adverse possession there must be ouster. 131 I.C. 105=1931 L. 439. *See* also 134 I.C. 491. The mere fact that one of them was in exclusive enjoyment of a common well does not lead to the inference of ouster of the other co-owners. 12 L. 101=1931 L. 339. In order that possession may be adverse, there must be (1) a disclaimer of the others' right by and open assertion of a hostile title on the part of the co-owner setting up adverse possession, and (2) notice thereof to others, either direct or to be inferred from notorious acts and circumstances. 148 I.C. 926=1934 Pesh. 7; 18 R.D. 39; 1934 A.L.J. 544=56 A. 582=1934 A. 193. But exclusve receipt of profits continuously for a long period may point to an ouster, if the Court is satisfied that such taking of profits is an indication of a denial of right in the other co-tenant to receive them. 58 B. 410=36 Bom.L.R. 284 =1934 B. 273. Where the co-sharer has built his residential house on the land, it amounts to an assertion of hostile and exclusive title to the knowledge of the other co-sharers. 148 I.C. 943=1934 L. 84 (1). The question whether the exclusive possession of a co-owner in a joint property amounts to ouster or not depends on the circumstances of each particular case. Different co-owners can be in exclusive possession of different portions of joint property. In such a case, the fact that one person constructs buildings is not such an injury as cannot be remedied in a partition suit. 32 P.L.R. 653=1931 L. 631 (2). *See also* 8 O. W.N. 710; 8 O.W.N. 854=1931 O. 381. Some overt act necessary. 1927 L. 887; 7 R. 164 =1929 R. 211; 1930 O. 517. Overt act nullified by subsequent admission of title of true owner. 106 I.C. 814=1928 L. 317. If the person possessed of legal title to an estate is also in the enjoyment of the profits of that estate more or less, his title cannot be held to have been extinguished by reason of the physical possession of the estate held by another person who has no title to it. Such person cannot put an end to the possession of legal owner by any secret intention in his mind. There must be an ouster or something equivalent to an ouster. 6 Luck. 106=130 I.C. 65 (2)=1930 O. 510. Co-owners—Purchaser from one has right to sue for jointpossession. 60 I.C. 589=23 Bom.L.R. 60=1921 B. 462. Art. 144 applies where the question is between a co-parcener in a joint Hindu family and a stranger. 37 B. 84=17 I.C. 657. *See also* 1927 P.C. 270=50 M.L.J. 394 (P.C.). Where an uncle and a minor nephew are members of a joint Hindu family and a mortgage is effected by the uncle comprising not only the share of the nephew but of the entire land of the uncle and the nephew in a suit for possession by the nephew on the allegation that he is the owner of the property, the uncle cannot be said to be a guardian of the plaintiff within Art. 44 and the alienation is effected by the manager of the joint Hindu family and a suit to set aside such an alienation is governed by Art. 144 and not by Art. 44. 152 I.C. 633=35 P.L.R. 722=1934 L. 601. *See also*

11 Cut.L.T. 15; 16 L. 237=1934 L. 725; 1936 L.996. But Art. 44 and not Art. 144 would apply, where the suit is by the sole surviving co-parcener of joint Hindu family, after attaining majority, to recover property alienated by his mother as guardian during his minority, on the ground that the alienation was beyond her power. 59 M. 549=43 L.W. 611=1936 M. 346=70 M.L.J. 352. Joint Hindu family— Partition— Property excluded by fraud—Suit by separated member for share in such excluded property—Limitation. *See* 45 Bom.L.R. 825=1943 B. 419. A suit by one co-owner of a waste channel for a declaration that he was in possession jointly with the defendants interested with him is not a suit for possession after dispossession and therefore the article applicable is not Art. 142 but 144. 55 I.C. 247=1 P.L.T. 192. As to co-sharers in a Mahomedan family, *see* 1927 L. 790=100 I.C. 145; 1933 L. 784 (2). The mere fact that after the death of a Mahomedan, the mutation takes place in the name of son does not by itself show that he asserted his exclusive title in opposition to the claim of his step-mother, especially when the mother and son lived amicably and in one house. 148 I.C. 926=1934 Pesh. 7. *See also* 1940 A.M.L.J. 9. Co-owners—No interception of rent proved—No question of adverse possession. 1929 C. 297. Lease by some—No assertion of hostile title otherwise—Lessee's possession is not adverse to other co-owner. 56 C. 914=1929 C. 297. Application by one to the Municipality to build a wall does not amount to an ouster. 109 I.C. 658=10 L. 842=1929 L. 195 (2). Title of other co-owners not denied except very lately—Statement before Revenue Court admitting permissive possession—No adverse possession. 1928 O. 449=112 I.C. 522. Where the title of the co-heirs relates to a number of properies any assertion of adverse title with reference to any one of the properties might have some bearing upon the question of adverse possession. 131 I.C. 211=1931 A. 193. Where in prior proceedings, the party never took up the position that he had been in occupation adversely of more than his share except the *kothri*. *Held*, that he had failed to establish adverse title except as regards the *kothri*. 139 I.C. 676=1932 L. 421. There must be, on the part of the co-owner setting up adverse possession, a disclaimer of the other's right by an open and unequivocal assertion of a hostile title; mere entry of name in the Revenue Registers and mere non-enjoyment of produce are insufficient. 118 I.C. 207=1929 S. 212. Presumption as to possession not being adverse—Applicability in favour of transferee from co-owner. 56 C. 616=1929 C. 250; 1930 O. 475. There can be no difference in principle whether a person is the original co-owner or has become a co-owner by virtue of a transfer. The burden would be on the transferee to establish that the denial of title and ouster were brought to the knowledge of the other co-owner and in the absence of proof he would not be able to perfect his adverse possession. 54 A. 628=1932 A.L.J. 425=1932 A. 393. *See also* 1937 Pesh. 69. Where a plaintiff, who was a co-sharer with some of the defendants who transferred a part of the property to third parties, admits in the plaint that he was dispossessed by the transferees some time prior to the institution of the suit, Art. 142 applies and not Art. 144. 1934 A. L.J. 973=1934 A. 993 (F.B.). Where certain land belonging to several co-owners was sold by some of them to a sranger and possession of the entire land was given to the vendee, the possession of the vendee is adverse to the other co-owners who did not join in the sale. The rule has no application to such a case. 116 I.C. 890 (1)=1930 L. 214. *See also* 1930 C. 180 (a case of religious office). *See also* 34 Bom.L.R. 354=1932 B. 255. Where a co-parcener sells not his undivided share but a specific property of the joint family and puts the purchaser in possession, the latter's possession becomes adverse to the other members even though the property sold is less than the vendor's share in the joint property. 1937 Pesh. 69. Where some items of joint property were rightly or wrongly taken possession of by a stranger and passed out of joint family and the stranger having been in possession thereof for more than twelve years and acquired an indefeasible right to them by adverse possession, one of the joint family members purchased them from the stranger with his own money, in such a case, the possession of that member cannot be said to be the possession of a co-sharer. 60 C. 1406=149 I.C. 410=1934 C. 356. Mere absence of a co-sharer does not amount to adverse possession. 4 Luck. 339=1930 O. 177; 13 R.D. 79; 15 R.D. 259. Entry into possession by some under an invalid sale, when there is no intention on their part to hold sole possession to the exclusion of the rest, is no adverse possession. 4 Luck. 503=1929 O. 284; nor is one co-sharer's writing a post-card to another denying right to partition. 1929 L. 519; nor an assertion of hostile title made in a suit to which the other co-owners are not parties. 32 P.L.R. 824=1932 L. 143. Mere entry of names in the mutation register is no indication of adverse possession until it is shown that it was obtained after a clear declaration to the effect that the title of the other co-sharers was denied. 115 I.C. 440=1929 O. 337. The mere fact that a co-sharer brought a suit to eject a trespasser is no evidence of denial of title of the other-co-sharers and doe not therefore amount to ouster. 1929 O. 337. Knowledge of person ousted is necessary. 34 C.W.N. 246=1930 C. 466. Constructive notce is sufficient. 34 C.W.N. 246. But where a tenant-in-common has not been in the participation of the rents and profits for a considerable length of time and other circumstances concur, the Court may presume that there has been an ouster, in which case the possession of the other co-sharers will be adverse. 117 I.C. 636=1929 P. 624. *See also* 132 I.C. 772=1931 O. 381; 58 I.A. 106 =1931 P.C. 48=60 M.L.J. 386 (P.C.). It is sufficient if adverse possession is adequate, continuous and exclusive; the true owner

must be vigilant and it does not prevent time from running, if he could have obtaincd, but did not actually obtain, knowledge of the adverse possession. 28 N.L.R. 282=1933 N. 27. The ouster takes place when the title of the other co-sharers is denied. Mere entry of the name of one co-sharer would not be proof of adverse possession. Also mere non-participation in the profits by one co-sharer and exclusive occupation by another would not constitute adverse possession against the former in favour of the latter. Further knowledge on the part of the person whose rights are invaded is an essential element of adverse possession. 119 I.C. 866=1929 O. 402; 32 P.L.R. 824. But *see* 1930 A. 845; 1930 A.L. J. 1456=1931 A. 193, where it was held that definite assertion of adverse possession is not necessary and cultivation by a co-owner of the entire land is adverse possession. 1930 A. 845. Where, in spite of a decree for joint possession in plaintiff's favour and an order in execution for formal delivery of possession, the defendant resisted all attempts of the plaintiff and effectively prevented him from obtaining actual possession, the resistance, coupled with an open denial of plaintiff's title, amounts to an ouster. 55 A. 173=1933 A.L. J. 33=1933 A. 173. Co-sharers—Court-auction-purchaser of share—Delivery of symbolical possession—Suit to recover actual possession—Commencement of limitation is from date of symbolical delivery. 31 Punj. L.R. 519=1930 L. 914; 1930 L. 251. A mortgage of property by one alone does not by itself show that the act is an adverse one. It must be proved that the mortgage was made with the knowledge of the other members interested. (1929 M. 27, Foll.) 122 I.C. 105 (2)=1930 L. 251. Where co-owners trespassed on the adjacent land belonging to the plaintiff and the revenue records showed that one or other of them were in possession for over 12 years before suit, *held*, that it was not a case of independent trespassers, that possession by one of them was really possession for all and that the suit against them was barred. 131 I.C. 341=1931 L. 232. Where of the two co-sharers, *A* and *B*, of a part share in a house, *A* gets a transfer of the other major share from *C* against whom *B* had set up adverse possession, the continuity of adverse title set up by *B* breaks and cannot prevail against *A* who was at the time of transfer, a co-sharer in the property. 134 I.C. 522= 1931 L. 251. Co-heirs under the Mahomedans Law are in the position of tenants in-common and the entry and possession of one of such co-heirs must be deemed to be on behalf of all co-heirs. Consequently, in the absence of ouster, such possession is not adverse to the other co-heirs. 109 I.C. 658= 1929 L. 195. *See also* 1929 L. 464=10 L. 849; 119 I.C. 335; 1930 A.L.J. 1456; 7 R. 744=1930 R. 72; 32 P.L.R. 381; 59 I.A. 74 =54 A. 93=1932 P.C. 81=62 M.L.J. 371 (P. C.). The mere fact that he exclusively grants a lease is not enough. 131 I.C. 211=1931 A. 193. Where some co-owners usufructuarily mortgage specific items of propety held by the members of a Mahomedan family and the mortgagee enters into possession of the mortgaged items under the mortgage deed, a suit by the other members of the family to recover possession of their shares in the items mortgaged is barred under Art. 144 of the Limitation Act at the end of 12 years of such possession and adverse possession as against those other members cannot be said to begin only from the date of ouster to their knowledge. 1942 M.W.N. 525=55 L.W. 532 =I.L.R. (1943) M. 15=1942 Mad. 622= (1942) 2 M.L.J. 321. Co-heirs under Mahomedan Law—Non-participation in rents and profits for 17 years—No denial of title—Suit to recover share is not barred. 31 Bom.L.R. 199=1929 B. 141.

DEBUTTER PROPERTY.—Adverse possession will also destroy title in lands attached to an idol. 36 B. 135=12 I.C. 926 (2). Strong facts may be necessary in order to establish adverse possession in any case in which there is a reasonable possibility that the possession is being held under the idol's title; but where a non-shebait is holding property in derogation of the trust, a plea of adverse possession can be sustained. 60 C. 54=1933 C. 295=144 I.C. 792. There can be no adverse possession against an idol by the shebait. 1933 C. 295. A trustee cannot by his declaration that he has committed or is about to commit breach of trust, prejudice the rights of the beneficiaries and claim that as from the date of his declaration he began to hold adversely to the trust. I. L.R. (1946) Lah. 300. A suit to set aside an alienation by a mahant of endowed property is governed by Art. 134. 1922 L. 271. *See also* 1927 M. 1163; 55 C. 448=1928 C. 130=32 C.W.N. 248; 2 Luck. 239; 105 I. C. 355=1930 P. 455; 1941 P.W.N. 75=22 P.L.T. 239=1941 P. 354. *Quaere*: Whether the possession of two joint shebaits becomes adverse to the idol when they openly claim to divide the property between them. *See* 48 C.W.N. 304=1944 P.C. 24 =(1944) 1 M.L.J. 344 (P.C.) (as to co-shebait's claim in respect of family idol). Sale of property belonging to idol by mahant—Suit by succeeding mahant to recover possession—Starting point of limitation is from the date of alienation. 9 P. 885=1930 P. 455. *See also* 35 Bom.L.R. 368=1933 B. 253=144 I.C. 277. But *see* 12 P. 251=1933 P.C. 75 (P.C.); 68 M.L.J. 499 (P.C.); 71 M.L.J. 105 (P.C.); 1939 C. 21, *infra*. Where a person enters into the possession of property as the mahant of math and holds it on behalf of the math until a certain compromise which he enters into with a rival claimant, the mere fact that the parties to the compromise purport to confer upon each other an unrestricted power of alienation in respect of the endowed property does not change the character of that person's possession, and he does not hold the property adversely to the institution from the date of the compromise. 62 I.A. 47=39 C.W.N. 433=1935 P.C. 44=68 M. L.J. 499 (P.C.). Under the law which obtained prior to its amendment by the Indian

Limitation (Amendment) Act (I of 1929), the article applicable to a suit by a mahant to recover math property transferred by the preceding mahant is Art. 144, and the period of limitation does not begin to run until the death of that mahant. 68 M.L.J. 499=57 A. 159=62 I.A. 47 (P.C.); 43 C. W.N. 102=1939 C. 21; 1936 P.C. 183=71 M.L.J. 105 (P.C.). Where a mahant alienates property appertaining to a math without any legal necessity, the alienation is not void but is good for the period during which the alienor is in office. Where a mahant alienated the math properties without any necessity, a suit by his successor in office to recover the properties transferred, would be governed by Art. 144 and not Art. 134 and would be in time if brought within 12 years of the death of the alienating mahant. 12 P. 251=60 I.A. 124=1933 P.C. 75=34 M. L.J. 505 (P.C.). If the alienation is by way of a permanent lease, the succeeding mahant can continue the lease, in which case the lessee's possession will not be adverse until the death of that mahant. But when the alienation is by way of a gift, in the absence of evidence to show that the possession which became adverse when the original grantor died was kept permissive by subsequent conduct, the adverse possession counts from the date of the first mahant, and when completed by possession for the statutory period bars the title of the math. 152 I.C. 251=67 M.L.J. 430=1934 M. 624. As to lessee from the head of the math claiming adverse possession, *see* 13 L. 677=140 I.C. 604=1933 Lah. 25. A person in adverse possession of property claiming to hold it as mutawalli does not prescribe for more than a mutawalli's right in such property and may acquire to that extent the status of a mutawalli. The right of the office and the right to the possession of property are distinct jural concepts. 1930 A. 866=129 I.C. 375. *See also* 40 P.L.R. 319=1938 L. 369 (Suit relating to mortgage). Art. 134 does not apply to suits to avoid alienations of the generally endowed property vested in the *sajjadanashin* and mutawalli of a wakf. Such suits are governed by Art. 144. Where as a result of the alienations the previous encumbrancers have been paid off, it cannot be said that there were several trespassers in succession so as to bar the true owner after the lapse of 12 years from the date of the earlier mortgage. 57 Bom. 709=35 Bom.L. R. 252=1933 B. 217. Where a mutawalli completely transfers wakf property to a stranger by sale or mortgage, the period of limitation for a suit to recover that property begins to run from the date of the alienation. Distinction between cases of permanent lease and sale pointed out. 57 Bom. 709=1933 B. 217. A sale by the mutawalli of wakf property, where the wakf provides for the private benefit of the family of the grantee as well as for the public benefit of a mosque, is valid during the lifetime of the vendor, and a suit by the succeeding mutawalli for a declaration that the sale is invalid and for recovery of possession of the property sold for the mosque is in time, if instituted within 12 years from the date of the death of the vendor mutawalli. 31 L.W. 396=1930 M. 582=58 M.L.J. 524; 37 L.W. 737=1933 M. 533=64 M.L.J. 706. There is no distinction in this respect between a lease and a sale. 64 M.L.J. 706. Where a sale-deed is a mere paper transaction and inoperative a suit by the vendor for possession of the property is governed by Art. 144 and not by Art. 91. I.L.R. (1940) Lah. 546=41 P.L.R. 657=1939 L. 544. Where one of the *wahivatdars* sold his share of the endowed properties, limitation for a suit by another *wahivatdar* or his representative to set aside the alienation on the ground that the properties were inalienable would run from the date of the alienation. 34 Bom.L.R. 1469=1933 B. 26. As to adverse possession of debutter property, *see* 60 C. 54=1933 C. 295 and 137 I. C. 487=1932 M. 328=62 M.L.J. 496 (Theory of perpetual minority of idol examined); 54 A. 909=1932 A.L.J. 836=1933 A. 19; 34 Bom.L.R. 1469 (Right to collect assessment of endowed land). A permanent lease of debutter property by a *dharmakartha* when not justified by necessity for the preservation of the endowment, is valid during the tenure of office of the *dharmakartha* and is not void *ab initio* so as to make the possession of lessee adverse from the date of the lease. The proper date from which the adverse possession generally runs in such cases is the date of death, resignation or removal of the *dharmakartha* from office. 63 I.A. 261=59 M. 809=1936 P.C. 183=71 M. L.J. 105 (P.C.). It is, however, within the power of each successive *dharmakartha* to authorise, create or continue a new tenancy, and where the successor permits the lessee to continue in possesion and receives rent during his tenure of office, the receipt of rent must be deemed to be with the knowledge, which must be imputed to him, that the tenancy created by his predecessor ended with his predecessor's tenure and can therefore only be referable to a new tenancy created by himself; and so with each successive *dharmakartha* and consequently the possession of the lessee does not become adverse till anything happens which takes the case out of the operation of the principle. 59 M. 809 (P.C.). So also in cases where lease is partly for necessity and partly not so. 162 I.C. 325=1936 M. 262. A trustee of a choultry alienated property belonging to the choultry as his own. He did not purport to pass title as manager of the choultry. *Held*, that the alienation was void *ab initio* and possession of the alienee became adverse from the date of the alienation and not from the death of the trustee. 180 I.C. 462=1938 M. 60.

LANDLORD AND TENANT.—The article governs a suit by lessor for possession against a trespasser who has wrongfully dispossessed the lessee who was holding over. 57 I.C.

994. *See also* I.L.R. (1938) All. 664=1938 A. 429=1938 A.L.J. 561 (Suit for possession under lease). In a suit by a landlord to eject the tenant, the Court must consider the length of the defendant's possession and the title claimed by him. If the tenant had been claiming occupancy rights for over two years, the right of the landlord is to sue for assessment of rent. 52 I.C. 650 (2) =29 C.L.J. 607. *See also* 30 I.C. 946=22 C.L.J. 151; 30 I.C. 942=22 C.L.J. 147; 1930 O. 310 (Alleged tenant claiming an adverse possession). 1940 O.W.N. 990=1940 A.W. R. (C.C.) 458 (Suit by zemindar to recover possession of land after removal of structures and newly planted trees, etc.). Art. 144 has no application to a landlord's assertion and the tenant's denial of the right to enhance the rent of the holding. 43 I.C. 59 =22 C.W.N. 856. But if the relation of the landlord and tenant subsists, a claim for assessment of rent and for mesne profits does not fail on the ground of adverse possession. 30 I.C. 917=22 C.L.J. 122. *See also* 45 C. W.N. 126. As to applicability of article to suits by landlord against tenant, *see also* 30 I.C. 896=22 C.L.J. 129; 55 I.A. 212=7 P. 649=55 M.L.J. 882=1928 P.C. 146 (P.C.); 1927 L. 759; 7 P. 341=1928 P. 431; 1928 C. 47; 28 I.C. 708=19 C.W.N. 136; 15 I. C. 64=16 C.W.N. 929. A tenant cannot hold adversely to his landlord by the mere fact of his encroachment. It is necessary that his adverse enjoyment should have been brought home to the notice of the landlord. 151 I.C. 256=1934 A. 722 (1). Mere nonpayment of rent does not necessarily imply adverse possession. 134 I.C. 1037=1932 C. 72. It would not create any title to hold rent free by adverse possession. 1933 P. 175=145 I.C. 527. A suit to set aside an alienation of *sarva* inam property made by the holder thereof must be brought within 12 years from the death of the alienating inamdar. Limitation runs from the date of the death of the alienor. 176 I.C. 586=40 Bom.L.R. 400=1938 B. 331. The doctrine that possession of one co-owner is possession of all co-owners cannot apply to a case between the landlord and the tenant. 117 I. C. 636=1929 P. 624. The entry of the names of persons as tenants *bila faisla* is inconsistent with their possession being adverse. Such entries should be presumed to be correct unless they are rebutted. The mere fact that they have been in possession for a long time or that they had not paid any rent for the land cannot establish title by adverse possession. 12 R.D. 622=1929 O. 370. *See also* 1930 C. 339; 13 L. 432= 1932 L. 586; 13 P. 45=1933 P. 656. But where land was originally grove land but no rent was ever paid for 60 years and the grantee built upon the land without protest on the part of the landholder: *Held,* that the grantee acquired title by adverse possession and was not liable for rent. 149 I.C. 807=1934 A. 288. Landlord and tenant—Notice of ejectment—Reply notice by tenant claiming occupancy rights—Rent paid as usual—Possession of tenant whether adverse from date of notice. 1929 B. 197. The possession of agricultural land by a tenant cannot be adverse to the landlord even though the tenant might formerly have been a village zemindar. 6 O.W.N. 529= 1929 O. 433. *See also* 16 Luck. 223=1941 O. 45=1940 O.W.N. 990. A lessee cannot claim adverse possession for himself during the lifetime of the head of the math who granted him the lease. 1933 L. 25=13 L. 677=140 I.C. 604; 1930 M. 422=1929 M. W. N. 840. *See also* 13 L. 432=140 I.C. 474=1932 L. 586. Limited right—Void lease of unrecognised sub-division of bhag —Possession of lessee for upwards of twelve years—Acquisition of title by prescription. 32 Bom.L.R. 930=1930 B. 448. Landlord and tenant—Use of land as *khalwara* for storing manure and allowing others to store manure—Possession is permissive, not adverse. 1930 L. 384 (2); 1939 A. 161=1938 A.L.J. 1227 (tethering of cattle and storing of wood and timber). Whatever possessory right a tenant-at-sufferance may have against a rank trespasser, it cannot be claimed that the "tenancy-at-sufferance" is heritable. The son of such tenant cannot style himself as a tenant holding over. His possession is nothing better than that of a trespasser. His possession is clearly adverse to the owner of the land and would ripen into a prescriptive title by 12 years possession. 30 N.L.R. 155=148 I.C. 561=1934 N. 67. *See also* 1938 A.W.R. (B.R.) 363=1938 R. D. 602 (Art. 144 does not apply to proceedings under Agra Tenancy Act). A suit for possession by the recorded occupancy tenant dispossessed by one of the body of landholders is governed by 12 years' rule of limitation. Sec. 99 of the Agra Tenancy Act does not apply to it. It applies only when the landlord is also the landholder. 14 L.R. 218 (Rev.). A holding was purchased at Court-sale but the purchaser got only formal delivery of possession. After about 25 years, the purchaser surrendered the holding to the landlord and the landlord filed a suit for ejectment of the judgment-debtor describing him as an under-raiyat under the purchaser. *Held,* whatever right the purchaser obtained by the sale was lost by efflux of time, that there was nothing for the purchaser on the date of surrender to surrender in favour of landlord and that the suit should be dismissed. 145 I.C. 613 =1933 P. 269.

MORTGAGOR AND MORTGAGEE.—It is not open to a mortgagee by denying the existence of a mortgage to curtail the period of limitation provided for a suit for redemption. 1923 A. 613 (1); 1928 A. 197=26 A. L.J. 149; 6 P. 102=1926 P. 512. Mortgagor and mortgagee—Adverse possession as between. *See* 25 I.C. 611. *See also* 1929 M. 16=109 I.C. 795; 14 I.C. 513; 13 I.C. 852. In case of possessory mortgage, *see* 107 I.C. 612=1928 L. 147. *See also* 1932 A. L.J. 474=138 I.C. 366=1932 A. 457; 42 Bom.L.R. 399=1940 B. 225. In the case of an invalid mortgage, the mortgagee prescribes as such and the result is in the ordi-

nary circumstances that, after the period of limitation expired, he is entitled to retain possession until his mortgage is redeemed. Adverse possession is limited to the intention of the person in possession. 144 I.C. 439=14 P.L.T. 294 =1933 P. 288. Under Art. 144 the possession of the mortgagor, who redeems the mortgage, does not become adverse as against his co-mortgagor when he recovers possession of the property on redemption. 1922 P. 129; 1923 P. 98; 1927 O. 347=2 Luck. 618=4 O W.N. 713. *See also* 1930 N. 300=127 I.C. 889. But *see* 8 O.W.N. 637; 1938 R. 65; 32 P.L.R. 649; 32 P.L.R. 622 =1931 L. 744; 132 I.C. 261 (O.). His possession would become adverse only when there is an open assertion of title by him of an exclusive title in himself. 141 I.C. 404 =1933 L. 91=34 P.L.R. 239. As to conflict of decisions regarding the applicability of Art. 148 to such case, *see* the cases cited on the point under Art. 148. The plaintiffs mortgaged four survey numbers with possession to *Y*. Subsequently the plaintiff sold the equity of redemption in two of the plots to *G* and the defendants. Later on the defendants successfully sued to redeem the original mortgage, but did not implead the plaintiffs as parties. The plaintiffs having sued to redeem the mortgage and recover possession of the several items, *held*, that the decree for redemption which the defendants had obtained created a charge in their favour by virtue of sec. 95, T. P. Act, and that the suit by the plaintiffs to recover possession was governed by Art. 144 and not Art. 148. *Held, further*, that the defendants acquiring the property did not hold as co-sharers and that limitation commenced to run from the date of the possession after redemption. 57 B. 134=35 Bom.L.R. 48= 1933 B. 114. Mortgage suit—Execution of second mortgage with possession pending—Plaintiff placed in symbolical possession in suit—Same is equivalent to actual possession —Suit for recovery of actual possession— Starting point of limitation is the date of the said symbolical possession. 33 C.W.N. 963. *See also* 1937 P. 13=15 P. 372=17 P.L.T. 546. Where a person was in undisturbed possession for 25 years under color of an invalid mortgage deed, his possession was with the permission of the mortgagor and the latter could recover possession of the property. (79 I.C. 232, Rel. on.) 1928 A. 552. The possession by a mortgagee of mortgaged properties is not *prima facie* adverse to the mortgagor. Also the mere payment of the mortgage money without more cannot amount to adverse possession by the mortgagee after the date of payment. 33 C.W.N. 963=1930 C. 15; 120 I.C. 789 (2). Mortgagor and mortgagee—Equity of redemption conveyed to mortgagee—Sale held to be invalid—Possession under sale is not adverse. 1930 B. 135=53 B. 676=31 Bom. L.R. 778. Mortgagee purchasing property at sale in execution of mortgage decree in ignorance of prior sale of property in execution of money decree—Suit for possession from purchaser under money decree—Cause of action—Limitation—Starting point—Date of purchase by mortgagee or date of mortgage. *See* I.L.R. (1943) Kar. 315=1943 Sind 242. As between the mortgagor and mortgagee neither exclusive possession by the mortgagee for any length of time short of the statutory period of sixty years nor any acquiescence by the mortgagor not amounting to a release of the equity of redemption will be a bar or defence to a suit for redemption if the parties are otherwise entitled to redeem. Mutation proceeding in favour of the mortgagee under a void deed of sale does not change the character of possession so as to enable the mortgagee to obtain a title by adverse possession. 118 I.C. 808=1930 O. 17. In the case of possessory mortgage, where possession has been delivered to the mortgagee, a trespasser obtaining possession may hold adversely to the mortgagee but not to the mortgagor. 1929 P. 639. So also adverse possession against the mortgagor does not affect the right of the mortgagee when it commences after the mortgage. 50 C.L.J. 317=1930 C. 313=34 C.W.N. 519. Where a tenant borrowed a certain sum of money from the *malguzar* and usufructuarily mortgaged the holding to him and the *malguzar* leased the holding to another person in contravention of the rights which the mortgagor had, *held*, that the possession of the *malguzar* and his lessee was adverse to the mortgagor. 118 I.C. 74. *Malikhana qazba* remaining in possession of *shamilat* plots—Landlord's title not acknowledged—Title by adverse possession acquired. 12 L.L.J. 161=1930 L. 991 =11 L. 410. Sale of part of mortgaged property to mortgagee in possession—Discharge of mortgage—Mortgagee continuing in possession of the remaining property also is adverse possession. 1930 C. 402. Where, during the plaintiff's minority, the equity of redemption in certain property owned by him was sold by his guardian, and the purchaser redeemed the property and was in possession ever since the purchaser's possession was adverse to the plaintiff from the commencement. 134 I.C. 366=33 Bom.L.R. 604=1932 B. 23. Where the plaintiff sued for possession as mortgagee of a certain land on the basis of a mortgage deed which was compulsorily registered and the suit was brought 12 years after the execution of the mortgage deed but within 12 years of the completion of its registration. *Held*, that, although under sec. 47 of the Registration Regulation, the title of the plaintiff dated back to the date of the execution of mortgage deed, it was not until the registration was completed that he became entitled to take possession and the possession of the defendant became adverse only from that date and the suit was therefore in time. 37 P.L.R.J. & K. 23.

MINOR.—*See* 1937 O.W.N. 1012=1937 O. 521. Where the mother and her adult son executed a conveyance on behalf of two minor members also, and one of the minors did not repudiate the transaction on attaining majority but the other did, *held*, that the

suit was governed by Art. 144 and time began to run from the date when the ward attained majority. 52 A. 768=1930 A.L.J. 852 =1930 A. 861. Alienation by guardian—Subsequent transfer by alienee—Suit by ward against second alienee—Limitation. *See* 1938 M.W.N. 403=1938 M. 677. The possession of a *de facto* guardian or of his mortgagee as a derivative owner cannot be legally deemed to be adverse to the minor but when the *de facto* guardian effects a sale of the minor's property, the possess on of purchasers would become adverse since the date they got into possession. 1930 M. 708 (2). Mahomedan minor of tender years living with his uncle who is managing the minor's property by family custom. Uncle's possession is not adverse to minor. 6 Luck. 106=7 O.W.N. 988=1930 O. 510. *See also* 1936 L. 996; 42 Bom.L.R. 208=I.L.R. (1940) B. 109=1940 B. 136 (Alienation by Hindu grandfather—Suit to set aside by after-born grandson—Limitation). 5 O.W.N. 832=1928 O. 481 as to adverse possession, against minor.

HUSBAND AND WIFE.—Where husband and wife are in joint possession, no question of adverse possession arises. 108 I.C. 435= 1928 N. 275 (2).

MALABAR FAMILY.—*See* 98 I.C. 860=1927 M. 244; 39 M.L.T. 211=1927 M. 1157 (Moplah tarwad).

REVERSIONER—SUIT BY.—As a remote reversioner's right is not derived from or through the nearer reversioner, possession adverse to the latter will not be adverse to the former. 4 L.L.J. 201=1922 L. 37. Adverse possession against widow is not so against reversioner. 101 I.C. 822=1927 N. 226. *See also* 1 L. 210=56 I.C. 733; 39 I.C. 204. During the lifetime of the limited owner, the possession of her property by her alienees cannot be adverse to the reversioners so as to destroy their contingent rights. [51 A. 188 (F.B.), Foll.] 55 A. 554 =1933 A. 493=1933 A.L.J. 1185. Where a sale is good for the lifetime of the alienating proprietor, the possession of the vendee can become adverse only after the death of the testator. 131 I.C. 105=1931 L. 439. On the death of the widow, with a life-estate, the share of the estate which stood mutated in her name went into the possession of her daughter. She died more than thirty years later. In a suit by the reversioners after the death of the daughter, *held*, that their right to sue arose on the death of the widow and as the daughter had no right to get possession on the death of her mother, her possession was adverse to the reversions and their suit was barred. 150 I.C. 519=11 O.W.N. 736=1934 O. 265. The rights of adopted son come into existence on the date of his adoption, and from that date he becomes entitled to possession of all the immovable properties belonging to him as against those who challenge and ignore his rights. Time for a suit for possession runs against him from that date, or, in case he is a minor at the time, from the date on which he attains majority. Merely because his adoption is disputed, and is subsequently declared to be valid by the highest Court of appeal several years later, it cannot be held that the cause of action for a suit for possession of the property accrues to him on the decision of the highest Court of appeal. The cause of action for a suit for possession of the property by him accrues in any event on his attaining majority, if not earlier. I.L.R. 1939 B. 173=40 Bom.L.R. 1134=1939 B. 1.

HINDU WIDOW.—Widow entitled to maintenance continued in possession after the death of step-son—Her possession is not adverse to reversioners. 51 M. 815=55 M. L.J. 436=1928 M. 820 (2). *See also* 1931 O. 25. Where a widow who is only entitled to maintenance out of her husband's estate enters into possession of the property of her husband who was a member of a joint Hindu family at the time of his death, her possession of the share of her husband is *prima facie* adverse, unless it can be shown that it was the result of any arrangement with the reversioners or that she took possession of the property prescribing only for the limited share of a Hindu widow. 6 Luck. 365=129 I.C. 328=1931 O. 25 (on the facts of this case, it was held that the widow prescribed only for a limited estate). *See* 6 Luck. 519=8 O.W.N. 6=130 I.C. 849 1931 O. 89 (2) (Where a Hindu widow acquired adverse possession as of right for over twelve years). A suit by a Hindu widow to recover possession of her deceased husband's estate is governed by Art. 144. 60 M.L.J. 619=131 I.C. 758=1931 P.C. 84. The holder of a life-estate and the remainderman should be considered as one and the holder of the life-estate under a will cannot as against the will assert an adverse title derived independently against the remainderman. 6 O.W.N. 549=119 I.C. 337=1929 O. 494. Widow entitled under custom to husband's property only during life—Invalid will by husband giving her full ownership—Suit by ultimate heirs for possession—Article applicable is 141 and not 144. 12 Luck. 592=1936 O.W.N. 1123=1937 O. 4.

RECEIVER, POSSESSION OF—EFFECT.—1927 M. 61; 7 P. 319=1928 P. 260.

SERVICE TENURE.—If a land is held on service tenure to be enjoyed as remuneration for services, the fact that no services have been performed for any length of time cannot by itself make the holding adverse. In order to make the possession adverse, there must be a refusal to perform the service or a claim to hold the land free of service. 1933 M. 668. *See also* 1940 M.W.N. 404=1941 M. 217.

TACKING.—Having regard to the definition of "plaintiff" in sec. 2, sub-sec. (8) of the Limitation Act, a plaintiff claiming title by adverse possession cannot "tack" the possession of an independent trespasser from or through whom he does not derive his right to sue. [*Dixon* v. *Gayfere*, (1853) 17 Beav. 421=51 E.R. 1097, Rel. on.] But a mortgagor can, for the purposes of the Limitation Act, avail himself of and "tack" on to his own adverse possession the adverse possession of his mortgagee. 61 I.A. 78=61 C.

362=1934 P.C. 23=66 M.L.J. 134 (P.C.). *See* 1923 N. 274.

TRUSTEESHIP.—The person concerned can sue for obtaining control or management of a religious institution within 12 years under Art. 144 when misapplication is not proved and the defendant does not deny the fact of his being a trustee. 43 M. 253=37 M.L.J. 460=1919 P.C. 62 (On appeal from 33 I. C. 216=1915 M.W.N. 657). As between co-trustees, *see* 39 M.L.T. 214=1927 M. 948. If a person could extend the time for suing by alleging that he had mistaken the meaning of an instrument, a most serious inroad would be made into the law of limitation and that quieting of title which is the reason for and the policy behind the statutes of limitation would be gravely disturbed. Hence, if a trustee alienates property which he honestly believes to be his own but which on a true construction of the deed of trust belongs to the *cestui que trust* time, which the trustee allows to pass owing to this mistake, counts when computing limitation for suit against alienee for possession. 180 I.C. 462 =1938 M. 60.

PARTITION SUIT.—Suit by an heir for his share in a Mahomedan's property is governed by Art. 144 and time runs from the date when the attempt to exclude or deny his right is made. 58 I.C. 42=44 B. 942. *See also* 1922 L. 193. Art. 144 applies to a suit for partition between tenants-in-common although a tenant has acquired his rights by a purchase at Court-auction. 29 I.C. 976= 28 M.L.J. 642. Art. 144 and not Art. 127 is applicable to a suit by one member of a family against another who is separate and divided from him for possession of immovable property which is not joint family property. Art. 144 also applies to a suit by such a divided member to recover possession of property which has continued undivided after the division of the members of the family, because such property is no longer "joint family property". 58 I.A. 106 .=1931 P.C. 48=60 M.L.J. 386 (P.C.). *See also* 31 N.L.R. (Supp.) 191=162 I.C. 577= 1936 N. 80. As to suit to reopen a partition and to readjust the shares of the parties thereto, on the ground that certain properties allotted to the share of the plaintiff really belonged to a third party, *see* 54 M. 883=1931 M. 707=61 M.L.J. 430 cited under Art. 96.

WASTE LAND.—As to adverse possession in respect of, *see* 1927 L. 753; 100 I.C. 51. In respect of fallow land, possession must be taken to follow title. 106 I.C. 130. *See also* 100 I.C. 51=1927 L. 230; 98 I.C. 880. In the case of waste land, possession is presumed to be with the owner and the mere fact that the owner has allowed his land to remain waste does not amount to a discontinuance of possession. 120 I.C. 792=1930 L. 303; 1923 L. 25. There is no rule to the effect that adverse possession cannot be acquired in respect of waste lands. 117 I.C. 636=1929 P. 624. Tethering of cattle, keeping dung cakes, building a khurli and passing over the vacant site do not amount to adverse possession. 11 L.L.J. 91=115 I.C. 71=1929 L. 432. But they, taken in conjunction with the fact that the defendant had enclosed the land in dispute which had been in existence for a period much longer than twelve years, would be sufficient proof of adverse possession. 1934 L. 684.

MINING RIGHTS.—Cases as to adverse possession of mineral rights fall to be decided under Art. 144. Once title is found or admitted to be in the zamindar he would be presumed to continue in possession until adverse possession by the trespassers is established and that whether the trespasser is the grantee of the surface or a stranger. To constitute title by adverse possession the possession required to be proved must be adequate in continuity, in publicity and in extent. In order that possession of mineral rights be adequate in publicity the defendant must prove that there was that to be seen on the surface which the plaintiff or his predecessor being reasonably vigilant ought to have seen and so seeing would have been put on their guard although they did not have any title to the surface. As a general rule where title is founded on adverse possession the title will be limited to the area of which actual possession has been enjoyed. In the case of mines there is no presumption in law that possession of a part of a seam infers possession of the whole seam much less of all the seams in the mineral field in which part of a seam has been worked. Possession is a question of fact and the extent of possession is an inference of fact. 49 C.W.N. 810.

MISCELLANEOUS.—A person obtaining possession under a pre-emption decree should be deemed to be in actual, physical, exclusive and continued possession. 6 O.W.N. 829= 13 R.D. 707=1929 O. 433. Possession if not permissive is adverse. It may be adverse even to the vendor in a case between the vendor and the vendee. (4 B. 89, Rel. on.) 33 C.W.N. 117=119 I.C. 123=1929 C. 218. Distinction as to starting point in case of void and voidable transfer. *See* 1938 M. 60. Licence to build—Licensee not repudiating title of owner—Plea of adverse possession by licensee is not sustainable. 31 Bom.L.R. 310. Where a conditional decree for possession has not been executed, the possession of the defendant becomes adverse to the plaintiff which would mature into ownership after 12 years. 1932 L. 46=133 I.C. 555. Lease by agent of principal's property—Suit to set it aside is governed by Art. 144. 1931 M. W.N. 856. When a dismissed *archaka* continues in possession although another has been appointed, his possession is adverse and a suit brought more than 12 years from the date of dismissal is barred. 150 I.C. 156=39 L.W. 513=1934 M. 381. Art. 134-B has no application to a transfer of wakf property by a person who professes to make the transfer in his own right and in a secular capacity. The only article which can have any application to such a case is Art. 144, and limitation begins from the date on which the transferor obtained possession of the dis-

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part IX.—Thirty years.	
145. Against a depositary or pawnee to recover movable property deposited or pawned.	[Thirty years] ..	The date of the deposit or pawn.
146 Before a Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction by a mortgagee to recover from the mortgagor the possession of immovable property mortgaged.	[1][Thirty years] ..	When any part of the principal or interest was last paid on account of the mortgage debt.

LEG. REF.

[1] Substituted by Act XI of 1923, sec. 2 and Sch. I, for "Ditto".

puted property in the assertion of a hostile title to the wakf. 73 C.L.J. 475=1942 C. 1.

ART. 145.—A suit to recover deposited goods is governed by Art. 145. 6 L.W. 401 =33 M.L.J. 577; 34 M.L.J. 399. Art. 145 can only apply to cases where the movable property deposited remains the property of the person depositing the same and it, therefore cannot apply to money. 1944 A.L.J. 339=1944 A.W.R. (H.C.) 175=1944 A.L.W. 571=1944 A. 241. A depositary's depositary is not contemplated in the Act. 1940 Lah. 254. The word "deposit" extends to all cases where one man's property is handed by that man to another. 1923 M. 578= 44 M.L.J. 431=17 L.W. 467. Unless there is something in the terms of that handing over which would prevent his being treated as a person with whom it was deposited at all. 61 C. 119=58 C.L.J. 502=1934 C. 87: "Deposit" in this Act has the same meaning as in the previous Limitation Acts and means a deposit of goods to be returned *in specie* (*depositum* of Roman Law). 24 I.C. 852= 37 M. 175. A suit by the heir or legal representative of a deceased employee for recovery of a sum of money deposited by the employee with his employer as security for good conduct is not governed by Art. 145. 20 Pat.L.T. 777=1939 Pat. 688. Where certain promissory notes remain with defendant, having been left by the plaintiff as security or at any rate for safe custody, then on either view, not Art. 49 but Art. 145 is the relevant article applicable to a suit in respect of such notes. 1938 A.L.J. 264=47 L.W. 649=1938 P.C. 110 (P.C.). The word "deposit" does not cover a transaction of the nature of a loan which can be more appropriately described as a contract of bailment. 126 I.C. 682=7 O.W.N. 769=1930 O. 395 There is only a thin difference between a loan and a deposit; where the arrangement is that the money handed over is to be paid to a third party on demand or on the happening of a specified event, the transaction is a deposit and not a loan. 1916 (1) M.W.N. 206=34 I.C. 347. Art. 145 is a special article applicable where the depositor seeks to recover from the depository movable property deposited, and time runs from the date of deposit. 1921 C. 416=69 I.C. 900=26 C.W.N. 772; 1928 R. 309=6 R. 547 (Jewels). The rule of limitation applicable to a suit against a depositor to recover movable property, even when the property is not recoverable *in specie*, is that contained in Art. 145. 22 C.W.N. 232=34 I.C. 959. (7 C.W.N. 476 =35 I.C. 519, Foll.). Entrustment of jewel for raising loan—Loan repaid but jewel not returned—Suit for recovery of same—Limitation. 35 M. 636=22 M.L.J. 152. *A* deposited his jewellery with his friend *B* at the time of *B's* marriage to be used by him for purpose of the wedding on condition that it would be returned whenever *A* asked for it. *Held*, that the transaction was a deposit and not a loan and the mere fact that *B* was allowed to use the jewellery did not take the transaction out of the category of deposit as that expression is used in Art. 145, and Art. 120 has no application. 1930 L. 913. This is so even when the jewel was used unauthorisedly. 1930 M. 364. Suit to recover gold and ornaments from a goldsmith or their value is governed by this article. 107 I.C. 473=1929 C. 143. *See also* 20 N.L.J. 198. A suit to recover pictures and manuscript is ordinarily governed by Art. 145, but when they are not returned on demand, Art. 49 would govern the suit and time runs from date of refusal. 41 A. 643=55 I.C. 45. G. P. notes belonging to two brothers of a joint family *D* and *G* were given as security for the service of *G*. In spite of a subsequent partition between them, the notes remained with the employer until *G* retired from service when the G. P. notes were given back to him and soon after he died. In a suit by the heirs of *D* against the heirs of *G* for recovery of their share, *held*, that the suit was governed by Art. 145 and not by Art. 49. *Held, further*, that the character of the transaction in so far as it was a deposit was not altered by the death of the depositary but that his heirs, in whose hands the thing deposited came, became depositary within the meaning of Art. 145. 61 C. 119= 58 C.L.J. 502=1934 C. 87.

ART. 146.—Mortgage of oil-well—Further advance—Article applicable. 24 I.C. 310= 1 L.W. 695=1914 P.C. 86 (P.C.).

Description of suit.	Period of limitation.	Time from which period begins to run.
146-A. By or on behalf of any local authority for possession of any public street or road or any part thereof from which it has been dispossessed or of which it has discontinued the possession.	[Thirty years] ..	The date of the dispossession or discontinuance.
	Part X.—Sixty years.	
147. By a mortgagee for foreclosure or sale	[Sixty years] .	When the money secured by the mortgage becomes due.
148. Against a mortgagee to redeem or to recover possession of immovable property mortgaged.	[1][Sixty years] .	When the right to redeem or to recover possession accrues:

LEG. REF.

[1] Substituted by Act XI of 1923, sec. 2 and Sch. I, for "Ditto".

ART. 146-A.—Art. 146-A applies only where the local authority suing has been dispossessed or has discontinued its possession; in other words, it contemplates prior possession of the land by the local authority which it subsequently loses by reason of any act done by the defendant or otherwise. The article can obviously have no operation in a case where the local authority is found not to have been in possession at all. Where at the date the Union Board was created, possession of the land was with the defendant, and the Union Board seeks to recover the land as part of a public road to which it became entitled upon its creation under the Act of its incorporation, it must sue for such recovery within 12 years from the date of its establishment under Art. 144. To such a case Art. 146-A has no application. 45 C.W.N. 802=1942 Cal. 151=73 C.L.J. 608. An open assertion of hostile title is not necessary to start limitation under Art. 146-A. Possession, provided it is not permissive or in the alternative discontinuance of possession by the Municipality is quite sufficient to make limitation run against the Municipality. A Municipality loses its right to demand the removal of an encroachment and to recover the land encroached upon if a suit for possession of the land is not instituted on its behalf within 30 years of its having been dispossesed of it. 196 I.C. 648=1941 Pesh. 76. Operation of—Removal of encroachment by Municipal Committee. 1936 L. 182=159 I. C. 639. As to applicability of Art. 146-A, *see* 32 C.W.N. 396=1928 Cal. 485. "Road", meaning of—Suit for ejecting person in occupation of road site, *see* 1928 Cal. 485=32 C.W.N. 396. An application under sec. 364 (1), Calcutta Muncipal Act, is plainly not a suit and therefore Art. 146-A, Limitation Act, which applies only to suits, cannot apply to such an application. 40 Cr.L.J. 870 =1939 Cal. 470.

ART. 147.—Art. 147 applies not to foreclosure proceedings under the Regulation but to such suits for foreclosure as under the law then in force could be brought. 17 I.C. 467=10 A.L.J. 522. *See also* 1942 C. 153= 74 C.L.J. 61. English mortgage—Provision for payment by mortgagor of insurance charges and for changing date of payment in certain event—If alters nature of mortgage—Limitation for suit. *See* 55 L.W. 417 =I.L.R. 1942 M. 851=1942 M. 628=(1942) 2 M.L.J. 406. Under sec. 67 (*a*) of the Transfer of Property Act, as amended in 1929, the right of an English mortgagee to sue for foreclosure has been taken away and his suit on the mortgage cannot be regarded as a suit for foreclosure or sale within the meaning of Art. 147, Limitation Act. His suit would now fall under Art. 132. But a suit on an English mortgage executed prior to 1—4—1930, is outside the scope of the amendment by reason of the saving clause in sec. 63 of the Amending Act of 1929 and will therefore be governed by Art. 147. 48 Bom.L.R. 327=1946 Bom. 499.

ART. 148: SCOPE OF ARTICLE.—In the absence of a special provision entitling the mortgagor to redeem during the term for which the mortgage is created, the right of redemption can only arise on the expiration of the specified period. But the parties may agree that the mortgagor might discharge the debt within the period and take back the property, in which case the period of limitation for redemption commences as soon as the debt is discharged and not from the expiry of the terms provided for in the deed. 1914 P.C. 36=36 A. 195=41 I.A. 84 =26 M.L.J. 474 (P.C.). On appeal from 29 A. 471. *See also* 160 I.C. 1066=1936 P. 63. Art. 148 is applicable to redemption of usufructuary mortgage and recovery of possession despite part of the consideration having become void. 35 M. 114=21 M.L.J. 169 *See also* 1930 O. 270 (simple mortgage with a default cause as to delivery of possession).

APPLICABILITY OF ARTICLE.—*See* 1927 L. 828; 1936 Pat. 63; 1927 O. 457; 1926 O. 594 =1 Luck. 529; 1927 A. 311. In the case of a mortgage by conditional sale executed before 1882, *i.e.*, before the T. P. Act came into force the mortgagor has a statutory right

under the Bengal Regulations I of 1798 and XVII of 1806 to redeem within any stipulated period provided in the deed. Therefore even if there had been only a period of some years in the deed, the statutory right existed by which the mortgagors could have redeemed from the date of execution and a suit for redemption brought after more than 60 years would therefore be barred by the period of limitation under Art. 148. I.L.R. (1939) All. 990=1939 A.L.J. 1127=1940 All. 29. *See also* 1946 A.L.J. 175=1946 All. 400 (Suit to recover possession of mortgaged property by virtue of sec. 9, U. P. Debt Redemption Act —Mortgage more than 60 years old). When a mortgage deed provides that, if the mortgagor pays the mortgage-money in the month of any Jeth within ten years, the property would be redeemed, and that, if the property is not redeemed within ten years, the mortgagee would become its owner, the mortgagor's right to redeem arises on the first Jeth succeeding the date of the mortgage, and a suit for redemption instituted more than sixty years after the first Jeth would, therefore, be barred by time. 1936 A.L.J. 1358=1937 A. 32=1937 A.L.J. 5. *See also* 1940 Mad. 639. Where a plaintiff in a suit for redemption of a Malabar kanom (usufructuary mortgage) seeks to dispossess persons who have been in possession for about 72 years, he should be required to prove positively that there is a subsisting mortgage which he is entitled to redeem and there must be proof that the mortgage was executed within the period of limitation or a valid acknowledgment which would save limitation. It is enough for him to prove that the mortgage was executed in a month of which the last 28 days would be within limitation and the first two days outside. There is no legal presumption that an event took place on any particular day within the month in which it is known to have taken place. No such presumption, if one exists, can take the place of positive proof of the actual starting point when a suit is challenged as barred by limitation. 1940 M.W.N. 446= 1940 Mad. 639. Suit by puisne mortgagee for redemption of a prior mortgage is governed by Art. 148 and Art. 132. 14 L. 596=34 P.L.R. 502=1933 L. 503. *See also* I.L.R. 1937 N. 367=1937 Nag. 205; 33 C.W.N. 1067=1929 C. 609 (F.B.). A suit against a co-mortgagor who has redeemed a mortgage, and is therefore subrogated to the position of the mortgagee, brought by the other mortgagors for redemption is governed by Art. 148 and time begins to run against the plaintiffs from the due date of the mortgage and not from the date of redemption by the co-mortgagor. 45 Bom.L.R. 253=1943 Bom. 191. Mortgage—Redemption by purchaser of equity of redemption of part of the mortgaged property—Suit by owner to recover possession governed by Art. 144 and not Art. 148. 57 B. 134=35 Bom.L.R. 48= 1933 B. 114.

ILLUSTRATIVE CASES.—Where one of several mortgagors redeems a mortgage, the other co-mortgagors can bring a suit for redemption against the redeeming mortgagor. Art. 148 is applicable. 20 A.L.J. 611=1922 A. 410; 38 A. 540=36 I.C. 452; 1929 A. 100; 1930 N. 300=127 I.C. 889; 1933 A. 228=114 I.C. 152. But *see also* 41 M. 650=34 M.L.J. 528; 1923 L. 311; 8 O.W.N. 637; I.L.R. (1941) B. 178=43 Bom.L.R. 194=1941 Bom. 178. A co-owner redeeming the whole of the mortgage is not a mortgagee but a mere charge-holder and a suit by the other co-owners for possession on payment of a proportionate part of the mortgage-money is governed by Art. 144 and not by Art. 148. 41 M. 650= 34 M.L.J. 528; 46 C. 111=45 I.C. 783; 32 P. L.R. 622=1931 L. 744; 32 P.L.R. 649; 132 I.C. 261=8 O.W.N. 637; 1933 L. 91=34 P. L.R. 239; 160 I.C. 933=1936 P. 60. But *see* 1922 A. 410; 38 A. 540 *supra*. [Sec. 92 (newly added) of the T. P. Act gives the right of subrogation to a co-mortgagor who redeems the entire mortgage and it would seem that he is in the position of a mortgagee and not that of a mere charge-holder with the result that a suit for redemption against him would be governed by this article.] Time begins to run from the date of the redemption of the mortgage by the redeeming co mortgagor. 127 I.C. 889=1930 N. 300. *See also* 1938 Rang. 65. Purchaser of equity of redemption in part—Suit for redemption of another purchaser—Limitation. 40 A. 683= 47 I.C. 833. *See also* 18 A.L.J. 995=43 A. 164=1921 A. 389. A claim of a mortgagor for recovery of over-payment or the surplus profits received by the mortgagee is a relief included in a suit for redemption and is governed by Art. 148 26 C.W.N. 123=1922 C. 189. *See also* 103 I.C. 290=1927 N. 302. Art. 144 could not be invoked by the mortgagee if the mortgagor was not barred by Art. 148 from redeeming and recovering possession of the mortgaged property. 37 M. 423=23 M.L.J. 339. Where a mortgagee transfers the property as proprietor and subsequently gets possession of the property before the transferee acquired a title by 12 years' possession, the mortgage is subject to redemption within the period given by Art. 148. 52 I.C. 159. In the case of transfers by mortgagees, Art. 134 applies only where the transferee has acted in good faith. In other cases, the suit to redeem against him is governed by Art. 148. 132 I.C. 184=1931 L. 464. This article applies to suit by puisne mortgagee for redemption of prior mortgage. 1935 O. W.N. 40=10 Luck. 531=1935 O. 139. Where the puisne mortgagee has already obtained a decree for sale on his mortgage without making a prior mortgagee a party, he is entitled to redeem a prior mortgage in a subsequent suit and the subsequent suit is governed by Art. 148 and not by Art. 132. 33 C.W.N. 1067=1929 C. 609 (F.B.); I.L.R. (1937) N. 367=1937 Nag. 205. And so also a suit by a puisne mortgagee for redemption of a prior mortgage against the auction-purchaser in a suit on the prior mortgage to which the puisne mortgagee was not impleaded as a party. 1934 A. 946. A co-mortgagor who redeems a mortgage is subrogated to the position of the mortgagee, and a suit against him for redemption by the other mortgagor or

Description of suit.	Period of limitation	Time from which period begins to run
149. Any suit by or on behalf of the Secretary of State for India in Council, [1][the Secretary of State, the Crown Representative, the Central Government or any Provincial Government] [2][except a suit before a Federal Court in the exercise of its orginal jurisdiction.]	[3][Sixty years] ..	Provided that all claims to redeem arising under instrument of mortgage of immovable property situate in Lower Burma which had been executed before the first day of May, 1863, shall be governed by the rules of limitation in force in that province immediately before the same day. When the period of limitation would begin to run under this Act against a like suit by a private person.

LEG. REF.

1 Inserted by A. O., 1937.

2 Inserted by Act XIV of 1937, sec. 2.

3 The words "sixty years" was substituted by Act XI of 1923, sec. 2 and Sch. I, for "Ditto".

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mortgagors is governed by the rule of limitation prescribed by Art. 148. Time begins to run from the due date of the mortgage and not from the dae of redemption by the co-mortgagor. Merely because the co-mortgagor has redeemed the mortgage time does not cease to run against the other mortgagor or mortgagors. 19 Pat. 938=21 Pat.L.T. 702=1941 P. 147.

ART. 149: SCOPE AND APPLICATION OF ARTICLE.—Art. 149 of the Limitation Act applies only to suits brought by or on behalf of the Government and has no application to suits brought by assignees and other persons deriving or claiming through or under the Government. I.L.R. (1946) Nag. 246=1946 N.L.J. 223=1946 N. 228. Where land belonged to the Crown when it emerged out of the sea and plaintiff claims adverse possession against Government, he has to prove possession for the full period of 60 years. Proof of less period does not shift the onus on to the Government to show that pliantiff's possession began within 60 years. 39 M. 617=1916 P.C. 21=43 I.A. 192=31 M.L.J. 324 (P.C.). (On appeal from 33 M. 1=20 M.L.J. 66); 16 I.C. 626=12 M.L.T. 159 is not now good law. When adverse possession is asserted as against the Government, it is not necessary that the adverse character of the possession should be actually brought home to the knowledge of the Government. It is sufficient that the possession be overt and without any attempt at concealment, and if the rights of the Government have been openly usurped, it cannot be pleaded that the fact was not brought to its notice. Apart from the longer period of limitation allowed to the Government by Art. 149, there is no discrimination in the Act between the Government and the subject as regards the requisites of adverse possession. 61 I.A. 78=61 C. 262=1934 P.C. 23=66 M.L.J. 134 (P.C.). Fishery rights in navigable river—Adverse possession against the Government—Evidence of. 61 C. 262. All unoccupied sites are Government property unless an individual can establish in his own right a title to such unoccupied property either by proving that he got a title better than the title of the Government or that he has obtained a title by adverse possession, that is to say, by possession for 60 years. 45 B. 789=61 I.C. 440=1921 Bom. 177. Natham poramboke—Erection of a pucca thatched building and enclosing land by kalli fence—stray trees on the land—Effect. *See* 101 I.C. 96=25 L.W. 349=1927 M. 456=52 M.L.J. 309. Suit by Government against Municipal Councillors for embezzlements of Municipal money by Municipal servant is governed by Art. 149. 40 B, 166=33 I.C. 428. Benefit of adverse possession against Government whether accrues to the purchaser from Government. 28 C.W.N. 66=1924 C. 394. Where Crown land had been handed over to a Municipal Committee for management, a suit for possession by the Committee against the defendant who has interfered with their possession is governed by Art. 149. 36 P.L.R. 251=1934 L. 960. Railway Company in management of Government lands—Grant of licence in respect of such lands—Suit against licensee for mesne profits—Limitation. 17 Pat.L.T. 206=1936 P. 362. *See also* 18 Pat.L.T. 486=1937 P.W.N. 535=1937 Pat. 568 (Land acquired by Government for Railway under Land Acquisition Act).

SECOND DIVISION: APPEALS.

Description of Appeal.	Period of limitation	Time from which period begins to run.
150. Under the Code of Criminal Procedure, 1898, from a sentence of death passed by a Court of Session [2][or by a High Court in the exercise of its original jurisdiction] (added by Act XXVI of 1943).	Seven days ..	The date of the sentence.
[2][150-A. Under the Code of Criminal Procedure, 1898, from a finding rejecting a claim under section 443 of that Code.	Seven days ..	The date of the finding.]
151. From a decree or order of any of the High Courts of Judicature at Fort William [3][Madras, Bombay and Lahore in the exercise of its original jurisdiction.	Twenty days ..	The date of the decree or order.
152. Under the Code of Civil Procedure, 1908, to the Court of a District Judge.	Thirty days ..	The date of the decree or order appealed from.
153. Under the same Code to a High Court from an order of a Subordinate Court refusing leave to appeal to His Majesty in Council.	[4][Thirtydays] ..	The date of the order.
154. Under the Code of Criminal Procedure, 1898, to any Court other than a High Court.	[4][Thirty days] ..	The date of the sentence or order appealed from.

LEG. REF.

[1] Added by Act XXVI of 1943.

[2] Inserted by Act XII of 1923, sec. 42.

[3] The word "Madras, Bombay and Lahore and Rangoon" were substituted by Act VIII of 1930, sec. 2 and Sch. I, for "Madras and Bombay or the Chief Court of the Punjab or the Chief Court of Lower Burma," and the words "and Lahore" were substituted by A. O., for "Lahore and Rangoon".

[4] Substituted by Act XI of 1923, sec. 2 and Sch. I, for "Ditto".

ART. 151.—The expression "date of the decree" in the third column means the date the decree is directed to bear, *i.e.*, the date when the judgment is delivered and not when the decree is actually prepared or signed. 19 I.C. 410=17 C.W.N. 959. *Also* 25 I.C. 67 and 25 M.L.J. 560. "Decree or order—" Meaning of. *See* 4 R. 265=1927 R. 20.

ART. 152.—Art. 152 read with C. P. Code, O. 20, R. 7, is conclusive on the point that the "date of the decrees" for the purpose of calculating appeal time must be taken to be the date on which the judgments were pronounced. 25 I.C. 66=38 B. 653. A money decree against different defendants at different times is not consolidated decree against all for purposes of the Limitation Act, and limitation in respect of each decree runs from the date on which it was passed. 31 I.C. 917. Under Art. 152 there is no question of knowledge of the party regarding the date of the decree or judgment. 1936 L. 742. The "date of the decree" in Art. 152 is the date when the judgment is delivered in accordance with O. 20, R. 7, C. P. Code, and not the date when the decree is signed or prepared. In a case where the decree, or the judgment and the decree are amended on an application under sec. 152, C. P. Code, the judgment or decree is not superseded in the eye of law, such amendment does not give the appellant a fresh starting point of limitation for filing his appeal. The time for filing the appeal runs from the date when the original judgment was pronounced, and if it is filed beyond time, the time can only be extended on an application made under sec. 5 of the Limitation Act. 40 C.W.N. 83=165 I.C. 53.

ART. 154.—The 'order' contemplated by Art. 154 is the finding that is recorded under sec. 476, Cr. P. Code, and consequently time for appeal begins to run from the time when the finding is recorded or is supplemented by an actual complaint. The fact that an appellant may not know that a complaint has been filed till after 30 days prescribed by Art. 154, have expired is immaterial as the appellate Court can excuse the delay under sec. 5 of the Act. 52 B. 164=108 I.C. 26=1928 B. 64. Where a Court refuses to complain under sec. 476, Cr. P. Code, it amounts to an order to the effect that it will not complain and an appeal is governed by Art. 154. 1931 M.W.N. 1064. The decisions in 40 C. 239; 1 L. 602 and 39 M. 750=22 M.L.J. 419 holding that applications made to a higher Court in proceedings under sec. 195, Cr. P. Code, are not appeals to which the article is applicable, are not good law. The time for 'filing' an appeal under sec. 476-B, Cr. P. Code, has according to Art. 154 to be computed from the date of the complaint. But if the person against whom the complaint is

Description of Appeal.	Period of limitation.	Time from which period begins to run.
155. Under the same Code to a High Court, except in the cases provided for by article 150 and article 157,	Sixty days ..	The date of the sentence or order appealed from.
156. Under the Code of Civil procedure, 1908, to a High Court, except in the cases provided for by article 151 and artcle 153.	Ninety days ..	The date the decree or order appealed from.

filed is ignorant of the filing of such a complaint, and on coming to know of it files an appeal within 30 days of his knowledge in such a case time can be extended under sec. 5. 1938 N.L.J. 183. A complaint was sanctioned to be filed by the Sub-Divisional Magistrate. The Disrict Magistrate granted permission to withdraw the complaint of the Sub-Divisional Magistrate. On a revision to the High Cout, the District Magistrate's order was set aside and the Sub-Divisional Magistrate's complaint was restored. An appeal was filed to the Sessions Judge which was held by him as barred by limitation. *Held*, that there was an order in favour of the accused and hence he could not appeal against an order in his favour. Only when the complaint was restored by High Court did the right of appeal against the complaint again arise. Hence the period from the day complaint was ordered to be withdrawn to the day the High Court ordered it to be restored should be excluded. 44 Cr.L.J. 293=(1943) Sind 39 (F.B.). Application under sec. 520, Cr. P. Code, regarding disposal of property—If appeal from order under sec. 517. *See* 225 I.C. 525=I. L.R. (1946) Nag. 940.

ART. 155.—Application for leave to appeal under sec. 449, Cr. P. Code, is governed by the 60 days' period under this article. 54 C. 52=101 I.C. 657=1927 C. 307. *Also* appeal to High Court under sec. 476-B, Cr. P. Code. 104 I.C. 456=1927 C. 718. In cases coming under secs. 562 and 563, Cr. P. Code, the proceedings fall into two parts—the sentence does not immediately follow the conviction but that does not deprive the person convicted of the right given him by sec. 408 of appealing against either conviction only, or sentence only, or both. A person against whom a conviction is recorded under sec. 562 and who is subsequently sentenced more than 60 days after the recording of the conviction can appeal against the sentence if he does so within 60 days from the date of the sentence. 1940 Rang.L.R. 386=1940 Rang. 257. *See also* I. L.R. (1943) Kar. 122=1943 S. 157.

ART. 156.—Art. 156, lays down that the *terminus a quo* for an appeal is the date of the decree, and O. 20, R. 7, C. P. Code, provides that the decree shall be on the date on which the judgment is pronounced. Taking both these provisions together, the time for appeal starts from the date of the judgment. 47 P.L.R. 193=A.I.R. 1945 Lah. 233. Where judgment is pronounced on one day and the decree is to be passed on a later date on plaintiff's complying with a certain condition, time begins to run for purposes of appeal from the date of the decree. 34 I.C. 867= 9 S.L.R. 193. The expression "date of the decree" can only mean the date when the decree became appealable to the party concerned. Where a decree grants all the reliefs claimed by the plaintiff, he has no occasion to prefer an appeal, even though there is an adverse finding on one of the issues, as no appeal can be preferred against a mere adverse finding to which no reference is made in the decree. Where such a decree is subsequently amended on an application for scaling down under sec. 19 of Madras Act, IV of 1938, and the amendment brings about a vital alteration by substantially reducing the relief originally granted to the plaintiff, based upon the adverse finding which previously was not prejudicial to the plaintiff, "the date of the decree" for purposes of appeal is the date of the amended decree and not the decree originally passed. (1944) M.W.N. 702 (2)=(1944) 2 M.L.J. 384=I.L. R. (1945) Mad. 378=1945 Mad. 62. Appeal to High Court—Starting point of limitation —Date of judgment. 28 Punj.L.R. 132=100 I.C. 909=1927 L. 839. *See* 135 I.C. 858= 1932 R. 54. *See also* 1941 Pesh. 74. Although rules of the Lahore High Court require that an order of appointment of a guardian of property of minor should be conditional on furnishing a bond, still, where the order appointing a guardian is not in these terms, it becomes final on the date on which it is passed and not on the date on which the security furnished is accepted and the period of limitation begins to run from the date of the order. 41 P.L.R. 592=1939 Lah. 170. Where an *ex parte* decree was set aside by the Court which passed it within the appealable period and therefore no appeal was thereafter competent to the defendant but the High Court in revision restored the *ex parte* decree, limitation runs only from the date of the High Court reviving the *ex parte* order and not from the date of the *ex parte* order itself. The language interpreted as to carry out the intention of the legislature, that is to say, by dating the cause of action from a date from which the remedy is available to the party. 54 M. 455=1931 M. 149=60 M.L.J. 239. A subsequent amendment of decree relating to a

Description of Appeal.	Period of limitation	Time from which period begins to run.
157. Under the Code of Criminal Procedure, 1898, from an order of acquittal.	Six months ..	The date of the order appealed from.
THIRD DIVISION; APPLICATIONS		
[1][158 Under the Arbitration Act 1940 to set aside an award or to get an award remitted for reconsideration	Thirty days ..	The date of service of the notice of filing of the award.]

LEG. REF.

1 Substituted by Act X of 1940.

clerical error as regards interest does not extend limitation for filing the second appeal where the question of interest was not attacked in the second appeal. L.R. 3 A. 27. Art. 156 applies to appeals to the High Court under sec. 54 of the Land Acquisition Act. The expression "an appeal under C. P. Code" in the first column is not restricted to appeals the right to prefer which is conferred by the C. P. Code, but covers appeals, the procedure with respect to which is governed by the C. P. Code. 43 M. 51=37 M. L.J. 110. *Per* Suhrawardy, J.—If a decree is amended either by way of review or under sec. 152 of the C. P. Code, the decree to be appealed from is the amended decree and no appeal should therefore lie from the original decree. The time for appeal should be reckoned from the date of the amended decree. 1931 C. 578. Where a decree is amended, and the amendment is in regard to a pure arithmetical error if the amendment is not the reason for the grievance of the appellant there is clearly no reason for allowing the appellant to calculate the period of limitation from the date of the amendment rather than from the date of the original decree. If, however, the appellant is aggrieved not by the original decree but by the decree as amended, logically and equitably, time for that appeal should run from the date of the decree as amended. I.L.R. (1946) M. 854=1946 M. 291=(1946) 1 M.L. J. 198. Time for appeal from preliminary decree runs from the date of that decree and not from the date of final decree. 37 C.W.N. 179=146 I.C. 359 (1)=1933 C. 796. Where on an application for review of a dismissal of an appeal, the application is admitted, the appeal re-heard and a fresh decree dismissing the appeal is passed on different grounds, a fresh period of limitation for the appeal begins to run from the date of the new decree. 27 I.C. 732. For purposes of appeal, the time taken in review proceedings ought to be deducted. The fact that the review application is unsuccessful does not affect this rule. 11 Lah. L.T. 37. Memo. without copy of judgment would not save time. 1 P. 670=1922 P. 580. Where the power-of-attorney authorising the counsel to appear in the case contained some formal defects, which were rectified after the period for filing appeal expired, *held*, that the appeal should be deemed to have been filed on its first presentation. 134 I.C. 114 (L.)=1932 L. 134. The period during which the Court is closed should be excluded under sec. 4. 130 I.C. 265 (1)=1931 P. 60. From the next day after delivery of judgment the Court was closed for annual vacation. After the reopening, excluding the time taken up for application for copy of the judgment the appeal was presented on the ninetieth day. *Held*, that the appellant was entitled to exclude the period of the vacation and that the appeal was in time. (20 C.W.N. 1303 and 1929 P. 615, Foll.) 146 I.C. 931=1934 P. 4. Where an appeal directed against an appellate decree is presented with the certified copy of the judgment and decree appealed against within the time allowed by Art. 156, no question of limitation arises if the certified copies of the first Court's judgment and decree are not filed within the period of limitation. The defect would be a defect in form. 1947 C. 67=50 C.W. N. 213 (1).

ART. 157.—Though the period of limitation for appeals against acquittals is six months, such appeals should be filed as early as possible. 10 R. 312=1932 R. 146. Appeal against order of acquittal in case tried by jury—Effect and scope of sec. 449, Cr. P. Code—Limitation governed by this article. 61 C. 991=151 I.C. 662=38 C.W. N. 854=1934 C. 610.

ART. 158.—Limitation under Art. 158 for objections to an award begins from the date of notice of filng of the award and not from the date of filing of the award. 63 I.C. 399 =19 A.L.J. 404=1921 A. 63. But *see* 27 I.C. 371=8 S.L.R. 190, *contra* and 13 I.C. 234=5 S.L.R. 125; 29 C. 167=29 I.A. 51= 12 M.L.J. 77 (P.C.). An application to set aside an award must be made within 10 days of the filing of the award and notice of such filing given to the parties. 1924 Rang. 153. Under Art. 158, three things are necessary for fixing the starting point of limitation (1) the award must have been filed; (2) in Court, and (3) notice of the filing has been given to the parties. Where the arbitrator handed over the award to the Reader during the absence of the Judge on leave, and the Judge resumed his duties on a later date and in the presence of the parties passed an order directing them to

Description of Application.	Period of limitation.	Time from which period begins to run.
159. For leave to app ar and defend a suit under summary procedure referred to in section 128 (2) (*f*) [2][or under Order XXXVII] of the [Code of Civil Procedure, 1908.]	[1][Ten days] ..	When the summons is served.
160. For an order under the same Code, to restore to the file an application for review rejected in consequence of the failure of the applicant to appear when the application was called on for hearing	Fifteen days ..	When the application for review is rejected.
161. For a review of judgment by a Provincial Court of Small Causes or by a court invested with the jurisdiction of a Provincial Court of Small Causes when exercising that jurisdiction.	[3][Fifteen days] .	The date of the decree or order.
162. For a review of judgment by any of of [4][the following Courts, the High Courts of Judicature at Fort William, Madras [Bombay, Lahore [5](**) and the Chief Court of Sind] in the exercise of its orginal jurisdiction.	Twenty days ..	The date of the decree or order.
163. By a plaintiff, for an order to set aside a dismissal for default of	Thirty days ..	The date of the dismissal.

LEG. REF.

1 The words "or under O. XXXVII" were inserted by Act XXX of 1925, sec. 3, and the words "Ten days" in the second column were substituted by Act XI of 1923, Sch. I.

2 Substituted by Act X of 1940.

3 The words "Fifteen days" were substituted by Act XI of 1923, Sch. I.

4 The words in brackets were respectively inserted and substituted by Act X of 1927. *See also* Act XXXIV of 1926, sec. 3 as to Sind. [*See also* notes under Art. 164.]

5 Words "and Rangoon" omitted by Government of India (Adaptation of Indian Laws) Order, 1937.

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file objections within the time prescribed by law. *Held*, that the period prescribed under Art. 158 ran from the later date. 44 P.L. R. 249=201 I.C. 462=1942 Lah. 190. (*See* now Act X of 1940). The word "Court" in Art. 158 means Court and not the chief ministerial officer, *e.g.*, the Registrar in the case of a High Court. 46 C. 721=53 I.C. 46=23 C.W.N. 280. The period of 10 days is to be computed from the day on which the parties receive notice of the submission of the award and not from the day on which it is actually received. 42 I.C. 266. A Court has no jurisdiction to pass a decree in terms of the award within 10 days allowed by Art. 158 for filng objections to the award. 45 M. 466=1922 M. 79 (2)=42 M.L.J. 303; 40 L.W. 364=1934 M. 619=67 M.L.J. 377. "Parties" in Art. 158 cannot be confined to parties personally but includes pleaders and other persons specially authorised by the parties to take notice. 1930 A.L.J. 995= 1930 A. 711. Period requisite for obtaining copy of an award should be allowed while computing period for filing objections to the award. 142 I.C. 835=1933 R. 38. The mere fact that the parties agree to be bound by the award and not to object thereto does not prevent them from impeaching award on the ground of collusion. 1922 M. 179; 45 M. 466=42 M.L.J. 403=1922 M. 79 (2). There is no limitation for making an application to remit an award for reconsideration of the arbitrators owing to an illegality apparent on the face of it. 47 I. C. 597=8 L.W. 171. Art. 158 does not apply to the case of an application under para. 20, Sch. II, C. P. Code. The application contemplated by Art. 158 is the application which is mentioned in para. 16, Sch. II. 1936 Pesh. 135. Art. 158 applies only to objections under para. 15 of the C. P. Code, Sch. II, *i.e.*, where the application is to set aside the award completely. Where the application, on the other hand, is only for the modification or remission of the award, it comes within para. 12 or para. 14 of the second schedule of the C. P. Code, and Art. 158 is not applicable thereto. 1933 A.L.J. 519=1933 A. 648. Art. 158 cannot possibly apply to a written statement by the defendant in an application to have an award made a rule of Court. 13 I.C. 520=14 O.C. 308.

ART. 159.—Scope—Conflict with rr. 100 and 101, Rangoon Small Cause Court Rules. *See* 14 Rang. 728=1936 R. 501.

ART. 161.—*See* 24 C.W.N. 380=56 I.C. 551.

ART. 163.—SCOPE AND APPLICATION OF ARTICLE.—Art. 163 applies to an application to set aside an order dismissing a suit for

Description of Application.	Period of limitation	Time from which period begins to run.
appearance or for failure to pay costs of service of process or to furnish security for costs.		
164. By a defendant, for an order to set aside a decree passed *ex parte*.	[1][Thirty days] ..	The date of the decree or where the summons was not duly served, when the applicant has knowledge of the decree.

LEG. REF.

[1] The words "Thirty days" were substituted by Act XI of 1923, Sch. I, for "Ditto".

default passed by a Judge sitting on the Original Side of the High Court, whether such application is made under O. 9, r. 9, C. P. Code, or under some other power. 47 C. W.N. 667. An application by the plaintiff to have the decree of the original side dismissing his suit for default set aside is governed by Art. 163. 47 C.W.N. 450=A.I.R. 1943 Cal. 257=I.L.R. (1942) Cal. 227. If a *plaintiff* or appellant seeks to set aside an *ex parte* order, limitation runs only from date of the order, but if a *defendant or respondent* seeks such relief, he can in cases where he has not had due notice, count limitation from the date of his knowledge of the order. 1 L. 363=58 I.C. 789; 1933 P. 557. *See also* 163 I.C. 274=38 P.L.R. 697 =1936 L. 495. The benefit which the law allows only to a defendant or respondent cannot be allowed to an appellant. (*Ibid.*) Art. 163 is intended to be strictly followed and the Court has no discretion to enlarge the period of 30 days therein prescribed. 53 I. C. 55. *See also* 107 I.C. 193=23 N.L.R. 183 =1928 N. 91. Where, in an application under O. 9, r. 9, the Court granted an extension of time not known to law, *held*, that the order was illegal and must be set aside in revision. 52 C.L.J. 23=1931 C. 319. An application for restoration of a suit dismissed for default, by the representative of the deceased plaintiff more than 30 days after the dismissal is time-barred. 14 I.C. 221. An application to set aside the dismissal for default of a previous application for restoration under O. 9, r. 9, C. P. Code, made the very next day after such dismissal is clearly within time even though made more than thirty days after the dismissal of the suit for default. 13 Luck. 246=1937 O.W.N. 372=1937 Oudh 344.

ART. 164: OLD AND NEW ACT—APPLICABILITY.—Limitation to be applied is that under the law existing at the time when the application was made. 37 A. 597=30 I.C. 573. If the right of defendant to make an application was lost under Art. 164 of Act of 1877 the provisions of Art. 164 of the new Act of 1908 cannot revive the right having regard to sec. 6 of the General Clauses Act, 1897. 15 I.C. 551=39 C. 506.

SCOPE OF ARTICLE.—It is only when summons is not duly served that ignorance of decree saves limitation. 108 I.C. 753 (M.). Art. 164 governs an application to set aside an *ex parte* decree passed on the Original Side of the High Court. Such an application should therefore, be made not later than thirty days from the date of the decree or the date of the applicant's knowledge of the decree. 46 C.W.N. 280. Where a suit was adjourned at the instance of defendant's cousel, but the defendant or his counsel did not appear on the adjourned date, and the suit was decreed *ex parte*, *held*, that the case was not one where the summons was not duly served. 1931 L. 268. Knowledge of the suit on a particular date is wholly immaterial; knowledge of the decree within 30 days is material for computing time. 1930 L. 397. *See also* 1931 L. 268.

CONSTRUCTION—NATURE OF KNOWLEDGE OF DECREE.—The knowledge of the decree mentioned in Art. 164 is knowledge of the particular decree and not a knowledge of a decree. A vague information about there being a decree is not sufficient for limitation to run against the applicant. The question whether the knowledge which an applicant had on a particular date can be said to be a knowledge of the decree, is a question of fact, and in a case where applicant filed an application for time in the execution proceedings, from the fact that he knew that a decree was under execution, it cannot be inferred that he had complete information about the decree. 18 Pat.L.T. 72=1937 P. 17. *See also* 1923 B. 193=47 B. 485; 27 N.L.R. 53=134 I.C. 279=1931 N. 119. 'Knowledge' in Art. 164 means certain and clear conception of a fact, *i.e.*, of the decree in the particular case and not of a decree. 38 C. 394=15 C.W.N. 399. *See also* 99 I.C. 621=1927 M. 381; 46 I.C. 777. The time is 30 days from the date of the applicant's knowledge of the decree and not 30 days of the knowledge of the suit. 1933 P. 279=12 P. 745=14 Pat.L.T. 326.

BURDEN OF PROOF.—Where application to set aside *ex parte* decree is made more than 30 days after date of decree, the onus is on defendant to show that he presented the same within 30 days of his having knowledge of decree. 109 I.C. 82; 1930 L. 191; 1929 L. 235; 107 I.C. 284; 139 I.C. 131 (L.). *See also* 164 I.C. 286=1936 R. 305; 7 L. 161=1926 L. 379; 1938 Cal. 535.

SCOPE AND APPLICATION.—The limitation

Description of Application.	Period of limitation.	Time from which period begins to run
165. Under the Code of Civil Procedure, 1908, by a person dispossessed of immovable property and disputing the right of the decree-holder or purchaser at a sale in execution of a decree to be put into possession.	[1][Thirty days] ..	The date of the dispossession.

LEG. REF.

[1] Substituted by Act XI of 1923 for "Ditto."

laid down in Art. 164 applies to the case of a defendant only. 24 I.C. 27=41 C. 819. *See also* 38 M. 442=21 I.C. 568; 25 A.L. J. 1032=50 All. 254=1928 A. 111 (Deposit under sec. 17, Provincial Small Cause Courts Act). Art. 164 applies not only to decrees but to orders in executions which are decrees in Civil Procedure Code. 37 M. 462 =26 M.L.J. 189. An order under O. 21, r. 50. sub-cls. (2) and (3) granting leave to execute the decree against a partner is not a decree and consequently Art. 164 can have no application. 31 Bom.L.R. 995=53 B. 836=1929 B. 386. A decision given under sec. 152, C. P. Code, granting an application for amendment of a decree is an order and not a decree. Hence an application to set aside such an order is governed by Art. 181 and not by Art. 164. 145 I.C. 823= 1933 R. 264. Time cannot be extended under sec. 151, C. P. Code, or Limitation Act, sec. 5. 1922 L. 266; 144 I.C. 394= 1934 N. 43. The mere fact that the original application to set aside an *ex parte* decree which was made in time was consigned to the record room would not in any way necessitate a fresh application. 55 I.C. 824. A subsequent application must be considered as merely one in continuance of the suspended original application. Consequently no question of limitation arises in such a case. 55 I.C. 824. An application to set aside an order of adjudication of an insolvent passed *ex parte* has to be made under O. 9, r. 13, C. P. Code, and is governed by Art. 164. 138 I.C. 377=1932 L. 522. The limitation applicable for setting aside an *ex parte* decree under sec. 150 of the Companies Act of 1882 is that provided by Art. 164. 1 L. 187=55 I.C. 820. Act not applicable to proceedings on the Original Side of High Court. 32 C.W.N. 411=1928 C. 864. Application to set aside *ex parte* decree—Security bond filed with application, but not verified—Verification after limitation period. *Held*, that the bond, though not verified in the first instance, was perfectly good and effective and that the application was within time. (29 A.L.J. 1049, Ref.) 1933 A.L.J. 992=1933 A. 933. *See also* 11 O.W.N. 639=1935 O. 35.

MEANING OF WORDS—"DEFENDANT".—The word "defendant" is wide enough to include the executor of the original defendant (since deceased) though not on record. 38 M. 442.

"SUMMONS."—The summons referred to in Art. 164 is the summons for the first hearing of the case, and there is no essential difference between the case where a suit is adjourned owing to the absence of the presiding officer or some other cause and a case in which a suit is remanded for retrial by the appellate Court. The underlying principle in such cases is that where the existence of the suit has been brought to the notice of the defendants by due service of a summons on them, it is their duty thereafter to inform themselves of what is being done in the case. 154 I.C. 429=1935 Pesh. 7.

"DULY SERVED".—The words "duly served" in Art. 164 are used in the same sense as in O. 5, R. 19 of the Code, and means "served" in such a manner as to give the defendant information of the proceedings taken against him. 42 I.C. 611=11 S.L.R. 71. *See also* 1928 M. 655=54 M.L.J. 448; 1928 M.W.N. 49=1928 M. 815=51 M. 860=55 M.L.J. 565; 1927 M. 507=52 M.L.J. 477; 1927 M. 487=52 M.L.J. 512; 38 C.W.N. 1066=1934 C. 745; 1939 Rang. 436. A defendant, who has been duly served cannot get an *ex parte* decree set aside, unless he can show that he was prevented unavoidably from appearing at the hearing and Art. 164 is a bar if he does not seek to set it aside within 30 days after the decree. 27 I.C. 351=8 S.L.R. 153. Duly 'served' in Art. 164 cannot be construed to exclude a case where a summons was not served in sufficient time. 27 I.C. 351. In the case of substituted service a summons is duly served for the purpose of Art. 164. even though it does not in fact come to the defendant's knowledge and as time runs from the date of the decree in such cases, an application for setting aside an *ex parte* decree made after the expiry of 30 days from the date of the decree is clearly barred by limitation. 131 I.C. 344=1931 L. 118. In the case of substituted service, the article lays down that when the order is rightly made and the service directed by the order is properly effected, knowledge of the defendant is immaterial and time runs from the date of the decree. 122 I.C. 35=1930 M. 222; 1931 O. 369=32 I.C. 778. Where, however, an order for substituted service is improperly obtained, as being made on insufficient material contained in an application supported by affidavit, the summons cannot be said to have been duly served within

Description of Application.	Period of limitation.	Time from which period begins to run.
166. Under the same Code to set aside a sale in execution of a decree, [1][including any such applicatton by a judgment-debtor.]	[2][Thirty days] .	The date of the sale.

LEG. REF.

[1] Added by Act I of 1927.

[2] Substituted by Act XI of 1923 for "Ditto".

the meaning of Art. 164, and the time accordingly runs not from the date of the decree but from the date when it first came to the knowledge of the defendant. 122 I. C. 35=1930 M. 222; 1924 L. 191. Substituted service cannot always be deemed to be due service within the meaning of Arts. 164 and 169. Due service is one which has achieved the object of service by bringing the claim against him to the knowledge of the defendant or respondent. 55 M. 223=134 I.C. 1202=1931 M. 813=61 M.L.J. 920. *See also* 55 M. 240=1931 M. 812=61 M.L.J. 931; 54 A. 154; 1931 A.L.J. 1049 =1931 A. 727 (F.B.); 1939 Rang. 436=1939 Rang.L.R. 606.

NOTICE.—Where summons is once served, absence of notice of adjourned hearing will not attract the application of Art. 164. 57 I.C. 15; 139 I.C. 354=1932 L. 539. Article does not apply to a case where the defendant alleges service of summons but that he had no knowledge of any of the proceedings. 13 I.C. 642=1912 M.W.N. 361. The notice of the application for final decree being as effectual as if it had been served on him personally, the limitation for his application to set aside the *ex parte* decree runs from the date of the decree. 1923 N. 13. Where the summons is served on a defendant too late to afford him sufficient opportunity of appearing at the hearing of the suit, it is not a case of a summons 'duly served' within the meaning of O. 9, R. 13, C. P. Code. In such cases the Court ought to issue fresh summons. An omission on the part of such a defendant to prosecute inquiry which might have led to a knowledge of the date of hearing cannot be regarded as culpable or wilful so as to carry wth it the consequence of 'knowledge'. Such a defendant will be within time if he applies for setting aside the *ex parte* decree within 30 days of actual knowledge of the decree. 53 L.W. 246= 1941 Mad. 435=(1941) 1 M.L.J. 319.

APPEAL.—No appeal lies against refusal of an application to set aside an *ex parte* decree. There is no inherent power to extend time prescribed by Art. 164. 1 P. 277=1922 P. 479.

REVISION.—The lower Court acting on certain decisions then in vogue held substituted service was due service. Subsequently a slightly modified view was taken in other cases. *Held*, it was not a case for interference in revision. 138 I.C. 146=1932 M. 472.

ART. 165: SCOPE AND APPLICABILITY.—Where the judgment-creditor fails to apply for removal of an obstruction under O. 21, r. 97, within 30 days, he is not debarred from making an application under O. 21, R. 35, to obtain a fresh warrant for possession. He need not file a suit for that purpose. Art. 165 has nothing to do with such an application for warrant for possession. 146 I.C. 11 =35 Bom.L.R. 1033=1933 B. 457 (F.B.). But it will be applicable notwithstanding the fresh order for possession to a subsequent application in respect of the same obstruction, and if the obstruction is by the same person and in the same character, the mere fact that the decree-holder is applying under a fresh warrant for possession would not make the obstruction a fresh obstruction. 1933 B. 457 (F.B.) An application by judgment-debtor for re-delivery of property not covered by decree alleged to have been delivered is governed by Art. 181 and not Art. 165. 23 Pat. 145=1944 Pat. 254; 46 B. 1031=1922 B. 271. *See also* 38 A. 339=34 I.C. 231=14 A.L.J. 401; 1 Lah.L.J. 230. Art. 165 applies to proceedings under O. 21, R. 100, C. P. Code. 1923 C. 287; 58 C. 55 =132 I.C. 631=1931 C. 385. Where the claimant preferred his petition under O. 21, R. 100. Within 30 days of his dispossession bringing the judgment-creditor and the auction-purchaser on record but failed to bring the sub-purchaser on record till he had notice of the sub-purchase and after 30 days: *Held*, that the petition was not barred by limitation, sec. 22 not applying to applications, 58 C. 55=1931 C. 385. Art. 165 was not intended to apply to an application by judgment-debtor. Art. 181 applies to an application for restoration of possession. 1 Lah.L.J. 230. *See also* 46 B. 1031; 34 I.C. 231 *supra*. Application to set aside sale of plots not specified in the mortgage-deed and the decree for sale, and for recovery of possession comes under Art. 165 and not under Art. 166. 24 I.C. 137=17 O.C. 94.

ART. 166: SCOPE AND APPLICATION.—Art. 166, applies even though the ground urged for setting aside the sale raises a question under sec. 47, C. P. Code. An application to set aside a sale on the ground that part of the property sold was a house which was not liable to be sold by reason of sec. 60 (1) (c), C. P. Code, is governed by Art. 166 and must be made within thirty days though the question as to the saleability of the property may fall under sec. 47, C. P. Code. 21 Pat.

774=1943 P.W.N. 75=24 Pat.L.T. 97=1943 Pat. 75. Purchase by a decree-holder without obtaining leave to bid is irregular and not void and an application to set it aside is governed by Art. 166. 41 B. 357=39 I.C. 3. Under O. 21, R. 89, read with R. 92 (3), C. P. Code, and Art. 166 of the Limitation Act, it is necessary that not only the application but also the deposit must be made within thirty days of the date of the sale, and this period cannot be extended by the Courts, sec. 148, C. P. Code, being inapplicable. 36 P.L.R. 101=1934 L. 875. But where the deposit by the judgment-debtor was not made in time, by delay on the part of the Court in issuing the chalan, there is no reason why he should suffer in consequence. Art. 166 is not limited to applications under O. 21, Rr. 89 to 91 of the C. P. Code. It is perfectly general and refers to an application under the Code to set aside a sale in execution of a decree. 54 I.C. 431=46 C. 975. *See also* 45 L.W. 486 =1937 M. 560=(1937) 1 M.L.J. 569; I.L.R. (1941) Nag. 381=1938 N. 558. An application to set aside a sale in execution of a decree passed against the father, on the ground that the property sold belongs to the applicant and not to his father, is governed by Art. 166. 1938 N.L.J. 389= 1938 Nag. 558; 1937 Mad. 560=(1937) 1 M.L.J. 569. Art. 166 cannot override the special provision in O. 34, R. 5, C. P. Code. (1937) 1 M.L.J. 569. An application to set aside an execution sale on the ground that the sale was bad and a nullity as it was held without the valuation as required by sec. 13 of the Bihar Money-Lenders Act falls under O. 21, R. 90, C. P. Code, and is governed by Art. 166 and is barred if preferred beyond 30 days of the sale. The mere fact that the application is labelled as being under secs. 47 and 151, C. P. Code, will not take it out of O. 21, R. 90, C. P. Code, so as to make it maintainable though preferred beyond 30 days. 23 Pat.L.T. 139 =1942 Pat. 238=21 Pat. 281. *See also* 47 M. 525=1924 M. 137=45 M.L.J. 829. The period of limitation being fixed by statute and not by the Court, it cannot be extended under sec. 148, C. P. Code, or under sec. 5, Limitation Act. 148 I.C. 1082=1934 Pesh. 25; 57 I.C. 224. An application to set aside an execution on the ground of fraud must be made within the time prescribed by Art. 166. 51 I.C. 447. An application to set aside an execution sale on the ground of illegality though falling under sec. 47 of the Code of Civil Procedure and not under O. 21, R. 90, is governed by Art. 166. 18 L.W. 780=45 M.L.J. 829. *See also* I. L.R. (1942) Lah. 559=44 P.L.R. 302=1942 Lah. 153 (F.B.); (1945) 1 M.L.J. 267= 1945 M. 499; 130 I.C. 708=1931 A.L.J. 119=1931 A. 145; 1941 Pat. 566. An application after 30 days to set aside an execution sale on the ground that the proclamation of sale was not made in the village where the property was situate, is barred. 19 L.W. 780=45 M.L.J. 829. An application to set aside an execution sale on the ground that there was no attachment prior to the sale or that there had been a defective attachment falls within Art. 166. 1 R. 533=1924 R. 124. An application to set aside an execution sale whatever its nature and whether falling under sec. 47, C. P. Code, or O. 21, R. 90, C. P. Code, is governed by Art. 166 and not by Art. 181. 43 M.L.J. 184=1922 M. 417. *See also* 16 L.W. 934=1922 M. 95; I.L.R. (1938) 1 Cal. 280=42 C.W.N. 87=1938 Cal. 113; I.L.R. (1939) Lah. 103=41 P.L.R. 436=1939 Lah. 113; 1941 M. 276 =(1940) 2 M.L.J. 503; 1941 Pat. 566; 61 I.C. 823=1921 P. 145. But *see also* 43 M. 313. *See contra* 145 I.C. 113=1933 L. 570. Art. 166 governs an application to set aside a sale under O. 21, r. 90 of the C. P. Code. 57 I.C. 404; 8 O.W.N. 633=1931 O. 291. An application by a defendant who is exempted by the decree from liability to set aside a sale of his property in execution by the plaintiff, is governed by Art. 181 and not by Art. 166. 43 M. 313=38 M.L.J. 62. If an execution sale is a nullity, *i.e.*, made without jurisdiction, or is void *ab initio*, Art. 181 governs an application to set it aside and not Art. 166. 43 Mad. 313; 1931 L. 586 (2)=132 I.C. 493. *See also* 1941 Pat. 566; 1936 P. 496; 19 Pat. 393 =21 Pat.L.T. 223=1940 Pat. 303; 1937 R. 126 (Property sold in excess of the property mortgaged). Where a sale in execution of a decree is a nullity, Art. 166 does not apply. 23 I.C. 251=26 M.L.J. 267. *See also* 1930 L. 17; 1934 A.L.J. 859=1934 A. 314; 1936 Pat. 496; 1937 Rang. 126; 5 C.L.T. 22; 19 P. 393; 1940 Pat. 303. A sale held without notice of sale proclamation to judgment-debtor is not a nullity and an application to set it aside is governed by Art. 166. 53 I.C. 809=11 L.W. 59. An objection or application by a judgment-debtor after the sale that his property is not liable to attachment and sale under sec. 60 is an objection under sec. 47 and is governed by Art. 166. 30 N.L.R. 135=148 I.C. 200= 1934 N. 82. Where certain property is sold in execution of a decree which is executable only against the assets of the deceased judgment-debtor in the hands of his son, an application to set aside the sale by the son on the ground that part of the property sold was his personal property falls under Art. 166 and not under Art. 181. 189 I.C. 256=1940 Pat. 192. Where there is an execution sale of an insolvent's property after his adjudication and in ignorance of it, and the Official Receiver applies to have it declared void, Art. 181 is applicable. 1940 N.L.J. 505= 1940 Nag. 414. Though an application by a judgment-debtor for setting aside sale (on the ground that he was not notified either under O. 21, r. 22 of the application for execution under O. 21, r. 66 of the date of the preparation of the sale proclamation) falls under sec. 47, it is governed

Description of application.	Period of limitation.	Time from which period begins to run.
167. Complaining of resistance or obstruction to delivery of possession of immovable property decreed or sold in execution of a decree.	[1][Thirty days] ..	The date of the resistance or obstrution.
168 For the re-admission of an appeal dismissed for want of prosecution.	[1][Thirty days] ..	The date of the dismissal.

LEG. REF.

[1] Substituted by Act XI of 1923 for "Ditto".

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by Art. 166. 130 I.C. 708=1931 A. 145. On this article, *see also* 54 C. 493=1927 C. 818=47 C.L.J. 75; 1927 M.W.N. 224; 55 C. 96=1928 C. 60; 1928 M. 140; 102 I.C. 543=1927 N. 262 (Setting aside sale in insolvency). 54 C. 493 (Court sale by Registrar, Calcutta High Court, original side—Objection on the ground of wrong identification of property); 8 P.L.T. 186 =1927 P. 177 (Setting aside rent sale); 50 M. 639=1927 M. 394=52 M.L.J. 149; 55 C. 96=1928 C. 60; 46 C.L.J. 579; 6 R. 490. Application under O. 21, r. 89, C. P. Code, to set aside sale—Court ordering petition to be dismissed as withdrawn—Sale upheld in appeal— Fresh application to set aside sale—Continuance of earlier petition—Extension of time—C. P. Code, O. 21, rr. 89 and 90. 40 L.W. 266=1934 M. 593=67 M.L.J. 189. *See also* 42 C. W.N. 478=1938 C. 352.

STARTING POINT.—Limitation runs from the date of the sale and not the date of confirmation or date of deposit of 25 per cent. 17 I.C. 884. *See also* 1936 P. 558; 1940 O.W.N. 381=1940 Oudh 261. But *see* 8 O.W.N. 633=132 I.C. 263=1931 O. 291 (Sale complete only when a declaration about a person being the purchaser is made and a deposit of ¼ of the purchase money is made and not where the bid is made). Where property to be sold in execution of a decree is self-acquired revenue paying land belonging to the judgment-debtor and the papers are sent to the Collector for sale under the Oudh Civil Rules, the Collector is acting merely as a sale officer under the directions of the executing Court and the Court remains seized with the execution and the sale is not completed until the Court formally accepts the bid and declares the purchaser under O. 21, r. 84, C. P. Code. The starting period of limitation under Art. 166 is the date on which the Court approves of the sale and declares the purchaser. 10 Luck. 557=153 I.C. 719=1935 O. 131. *See also* 1938 N.L.J. 10. Where no fraud is made out, the question of the date of knowledge of the judgment-debtor is irrelevant. 140 I.C. 732=36 C.W.N. 242=1932 C. 627. *See also* 1936 P. 558. Where an execution sale is alleged to be fraudulent and collusive, the period of taking proceedings to set aside the sale, in the case of fraud, would be three years from the time when the sale took place or when the plaintiff knew of the fraud. 74 I.C. 202. Sale when complete. 106 I.C. 333=1928 N. 111; 8 O.W.N. 633=1931 O. 291. An application to set aside a sale is made in time if service of the notice of motion is made within time. The fact that it comes on for disposal after the time prescribed does not matter. 60 C. 1106=1933 C. 886. Where a purchaser has actual notice of the application to set aside a sale, the absence of formal notice is not a bar to the maintainability of the application. 60 C. 1106=1933 C. 886. Application filed beyond 30 days of sale but within 30 days of alleged date of knowledge of sale—Maintainability. 9 Cut.L.T. 84.

ARTS. 166 AND 181.—Official Receiver's application to declare execution sale void—Limitation. I.L.R. 1942 N. 377=1940 N. 414.

ART. 167.—Acquiescence in the obstruction to previous attempt to obtain delivery of possession is no bar to a second application for removal of obstruction, though made more than 30 days after the acquiescence in the earlier obstruction. 66 I.C. 722=1921 M.W.N. 698=1921 M. 559. The failure of the decree-holder to complain of obstruction under O. 21, r. 97, C. P. Code, within 30 days prescribed by Art. 167 is no bar to a fresh application for delivery of possession under O. 21, r. 95. 24 I.C. 512. *See also* 1933 N. 369; 161 I.C. 524=1936 S. 11=30 S.L.R. 290.

ART. 168.—Where no date is fixed for the hearing of an appeal and no notice is given to the parties of any date for which the hearing has been fixed, an order dismissing the appeal for default is without jurisdiction. 1924 L. 279. The limitation allowed to a party seeking to set aside an *ex parte* order dismissing his appeal in default, runs from the date of the order and not from the date of the knowledge. The inherent power of the Court to break through the provisions of sec. 3 of Limitation Act cannot be invoked to enable it. 1 L. 363=58 I.C. 789. Assuming that an application under sec. 151, C. P. Code, lies

Description of application.	Period of limitation.	Time from which period begins to run.
169. For the re-hearing of an appeal heard *ex parte*.	[1][Thirty days] ..	The date of the decree in appeal or, where notice of the appeal was not duly served, when the applicant has knowledge of the decree.
170. For leave to appeal as a pauper.	[1][Thirty days] ..	The date of the decree appealed from.
171. Under the Code of Civil Procedure, 1908, f r an order to set aside an abatement.	[Sixty days] ..	The date of the abatement.
172. Under the same Code by the assignee or the receiver of an insolvent plaintiff or appellant for an order to set aside the dismissal of a suit or an appeal.	[1][Sixty days] ..	The date of the order of dismissal.
173. For a review of judgment except in the cases provided for by Art. 161 and Art. 162	Ninety days ..	The date of the decree or order.

LEG. REF.

[1] Substituted by Act XI of 1923 for "Ditto".

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for the re-admission of an appeal dismissed for want of prosecution, there is nothing in the terms of Art. 168 to exclude such an application from the operation of the article. 13 Luck. 425=1937 O.W.N. 743=1937 Oudh. 426. An application for restoration of an appeal which has been dismissed for default of prosecution is governed by Art. 168 and sec. 5 has no application to such a case . 142 I.C. 185 =1933 R. 96. Where an appeal is dismissed for non-appearance of the appellant under O. 41, r. 17, C. P. Code, the only course open to the appellant is to have it restored under O. 41, r. 19, within the period of 30 days prescribed by Art. 168 and Court cannot exercise its inherent powers. 47 M. 171=45 M.L.J. 813=1924 M. 114. There is no distinction in principle or substance between an appeal dismissed on the day fixed for the hearing for default in payment of process-fee under O. 41, r. 18, and an appeal dismissed before the hearing for default in payment of process-fee or of the costs of preparing the paper book. They stand upon the same footing and an application to restore an appeal in the one case is *ejusdem generis* with similar applications in the other cases. In each instance the appeal is dismissed for want of prosecution, and Art. 168 applies. 8 R. 380=127 I.C. 161=1930 R. 228 (F.B.). An application for the restoration of an appeal dismissed for failure to furnish security for costs is governed by Art. 168. 1931 M. 813=61 M.L.J. 618. Even if Art. 168 does not apply, such an application ought to be made within a reasonable time, and by analogy should be made within 30 days. 40 I.C. 234=28 C. L.J. 163.

ART. 169.—*See* 61 M.L.J. 920=134 I.C. 1202=1931 M. 813 cited under Art. 164 as to substituted service being due service. The expression "notice of appeal" in Art. 169 should be taken to mean notice (actual or constructive) of the date on which the appeal is disposed of and not the filing of the appeal. 42 P.L.R. 38= 1940 Lah. 49.

Quaere.—Whether the expression "notice of appeal" in Art. 169, refers to first notice as regards the appeal having been filed or to the subsequent notice as to the dates fixed for hearing, *see* 1933 L. 882 =35 P.L.R. 1946.

ART. 170.—A memorandum of appeal unstamped and presented along with a pauper petition cannot, if it is stamped subsequently after the period of limitation, and after the pauper petition is dismissed, be treated, as an appeal filed on the day on which the memorandum was filed and is therefore barred. 22 I.C. 884. *See* 7 P. 827=1929 P. 31, for memo. of cross-objections *in forma pauperis* in appeal.

ART. 171.—Where one legal representative of a deceased party is brought on record in time, there is no bar by time if others are brought in subsequently. 13 I.C. 313=22 M.L.J. 169 (3 A. 517; 12 B. 48, Foll.).

ART. 173.—An application for a review of a decree of the High Court must be presented within 90 days of the decree and every day's delay over that period must be duly accounted for. 32 I.C. 100=3 L.W. 244. *See also* 1928 B. 308=52 B. 434=30 Bom.L.R. 668 (Subsequent regulation not a ground for review). 1929 A. 485=121 I.C. 552. The fact that the judgment-debtor had no knowledge of the order makes no difference. It is open to the judgment-debtor in such a case to apply under sec. 5 for an extension of the period of limitation, if in fact he could

Description of application.	Period of limitation.	Time from which period begins to run
174 For the issue of a notice under the same Code, to show cause why any payment made out of Court of any money payable under a decree or any adjustment of the decree should not be recorded as certified	[1][Ninety days] ..	When the payment or adjustment is made.
175. For payment of the amount of a decree by instalments.	Six months ..	The date of the decree
176 Under the same Code to have the legal representative of a deceased plaintiff or of a deceased appellant made a party.	[2][Ninety days] ..	The date of the death of the deceased plaintiff or appellant.

LEG. REF.

[1] Substituted by Act XI of 1923, sec. 2 and Sch. I, for "Ditto".

[2] Substituted by Act XXVI of 1920, sec. 2, for "Ditto".

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prove that he had no knowledge. 1929 A. 485. Under Art. 173, 90 days' time is allowed to the petitioners for review from the date of their knowledge, but the contention that, where the knowledge is after that period, there is no period prescribed by the Limitation Act and Art. 181, at most applies is wrong. 119 I.C. 99=1929 A. 545. Art. 173 is not attracted to an application for review of the order of an appellate officer exercising his functions under the provisions of the Bengal Agricultural Debtors Act. In such cases it is left to the discretion of the appellate officer himself to entertain the application for review at the time when it is presented to him. 48 C.W.N. 492.

ART. 174.—Art. 174 is applicable only to a case where the judgment-debtor seeks to inform the Court of a payment alleged to have been made by him out of Court to the decree-holder. Article does not apply to an application by the decree-holder himself. 1922 C. 30=26 C.W.N. 529=35 C.L.J. 71; 15 L. 910=1935 L. 194 (2). *See also* 1939 All. 581; 1936 P. 270=15 P. 422=17 Pat.L.T. 195. This rule would apply whether the payment pleaded is sought to be proved against the decree-holder or his assignee. 56 A. 694=1934 A.L.J. 198=1934 A. 209. In cases where fraud is alleged, the judgment-debtor must so inform the Court and protect himself, but he cannot be allowed to evade the provisions of Art. 174 and obtain a decision not properly coming under sec. 47. 13 I.C. 424=16 C.W.N. 396. The judgment-debtor has his remedy by a suit properly framed. 16 C.W.N. 396. Agreement not to sell property in execution of sale—Sale in contravention of—Application to set aside on the ground of "fraud"—Limitation. 152 I.C. 763=40 L.W. 622=1935 M. 257 (1). A mortgagor can claim an account of receipts and disbursements of income of the mortgaged property during the time the mortgagee was in possession under the decree. 38 I.C. 675=39 M. 1026. An application by a judgment-debtor to record satisfaction of decree made by him more than three years from the date of the revised decree against him is barred, even though it may be within three months from the date of the revised decree as against other defendants. 31 I.C. 917. *See also* 1929 A. 674=115 I.C. 139; 1935 M. 581=69 M.L.J. 77. Where under the terms of an agreement for an adjustment there would be no adjustment until and unless the judgment-debtor is ready to pay the whole of the agreed sum in one payment, and the judgment-debtor would not be entitled to apply for the adjustment to be certified until the amount is tendered, the agreement does not become an adjustment until tender is made, and limitation for an application to record adjustment therefore commences only from the date of tender and not from the date of agreement. I.L.R. (1943) 1 Cal. 195=1943 Cal. 634.

ART. 175.—The date of the decree is not a *terminus a quo* of an execution application if there is an agreement between the parties altering the date. 1923 L. 381. On this article, *see also* 58 I.C. 393=1921 P. 340. Where an appeal is preferred, the date of the appellate decree is the starting point, even though the appeal is dismissed. 135 I.C. 858=1932 R. 54.

ART. 176.—Neither Art. 176 nor Art. 177 applies to a case where the deceased is neither plaintiff nor an appellant nor a defendant nor a respondent, but is merely an applicant or opponent, in a proceeding which is instituted as a preliminary step to the filing of a suit or of an appeal. 28 S.L.R. 150=148 I.C. 819=1934 S. 36. Where on the death of a sole plaintiff before trial, the Court dismisses the suit for default of appearance, the order is unsustainable, and it is open to the legal representative of the deceased plaintiff to apply within the time prescribed by Art. 176, to be made a party. 40 I.A. 151=35 A. 331 =25 M.L.J. 148 (P.C.). Amending Act (XXVI of 1920) is not retrospective. 36

Description of application.	Period of limitation.	Time from which period begins to run.
177. Under the same Code to have the legal representative of a deceased defendant or of a deceased respondent made a party.	[1][Ninety days] ..	The date of the death of the deceased defendant or respondent.
178. Under the same Code for the filing in Court of an award in a suit made in any matter referred to,	[2][Six months] .	The date of the award.

LEG. REF.

1 Substituted by Act XI of 1923, sec. 2 and Sch. I, for 'Ditto'.

2 Substituted by Act XXVI of 1920, for "Ditto".

C.L.J. 263=1922 C. 491. An application under O. 22, R. 3 to bring on record the legal representative of a deceased appelland is governed by Art. 176 and sec. 6 does not apply to such an application. 35 I.C. 438. Two rival claimants—Application of one in time—Other's application barred. The latter cannot continue suit revived by the former. 104 I.C. 398=1927 N. 343. Death of plaintiff—Legal representative living in different province presenting application to be made party on knowing of death—Ordinary period of limitation can be extended. 1929 L. 634 =119 I.C. 759. *See also* 1940 O.A. 518.

ART. 177.—*See* 28 S.L.R. 150 noted under Art. 176. The period of limitation was originally six months under the article. Act XXVI of 1920 sought to reduce the period to 90 days in the case of both Arts. 176 and 177 but amended only Art. 176 and left the words "ditto" in Art. 177 alone to denote the altered period of limitation under Art. 176 above. This led to some conflict of decisions as to which, *see* 1923 B. 294; 1924 C. 74=50 C. 549; 1922 L. 211; 62 I.C. 52. The Amending Act XI of 1923 made the position clear by substituting "Ninety days" for the "ditto". *See* 4 L. 367 =1924 L. 65. Art. 177 has no application to execution proceedings. 10 I.C. 405 (2); 11 P. 546=1932 P. 222; nor to *forma pauperis* enquiry. 116 I.C. 111 (2)=1929 S. 136; but applies to an appeal against an order in execution proceedings; if in such an appeal a respondent dies and his legal representative is not brought on record within the time limited, it would abate. 151 I.C. 777 (1)=40 L.W. 623= 1934 M. 664 (1). Applications to bring on record the legal representatives of a deceased person are governed by Art. 177 and not Art. 181: 55 M. 1006=1932 M. 574 =63 M.L.J. 827. Where a suit was dismissed for default but the order of dismissal was subsequently set aside, and, during the interval, some of the defendants died, an application for impleading their heirs, after three months of the deaths of the defendants but within three months of the date of the restoration order could be entertained. 15 R.D. 476=12 L.R. 237 (Rev.). The limitation Act does not apply to proceedings under the Companies Act; when a member against whom an application is made for an order for the balance of contributions due from him dies pending the application, it is not necessary that his heirs should be substituted within 90 days as prescribed by the Limitation Act. The matter of the liability of the legal representatives is governed by sec. 160 of the Companies Act and on the death of the member the liability automatically falls upon the representatives. 19 Pat.L.T. 214=1938 Pat. 287.

ART. 178: (AS AMENDED BY ARBITRATION ACT X OF 1940)—APPLICABILITY.—Art. 178 as amended by the Arbitration Act X of 1940, is clearly intended to apply to those cases where a party to the arbitration proceedings applies for the filing of the award in Court. It is not intended to apply to an arbitrator filing an award in Court. An arbitrator who applies for filing an award in Court seeks no relief from the Court for himself or against anybody. The arbitrator in applying for the filing of an award in Court is performing a mere ministerial act at the request of a party to the arbitration or by the order of the Court. He has no interest in the award apart from his fees and charges. The legislature never intended that Art. 178 should apply to an application for the filing of an award in Court by an arbitrator. I.L.R. (1942) Kar. 466=1943 Sind 33. *See also* 1945 Bom. 417. The period of limitation provided by Art. 178 refers to an application made to the Court under the Arbitration Act by a party to an award to obtain an order directing the arbitrator to file the award. It does not apply to an award which had already been filed in Court, although it was in fact filed more than ninety days after notice of it had been served. I.L.R. (1942) 2 Cal. 69=1942 Cal. 542. The time for an application to file the award begins on the date the award is delivered to the parties and not the date of signatures by the arbitrators. 48 I.C. 711. An application to file an award beyond 6 months after date of its being given, is barred under Art. 178. Secs. 5 and 12 do not save limitation. 38 A. 85 =31 I.C. 899. An arbitrator's award does not become invalid merely because it has not been made rule of the Court within the prescribed period of limitation. 1930

Description of application.	Period of limitation.	Time from which period begins to run.
179 By a person desiring to appeal under the [1][Code of Civil Procedure 1908] to His Majesty in Council for leave to appeal.	[1][Ninety days] ..	The date of the decree appealed from.
180. By a purchaser of immovable property at a sale in execution of a decree for delivery of possession.	Three years ..	When the sale becomes absolute.

LEG. REF.

[3] Substituted by Act X of 1940.

O. 51 (1). An application under para. 20 of Sch II, C. P. Code, is not the only remedy open to a person in whose favour the award is made. He can file a regular suit in which case Art. 178, does not apply. 1935 L. 134. Art. 178, does not apply to the filing of the award by the arbitrator. The arbitrator does not make an application to the Court when he files his award and intimates to the Court by his letter that he has made the award and that award should be taken on file. It is only when such an application is made by a party to the reference that the application of Art. 178 is attracted. 47 Bom.L.R. 317=1945 Bom. 417. An application filed along with an award for making it a rule of the Court is not governed by Art. 178. 46 P.L.R. 232 =1944 Lah. 398.

ART. 179.—In cases of application for leave to appeal to His Majesty in Council, the time for obtaining copies can be deducted for purposes of limitation. 1 P. 429= 3 P.L.T. 289=1922 P. 255. *See also* 105 I. C. 852=1928 N. 63. Application for leave to appeal in a case under the Income-tax Act is also within the article. 59 C. 251= 36 C.W.N. 127=1932 C. 587. Where there are two cases, two applications must be filed. Where only one is filed in time, the party cannot file another out of time. 140 I.C. 70=1932 L. 441. Application for leave to appeal against an order calling for finding can be made within 20 days from the final decree in the case. 35 Bom.L.R. 415=1933 B. 251=145 I.C. 258. *See also* 1941 Pesh. 3 (application to file award under Arbitration Act, Art. 181 and not Art. 178 applies). According to the wording of Art. 179, the time should count from the date of the decree appealed from. Though a review application may be regarded as continuing the proceedings in view of sec. 14, Limitation Act and that limitation should begin when it is dismissed; it cannot be said that the tme must be computed from the date of the receipt of the information of the dismissal of the review application. 1945 A.W.R. (Rev.) 203 (2)= 1945 R.D. 405. In a case where an application for the review of a judgment sought to be appealed against is summarily rejected, obviously because the grounds did not come in any way within the grounds prescribed by law to justify a review, the time so taken, cannot be excluded in computing the period of limitation for an application for leave to appeal to Privy Council against the said judgment. 1941 A.W.R. (Rev.) 1090=1941 O.A. (Supp.) 880.

ART. 180.—Where an auction-sale was confirmed before the Limitation Act of 1908, but the application for possession was made after the coming into force of the Act, the application is governed by Art. 180 and is barred, if not made within three years from the date when the sale became absolute. 27 I.C. 420. An application for delivery of property sold in Court-auction should be made within 3 years from the date when the sale becomes absolute. In construing the meaning of words "when the sale becomes absolute" in Art. 180, regard must be had not only to the provisions of O. 21, R. 92 (1) but also to the other material sections and orders of the Code including those which relate to appeals from orders made under O. 21, R. 92 (1). Where, therefore, there is an appeal from an order of the Judge disallowing the application to set aside the sale, the sale will not become absolute within the meaning of Art. 180, until the disposal of the appeal, even though the Judge may have confirmed the sale, as he was bound to do when he decided to disallow the above-mentioned application. (1932 C. 75 Rev.; 56 C. 608, Overr.) 61 I. A. 248=61 C. 945=1934 P.C. 134=67 M. L.J. 79 (P.C.); 62 C. 66=1935 C. 333. An application by a decree-holder purchaser for delivery of possession of the properties purchased by him in Court-auction is not an application to execute the decree and is governed by Art. 180. 32 I.C. 993 (1)=3 L.W. 191; 103 I.C. 335=1927 N. 294. *See also* 7 L.W. 16=43 I.C. 155. Application under O. 21, Rr. 90 and 92—After statutory period—Sale partially set aside—Application by purchaser for possession—Limitation—Suspension of. *See* 43 M. 185=54 I.C. 66=38 M.L.J. 1 (F.B.). *See also* 1941 Pesh. 10. Revival of prior proceedings. *See* 25 L.W. 108=1927 M. 391. *See also* 65 M.L.J. 305=1933 M. 745 following 50 M. L.J. 215.

An application for possession made by the decree-holder purchaser in a collector sale nearly ten years after the confirmation of the sale, is barred by limitation, whether Art. 180 or 182, applies to such a case. 1945 N.L.J. 167.

Description of application.	Period of limitation.	Time from which period begins to run.
181. Applications for which no period of limitation is provided elsewhere in this schedule or by section 48 of the Code of Civil Procedure 1908.	[1][Three years] ..	When the right to apply accrues.

LEG. REF.

[1] Substituted by Act XI of 1923, sec. 2 and Sch. I, for "Ditto".

ART. 181: CONSTRUCTION OF ARTICLE.— The expression "right to apply" in Art. 181 should not be rigidly construed. 18 N.L.R. 58=1922 N. 217. Art. 181 does not apply to an application under sec. 16 of the Telegraph Act, such an application being in the nature of a plaint. I.L.R. 1943 Lah. 677 =44 P.L.R. 275=1942 Lah. 186. The expression "when the right to apply accrues" in Art. 181, means "when the right to apply *first* accrues." Hence where in a case there is no option contained in a decree, the limitation under Art. 181, for an application for preparation of a final decree under R. 5 of O. 34, C. P. Code, runs from the date when the plaintiff or applicant become first entitled to make the application. I.L.R. (1946) A. 570=1946 A. 360.

APPLICABILITY OF ARTICLE— GENERAL.— Art. 181 is a residuary article adapted to many different classes of applications. The words in the third column are only the expression of a broad common law principal. They have to be interpreted and applied according to the substance of each case. 60 C. 19=1933 C. 251. As to the scope of the article, *see* 8 Pat.L.T. 28=1926 P. 397. Art. 181 applies to all applications for making of which the C. P. Code gives authority and to no others. 1 L. 187=55 I.C. 820; 102 I.C. 543=1927 N. 262; 39 I.C. 653 (P.); 55 A. 912=145 I.C. 893= 1933 A.L.J. 1203=1933 A. 789 (F.B.). The preparation of a decree-sheet in a partition suit is merely a ministerial act to which the provisions of Art. 181 do not apply. 188 I.C. 577=42 P.L.R. 148=1940 Lah. 202. Order for final decree for partition—Application offering to file stamp paper to have final decree engrossed on it is not subject to limitation. 13 Luck. 135=1937 Oudh 409. *See also* 60 I.C. 123=12 L.W. 535. (Act applies only to applications under C. P. Code). But *see* 54 A. 1067= 60 I.A. 13=64 M.L.J. 403=1933 P.C. 63 (P.C.) in which the question as to the applicability of the article to applications by the Liquidator under Art. 186, Companies Act, was doubted. Art. 181 applies to all applications to Civil Court, unless they are governed by some other article or provision. 1928 N. 194. In determining whether the article applies, the substance of the application and not its mere form is to be looked to. 49 A. 276=25 A.L.J. 201=1927 A. 16 (F.B.). *See also* 19 N.L.J. 101 (application under sec. 62 C. P. Tenancy Act). Where a sale is void *ab initio* for want of jurisdiction, it is not necessary for an applicant to ask the Court to order the purchaser to deliver back to him the property on the ground that he had obtained no title to it. Where the applicant makes such an application, it is governed by Art. 181 and not by Art. 166, and the mere fact that he has also asked for setting aside the sale will not affect the nature of the application. 1937 R. 126. *See* 19 P. 393=1940 Pat. 303; 1936 Pat. 496; I.L.R. (1938) 1 Cal. 280= 1938 C. 113=42 C.W.N. 87; 1940 Pat. 192. A decision given under sec. 152, C. P. Code, granting an application for amendment of a decree is an order and not a decree. Hence, an application to set aside such an order is governed by Art. 181 and not by Art. 164. 145 I.C. 823=1933 R. 264. The Limitation Act provides periods with reference to suits, appeals and applications, the last being matters arising out of suit. It has no application to proceedings in insolvency. 29 I.C. 168=17 M.L.T. 347. *See also* 60 I.C. 123=12 L.W. 535; 52 I.C. 188; 1924 L. 331. Art. 181 governs application for an order absolute under sec. 89, T. P. Act, and limitation commences on the date of the appellate decree. L.R. 3 P.C. 174 (P.C.). An application for making conditional decree passed by consent absolute would be governed by Art. 181. 1923 A. 20. An application under sec. 26-J of the B. T. Act governed by Art. 181. 38 C.W.N. 50= 1934 C. 396. *See also* 1937 R.D. 509 (Agra Tenancy Act). Whether article applies for leave to appeal to His Majesty in Council from a criminal appeal decided by High Court. 38 C.L.J. 406=1924 C. 338. An application for leave to appeal to Privy Council in a case under the Income-tax Act is governed by Art. 179 rather than Art. 181. 59 C. 251=139 I.C. 236=1932 C. 587. Application for recording part-payment and for execution as regards balance. 26 C.W. N. 529=35 C.L.J. 71=1922 C. 30. A certification by the judgment-debtor under O. 21, R. 2, C. P. Code, is an application under Art. 181, whereas one by the decree-holders cannot be held to be such. For the latter, there is no period of limitation. 15 Pat. L.T. 457=1934 P. 380. *See also* 1936 Nag. 281. The law does not require any application being made to bring on the record the legal representatives of a judgment-debtor and an execution application against them is not barred, merely because no application to substitute the legal representatives is made within three years of the death of the judgment-debtor. 1934 L. 55.

Whether Art. 181 applies to an application to enforce an injunction under O. 21, R. 32, C. P. Code, or whether there is no limitation for it. 46 C. 103=45 I.C. 864. *See also* 162 I.C. 303=1936 L. 334. Application for substitution by assignee of preliminary decree. 20 I.C. 685=18 C.W.N. 450. Application to bring on record the legal representatives of a deceased person is governed by Art. 177 and not Art. 181. 55 M. 1006=1932 M. 574=63 M.L.J. 827. Where a person is not a party to a suit or appeal, but on his death his legal representative is sought to be impleaded, Art. 181 applies and not Art. 177. 1924 L. 316. Where properties are sold in execution of an *ex parte* decree, and the *ex parte* decree is subsequently set aside, an application to set aside the execution sale is governed by Art. 181, and limitation starts from the date when the *ex parte* decree was set aside. 43 B. 235=48 I.C. 130. Art. 181 and not Art. 165 applies in case of an application by a judgment-debtor for restoration of immovable property delivered in execution proceedings in excess of what has been decreed by the Court. 42 M. 753=37 M.L. J. 340 (F.B.). Also to objection to execution proceedings (wrongful delivery). 4 Luck. 209=1929 O. 76. An application to set aside an attachment and sale in execution, by the Judgment-debtor who continued in possession is governed by Art. 181. The right to apply accrued, not from the date of sale, but from when the notice of attachment served on him was returned. 133 I.C. 858=33 Bom.L.R. 781=1931 B. 446. Where there is an obstacle to the execution proceedings, for instance, possession of the property by a third party, as soon as that obstacle is swept away by a Court of competent jurisdiction declaring the title of the judgment-debtor to the property as against that party, the duty again arises upon the decree-holder to take execution proceedings within three years notwithstanding the fact that that party has filed an appeal. 40 P.L. R. 481=1938 Lah. 695. *See also* 1936 Sind 11. An application by the Official Receiver for having a transfer made by the insolvent avoided is not governed by Art. 181. The article applies only to applications made under C. P. Code. 60 I.C. 123=12 L.W. 535: 55 I.C. 820=1 L. 187; 1927 N. 262. 1940 N.L.J. 505. But *see* 1924 L. 331. Art. 181 will apply only when there are definite circumstances excluding Art. 182. An oral agreement by the decree-holder to give time to the judgment-debtor made out of Court, which is not proved, does not make Art. 181 applicable and does not give a fresh starting point for limitation. 114 I. C. 894=1929 A. 606. The mere certification by the decree-holder of a payment made to him out of Court by the judgment-debtor under O. 21, R. 2 (1) is not an application under Art. 181, even though such certification is termed an application and is in the form of a petition. 56 I.A. 30=3 Luck. 684=114 I.C. 581=1929 P.C. 19=56 M.L.J. 233 (P.C.). A petition for review of an order confirming an execution sale is governed by Art. 181; 116 I.C. 65=1929 N. 305. Where a preliminary decree for partition has been obtained, the right to get it made absolute accrues on the date when such decree is obtained and the limitation is 3 years from such date. 112 I.C. 205=1929 O. 117. In a partition suit, after the preliminary decree, the Court is bound to proceed further and to appoint a Commssioner to actually partition the property, and on the report of the Commissioner, if accepted, to pass a final decree. So, an application in a parition suit after the preliminary decree was passed for the appointment of a Commissioner is not subject to Art. 181 or any rule of limitation. (22 C. 425 and 53 M. 378, Rel. on.) 146 I.C. 201 =1933 Pesh. 101 (2). For purposes of limitation under Art. 182 the date of the decree in a partition suit must be taken to be the date on which the order for drawing up the final decree was passed and not the date on which the necessary stamped paper for drawing up the decree was supplied by the decree-holder. 1940 Lah. 337. Where in a partition suit an order for drawing up final decree is passed and the judgment-debtor has disputed the adequacy of the stamped paper supplied by the decree-holder, the period which is taken up in getting final decision on the point by the High Court, should in any case be deducted as the decree-holder could not get a decree drawn up owing to the dispute raised by the judgment-debtor and his cause of action for execution should therefore be taken as suspended. 1940 Lah. 337. *See also* 41 Bom. L.R. 921=1939 B. 454. Art. 181 applies only to applications to Court for exercise of acts and powers which the Court is not bound to perform *suo motu*. An application for the exercise of purely ministerial functions which the Court has no discretion to refuse is not within the article. 1933 Pesh. 101 (2); 1940 Lah. 202; 1937 O.W.N. 124 =1937 Oudh 409=13 Luck. 135. "Decree to be drawn up on production of succession certificates"—Judgment specifying no date within which to produce the certificate—Right to produce succession certificates, and apply for drawing of decree not barred by Art. 181. 33 Bom.L.R. 618=134 I.C. 694= 1931 B. 407. An application by transferee of Court auction-purchaser to recover possession falls under this article. 51 C.L.J. 560 =1930 C. 586. Art. 181 has no application to an application made to the High Court in revision of an order of a Criminal Court of inferior jurisdiction nor to civil revision petitions. 1930 O. 401. An application in a pending case is not governed by Art. 181 and is in fact not subject to any rule of limitation. 53 M. 378=59 M.L.J. 102. Where the original decree was capable of execution but the decree-holder sought to take advantage of a slight error in orthography and applied to execute the decree after an application for amendment

had been granted *ex parte, held,* that the first decree was capable of execution and that the decree-holder could not claim an enlarged period of limitation because of the application for amendment. 27 A.L.J. 427 =115 I.C. 118 (2)=1929 A. 253. An application under O. 21, R. 50 (2), C. P. Code, is not an application for execution of the decree within the meaning of Art. 182 and, consequently, is governed by Art. 181 and the commencement of the period of limitation is the date of the decree. 122 I.C. 392 =1930 S. 180. Where an execution sale was impeached on the ground that it was a nullity, *held,* that the application was governed by Art. 181, not Art. 166. 11 Lah. L.J. 457=1930 L. 17; 132 I.C. 493=1931 L. 586; 151 I.C. 244=1934 A.L.J. 859= 1934 A. 314. On this point, *see* under Art. 166. *See also* 1940 M. 566=(1940) 1 M.L. J. 537 (application under C. P. Code, O. 21, Rr. 86 and 87); 46 L.W. 280=1937 Mad. 779 (application under C. P. Code, O. 21, R. 93). Where, in case of an instalment decree, an application has been made after some instalments have fallen due, the appropriate article is Art. 182 (7). Art. 181 has no application to such a case. But so far as default clause is concerned, Art. 181 would apply and the remedy for the enforcement of the default clause in the instalment decree is time barred, after the expiry of three years from the default in payment of instalments making whole amount due. The decree-holder cannot in such a case claim the recovery of future instalments, merely because in some future years there has been a default in the payment of the agreed successive instalments. His remedy to recover the instalments as and when they fall due is however not barred by the default clause. 56 A. 921=149 I.C. 598=1934 A.L.J. 772=1934 A. 534. Preliminary mortgage decree—Provision for instalments—Default clause giving decree-holder right to apply for sale for all instalments remaining due—No payment made—Application for final decree five years after preliminary decree is not barred—Every default gives rise to a fresh cause of action. I.L.R. (1942) M. 770=1942 M. 581=55 L. W. 276=(1942) 1 M.L.J. 532. Award under the Co-operative Societies Act (II of 1912) —Enforcement— Sale and confirmation — Application for delivery of possession after three years from the date of confirmation— Barred by limitation. 57 L.W. 399=1944 M.W.N. 526=1944 Mad. 434=(1944) 1 M. L.J. 492.

SPECIAL CASES — MORTGAGE DECREE.— Where a preliminary mortgage decree for sale was taken up in appeal to the High Court, the period of limitation for an application for final decree runs from the date of the High Court decree. 21 A.L.J. 526=1924 A. 99; 25 A.L.J. 78=54 I.A. 52 =8 L. 253=1927 P.C. 25=52 M.L.J. 366 (P.C.). *See also* 20 A.L.J. 580=1922 A. 446; 20 A.L.J. 640=1923 A. 22 (1); 1930 M. 356 (2); 1930 M. 353=58 M.L.J. 207; I.L.R. (1937) A. 481=1937 A. 285. Where the appeal was dismissed for want of prosecution, time would run from the date fixed for payment in the preliminary decree. But where the appeal is formally brought before Court and is withdrawn and dismissed, the order dismissing the appeal amounts to a decree and time would run only from the date of the appellate order. 64 M.L.J. 695=1933 M. 442=143 I.C. 412. *See also* 1934 M. 65=38 L.W. 946=66 M.L.J. 24. Art. 181 applies to an application under O. 34, R. 5 of the C. P. Code, for a final decree in which preliminary decree was passed after passing of the present Code. 45 I.C. 76=7 L.W. 438. *See also* 6 P. 24 (P.C.); 50 B. 730=1927 B. 32; 1927 A. 305; 30 Bom.L.R. 724=1928 B. 323; 1938 O.W.N. 360=1938 Oudh 112; (1942) 1 M.L.J. 532. (Compromise decree); 48 I.C. 185=35 M.L. J. 507; 48 I.C. 732=35 M.L.J. 194; 56 I. C. 563. Applications for final decree are applications in the suit itself and not execution applications and Art. 181 applies to them. 1922 M. 65=42 M.L.J. 51. *See also* 42 B. 309=46 I.C. 107; 19 C.W.N. 473; 42 C. 294; 1929 A. 677; 16 I.C. 799=14 M.L.T. 194; 15 I.C. 732; 18 A.L.R. 58=1922 N. 217; 54 I.C. 323; 47 I.C. 206=21 O.C. 176. Application for final decree in mortgage suit—Delay in making—Court's discretion to excuse under sec. 5. *See* sec. 5 *supra.* 68 M.L.J. 665 (P.C.). *See also* 166 I.C. 828 (application for personal decree in mortgage suit). Where the next friend of the minor plaintiff died after the passing of a preliminary decree in his favour, and the plaintiff applied for a final decree within 3 years of his attaining majority, *held,* that sec. 6 of the Act had no application, that the suit was kept in abeyance and that the application for final decree was maintainable and was within time. 37 C.W.N. 184= 144 I.C. 768=1933 C. 508=53 I.A. 197= 1926 P.C. 93=51 M.L.J. 781. Appeal against preliminary mortgage decree filed without stamp and subsequently withdrawn—Application for final decree—Starting point of limitation. 25 P. 432=225 I.C. 256. Where an application for a final decree was adjourned *sine die* on the defendant's attorney stating that the defendant had become insane and the defendant subsequently died, an application made for a final decree afterwards, serving notice of it on the heir of the deceased defendant could be treated as a continuation of the earlier one for purposes of limitation. 37 C.W.N. 583=1933 C. 816. Preliminary mortgage decree in terms of compromise—Provision for instalment payment— Default— Application for decree under O. 34, R. 5—Time runs from the date of default in payment of an instalment. The fact that three years have elapsed from the date of the preliminary decree is immaterial. 130 I.C. 487=1931 A. 340. Usufructuary mortgage—Redemption — Preliminary decree — Mortgagor's right to deposit amount and ask for delivery of possession—Limit of time for exer-

cise of. *See* (1945) 2 M.L.J. 239. Mortgage—*Ex parte* preliminary decree—Application for setting aside of decree—Conditional order not complied with—Dismissal of application—Appeal against allowed and application to set aside remanded to first Court for hearing—Again default and dismissal—Application for final decree —Bar of limitation. *See* (1943) 2 M.L.J. 678=I.L.R. (1944) M. 791=1944 M. 209. An application to deposit money due under O. 34, R. 5 is governed by Art. 181. 9 O. L.J. 14=1922 O. 33. Order for final decree for partition—Application offering to file stamp paper to have final decree engrossed on it—Not subject to limitation. 166 I.C. 718=1937 O.W.N. 124=1937 O. 409. *See also* 192 I.C. 93=1940 Lah. 337. An application to execute a decree for redemption beyond time is to be regarded as an application for extension of time and is governed by the provisions of Art. 181, and the period of limitation begins to run at the latest on the last date fixed in the original decree for payment. 1929 R. 304. An application for a money decree under O. 34, R. 6 of C. P. Code is governed by Art. 181, and time begins to run when the right to apply accrues. 14 I.C. 591=9 A.L.J. 569. *See also* I.L.R. (1937) A. 481=1937 A.W.R. 103=1937 A. 285; 166 I.C. 828. But *see* 1931 C. 166=58 C. 741; 60 C. 19=1933 C. 251=143 I.C. 679; 35 A. 178=18 I.C. 731; 38 A. 21=30 I.C. 494; 43 B. 689=51 I.C. 924; 42 M. 52=35 M.L.J. 552; 49 A. 506 =25 A.L.J. 485=1927 A. 1395; 1935 R. 187. *See* 1929 A. 15. Mortgage—*Ex parte* preliminary decree — Application for setting aside of decree—Conditional order not complied with—Dismissal of application—Appeal against allowed and application to set aside remanded to first Court for hearing—Again default and dismissal—Application for final decree—Bar of limitation. I.L.R (1944) Mad. 791=1944 M.W.N. 35=57 L. W. 9=1944 M. 209=(1943) 2 M.L.J. 678. In the case of an application under O. 34, R. 6, the time from which limitation would run is the date of the confirmation of the sale, inasmuch as, unless and until the sale is confirmed by the Court after disposing of all the objections against it, the deficiency in the amount cannot be ascertained for the purpose of O. 34, R. 6. 58 C. 741 =35 C.W.N. 231=1931 C. 166; 60 C. 19= 1933 C. 251=143 I.C. 679. In this connection, the fact that the taxation of costs has not been completed is immaterial. 60 C. 19.

MESNE PROFITS.—An application for ascertainment of mesne profits under O. 20, R. 12, C. P. Code, is not one for execution and Art. 181 applies to it. 37 M. 186=24 M.L.J. 96. *See also* 25 O.C. 132=1922 O. 197; 1928 M.W.N. 222=1928 M. 522=54 M.L.J. 655; 164 I.C. 670=44 L.W. 486=1936 M. 801=71 M.L.J. 388; 50 L.W. 933=(1940) 1 M.L.J. 54 (F.B.) =40 M. 124. And time commences from the date on which possession is delivered. 142 I.C. 553=1933 L. 876. But *see* 151 I. C. 755=1934 A.L.J. 86=1934 A. 465, where it was held that the Code does not require that a party should make an application for the ascertainment of mesne profits and that therefore Art. 181 cannot apply to such an application when made. *See also* 1937 R. D. 21.

PROBATE PROCEEDINGS.—Art. 181 has no application to petitions under Probate and Administration Act and consequently an application may be made even 4 years after death of the testator. 20 P.R. 1912=10 I. C. 130.

COMPROMISE DECREE.— Providing for instalment payments, *see* 26 A.L.J. 966 (F.B.) =1928 A. 629=51 A. 237. *See also* 1928 B. 323=30 Bom.L.R. 724; 130 I.C. 487= 1931 A. 340. An application to the Civil Court under R. 14 (5) (*b*) of the rules under the Co-operative Societies Act to enforce an award obtained by a Co-operative Credit Society under the Co-opertive Societies Act must be made within three years of the date of the award. The application being one to put in motion the machinery of the C. P. Code, is governed by Art. 181 of the Limitation Act. 1937 M. 31=44 L.W. 720 =71 M.L.J. 759. *See also* (1940) 1 M.L.J. 268=1940 M. 635=I.L.R. (1940) M. 649.

CONDITIONAL DECREE.—Time runs from date of decree and not from any later date when the decree-holder may choose to fulfil the condition. *See* 131 I.C. 559=1931 A. 326.

RESTITUTION—APPLICATION FOR.—Where a judgment-debtor who has been dispossessed of property not covered by the decree in execution applies for recovery of possession, the application is governed by Art. 181 and not by Art. 165. 1922 B. 271=24 Bom.L. R. 771=46 B. 1031; 5 Lah.L.J. 389=1924 L. 166. *See also* 44 L.W. 798=71 M.L.J. 795=1937 M. 150; 1937 R.D. 21. Art. 181 is applicable to an application for restitution. Time will run against judgment-debtor only from the date when the erroneous decree is superseded. 24 C.L.J. 567=38 I. C. 17=21 C.W.N. 564. *See also* 1938 A.W. R. (B.R.) 113=1938 R.D. 182; 1941 A. 28 =1940 A.W.R. (H.C.) 579=1940 O.A. 1166; 69 C.L.J. 293=43 C.W.N. 515=1939 Cal. 349; 32 C.W.N. 971=1928 C. 646 (S. B.); 43 I.C. 775 (2)=27 C.L.J. 451; 16 I.C. 238; 1932 C. 308=35 C.W.N. 1294; 6 L.W. 359=33 M.L.J. 413; 54 I.C. 664; 47 I.C. 47=3 P.L.J. 367; 7 O.W.N. 1153= 130 I.C. 78=6 Luck. 448=1931 O. 51; 23 P. 145=1944 Pat. 254. Where a suit for possession of land was decreed and possession was delivered to the plaintiff, but on appeal the decree of the trial Court was set aside and the case was remanded for retrial, and the trial Court after the remand dismissed the suit, the *terminus a quo* from which limitation runs for an application for restitution and the delivery of possession of the land back to the defendant, is the date of the dismissal of the suit by the trial Court, and not the date of the decree confir-

ming such dismissal in appeal or second appeal. 1946 L. 416=223 I.C. 300=48 P.L.R. 138. The right to apply for restitution accrues really on the date when for the first time a decision is given which entitles the party asking for restitution to have restitution. 1933 C. 422=144 I.C. 150. Where a decree is passed by the trial Court but reversed in appeal and the reversal is confirmed in second appeal, the time for an application under sec. 144, C. P. Code, runs from the date of the first appellate decree and the period taken up in second appeal cannot be deducted. 1932 A.L.J. 724=1932 A. 609=54 A. 770; 150 I.C. 1096 =1934 A.L.J. 503=57 A. 26=1934 A. 626 (F.B.). But *see* 1933 R. 180=11 R. 275; 1937 R.D. 21, holding that Art. 182 applies to such applications and that even if Art. 181 applies, time begins to run from the date of the final decree. An application for restitution is in reality an application for execution of a decree and it is governed not by Art. 181 but by Art. 182. 44 L.W. 798=1937 Mad. 150=71 M.L.J. 795. Where an appellate Court has ordered restitution to a person who has been dispossessed under a decree and an appeal against that order has been dismissed by the High Court, the period of limitation under Art. 181 for an application for assessment of mesne profits begins to run from the date of the order of the High Court. 130 I.C. 78=1931 O. 51=6 Luck. 448. *See also* 150 I.C. 1096 (F.B.)=1934 A. 626 noted above and 17 N.L.J. 281=1935 N. 76. Where an *ex parte* decree is set aside, application for restitution is governed by Art. 181 and time runs from the date of the order setting aside the decree. 32 P.L.R. 395=134 I.C. 206 =1931 L. 504. Application to enforce order of P.C. to obtain restitution—Art. 183 applies. 26 A.L.J. 587=50 A. 767=1928 A. 293. *See also* I.L.R. (1940) Cal. 486=44 C.W.N. 438=1940 Cal. 260.

REVIVAL OR CONTINUANCE OF EXECUTION—APPLICATION FOR.—*See* 11 I.C. 972; 61 I.C. 817; 22 Pat.L.T. 992. Where an execution case is struck off for the time being, because some other suit is pending with regard to the property involved in the execution, the application to proceed with the execution after the matter has been finally decided in appeal and revision amounts to an application for revival of the original application, although the application may not say it in so many words and is governed by Art. 181. 212 I.C. 628=1944 Pesh. 17. If as a result of execution, a decree has been satisfied and if the decree-holder is compelled to refund or restore the property as a result of proceedings taken subsequently by the judgment-debtor or by a third party, the satisfied decree revives on the refund or the restoration of the property and application to execute the revived decree would be competent within three years from the time when the right to apply accrued to the decree-holder. In such cases, the starting point for an application would be the date when the decree-holder is compelled to refund the amount or restore the property. Where the High Court merely declares that the execution proceedings are ineffectual and it is the executing Court that orders restitution, limitation runs from date on which restitution takes place. 1935 L. 166. Where a decree-holder is prevented by an injunction from executing his decree, he must apply for execution within three years from termination of the injunction period, to save his decree from being barred. 42 A. 564=56 I.C. 1006. *See also* 166 I.C. 950=18 Pat.L.T. 90=1937 P. 43; 1927 A. 802; 49 A. 276=25 A.L.J. 201=1927 A. 16 (F.B.); 1927 A. 802=100 I.C. 790; 22 Pat.L.T. 992=1942 Pat. 112; 148 I.C. 525=1934 A.L.J. 363=1934 A. 294. But *see* 11 L.W. 42 and other cases cited *infra*. An execution application, which has not been judicially disposed of but simply removed from the Court's file for statistical purposes does not require to be revived. The Court had only to appraised of in some recognized manner, and a subsequent application presented to the High Court requesting it to deal with the prior pending application, is not one to which either Art. 181 or 182 of the Act applies. 55 I.C. 526=11 L.W. 42. *See also* 1924 M. 210=47 M. 176; 19 L.W. 20=45 M.L.J. 822; 1930 M. 328= 118 I.C. 769; 133 I.C. 316=1931 A. 458= 1931 A.L.J. 436; 58 C. 1113=134 I.C. 939 =35 C.W.N. 540=1932 C. 19 (execution stayed until further orders). All applications are not governed by the Limiation Act. Art. 181 does not apply to an application to continue execution proceedings which have been stayed. I.L.R. (1940) All. 246=1940 A. L.J. 180=1940 All. 151 (F.B.). Art. 182 does not apply to the case of an application to revive and carry through a pending execution; and such an application is not barred if brought more than 3 years after proceedings had ceased to be pending. 36 M. 553=14 I.C. 264=24 M.L.J. 545. Where, owing to an order staying a sale in execution of a decree, the decree-holder is prevented from taking further steps in the execution proceedings a subsequent application for execution must be treated as an application to continue the previous proceedings. 52 I.C. 116=22 O.C. 75. *See also* 54 I.C. 426=6 O.L.J. 656; 142 I.C. 534=1933 M. 325=38 L.W. 268; 1942 P. 112=22 P.L.T. 992. In such a case limitation is three years from the date on which the stay came to an end. 142 I.C. 534 =1933 M. 325=38 L.W. 268. An application for reviving execution proceedings is governed by Art. 181 and the time commences to run from the time when the right to apply *first* accrues. The general principles of suspension of limitation might be applied in cases where a plaintiff or decree-holder is prevented under the circumstances from taking action in pursuance of his rights. It cannot be said that by reason of an appeal against

the order setting aside the sale the decree-holder should be considered to be prevented from making a fresh application for execution of his decree. 57 C. 931=34 C.W.N. 102=1930 C. 329. The application was barred by limitation as it was made more than three years from the date when the sale was set aside. 34 C.W.N. 102=1930 Cal. 329. Application for reviving execution proceedings, filed within 3 years after the petition for setting aside *ex parte* decree was finally disposed of in appeal was held to be in time. 35 C. W.N. 540. Where, on an application by the judgment-debtor, the satisfaction of the decree was recorded by the lower Court, and where this order was reversed on appeal, and the decree-holder subsequently applied for execution, held that Art. 181 applied, and that time began to run from the date of the appellate decree, *i.e.*, from the decree when the bar to the executability of the decree was removed. 38 L.W. 557=1933 M. 785=65 M.L.J. 747. If execution case is struck off at request of decree-holder on his own statement, subsequent application by him will not be in revival of the prior one. So Art. 181 will not apply but only Art. 182. 1937 A. L.J. 375=1937 A. 513. Application for substitution under R. 11 of O. 22, C. P. Code —Starting point of limitation. 10 P.L.T. 763=1929 P. 565 (F.B.).

EXECUTION AGAINST SURETY.—Period of limitation for execution against the surety who had executed a surety bond when the decree was first put into execution, undertaking to pay the decree amount in case the decree-holder failed to realise the amount from the judgment-debtor does not run under any of the clauses of Art. 182 which is not exhaustive of all execution applications. Art. 181 applies to such a case. Limitation is 3 years from the date when the decree was kept alive as against the judgment-debtor. 1933 O. 209=143 I.C. 808=8 Luck. 427. *See also* 41 C.W.N. 1099=1937 Cal. 452; 65 M. L.J. 507=1933 M. 722 noted *infra* under Art. 182. An application to enforce a security bond against sureties to whom the judgment-debtor's properties were entrusted after attachment in execution of a decree is not an execution application, though the security bond has been executed in the Court of the execution proceedings and is enforced by summary procedure in the execution proceeding itself. Art. 181 and not Art. 182 applies to the application. Such an application must be made within three years after the date on which the sureties failed to produce the properties and a right to enforce the bond accrued to the decree-holder. 56 L.W. 632=1943 M.W.N. 669=(1943) 2 M.L.J. 444. Surety for judgment-debtor undertaking to produce him on each date of hearing—Failure to produce him on certain date—Execution proceedings terminating after several subsequent hearings—Execution against surety—Limitation. *See* 153 I.C. 459=1935 L. 174 (2).

REVIVAL OF SUIT—APPLICATION FOR.—An application by a Hindu reversioner to continue a suit instituted by a nearer reversioner since deceased is governed by Art. 181. 49 I.C. 268=9 L.W. 166. An application on the death of the plaintiff by a person on whose behalf the suit was filed by the plaintiff in a representative capacity, to be brought on the record as *eo nomine* plaintiff, is governed by Art. 181. 54 M. 770=132 I.C. 289=1931 M. 590=60 M.L.J. 659. An application to the Court to restore a suit in the exercise of its inherent power is governed by Art. 181. 47 I.C. 137=5 O. L. J. 259.

MISCELLANEOUS.—An application by the judgment-debtor to set aside sale on the ground that the sale was without jurisdiction is governed not by Art. 166 but by the residuary Art. 181. 163 I.C. 34=1936 P. 496. Execution sale—Property of co-owner included in—Symbolical delivery of possession—Transferee from co-owner not having notice of sale and delivery—Application by transferee to establish his title within 3 years of his knowledge is within this article. The starting point of limiattion is the date when his possession was sought to be interfered with. 1929 M.W.N. 811=1930 M. 12. A decree prohibiting the defendant from obstructing the village path is not capable of execution on the date it is passed, or in other words, until an obstruction is caused there is nothing to execute. As soon as any obstruction is caused and the Court's order in that behalf is breached, a cause of action for the enforcement of the decree arises. Art. 181 of the Limitation Act applies in such a case, and the decree-holder's right to apply for the enforcement of the decree accrues when the obstruction is caused. 12 B.R. 466=224 I. C. 37. On this article, *see also* 1936 S. 11; 1936 L. 334; 30 S.L.R. 88=1936 S. 138.

Arts. 181 and 182.—When there is a specific article, Art. 181, applicable to a case, Art. 182 can have no application and cannot be invoked. (1945) 2 M.L.J. 444. *See also* 1944 Mad. 561=(1944) 2 M.L.J. 192; 15 Pesh. 67. An application by the legal representatives of a deceased decree-holder for reviving the execution proceedings dismissed for default on the death of the decree-holder is not governed either by Art. 181 or 182 of the Limitation Act. The Code of Civil Procedure nowhere provides for such an application. It is a proceeding by which the inherent jurisdiction of the Court is involved. The Court will exercise its inherent powers if it considers that justice requires its exercise and if it is satisfied that there are no such laches on the part of the applicant which would disentitle him to relief. 46 C.W.N. 326=75 C.L.J. 114=1942 Cal. 390. Where a decree for money is made payable in ins-

talments, and in default of payment of any instalment the whole decretal amount becomes payable immediately, it is open to the decree-holder to apply for execution even after three years from the date of default, and to recover such of the instalments as ha_ become due within three years of the date of his application. A default clause in an instalment decree is certainly for the benefit of the decree-holder, and his failure to avail himself of it should not be held to deprive him of the remedy he would have apart from the clause. It is open to the decree-holder either to apply for the full amount on default or to waive that privilege. 163 I.C. 937=38 Bom.L.R. 492=1936 B. 268. An application for a final decree is not an application for execution and hence it is Art. 181 that would apply to it and not Art. 182. Where a preliminary mortgage decree provides for payment in instalments, a new cause of action to apply for a final decree accrues under Art. 181, on every fresh default. There is nothing in Art. 181 to indicate that the decree-holder's right to apply for a final decree accrues only once. I.L.R. (1945) All. 277=1945 A.W.R. (H.C.) 54=1945 O.W.N. (H.C.) 184 =1945 A.L.W. 199=1945 All. 161; 1943 Nag. 170=I.L.R. (1943) Nag. 334. An application for leave under O. 21, R. 50 (2), C.P. Code, although it may be an *application in execution* proceedings is not an *application for execution* and consequently does not come under Art. 182 or 183. There being no other specific article applicable to it, it must be governed by Art. 181. 48 C. W. N. 280. Article 181 applies to an application for restitution, under S. 144, C.P. Code. An application under S. 144 is not an application for execution and Art. 182 does not apply to such an application. 40 P.L.R. 692= 1938 Lah. 456. *See also* I.L.R. (1938) L. 57; 41 P.L.R. 208=1939 Lah. 73; 1944 Lah. 190 (F.B.); 1938 A. W. R. (B.R.) 113. Where in a decree for possession conditional on deposit no time is fixed for deposit of the amount, it cannot be said that it should be made within three years from the date of the decree. In such a case neither Art. 181 nor Art. 182 is applicable, nor is there any article in the Limitation Act which governs such deposits. In such a case the decree-holder is entitled to deposit the money within a period of 12 years or within such period which falls short of the period necessary for the judgment-debtor to acquire an independent title to the property. I.L.R. (1944) All. 717=1944 A.L.J. 449=1944 A.L.W. 563=1944 O.A. (H.C.) 286=1944 A.W.R. (H.C.) 286= 1945 All. 10. Where a Court passes a decree for partition of lands assessed to the payment of revenue to the Crown and refers it to the Collector to carry out the partition under S. 54, C.P. Code, the Court's duties are at an end, and a darkhast asking the Court to send the papers to the Collector is not an application in execution. There is no provision which requires an application to be made to the Court to send such a decree to the Collector and such an application even, if made in the form of a darkhast, is not governed by either Art. 181 or 182. There is no limitation for such application. 47 Bom.L.R. 447=1945 Bom. 338 (F.B.). Unless an instalment decree clerly leaves the decree-holder no option on the happening of a default but to execute the decree once and for all for the whole amount due under it, the decree-holder is entitled to execute the decree for any of the instalments that are not barred by limitation and is not obliged to take out execution for the whole of the decretal amount immediately within 3 years from date of first default. The right to realize the entire amount due on the occurrence of the default is inserted for the benefit of the decree-holder and he is not obliged to exercise that option. Though the decree-holder might have attempted to take out execution for the amount and failed he is not debarred from taking out execution to recover the individual instalments. I.L.R. (1943) Nag. 334=1943 N. L. J. 108=1943 Nag. 170; *see also* 1945 All. 161=I.L.R. (1945) All 277 The application for execution against the sureties is an application for execution of a decree as by operation of S. 145, C.P. Code, the sureties become judgment-debtors under the decree. Such an application for execution therefore comes under Art. 182. It cannot come under Art. 181, Limitation Act, 41 C.W.N. 1099=1937 Cal. 452. Art. 182 the Limitation Act has no application to the execution of a decree for possession of immovable property conditional on the payment of a sum of money on a future date. Art. 181 is the article applicable to an application for execution of such a decree; and time begins to run from the date of the decree or at any rate on the date fixed for payment of the amount. I.L.R. (1938) Bom. 649=40 Bom.L.R. 512=1938 Bom. 367. Execution sale set aside—Application under O. 21, r. 93, C.P. Code, by unsuccessful auction-purchaser for refund to poundage and interest—Starting point—Appellate order or original order. (1941) 2 M. L. J. 121. *See also* (1939) 2 M. L. J. 271. Art. 181 is a residuary Article and cannot be applied if the case falls within Art. 182. The fact that execution proceedings are interrupted and it becomes necessary for the decree-holder to get his right of sale declared would not take the case out of Art. 182 and relegate it to the residuary Article 181. 57 L W. 493=1944 M.W.N. 606=1944 Mad. 561= (1944) 2 M. L. J. 192 (F.B.). *See also* (1945) 2 M.L.J. 444.

Arts. 181 and 183.—An application for a final decree for sale in a mortgage suit in the High Court, under O. 34, R. 5, C. P. Code, is governed by Art. 181 and not by Art. 183. It is not the law that there is no limitation applcable to an application of the kind. I.L.R. (1938)

Description of application.	Period of limitation.	Time from which period begins to run.
182. For the execution of a decree or order of any Civil Court not provided for by article 183 or by section 48 of the Code of Civil Procedure, 1908.	Three years; or where a certified copy of the decree or order has been registered six years.	1. The date of the decree or order, or 2 (where there has been an appeal) the date of the final decree or order of the Appellate Court, or the withdrawal of the appeal, or

Bom. 273=40 Bom.L.R. 507=1938 Bom. 354. *See also* 31 S.L.R. 180=1937 Sind 273. An application for a final decree in a mortgage suit is barred by limitation under Art. 181 if made more than three years after the date of the preliminary decree passed under O. 34, R. 4, C.P. Code. Such an application is not one to enforce the preliminary decree and Art. 183 is, therefore, inapplicable. 43 C.W.N. 537. *See also* 13 Rang. 325=1935 R. 239. An application made under S. 144, C.P. Code, to have restitution in consequence of an order of His Majesty in Council is governed by Art. 181, and not by Art. 183. Such an application cannot be regarded as one for *enforcement* of the final judgment or decree within the meaning of Art. 183, but is one for relief which is *consequential* upon the appellate Court's decree of reversal. I.L.R. (1940) 1 Cal. 486=44 C.W.N. 438=1940 Cal. 260. *See also* 26 A.L.J. 587; 1942 Pesh. 87; I.L.R. (1945) Lah. 8; (1945) 1 M.L.J. 143; 1942 M.W.N. 689.

ART. 182: APPLICABILITY.—Where a decree-holder applies for execution and the judgment-debtor being entitled to and having had an opportunity to raise a plea of limitation does not do so and an order for execution by attachment is made on the application, the judgment-debtor is precluded from raising that plea at a subsequent stage in the execution proceedings. 37 C.W.N. 752=1933 C. 855; also where a decree-holder could have applied for fresh execution at any time after the dismissal of first execution petition, but the delay is due to his own negligence or laches and not to any defect in the decree or to any circumstances connected with the decree which prevented him from putting in an application for execution. Art. 182 applies. 59 M. 759=44 L.W. 403=1936 M. 284=71 M.L.J. 180. The date of the decree is the day on which judgment is pronounced and limitation begins to run from that date, although no formal decree can be drawn up in a partition suit until paper bearing a proper stamp under the Stamp Act is supplied to the Court. (1924 Cal. 351, foll.) 197 I.C. 217=1942 P. 335. *See also* 1942 P. 410=23 Pat.L.T. 202=1942 P. W.N. 139; 1938 Pat. 149; 1942 Pat. 335; 24 Pat. 421. To make the provisions of the article apply to the execution of a decree, the decree must be such as to be capable of being enforced. 1921 P.C. 31=40 M.L.J. 1=48 I.A. 17 (P.C.) (On appeal from 42 I.C. 666). Where a decree is passed against the estate of a deceased person in the hands of the judgment-debtor, limitation for execution runs from the date on which some part of the estate comes into the judgment-debtor's hands. 40 M.L.J. 1=48 I.A. 17 (P.C.). S. 48, C.P. Code, does not superseded the law of limitation, but only fixes a period after which execution will not be granted, although not barred by the Limitation Act. 138 I.C. 149 =1932 O. 220. *See also* 1938 P.W.N. 449= 1938 P. 401; I.L.R. (1940) M. 349=1940 M. 127=(1940) 1 M.L.J. 235. The words "provided for" mean that where execution is barred by S. 48, C.P. Code, execution cannot be allowed under Art. 182. An amendment of a decree does not give a new date for starting of limitation under S. 48, C.P. Code. 54 A. 622=138 I.C. 93=1932 A. 351. *See also* 1936 Mad. 434=70 M.L.J. 700; 1938 Pat. 57; 16 P. 453; (1940) 1 M.L.J. 235; 18 Pat. 395=1939 P. 607. Striking off decree as satisfied is no suspension of proceedings. 40 C.L.J. 246=84 I.C. 283=1925 C. 207. Where some minors were impleaded as co-mortgagees in the place of one of the co-mortgagees since deceased, and a final decree is passed but the execution application was filed five years after. *Held*, that it was barred by limitation. 37 C.W.N. 838=1934 C. 1. A redemption decree directed possession to be given on payment of a certain sum within six months, but did not provide as to what should follow in a case of default of payment. *Held*, that it could be enforced at any time within 3 years as provided by Art. 182. 76 I.C. 144=1924 L. 635. An award under the Arbitration Act when filed in Court becomes enforceable as a decree of Court and an application in execution is governed by Art. 182. 6 L.L.J. 564=75 I.C. 927=1924 L. 544; 142 I.C. 489=1933 S. 78=27 S.L.R. 109: 1937 Sind 261; 43 Bom.L.R. 1006; I.L.R. (1942) B. 124=1942 B. 34; (1946) 1 M.L.J. 244. An award of arbitrator under S. 54 of Bombay Co-operative Societies Act is not a decree of a Civil Court within the meaning of this article. 165 I.C. 512=38 Bom.L.R. 927= 1936 B. 396. Application for the enforcement of an award by the Registrar of Co-operative Societies under S. 51 of the Madras Co-operative Societies Act applies Art. 182. 49 L.W. 143=1939 Mad. 304=(1939) 1 M.

L.J. 695. Awards under R. 22 of the Co-operative Societies Rules are executable as decrees and this being the case, the provisions of Art. 182 (1) are applicable. The period of limitation is three years from the date of the award. The date of the award is the date on which such award is officially communicated to the person or persons affected thereby. I.L.R. (1940) 2 Cal. 460=1941 Cal. 152. Whether it becomes such on grant of certificate by Registrar under S. 59 of the Act. (*Ibid.*) Execution of decree against co-defendants—Application against any one of them shall take effect against them all. 1925 M. 152=47 M.L.J. 608=20 L.W. 585. Decree-holder consenting to postponement of execution pending judgment-debtor's suit—Period must be excluded. 84 I.C. 1027=1925 O. 315 (2). S. 28 of the Provincial Insolvency Act imposes a disability on the creditor from proceeding against the person of the insolvent without leave of Court. So an application for execution, if made within the period of limitation from the order granting leave is not barred by limitation, even though it may be more than three years from the date of decree. 10 P. 422=134 I.C. 633=1931 P. 357. Application for leave to execute a decree against a partner of a firm under O. 21, R. 50 (2) is one in execution of the decree against the firm, and falls under this article and not under Art. 181. 30 S.L.R. 88=164 I.C. 1001 =1936 S. 138. *See also* 1939 Sind 161=I.L.R. (1939) Kar. 589 (F.B.). An application for restitution is in substance an application for execution though the rules of O. 21, C.P. Code, may not apply. Consequently Art. 182 applies to such applications. 2 P. 227; 41 Bom.L.R 1204=1940 Bom. 30; I. L. R. (1939) N. 492=1939 Nag. 101. A decree of the Chief Court of Lower Burma when put in execution before the High Court is governed by Art. 182. It does not become a decree of the Original Side of the High Court so as to get the benefit of an extended period of limitation. 6 R. 566=1928 R. 317. Secured creditor under S. 28 (6), Provincial Insolvency Act—Failure to execute decree against assets of insolvent within three years—Decree barred. 4 Luck. 241=1929 O. 71. An application by the Board of Commissioners for Hindu Religious Endowments, Madras, made to the District Judge for recovery of contributions under S. 70 (2) of the Madras Hindu Religious Endowments Act, after demand and refusal, is governed by Art. 182. The right to apply accrues only after the expiry of three months from the date of the demand made by the Board and the amount becomes payable only then. 58 M. 760=41 L.W. 264=1935 M. 217=68 M.L.J. 200.

CONDITIONAL DECREE.—Where a decree is not immediately executable and the right to apply for execution depends upon the fulfilment of certain contingencies, Art. 182 is inapplicable and Art. 181 governs execution in such cases. 131 I.C. 559=1931 A.L.J. 319 =1931 A. 326. *See also* I.L.R. (1938) A. 848; 1938 All. 539 (decree on payment of Court-fee). Where a decree directs possession of property to be given to plaintiff on his paying a certain sum to the defendant and no time is fixed for payment, the decree-holder is entitled to pay the money at once and ask for possession and an application made more than 3 years from the date when the decree was passed will be barred by Art. 181. *See also* 1931 N. 54=26 N.L.R. 353; 1930 B. 503=32 Bom.L.R. 427; 1931 All. 326. For the purposes of computing limitation under Art. 182 the date of the judgment has to be taken as the date of the decree which is the starting point of limitation. In the case of a *decree for mesne profits* under O. 20, R. 12 (2), C.P. Code, such date of the final adjudication between the parties fixing the amount of the mesne profits. The fact that the Court defers the drawing up of the final decree until payment of the deficit Court-fee by the plaintiff, and that the Court draws up the final decree only on the application of the plaintiff on payment of the deficit Court-fee would not enlarge the period of limitation under Art. 182, for execution of the decree for mesne profits on the ground that the decree is actually drawn up not on the date of the judgment fixing the mesne profits but subsequently on payment of the Court-fee and on application by the plaintiff. The application by the decree-holder to assess the deficit Court-fee or to receive the deficit Court-fee or to prepare and sign the decree cannot be regarded as a step-in-aid of execution under Art. 182 (5). 21 Pat. 366=23 Pat.L.T. 202= 1942 Pat. 410.

CONSTRUCTION —Article should receive a liberal construction in favour of decree-holder. 1927 N. 308=24 N.L.R. 36. Its language ought not to be strained in favour of the judgment-debtor who has not paid his debt. 47 L.W. 693=1938 Mad. 323=(1938) 1 M.L.J. 135. Construction—Mortgage-decree and money decree—Construction of—Execution of money decree—Limitation. 5 Pat.L.T. 276 =76 I.C. 452=1924 P. 700; 79 I.C. 477= 1921 S. 132=16 S.L.R. 245. Where a decree was dated wrongly and the decree-holder was misled by that, the decree ought to be regarded as having been passed on that date. 56 C.L.J. 185=1933 C. 239.

EXECUTION AGAIST SURETY, CL. (5).—Art. 182 is not exhaustive of all execution applications. Period of limitation for execution, against a surety who had executed a surety bond when the decree was first put into execution undertaking to pay the decree amount in case the decree-holder failed to realise the amount from the judgment-debtor, does not run under any of the clauses of Art. 182. Art. 181 applies to such a case. 8 Luck. 427= 1933 O. 209. Time for enforcing a surety bond given as a condition for stay of execution of a mortgage-decree runs only from the date when the property is sold and a defici-

ency arises. 136 I.C. 629=36 C.W.N. 701 =1932 P.C. 131=63 M.L.J. 85 (P.C.). *See also* 1941 M. 151=(1940) 2 M.L.J. 831. It was held in the case of execution against a surety who had executed a surety bond at the time of attachment before judgment, that limitation on the bond began to run from the date of the decree itself and that execution was barred under Art. 182. 142 I.C. 368= 1933 M. 219=37 L.W. 127. *See also* 6 R. 334=1928 R. 282. Surety for movables attached in execution—Limitation—Application for arrest of second surety—Prior application for recognition of assignment of decree and for arrest of first surety, if available to save limitation as against surety: *Held*, that (*i*) steps taken in execution against the judgment-debtor are not steps against the sureties, nor are steps in execution against sureties steps in execution of the decree itself, so that the proceedings for the recognition of the assignment of the decree did not save limitation; (*ii*) that the application was governed by Art. 181 and not Art. 182; (*iii*) that the application for the arrest of the first surety, in which no relief was sought against the second surety, did not save limitation against the second surety and that the petition was, therefore, barred by limitation. 38 L.W. 450=1933 M. 722=65 M.L.J. 507. There is no reason why, because Expl. I to Art. 182 (5), deals with cases of more than one decree-holder or judgment-debtor, Art. 182 should be deemed to be confined to applications for execution of decrees against judgment-debtors only. Cl. (5) can be applied to execution applications against any other party, for instance a surety, though it does not appear that the Legislature in enacting the article had specifically in mind the case of an application for execution against a surety. Art. 182 (5) is general in its application, and an application made in accordance with law to the proper Court for execution or to take some step-in-aid of execution of the decree or order would save limitation also against others affected by the decree, *e.g.*, a surety; para. 2 of Expl. I operates an an explanation or clarification of the clause. The first sentence there would create an exception, but the second sentence of that paragraph would re-affirm the principle of the main clause (5) in its application to joint judgment-debtors. Previous applications for execution against a judgment-debtor would therefore save limitation against a surety, though he is not in the position of a joint judgment-debtor, within the meaning of Expl. I. 47 Bom. L.R. 434=A.I.R. 1945 Bom. 489.

CONTINUATION OF PROCEEDINGS. [*See* "REVIVAL AND CONTINUANCE OF EXECUTION", *supra*.]—Where the proceedings in pursuance of an application for execution are suspended by the executing Court though no act or default of the decree-holder, an application to revive and carry on the execution will not be barred, even though made three years after the suspension of the execution. 71 I.C. 963=1923 A. 471. *See also* 77 I.C. 871= 1923 A. 600; 1940 A.W.R. (B.R.) 278= 1940 R.D. 533; 12 Luck. 743=1937 Oudh 158; 1936 Pat. 313. Where an application for execution is dismissed neither for default of the decree-holder nor on termination of the proceedings, the dismissal being a mere routine dismissal, the execution petition must in the eye of law be treated as still pending, though the records of the case are consigned to the record room for convenience of disposal. A subsequent application which, though in form a fresh application, in substance is one to merely continue the previous application, must be treated as a continuation of the prior application, and cannot be held to be barred by limitation as being made beyond time. 26 P.L.T. 155=A.I.R. 1945 Pat. 276. *See also* (1945) 1 M.L.J. 380=1945 Mad. 236. Per *Walsh, A.C.J. and Mukherjee, J.*—Whether an application is in substance a fresh application or an attempt to revive a former one is, as a general rule, a question of fact to be decided with reference to all the circumstances of the case. 49 A. 276=100 I.C. 692= 1927 A. 16 (F.B.). Where the original application asked for execution against the movable property to be pointed out by the servants of the decree-holder and attachment of crops in the following plots, and the subsequent application referred to the attachment of different crops in different plots, it was held that the later one was in continuation of the prior one. 1941 A.L.J. (Supp.) 19. Where after dismissal of an application for execution of decree for want of prosecution, another application is made in a tabular form setting forth all the particulars required by O 21, R. 11, C.P. Code, and praying that the decree may be executed and the property sold by "revival" of the previous proceedings, it should be construed as a fresh application for execution. 152 I.C. 36=1934 A. 1047. An execution application asking for a new relief cannot be treated as an application for the revival or continuation of the previous execution proceedings. When the character of the application is different from that of the previous application, it cannot be treated as a continuation. 54 A. 573 =138 I.C. 583=1932 A. 273 (F.B.). Where, without any fault or delay on the part of the decree-holder and without notice to him, the Court consigns an application for execution to the record room, a further application for execution will be treated as one for continuation of the old application. 1922 A. 433 (1). *See also* 8 Pat.L.T. 287=1927 P. 114. Revival—Deposit of first application as order was received too late for execution—Dismissal of second application owing to decree-holder's failure to comply with Court's order —Third application beyond time—If a continuation of the earlier ones. 1942 O.W.N. (B.R.) 571=1942 O.A. (Supp.) 429 (2).

Property of a judgment-debtor attached on application for execution—Judgment-debtor obtaining from Insolvency Court order for staying execution—Case consigned to records but attachment continued—Judgment-debtor ultimately withdrawing his insolvency petition—Subsequent application, by decree-holder for revival of execution is only a continuation of his previous application. 165 I.C. 798=1936 O.W.N. 1239=1937 O. 158. Decree in suit filed *in forma pauperis*—Direction to pay the amount of Court-fee to Government—Execution applications by Government and attachment of the decree—Subsequent application for execution by decree-holder—Execution application by Government enure for the benefit of the decree-holder. 59 L.W. 593=(1946) 2 M.L.J. 303 (*see* Expl. I, *infra*.) A direction to consign papers to the record room is not a final disposal of the execution application. 49 A. 509=1927 A. 165=25 A.L.J. 249. (F.B.) As to order directing application to be struck off without notice to decree-holder, *see* 49 A. 276=100 I.C. 692 =1927 A. 16 (F.B.) *See also* 3 P. 596=78 I.C. 766=1924 P. 576. (Execution proceeding struck off wthout any default on the part of the decree-holder). *See also* the cases cited on the point under Art. 181. An order in execution proceedings recording the execution petition with permission to the decree-holder to renew is a wrong order to pass, but once such an order is made, a subsequent execution petition becomes a continuation of the previous one. 121 I.C. 845=1930 M. 303. An application for execution may be deemed to be one to revive and carry through a pending proceeding when the latter was arrested by reason of circumstances, over which the decree-holder had no control. 74 I.C. 279 =1924 C. 419. *See also* 87 I.C. 561=1925 C 1185; 26 C.W.N. 338; 1921 C. 472· 1924 M. 178; 89 I.C. 886;=1926 P. 129; 60 I.C. 265=1922 L. 208; 19 L.W. 613; 1934 P. 532. Where execution sale is set aside at the instance of judgment-debtor, a subsequent application for execution is treated as one for continuation of earlier application. 64 I.C. 849=35 C.L.J. 135=1921 C. 594. *See also* 90 I.C. 799=1926 P. 143. In order to entitle a decree-holder to claim that an application should be regarded as a continuation of the previous application, two conditions must be satisfied, first that the previous application was dismissed for no fault or default on his part and, secondly, that the present application is similar in scope and character to the previous application. 72 I.C. 862=1924 P. 367. *See* also 4 Pat.L.T. 393=1923 P. 488. Where an execution application did not contain an express prayer to revive a previous application which had been dismissed, and the relief in it was quite different from what was claimed in the previous application, and besides, the application was made on a form prescribed for application for execution of decrees, *held*, that the application could not be said to be a continuation of the previous application. 115 I.C. 24=1929 L. 529. An application for revival of previous execution proceedings which contains an additional prayer for the arrest of the judgment-debtor is not a fresh application. 1930 L. 753. *See also* 1939 O.W.N. 267=1939 Oudh 118=1939 O. A. 296; 69 C.L.J. 165=43 C.W.N. 429=1939 Cal. 331; 1937 A.M.L.J. 53.

EXECUTION PROCEEDINGS, WHAT ARE.—An application for the ascertainment of mesne profits awarded by a decree, prior as well as subsequent to its date, is not a proceeding in the suit, but a proceeding in execution and comes within Art. 182, 47 B. 778=25 Bom.L.R. 810=1923 Bom. 366. *See also* 45 B. 819=61 I.C. 448=1921 Bom. 404. An application for restitution under S. 144, C.P. Code, is one for execution of decree of the appellate Court and is thus governed by Art. 182. 45 B. 1137=62 I.C. 233; 1921 B. 67; 1931 M.W.N. 1006; 2 P. 227; 13 P. 411=15 Pat.L.T. 173=1934 P. 246 (2) (F.B.); 152 I.C. 944=15 Pat.L.T. 745=1934 P. 646; 41 Bom.L.R. 1204=1940 Bom. 30; I.L.R. (1939) Nag. 492; 1939 Nag. 101. I.L.R. (1945) Lah. 8; (1945) 1 M.L.J. 148=13 R. 43. But *see* 35 C.W.N. 1294 holding that Art. 181 applies. Time begins to run from the decree which for the first time gave the applicant the right to restitution; 35 C W. N. 1294=1932 C. 308. An application for restitution under S. 144, C.P. Code, is not an application for execution within the meaning of Art. 182 because "execution" signifies in law the obtaining of actual possession of anything acquired by judgment of law. In making an application for restitution, the applicant does not seek to enforce any judgment of law directly. The application for restitution is one to obtain an executable order and cannot therefore be called an application for execution in itself; while under S. 47, C.P. Code, an application for execution is to be made to the Court executing the decree an application under S. 144, C. P. Code, can be made only to the Court of the first instance. I.L.R. 1945 L. 8=213 I.C. 121. An application for refund of purchase-money by the auction-purchaser is in time if brought within 3 years from the date of the decree of the High Court on second appeal confirming the claim of the claimant to the suit properties, although it may be more than 3 years from the date of the decree of the first appellate Court and of dispossession. 1931 M. W.N. 1006. Time must begin to run from the date of the final decree, however informally it is expressed. 50 C. 743=74 I.C. 1017 =1924 C. 131. Where an appeal against a preliminary decree in a mortgage suit is dismissed for default or non-prosecution *e.g.* non-compliance with an order to pay the deficient court-fee on the appeal, the order of dismissal amounts to decree and furnishes

the starting point of limitation for an application for a final decree. 23 Pat. 635=10 Cut.L.T. 59=25 P.L.T. 159. "Final order" —Date of—Application for transfer of decree to another Court for execution—Order for transfer—If judicial or ministerial order. *See* 23 P. 707=219 I.C. 491=1945 Pat. 71. Execution proceedings—Partial decree—Appeal—Dismissal—Starting point of application for execution. 60 I.C. 915=47 C. 813. Where an application for the execution of a decree is barred by limitation, it cannot be revived by a subsequent application for amendment. 59 I.C. 186 (C.) Execution proceedings are not closed by the Court merely recording them and the decree-holder's right to apply for their continuance accrues from day to day and is not barred until three years from the date when they cease to be pending. 1925 M. 152=47 M. L.J. 608=20 L.W. 585. *See also* 79 I.C. 891=1925 M. 218. But a judgment-debtor, who was not a party to a previous application for execution of a decree or to any order made upon it, is not precluded from showing that the said application was barred by limitation and that therefore it was not in accordance with law. 1923 C. 322 (2).

ATTACHMENT BEFORE JUDGMENT.—Under O. 38, R. 11, C.P. Code, where there has been an attachment before judgment, it is unnecessary to apply for a further order of attachment, but it is equally clear that there can be no order for execution without an application in that behalf. Art. 182 requires the decree-holder to make an application within three years from the date of the decree. An attachment before judgment cannot operate to keep alive the decree subsequently passed until the attachment is removed. 57 L.W. 493=A.I.R. 1944 Mad. 561=(1944) 2 M.L.J. 192 (F.B.).

ART. 182 (1).—SCOPE AND EFFECT OF CL. (1).—Under this article the period of three years of limitation runs from the date of the decree and not from the date of the order to dismiss the appeal for want of prosecution. 25 C.W.N. 858=49 C. 203. *See also* 2 P. 712: 1934 R. 329. Art. 182 (1) contemplates only a decree or order made in such a form as to render it capable of being enforced in execution; if a further application is necessary to make the decree executable, then Art. 181 applies for such further application. 48 I.A. 17=1921 P.C. 31=40 M.L.J. 1=25 C.W.N. 337 (P.C.). Date of decree—Instalment decree—Default—Waiver—Limitation. 25 Bom. L. R. 153=1923 B. 207. Execution of decree by legal representative—Limitation—Starting point is date of appellate decree. 51 C. 312=81 I.C. 569=1924 C. 608. Date of the decree—Copy of decree through Court's mistake bearing date on which it was drawn up instead of date of judgment—Application for execution made within limitation from former date not barred. 1938 Pat. 149. *See also* 197 I.C. 217=1942 P. 335; 1942 P.W.N. 139 =21 Pat. 366=1942 P. 410. The provision of cl. 5 of Art. 182 is not restricted in its application by cl. (1). 1921 M. 415=41 M. L.J. 312; 45 M. 35. Where a decree is passed in favour of one person and is transferred to two persons in parts, an execution application by one of such transferees enures to the benefit of the other transferee and saves limitation for his portion. 45 M. 35=1922 M. 129. The starting point of limitation for execution of the order for compensation passed by a partition officer is the date os which the partition came into effect. 14 R.D. 341. Where a compromise decree was passed in a mortgage suit, which was itself executabe, but the decree-holder applied subsequently for a final decree which was passed without any objection by the judgment-debtor, *held*, that limitation for an application for execution commenced to run only from the date of the final decree and not from the date of the compromise decree. 121 I.C. 818=1930 A. 520. Where the parties to two cross-suits agreed, when the suits were pending, that after the two decrees were passed, the party who was entitled to the larger amount should pursue execution of the decree in his favour to the extent of the excess. *Held*, that the agreement showed a set-off and entitled the party in whose favour the excess was decreed to ultimately take out execution, that the excess could be only ascertained after the final decree was passed in appeal, if any, preferred by any of the parties, and that by purposes of the execution the date of the decree of the appellate Court and not of the trial Court was the starting point of limitation. 59 B. 1=36 Bom.L.R. 645= 1934 Bom. 307. Partition decree sent to Collector for execution—Application to Court to decide legal representatives. *See* I.L.R. 1944 Nag. 852=1945 N. 56. Where an order of decree, separately executable, is passed at an earlier stage of a suit, limitation for applying for the execution of such decree or order runs from the date of the order or decree as the case may be. Where therefore the Court passes a preliminary decree for partition and along with it also passes a decree for costs to be paid by the judgment-debtor to the decree-holder, the order for costs being a separately executable order, execution of it must be taken within three years of the date of the order. It is however open to the decree-holder plaintiff to ask the Court to incorporate the previous order for costs in the final decree, although execution of such order independently is barred by limitation. 175 I.C. 45 =19 P.L.T. 798=1938 Pat. 188. *See also* 1942 Pat. 335. Partition suit—Final de-

cree—Execution—Starting point of limitation—Non-payment of stamp duty for drawing up of decree—If extends period of limitation. *See* 1943 M. 650=(1943) 2 M. L.J. 112.

ART. 182 (2): SCOPE AND EFFECT:—*See* 6 P. 780=8 Pat.L.T. 379=1927 P. 215. The word "appeal" in Art. 182 (2) means an appeal the result of which affects the decree sought to be executed. It does not mean any appeal which only affects the decree-holder's right to execute it at a particular time and in a particular circumstance. An appeal against an order dismissing an application by the judgment-debtor to record satisfaction of the decree, which would leave the decree valid and without modification, cannot be regarded as an "appeal" within the meaning of Art. 182 (2), for purposes of extending limitation. 52 L.W. 277= 1941 M. 40=(1940) 2 M.L.J. 371. The language of Art. 182 (2) is sufficiently wide to include an appeal the result of which may affect the decree or order which it is sought to execute, in such a way as to render the execution proceedings in connection with such decree or order infructuous. Where, therefore, after an order for restitution was obtained by the respondent, the appellant continued litigation in various Courts and at last his final appeal failed, an application for execution for the order for restitution filed within three years from the date of the order in such final appeal but more than three years after the order for restitution was made, is not barred by limitation. 44 C.W.N. 859. The words "where there has been an appeal," in the last column, mean an appeal from the decree sought to be executed, and not an appeal from another decree, though made in the suit. 41 Bom.L.R. 921=1939 Bom. 454. *See also* 1937 M. 421=(1937) 1 M. L.J. 407=1943 A.L.W. 40. Time for applying for execution runs from the date of appellate decree even though appeal is only against a portion of the trial Court's decree. 53 C. 901=97 I.C. 838= 31 C.W.N. 262=1927 C. 89; 1929 C. 676. A preliminary decree in a partition suit was passed on 18th April, 1918, and confirmed by High Court on 20th March, 1923. A final decree was passed by the trial Court on 30th September, 1919, and on an application for execution filed on 24th March, 1925, *held*, that the appeal referred to in Art. 182 (2) was an appeal against the decree sought to be executed and as no appeal had been preferred from the final decree which was the decree sought to be executed, time began to run from 30th September, 1919, and the application was therefore barred, even though it was within three years of the date when the High Court confirmed the preliminary decree. 37 L.W. 180=1933 M. 315=64 M.L.J. 251=56 M. 458. *See also* 1928 P. 581; 6 P. 780=102 I.C. 811=1927 P. 215; 19 Pat.L.T. 798= 1938 Pat. 188. Appellate decree what is. 54 C. 1052=1927 C. 904; (1940) 2 M.L.J. 371=1941 M. 40. Where in remanding a case for trial *de novo* the appellate Court passed an order for costs against the guardian of the successful minor appellants and the suit though dismissed in the trial Court was ultimately decreed in appeal on a question as to the starting point of limitation for the execution of the order for costs against the guardian, it was held that the order for costs though not varied by the final order, in appeal was at least closely related to it since both were passed during proceedings in the same suit and that was sufficient reason for taking the date of the final decree in the suit on appeal as the proper starting point of limitation. 18 Luck. 68=1942 Oudh 464=1942 O.W.N. 315. The time fixed for payment of the instalment under an instalment decree which is confirmed by the appellate Court should be allowed from the date of the confirmation of the decree. 49 B. 305=86 I.C. 894=1925 B. 270. *See also* 25 Bom.L.R. 153=1923 B. 207. There is no definition of appeal in the C.P. Code and any application by a party to an appellate Court asking to set aside a decision of a subordiate Court is an appeal within the ordinary acceptation of the term. An appeal is no less an appeal, because it is irregular or incompetent Hence an appeal against an order granting the review comes under the definition. 57 B. 388=35 Bom.L.R. 432=1933 B. 255. Any application by a party to an appellate Court to set aside *or revise* a decree or order of a Court subordinate thereto is an "appeal" within the meaning of Art. 182 (2). I.L.R. (1937) M. 617= 45 L.W. 457=1937 M. 385=(1937) 1 M. L.J. 453 (F.B.). The word "appeal" in Art. 182 (2) does not mean *bona fide* appeal. 74 I.C. 679=1924 C. 349. But *see* 1923 C. 288. Even though the appeal preferred was irregular in form and was dismissed on that ground, limitation would start from the date of the appellate Court's order. 59 I.A. 283=60 C. 1=1932 P.C. 165=63 M.L.J. 229 (P.C.). But *see also* 57 M. 741=1934 M. 303=66 M.L.J. 486. Even though an appeal is incompetent not in the sense that it was filed in the wrong forum but on the ground that no appeal lay, the order dismissing the appeal would give a fresh starting point of limitation under Art. 182 (2) of the Limitation Act. 58 L. W. 222=1945 Mad. 261=(1945) 1 M.L.J. 421. The contention that an appeal in order to save limitation under cl. (2) must be one to which the persons affected were parties and that it must also be one in which the whole decree was imperilled is not sound. 59 I.A. 283. The decision in 1930 A. 636 and 1930 P. 146 are not now good law. *See also* 1923 C. 288; 1924 C. 349.

For purposes of Art. 182 (2), it is sufficient that there has been an appeal and there is no warrant for reading into the words of the article any qualification either as to the character of the appeal or as to the parties to it. Where there was an appeal from the decree in the suit in which respondent was awarded costs but the question as to costs was not the subject-matter of the appeal. *Held*, that the period of limitation did not begin to run from the original date of the decree 15 L. 267=147 I. C. 689=1934 L 318 (1). The expression "where there has been an appeal" means an appeal which is likely to affect the decree sought to be executed Where pending an appeal from a preliminary decree in a mortgage suit, which was confirmed on appeal, a final decree is passed, an application for execution of the final decree would be in time, if filed within three years of the date of the appellate preliminary decree, though beyond three years of the date of the final decree itself. It is not necessary to apply afresh for a final decree or to get the final decree amended. The original final decree may itself be executed. 1937 M. 421—45 L W 278=(1937) 1 M.L J. 407. *See also* 1939 Bom 454: I L R. (1939) Mad 252=48 L.W. 751=1939 Mad 157=(1938) 2 M.L J. 1048: I.L R (1939) M. 828; 1939 Mad. 735=(1939) 2 M.L J 86. The expression must be construed in its plain sense Where, though an appeal is incompetent in law, it is *bona fide* presented, it satisfies the terms of Art. 182; 79 I.C. 477 =16 S.L R. 245=1921 C 132. Even when an appeal is dismissed for non-payment of Court fees limitation runs for purposes of execution only from the date of the order of dismissal 1924 C. 349. Where a memorandum of appeal filed with deficit Court-fees was neither registered nor numbered as an appeal but was rejected for non-payment of the requisite Court-fees within the time allowed, the order of the appellate Court has not the effect of a decree and it does not deal judicially with the appeal at all which never came into existence. Consequently, the starting point for limitation under Art 182 for the execution of the decree is the date of the trial Court's decree and not the date of the order of the appellate Court rejecting the memorandum of appeal; 42 C W.N. 698=1938 Cal. 533. *See also* 41 C W.N. 1285=I L.R (1938) 1 C. 171=1937 Cal. 728 Where an appeal is preferred on insufficient court-fee and is duly registered as an appeal and numbered as such but subsequently rejected after notice to the parties and after hearing them, the time for execution begins to run from the date of the order of the appellate Court. 19 Pat.L. T. 243=1937 P.W.N. 1023=1938 Pat. 79. Cl. (2) of Art. 182 has no application to appeals other than appeals against the decree itself. It does not apply to appeals from orders in collateral proceedings which may affect the decree to be executed. An application to cancel or modify an order recording satisfaction of a decree and to revive it, cannot be regarded as an appeal from the decree itself, so as to make Art. 182 (2) applicable to an appeal from the order passed on the application to revive the decree. 50 L W. 497=1939 Mad. 892. An order directing the return of the memo. of appeal for presenting to the proper Court is not a "final order", nor is the Court an appellate Court within Art. 182 (2) and the time for executing the decree does not run from the date of such order. 39 M. L.J 431=43 M. 835; nor where it is returned for re-presentation after some amendment. 163 I.C. 354=44 L.W. 59= 1936 M. 613=71 M.L.J. 336. *See also* 1936 Lah. 479 In an appeal from a part of the decree by some of the parties the entire decree becomes the subject-matter of the appeal. 3 P 327=79 I.C. 794=1925 P. 40; 59 I.C 896=1921 P. 6. *See also* 59 A. 283 (P.C); 1939 2 M.L J. 271. (appeal by some of the defendants only). Continuance of proceedings—Incompetent appeal does not suspend limitation. 1923 C. 288. But *see* 74 I.C 679=1924 C 349; 134 I C 425=11 P. 430=1931 P. 422. (Appeal dismissed as out of time gives a fresh starting point) *See also* 19 I.C. 477 (S.); 35 Bom L.R. 432=1933 B. 255=57 B. 388. But where a Court refuses to receive the memo. of appeal on file in view of O. 41, R 1 (3), C.P. Code (Madras Amendment), there is no appeal, and time is not extended by Art 182 (2). 57 M. 741=1934 M. 303=66 M.L.J 486. An order of the appellate Court holding that the appeal had abated and refusing to set aside the abatement is a final order within the meaning of Art 182 (2), since it deals judicially with matters before the Court. 60 I.A. 83=142 I C. 326=1933 P C 68=64 M.L.J 421= 60 C 662 (P C.). The decision in 49 C. L.J. 111=104 I.C. 566=1927 C. 760 to the contrary is not good law. The dismissal for non-prosecution of an appeal to the Privy Council even after admission and appearance of the respondents does not constitute a final order or decree of the appellate Court within the meanisg of Art. 182 (2), and limitation starts from the date of the dismissal of the appeal by the High Court. 11 P 477=139 I.C. 198=1932 P. 251. *See also* 1936 L. 479. Where an appeal is dismissed for default in payment of printing charges, limitation for execution of the decree appealed against starts not from the date of the dismissal of the appeal but from the date of the original decree. I.L. R. (1945) All. 71=1945 A.L.J. 73=1945 A.W.R. (H.C.) 34. The appeal referred to is an appeal from the decree itself and

Description of application.	Period of limitation.	Time from which period begins to run.
		3. (where there has been a review of judgment) the date of the decision passed on the review, or

not from an order rejecting an application to set aside the *ex parte* decree. 11 Lah L.J. 61=1929 L. 283; 138 I.C. 692=1932 A. 601; 35 C.W.N. 155=131 I.C. 263=1931 C. 332. But *see contra* 18 Pat.L.T. 231=16 P. 306=1937 P. 337. For execution purposes an appeal by itself never operates as a stay. There is the right to execute the moment the decree is passed, but if there is an appeal the time of limitation is postponed and does not run until the decree determining the appeal is made. 33 C.W.N. 958=50 C.L.J. 12=1929 C. 676. Assignment of decree pending appeal—Assignee not brought on record—Appeal and second appeal with decree-holder on record—Application for execution by the assignee within three years of second appellate Court's decree is not barred. 1930 A. 380. In all cases, what Art. 182 (2) refers to is a decree, *viz.*, one decree, and it is not permissible for Courts in execution to look into the matter and say that, as there are several reliefs which are severable, what is nominally one decree, consists of several decrees. In the case of a plaint claiming several reliefs where the Court passes a decree granting some of such reliefs and refusing the others, but where an appeal is preferred only against a portion of the decree regarding a particular relief, limitation for the execution of the other unappealed reliefs runs only from the date of the appellate decree. (1932 P.C. 165, Appl.) 1935 M.W.N. 329=1935 M. 557.

ART. 182 (3).—The real distinction between cls. (2) and (3) of Art. 182 is really one of the particular tribunal which passed the order by which the original decree is imperilled. If the order is made by the appellate Court, then Art. 182 (2) applies; but if the order is made by the original Court which passed the decree to be executed, then cl. (3) applies and the date from which limitation runs is the date of the order of the original Court. All cases in which the Court reconsiders its own judgment, whether in applications for restoration or in applications for "review" so-called, are cases of review within the meaning of Art. 182 (3). An order allowing or rejecting an application for restoration of a proceeding decided *ex parte* is an order on "review" and therefore gives a starting point of limitation for execution. 18 Pat. L.T. 231=1937 P. 337=16 Pat. 306. Art. 182 (3) is not applicable to cases where an application for review has not been granted but rejected, and in such cases limitation is not enlarged under the article. 20 Pat. 513=1941 P.W.N. 477=22 Pat.L.T. 26=1941 Pat 213. Where there has been a review of the decree, the period of limitation for purposes of Art. 182 (3) should be taken to run from the date of the review, notwithstanding that the persons against whom time is reckoned were not parties to the review proceedings. [63 M.L.J. 329 (P.C.) Rel. on.] 141 I.C. 175 (2)=1933 M. 276=64 M.L.J. 75=36 L.W. 919. *See also* 1939 P. 207. A second execution application (filed after the amending Act IX of 1927 came into force) was returned for correction of some defects and only represented along with a third application for execution more than three years from the date of the first application. *Held*, that so long as no final orders had been passed on the second application, it was still pending and no question of limitation arose. 64 M.L.J. 401=37 L.W. 469=144 I.C. 167=1933 M. 540 (1). As to the meaning of "final order," *see* 7 Luck. 590=1932 O. 148 (F.B.). Recording of payment by Court under O. 21, R. 2 is not a final order. 1932 Oudh 148. Where there was an application for review and an appeal against the order in review, the decree-holder is entitled to the benefit of cls. (2) and (3) of Art. 182. The words in Art. 182 (3) "decision passed on review" mean a decision passed in review proceedings; and whatever such a decision is, it gives a fresh starting point of limitation. 162 I.C. 223=38 Bom. L.R. 215=1936 B. 162. The words 'where there has been a review of judgment' in Art. 182 (3) can only cover cases when an application for review of a judgment has been allowed and they do not cover cases in which the application for review has been rejected. In the former case limitation would begin to run from the date of the decree substituted on review and in the latter from the date of the original decree itself. 1942 A.L.W. 429=1942 A.L.J. 352=1942 All. 338.

Description of application.	Period of limitation	Time from which period begins to run.
		4. (where the decree has been amended) the date of amendment, or

ART. 182 (4): SCOPE AND EFFECT OF CL. (4).—The correction of mere clerical errors in a decree, *e.g.*, error in the number of the suit or in the name of judgment-debtor, does not amount to an amendment within the meaning of Art. 182 (4). Where the decree as it stood before such correction was fully capable of execution and the decree-holder took no steps for its execution for a period of three years, the decree becomes barred, and the subsequent verbal corrections will not have the effect of reviving the said decree or giving a fresh start to the decree holder. 67 C.L.J. 92=41 C.W.N. 1151=1937 Cal. 581. Art. 182 (4) lays down clearly and without reservation that when a decree has been amended the period of limitation is three years from the date of the amendment. It is not stated that the amendment should have been made within three years from the date or the original decree or at a time when the original decree was subsisting. It is not the function of the executing Court to question the correctness or propriety of the amendment of the decree. I.L.R. (1941) Lah. 659 =43 P.L.R. 11=1941 Lah. 131. *See also* 41 C.W.N. 1330; 16 Pat. 453=1938 Pat. 57. Under Art. 182 (4), *terminus a quo* for an application for execution of a decree runs from the date of the order of the amendment, if there has in fact been an amendment within the meaning of that clause, even though that amendment has been made more than three years from the date of the original decree. But if the alteration in the decree does not amount to an amendment within the meaning of that clause, no fresh *terminus a quo* is available to the decree-holder for execution of the decree. 23 P.L.T. 731=1942 P.W.N. 179=1942 Pat. 478. Where the original decree is incapable of execution, time runs from the date when a decree properly capable of execution has been drawn up. 64 I.C. 522= 34 C.L.J. 397. Where a decree capable of execution becomes barred, its amendment cannot entitle the decree-holder to a fresh period of limitation under Art. 182 (4), because after it is dead, it cannot be revived by a subsequent application for amendment. 5 Lah.L.J. 398=1924 L. 329. *See also* 56 M. 458=1933 M.W.N. 23=37 L.W. 180 =64 M.L.J. 251=1933 M. 315=56 M. 458; 1936 Mad. 434=70 M.L.J. 700; 147 I.C. 815=11 O.W.N. 10=1934 O. 43. But see *contra* 58 M. 743=1935 M. 97=40 L.W. 896=67 M.L.J. 904; 16 P. 290=167 I.C. 134=18 Pat.L.T. 18=1937 P. 316. *See also* 57 M. 795=39 L.W. 488=1934 M. 283 =66 M.L.J. 492. The words of cl. 4 of Art. 182 are quite unqualified and do not speak of any particular form of amendment, whether the amendment is necessary or not, whether the decree is capable of execution without the amendment; it does not qualify the matter of amendment in any way under Art. 182 (4), if a decree has been amended, the starting point of limitation for execution is the date of the amendment. The fact that the amendment is applied for and made after three years from the date of the decree is immaterial. If an application for execution is made within three years of such amendment, it is in time and not barred. The executing Court is not competent to sit in appeal over the Court which passed the decree or made the amendment; it has only to see whether the decree has been amended in order to see whether the execution application is barred by limitation. 16 Pat. 290=18 Pat.L.T. 18=1937 Pat. 316; *See also* 16 Pat. 453=18 Pat.L.T. 679=1938 Pat. 57; 1929 Cal. 650. Art. 182 (4) allows an application for execution to be made within three years from the date when the decree is amended. It is beyond the competence of the executing Court to decide as to whether the order for amendment of the decree was proper or not. It may be the duty of the Court allowing the amendment to consider as to whether an amendment should be granted at all when the application is made more than three years after the date of the decree; and if there is an order for amendment passed in such cases the parties of course could challenge that order by way of revision, but it is no business of the executing Court to enter into the propriety of the question as to whether the amendment should have been made or not, and once the decree is amended it has got to take the amended decree as it stands and allow execution of it provided the application for execution is made within three years from the date of the amended decree. 65 C.L.J. 455=41 C.W.N. 1330. *See also* 1935 A. 606=1935 A.L.J. 289; 1930 Pat. 286.

If there has been an amendment of a decree which was incapable of execution, the period shall run from the date of the amendment, otherwise it must date back to the date of the original decree. 27 A.L.J. 427

Description of application.	Period of limitation.	Time from which period begins to run.
		5. (where the application next hereinafter mentioned has been made) the date of [1][the final order passed on an application made] in accordance with law to the proper Court for execution, or to take some step-in-aid of execution of the decree or order, or

LEG. REG.

[1] Substituted by Act IX of 1927.

=115 I.C. 118 (2)=1929 A. 253. *See also* 1929 C. 650.

Art. 182 (5).—Scope of—Difference between para. (5) and the rest of the paragraphs. While all the paragraphs in Art. 182 excepting para. (5) deal with the question of what is the time from which limitation begins to run in the case of a first application for execution, para. (5) alone deals with the case of subsequent applications. The wording of para. (5) shows that it refers to an application for execution where there has been a previous proceeding in execution in the Court. The other paragraphs do not deal with such a question. I. L.R. (1938) A. 342=1938 A.L.J. 117=1938 All. 210. What is clearly contemplated by Art. 182 (5) is that a judicial order is to be made on an application by the decree-holder, being a step-in-aid execution and in order that an application for transfer should benefit the decreeholder, it must be in essence in continuation. 162 I.C. 984 =1936 P. 313. A suit under O. 21, R. 63, C.P. Code, by a decree-holder to set aside an order allowing a claim to the attached property cannot be regarded as a step-in-aid under Art. 182 (5), such a suit is not "an application made in accordance with law to the proper Court for execution or to take some step-in-aid of execution of the decree or order." "Application" in the Article does not include a suit. 47 Bom.L.R. 848. *See also* 1942 Mad. 5=(1941) 2 M.L.J. 754. A decree entitling a landlord to a certain enhancement of rent is not capable of execution. The entry of the decree in the revenue records is not execution of it, but merely a record of the facts as they exist. Accordingly, Art. 182 has no application to a mutation in accordance with such a decree. 16 Lah.L.T. 26. The *terminus a quo* under the *unamended* form of Art. 182, cl. (5) is the date of the application for execution or to take some step-in-aid of execution and not (as under the amending Act IX of 1927) the result of the application, *viz.*, the date of the final order passed on such application. 61 I A. 62=55 A. 993=38 C.W.N. 229=1934 P.C. 14=66 M.L.J. 79 (P.C.). An order on an execution petition stating that it was "closed" because no schedule of immoveable property was furnished as required by O. 21, R. 13, C.P. Code, cannot be deemed to be one rejecting or dismissing the petition. The word "closed" generally indicates an intention to remove the petition from the file for statistical purposes but not to terminate it finally. A subsequent application for execution may therefore be treated as continuation of the earlier one. 1945 M.W.N. 381=A.I.R. 1945 Mad. 236=(1945) 1 M.L.J. 380. *See also* 1945 Pat. 276=26 Pat.L.T. 155.

AMENDMENT NOT RETROSPECTIVE—The amendment will not disturb vested rights and so, subject to this limitation, an application made after the 1st January, 1928, will necessarily be governed by the amended Act. 1930 P. 207.

STEP-IN-AID OF EXECUTION—(*a*) TEST OF APPLICATION BEING STEP-IN-AID.—There can be a step-in-aid of execution without any application for execution having ever been made at all. 178 I.C. 202=1938 Lah. 326. Anything done by the decree-holder through the machinery of the Court or any proceeding taken by the executing Court which is calculated to advance the case of the decree-holder in the direction of his ultimate object of reaping the fruits of his decree, can be treated as a step-in-aid of execution and save the running of limitation against him. 18 Lah. 671=39 P.L.R. 680 =1937 Lah. 404. The necessary conditions which must be satisfied for the application to be one for execution or to take some step-in-aid of execution of the decree or order are that (1) the application must be in accordance with law, (2) it must be made to the proper Court, and (3) there must be a final order passed on the application. These conditions are adjectival both to the application for execution and to the application to take step-in-aid of execution of the decree or order. 7 Luck. 590=137 I.C. 768=1932 O. 148 (F.B.). A step-in-aid of execution can be taken before an application for execution of the decree has been made in

Court. I.L.R. (1939) All. 728=1939 A. L.J. 746=1939 All. 483. A step-in-aid of execution implies that there is already a decree which can be executed and in furtherance of which the step is taken. Where under O. 21, R. 12, C.P. Code, the Court fixes the amount of the mesne profits but defers the drawing up of the decree until payment of the necessary Court-fee by the plaintiff, an application by the plaintiff praying the Court to assess and receive the deficit Court-fees or to prepare the final decree cannot be considered to be a step-in-aid of execution under Art. 182 (5). 21 Pat. 366=23 Pat.L.T. 202=1942 Pat. 410. Art. 182 (5) gives two landmarks of time from which the period of limitation can run. One is the date of the final order passed on an application made for execution, and the other is the date of the final order passed on an application made to take some step in-aid of execution. 1939 Rang.L.R. 508= 1939 Rang. 406. Under Art. 182, Cl. (5) it is sufficient to show that an application was made in accordance with law to the proper Court for execution or to take some step-in-aid of execution of the decree, and it is not further necessary to show that such application was not merely colourable but had been made with a *bona fide* and genuine intention of obtaining execution of the decree and not simply for the purpose of gaining time and keeping the decree alive. [52 A. 11 (F.B.). Appr. 48 A. 468, Overr.] 61 I.A. 62=66 M.L.J. 79=55 A. 993 (P. C.). An execution application made to a proper Court and outwardly at least, in accordance with law, is one within the provisions of Art. 182 (5) even if it is made merely for the purpose of gaining time and keeping the decree alive. There is nothing inherently wrong in making an application merely for the purpose of saving time. I.L.R. (1942) Kar. 448=1943 Sind 29. Application for execution of a decree made to a wrong Court cannot be considered as a step-in-aid of execution. 177 I.C. 483=40 P.L.R. 721=1938 Lah. 451. The fact that an application for execution is subsequently dismissed on account of the decree-holder's default cannot make the application ineffective for saving the limitation, if it is a proper application made in accordance with law. It is the application, and not the result of the application, which is contemplated as being sufficient to save limitation. 13 Luck. 162=167 I.C. 34= 1937 O.W.N. 169=1937 O. 233. The words "for execution" in Art. 182 (5) mean "for the purpose of obtaining execution," the words "step-in-aid of execution" mean "step taken for the purpose of obtaining execution." 90 I.C. 938=48 A. 468=1926 A. 95. *See also* 1922 M. 79 (2)=42 M.L. J. 303=45 M. 466. But where the applicant does not state what step he wishes to be taken, that application will not come under this clause. 150 I.C. 866=36 Bom. L.R. 115=1934 B. 113 (2). Where decree comprises two reliefs, an application to execute first portion is a step-in-aid. 44 A. 166=1922 A. 388=65 I.C. 358. In the case of a joint and several decree an application for execution made against any one of the judgment-debtors is a step-in-aid of execution against all. The fact that one of the judgment-debtors is not correctly impleaded in that the person who was mentioned as his guardian was not nominated by the Court, is immaterial. 197 I.C. 480=1942 P. 285. *See also* 1938 Pat. 395. An application praying for a relief which perhaps the Court would not have granted is still treated as an application in accordance with law for the purposes of Art. 182. 1926 M. 179=49 M.L.J. 753= 91 I.C. 11; 1922 C. 3=26 C.W.N. 292. "Date of decree", meaning of. 1 Luck. 543=1927 O. 488. An application made to point out that the official of the Court had omitted to include interest granted under the decree payable to him and to correct the mistake by addition of interest after calculation, is necessarily by a mistake of an official of the Court and is a step-in-aid of execution. It is a judicial act and not a ministerial one. 114 I.C. 55=1929 L. 103. *Obiter.*—If execution of a decree is conditional on prior payment by the decree-holder of court-fees, or of the mortgage-debt in a redemption suit, or on discharge by the decree-holder of an incumbrance, or anything else, an application by the decree-holder for execution without fulfilling such a condition is nevertheless one in accordance with law, it being open to the Court, on such application, to order execution on previous compliance by the decree-holder of the condition imposed by the decree. 122 I.C. 438=1930 N. 241. *Bona fides of decree-holder* in making the application is not material. 1939 Rang.L.R. 587=1939 Rang. 433; (41 P.L.R. (J. & K.) 31; (1934) P.C. 14 Foll.)

(*b*) APPLICATIONS AS STEPS-IN-AID OF EXECUTION— (1) GENERAL.—An application to take a step-in-aid of execution is not necessarily an application in execution. 45 M. 202=41 M.L.J. 374=1922 M. 247. To constitute a step-in-aid it must pray for some relief which can be granted by the Court. 35 C.L.J. 82=1922 C. 44. *See also* 1932 A.L.J. 1035=1933 A. 49 as to the meaning of the word. If the facts of a particular case show that the proceeding in question has the effect of facilitating or advancing the execution to any extent of removing some obstacle from the way of execution, it may well be regarded as a step-in-aid of execution. 7 Luck. 590=137 I.C. 768=1932 O. 148 (F.B.). The word "application" in cl. (5) means a document containing a request. There is nothing to

prevent the Court from treating a suit as an application. 7 O.W.N. 887=1930 O. 468. But *see also* I.L.R. (1939) 2 Cal. 33=43 C. W.N. 604=1939 Cal. 319; 1940 Rang.L. R. 82=1939 Rang. 296; 1942 Mad. 5= (1941) 2 M.L.J. 754; 1946 A.M.L.J. 13; 1938 N.L.J. 336=1938 Nag. 534=I.L.R. (1940) N. 334 (Claim suit under C.P. Code, O. 21, R. 63). It is not necessary for the purpose of saving limitation under Art. 182 (5), that an application taken as a step-in-aid of execution should be made in a pending execution petition. I.L.R. (1945) Mad. 468=58 L.W. 25=1945 Mad. 139=(1945) 1 M.L.J. 47 (F.B.). An application to take a step-in-aid of execution may be made even though there is no pending application for execution. (45 M. 202, Foll.; 45 M. 466, Not Foll.) 151 I.C. 767 =36 Bom.L.R. 510=1934 B. 266; 57 M. 808=39 L.W. 639=1934 M. 392=67 M.L. J. 762; 7 Pat. 708. The step-in-aid of execution must be made while the decree is still alive. Certification cannot have the effect of reviving a dead decree. 1930 O. 804= 7 O.W.N. 858. An application for execution against a judgment-debtor who was then dead is neither made in "accordance with law for execution nor a step-in-aid of execution." The good faith of the decree-holder is immaterial and cannot affect the position. I.L.R. (1944) Nag. 419=1944 N.L.J. 200=1944 Nag. 145. A plaint in a suit in a Munsif's Court for a declaration that certain immovable property of the judgment-debtor was liable to attachment and sale in execution of a decree obtained in a Small Cause Court can be treated as a step-in-aid of execution. But it cannot be treated as an application made to the "proper Court," unless the said decree of the Small Cause Court has, before the plaint is filed, been transferred to the Munsif's Court for execution. When the decree has not been so transferred, Art. 182 (5) will not apply to save limitation. 155 I.C. 505=1935 O. W.N. 672=1935 O. 430. *See also* 1940 N. L.J. 605=1941 N. 60 (Insolvency Court not proper Court for execution). Application by decree-holder to execute decree for more than is due to him does not by itself make it not one in accordance with law. 53 L.W. 155=1941 Mad. 528=(1941) 1 M.L.J. 267. *See also* I.L.R. (1942) B. 1=1942 B. 29=43 Bom.L.R. 833 (Assignment of decree to several persons jointly—Application by one alone saves limitation). *See also* 1941 M. 30=(1940) 2 M.L.J. 502; 8 Cut.L.T. 86.

(2) WHAT APPLICATIONS AMOUNT TO STEPS-IN-AID.—Process application for attachment. 48 M.L.J. 678=1925 M. 380. An application or transfer of decree for execution. 3 Pat.L.T. 298=1 P. 328=1922 P. 301. *See also* 11 P. 785=1932 P. 309; 27 S.L.R. 109=142 I.C. 489=1933 S. 78; 10 O.W.N. 363=1933 O. 131=143 I.C. 678; 16 P. 288=18 Pat.L.T. 202=1937 P. 351; 162 I.C. 984=1936 P. 313; I.L.R. (1939) A. 57=1938 A. L. J. 1128=1939 All. 57; 1940 Pat. 677=19 Pat. 354; 1937 O.W.N. 1116; I.L.R. (1940) All. 318= 1940 A.L.J. 381=1940 All. 331; 1937 Ran. L.R. 287=1937 Rang. 477 (order sending decree for execution to another Court); I. L.R. (1940) 2 C. 252=71 C.L.J. 535= 1940 Cal. 557; I.L.R. (1937) N. 440=1937 Nag. 305; 1936 A.L.J. 254=163 I.C. 231 =1936 A. 369; 1937 A.L.J. 278=1937 A. 397. An application to certify payment. 2 R. 393=1925 R. 26=84 I.C. 473. *See contra* 137 I.C. 768=1932 O. 148 (F.B.); 7 Luck. 590; 9 Luck. 288; 56 I.A. 30=3 Luck. 684=56 M.L.J. 233=1929 P.C. 19 (P.C.); 163 I.C. 915=1936 P. 386; 43 Bom.L.R. 880=I.L. R. (1942) Bom. 11=1942 Bom. 17; 21 Pat. 481=1943 Pat. 7. Uncertified payment whether saves limitation. *See* 1927 C. 29. *See also* 101 I.C. 574; 1927 A. 827; 1933 A. 49. (S. 20 proviso applied). Application by mortgagor in redemption suit to extend time for deposit of money. 41 M.L.J. 374 =45 M. 202. An application by a transferee decree-holder for a recognition of his transfer and to execute the decree. 1924 M. 834=47 M.L.J. 447=80 I.C. 103; 40 Bom. L.R. 411=1938 Bom. 309. But an application by a transferee to be brought on the record without asking for execution of the decree is not an application in accordance with law, as it is not an application for execution of the decree. 27 S.L.R. 314=1933 S. 341. An application is required under the provisions of O. 21, R. 11, C.P. Code, to contain certain particulars and to be signed and verified. It is the duty of the Court when it is presented to check the application to see that the necessary particulars are given under O. 21, R. 17 and the Court is then empowered either to reject the application or require its immediate amendment or its amendment within a fixed time. If the Court takes none of these actions it must be deemed to hold the application to be one in accordance with law. 1941 Pesh. 103. Application to make decree final may be step-in-aid. 79 I.C. 407=1924 B. 71. An application by a decree-holder to obtain an order which he has been directed by the executing Court to obtain is an application to take a step-in-aid. 46 B. 269=1922 B. 118=23 Bom.L.R. 1013. Application to send for records. 23 A.L.J. 422=1925 A. 394=47 A. 667=88 I.C. 271. Application for the issue of notice upon judgment-debtors. 68 I.C. 337 =1923 P. 180. Even where an execution application is not in accordance with law, if an order had been made for issue of notice under O. 21, R. 22, a fresh period of limitation begins to run from the date of the issue of the notice. 90 I.C. 847=1926 P. 160; 1933 P. 658. Issue of a combined notice under O. 21, Rr. 22 and 16 upon the judgment-debtor is sufficient under the law

to save limitation. 90 I.C. 847; 17 L.W. 538=1938 Mad. 553=(1938) 1 M.L.J. 710; 40 Bom.L.R. 676=1938 Bom. 405= I L.R (1938) Bom. 708. But *see* 78 I.C. 241=1925 L. 233, *contra*. Application made by decree-holder merely to issue notice to the judgment-debtor to pay the decretal amount to the Court which passed the decree is not illegal or to an improper Court, although the judgment-debtor at the time was residing outside that Court's jurisdiction. And if such application is made in good faith for the purpose of executing the decree, it will be a step-in-aid. 116 I.C. 474=1929 R. 95. *See also* 1929 A. 625 (F.B.). (Good faith not necessary). An application that certain objections to the execution of the decree be rejected is a step-in-aid. 19 A.L.J. 641=1921 A. 119 =63 I.C. 907. *See also* 50 M. 49=1926 M. 1178. So also an application by the decree-holder to get rid of the objections raised by the judgment-debtor, and an application for extension of time in complying with the orders of the Court thereafter. 119 I.C. 228=1929 L. 335. Application to summon witness in claim proceedings. 1922 A. 432=19 A.L.J. 843; 1923 A. 415. *See also* 103 I.C. 712=1927 L. 653 (Application to summon witnesses to resist judgment-debtor's objection). The decree-holders examined a certain witness in order to resist an objection filed by the judgment-debtor to the execution of the decree. *Held*, that the action on behalf of the decree-holders was a step-in-aid. 4 P. 202=88 I.C. 807 =1925 P. 459. Where, on the judgment-debtor's application under O. 21, R. 2, the decree-holder attends the Court with witnesses to contest the application informing payment out of Court, the act can be construed to mean a step taken in aid of execution 1930 C. 304. Where a decree-holder, after executing the decree against the principal judgment-debtor and getting part satisfaction, files an application against the surety more than three years after the date of the decree, the case is governed by Art. 182 (5), Expl. 1 to the article does not apply to the case. The prior execution against the principal judgment-debtor saves limitation against the surety also. The surety may no doubt be technically liable from the date of the decree, but in equity his liability arises only upon the failure of the principal to satisfy the decree. 58 M. 276 =1935 M. 188=68 M L.J. 119 *See also* 44 A. 743=1922 A. 481. Where a prior execution application is dismissed on the ground that the reliefs claimed are superfluous or incorrect, still it is an application in accordance with law and saves limitation. 3 P. 42=75 I.C. 312. An application for transfer of a decree to another Court for execution made at a time when the judgment-debtor is known to the decree-holder to be dead, is a step-in-aid and will save limitation. 45 C.W.N. 342. An application to a Court in British India to send a decree passed by it for execution to a Court in a Native State, there being reciprocal arrangement between that state and the Government of India whereby the decrees of the state shall be executed in British India and the decrees of British Indian Courts shall be executed by the Courts in that state, is a step-in-aid of execution under Art. 182 (5), Limitation Act, and the order on such application starts a fresh period of limitation. I.L.R. (1941) Mad. 574=53 L.W. 145=1941 Mad. 309=(1941) 1 M.L.J. 242 (F B.). *See also* 1942 N.L.J. 101= 1942 Nag. 63=I.L.R. (1942) Nag. 539. Where proceedings are taken in a Native Court but transferred to British Court, such a proceeding is a step-in-aid of execution. 45 B. 453=59 I.C. 747=1921 B. 256; 31 Bom.L.R 1105=1929 B. 418=53 B. 844. So also application re-presented in time but dismissed on ground of too great delay. 1925 M. 714=21 L.W. 548=88 I.C. 88. Execution application returned for arrangement but not re-presented is not one in step-in-aid. I.L.R. (1940) Mad. 60=(1939) 2 M.L.J. 671=1939 Mad. 841=50 L.W. 311; 1939 Mad. 429=(1939) 1 M.L.J. 87=49 L.W. 173. *See also* 1942 Mad. 216=(1941) 2 M. L.J. 1018. As to effect of application for rateable distribution, *see* 1 Luck. 569=1926 O. 606. Application to substitute legal representative of judgment-debtor on record is step-in-aid. 103 I.C. 279=1927 N. 308; 103 I.C. 244=1927 A. 698; 26 A.L.J. 417 =50 A. 621=1928 A. 299; 24 N.L.R. 36= 1927 N. 308. Where an execution application is filed against the legal representatives of the judgment-debtor in the Court which passed the decree and a notice thereon is issued to them to show cause why the decree should not be executed against them, it cannot be dismissed for want of jurisdiction, merely because it turns out to be ineffective owing to the non-existence of any property within the jurisdiction of the Court. 1934 L. 55. An application to bring on to the record the legal representatives of the defendant and to execute the decree is a step-in-aid of execution, even though so far as the prayer for execution of the decree was concerned the application was not in accordance with law, the applicant claiming under an oral transfer of the decree. 54 M 852=134 I.C. 59=1932 M. 19=61 M. L. J. 541. In the case of a joint and several decree an application for execution made against any one of the judgment-debtors is a step-in-aid of execution against all. The fact that one of the judgment-debtors is not correctly impleaded in that the person who was mentioned as his guardian was not nominated by the Court, is immaterial. 197 I.C. 480=23 Pat.L.T. 734=1942 P. 285. A decree obtained by two persons was sought to be executed by

one of them alleging that the other had relinquished his right during pendency of suit. On an objection being raised the other decree-holder gave a *purshis* stating that he had no objection if the decree were executed by the applicant alone. The application ultimately failed for want of prosecution. A question having been raised whether application was according to law and served as a step-in-aid of execution. *Held*, that the statement made by the other decree-holder in the *purshis* did not amount to a relinquishment or to an assignment of his interest in the decree. The application made in reliance of the alleged relinquishment was mistaken. It was however made by a person entitled to make it and was thus in accordance with law. (1931 L. 600, Foll.) 58 B. 428=36 Bom.L.R. 437=1934 B. 216. Before the expiry of one year from the date of decree, the decree-holder put in an application for execution in accordance with O. 21, R. 11, and on the same day he also filed another application for amendment of the first application, by which in effect he prayed that a precept be issued to the District Court of another district for attachment of money standing to the credit of the judgment-debtor in the Allahabad Improvement Trust. The application was accordingly amended. *Held*, that the application was one in accordance with law and a step-in-aid of execution. 146 I.C. 991=1933 A.L.J. 902=1933 A. 844. Application against minor whose guardian was dead before date of application is good to give a fresh starting point of limitation. 65 M.L.J. 374=145 I.C. 714=1933 M. 696; 1936 N. 77 (17 M. 76; 35 C. 1047 and 19 A. 337, Not Foll.) Filing of batta memorandum for arrest. 1928 M. 563=56 M.L.J. 64. (*See also* 28 M. 399, Rel. on.) But mere filing of receipts by decree-holder for costs on account of maintenance of judgment-debtor in jail is not a step-in-aid. 1928 L. 443. *See also* 23 C. 196; 22 Cal. 827. (*See* however 63 M.L.J. 792, *infra*.) The despatch by money order of the subsistence allowance for the judgment-debtor in jail to the jail superintendent who, under O. 21, R 39 (4), is the proper officer to whom the payment should be made is "an application to the proper Court to take a step-in-aid of execution." 56 M. 420=1933 M. 83=63 M.L.J. 792. But *see* 62 I.C. 480=1921 M. 532 (1). Application for payment of money deposited in Court is step-in-aid. I.L.R. (1938) All. 342=1938 A.L.J. 117=1938 All. 210. *See also* 39 P.L.R. 102=1938 Lah. 138; I.L.R. (1938) Lah. 586=40 P.L.R. 494=1938 Lah. 678. An application for delivery of property by a decree-holder who has purchased the property in execution of his own decree is a step-in-aid, even though the application was dismissed for non-payment of batta. 36 L. W. 683=57 M.L.J. 468. An application for possession of property purchased or money realised by a plaintiff decree-holder in execution is a step-in-aid of execution and saves limitation. There can be no difference in principle when the application is for payment out of Court of money realised in execution and when it is an application for possession of property sold in execution by the decree-holder purchaser. 55 L.W. 857=1943 M.W.N. 4=1943 Mad. 129=(1943) 1 M.L.J. 9 (F.B.). The filing of a batta application by the judgment-creditor in an execution proceeding for summoning certain persons to attend Court and give evidence to show that the objection of the judgment-debtor that the decree had been satisfied was untrue, is a step-in-aid. 58 M. 301=69 M.L.J. 19=1934 M. 710; also application for appointing receiver in pending execution proceedings. 1929 L. 57; also application of the decree-holder to file list of movables under O. 21, R. 12. 31 Bom.L.R. 1291=1930 B. 65; also application by the decree-holder for leave to bid at the execution sale. 53 M. 390=1930 M. 588=58 M.L.J. 406. *See also* 12 L. 153 =32 Punj. L. R. 84=1931 L. 81 (F.B.) (Majority holding that the question must depend upon the circumstances of each case). The execution of the attached decree on the application of the attaching decree-holder is a step-in-aid of execution of the decree in execution whereof the attachment has been made. 132 I.C. 667=1931 L. 705. An application by way of appeal to a Court of appeal, to set aside an order of the trial Court raising an attachment ordered earlier, is an application in accordance with law to take a step-in-aid of execution of the decree. It is also an application made to the proper Court, for when an application is dismissed by a subordinate Court, the appeal Court is the proper Court and indeed the only Court which can then execute the decree. When an appeal against an order in an execution application is dismissed, a subsequent execution application made within three years of the date of the final order of the appellate Court, would be in time as falling within Art. 182 (5). 49 C.W.N. 776=58 L.W. 438 =47 Bom.L.R. 956=1945 M.W.N. 623=1945 P.C. 176=(1945) 2 M.L.J. 224 (P. C.). *See also* 12 Cut.L.T. 19 I.L.R. (1943) M. 485=1943 M. 398 (2)=(1943) 1 M.L.J. 95. A decree-holder having been adjudicated insolvent on his own application, the Official Assignee sold all the debts due to the insolvent to the appellant. It appeared that after the insovency, the original decree-holder filed an execution application and the appellant who took out execution later on relied on the application filed by the original decree-holder as a step-in-aid. *Held*, that the original decree-holder, who was on record, was entitled to execute the decree, and that his insolvency was not material as the Official Assignee had transferred all his rights, and that consequently the transferee could rely on the

prior application as a step-in-aid. 41 L.W. 295=1935 M. 383=68 M.L.J. 392. The institution of a suit under S. 61 of the Oudh Rent Act constitutes a step-in-aid of execution of the decree for arrears of rent, as the decree passed in such a suit requires the tenant to pay up the arrears within a certain time, in default of which he is to be ejected. 11 Luck. 716=1936 O.W.N. 134=1936 O. 248. *See also* I.L.R. (1939) Nag. 367=1938 Nag. 191 (application for substitution of names in place of original decree-holder); 1940 Lah. 337 (application in partition suit for preparation of formal decree sheet on stamp paper); 1937 Sind 108=31 S.L.R. 14; 14 Luck. 453=1939 O.W.N. 219=1939 O. 155; 40 Bom L.R. 507=I.L.R. (1938) B. 273=1938 B. 354 (application for final decree). *See also* 43 C.W.N. 800=1939 Cal. 488 (application for final decree after final decree is passed is not step-in-aid). *See also* 18 L. 671=39 P.L.R. 680=1937 L. 404.

(3) WHAT APPLICATIONS DO NOT AMOUNT TO STEPS-IN-AID.—Application not indicating how the Court is to assist the decree-holder. 1925 C. 1135. *See also* 150 I.C. 866=36 Bom.L.R. 115=1934 B. 113 (2). Mere filing of an affidavit by the decree-holder stating that there were no incumbrances over the property. 22 A L.J. 410=78 I.C. 631=1924 A. 811. But the filing of affidavit of revenue is step-in-aid. 47 C.L.J. 362=1928 C. 302. But *see contra*. 6 P. 694=108 I.C. 430=1928 P. 145. A "counter-statement" filed by the decree-holder in answer to an application by the judgment-debtor to enter up satisfaction of the decree is not a step-in-aid. 1922 M. 79 (2)=42 M. L. J. 303=45 M. 466. *See also* 50 M. 49; 142 I.C. 197=1933 M. 403=64 M. L. J. 345=37 L. W. 455. An application made to the Court to record a part payment or adjustment of the decretal debt under O. 21, R. 2, C.P. Code, is not a step-in-aid of execution which will prevent limitation running under Art. 182 (5). Such an application to record adjustment under O. 21, R. 2, is a mere certificate and is no application at all under Art. 181 or Art. 182. 43 Bom.L.R. 880=I.L.R. (1942) B. 11=1942 Bom. 17. A mere adjournment has been held not to be a step-in-aid of execution, although an application for adjournment in order to obtain further evidence has been held to be a step-in-aid. 1923 B. 218. (27 C. 285, Ref.) An application for time to put in a petition for substituted service is not a step-in-aid. 38 L.W. 301=1933 M. 675=65 M.L.J. 271; 152 I.C. 987=1934 P. 662. Partition decree—Application for execution—Return for purpose of payment of stamp duty—Application to excuse delay in payment not step-in-aid. 1943 Mad. 650=(1943) 2 M.L.J. 112=56 L.W. 393. An application by a decree-holder under S. 39, C.P. Code, for transfer of his decree to another Court for execution, in ignorance of the death of the judgment-debtor, is a step-in-aid of execution (17 M. 76 and 35 C. 1047, Foll.; 19 All. 337, Diss. from.) 151 I.C. 767=36 Bom.L.R. 510=1934 B. 266; 1934 L. 55; 56 A. 890=1934 A.L.J. 829=1934 All. 463, The mere filing of an appeal is not in itself a step-in-aid of execution; if any step has to be and is taken by the decree-holder to remove obstacles thrown by the judgment-debtor in his way to the realisation of the decree, that will be a step-in-aid of execution. 12 Cut. L.T. 19. *See also* 1945 P.C. 176=(1945) 2 M.L.J. 224 (P.C.), Application for certificate of transfer is not application for execution. 23 A.L.J. 977=90 I.C. 274=1926 A. 93. Such an application does not become an application for execution, merely because it was made in a form prescribed for an application for execution. 11 P. 785=1932 P. 309. An application to the Court which passed a decree and transferred it for execution to another Court, to recall the decree from that Court and to send it back again to that Court for execution is not a step-in-aid of execution for it took the decree-holder no nearer execution than he was before the application. 1942 N.L.J. 101=I. L.R. (1942) N. 539=1942 N. 63. *See also* 1937 R. 406. If the application for transfer is incompetent, because the Court to which the decree sought to be transferred has no jurisdiction to entertain the same, it cannot be treated as a step-in-aid. 1932 P. 309; nor an application to recall decree from transferred Court after the same has been returned with certificate of non-satisfaction. 1937 Rang. 406. An application for a copy of the decree to be executed is not step-in-aid. 39 M.L.J. 572=60 I.C. 117; 1933 All. 756 (1). The payment of process for issue of a warrant of arrest in execution of a decree, where the batta memo. itself does not apply for the issue of process is not step-in-aid. 1924 M. 906=47 M L.J. 537=82 I.C. 497; 1925 A. 646. *See also* 64 M.L.J. 692=1933 M. 438=38 L.W. 766. Mere service of notice. 6 P. 277=8 Pat.L.T. 652=1927 P. 218. Application by decree-holder for extension of time to file incumbrance certificate. 53 M.L.J. 766=106 I.C. 648=1928 M. 143. Application for payment out of money in Court. 1925 M. 703=48 M.L.J. 506=87 I. C. 989. Mere drawing out of money without any application. 144 I.C. 66=38 L.W. 205=1933 M. 597. *See also* 22 Pat.L.T. 792=1941 P.W.N. 559=1941 Pat. 428 (application for withdrawal of money awarded upon rateable distribution). Where, on an execution petition being put in, notice was ordered, and, on the absence of the judgment-debtors on the day fixed, the Court passed an order directing attachment, this does not mean to be a step-in-aid of execution. 45 M. L.J. 680=1924 M. 186. An application by

a decree-holder to be put in possession of the property is not a step-in-aid. 2 P. 249=1923 P. 22. But *see contra*. 24 M. 185; 19 A. 477; 27 C. 709; 35 B. 452; 57 M.L.J. 468 =30 L.W. 683; 50 A. 211. *Pratt, J.*—The application for stay is not a step-in-aid of execution. 1923 B. 218. An application for the revival of previous proceedings for execution is a step-in-aid. 64 I.C. 727. Surety for payment of amount of mesne profits—Application for ascertainment of amount does not keep decree alive. 47 B. 778=1923 B. 366. Arrest warrant returned unexecuted—Order for fresh steps not step-in-aid. 18 L. W. 109=1923 M. 686; nor application to attach property beyond executing Court's jurisdiction. 90 I.C. 938=1926 A. 95. But *see* 14 R. 550=163 I.C. 403=1936 R. 271. Nor application for arrest of judgment-debtor residing outside British India. 1940 Pesh. 27 =189 I.C. 738. Application for attachment —Final order recording petition—Fresh application for receiver—Dismissal—Claim subsequently upheld—Appeal—Cannot be treated as "step-in-aid". I.L.R. (1943) M. 485 =1943 Mad. 398 (2)=(1943) 1 M. L. J. 95. Where an application for execution was made to a Court which originally had no jurisdiction but subsequently acquired jurisdiction, and no fresh application was made after the conferment of jurisdiction. *Held*, that the application did not save limitation. [39 M. 640 (P.C.), Rel. on.] 60 C. 1176=37 C.W.N. 1167=1933 C. 906. Where a decree has been transferred for execution to another Court, an application made to the Court from which the decree has been transferred is not a step-in-aid. 1923 P. 384 =2 P. 247=74 I.C. 608. *See also* 1922 C. 3=63 I.C. 116=26 C.W.N. 292. An application by the transferee of a decree to substitute his name for that of the decree-holder is a step-in-aid of execution. 88 I.C. 112= 1925 N. 362; 1933 R. 55=144 I.C. 310. *See also* 1924 M. 895 (2)=47 M.L.J. 447. Where both the parties apply to the Court to postpone the hearing of a pending execution with a view to arrive at a compromise, the application so made cannot be considered a step-in-aid. 25 Bom.L.R. 490=1923 B. 461. Nor an application for an injunction to restrain waste by judgment-debtor. 19 Pat.L.T. 798 =1938 Pat. 188. Decree-holder purchasing portion of the property—Application for possession under O. 21, R. 95—Subsequent execution application to recover decree amount not satisfied—Same filed after three years of original application but within three years of the application for possession. *Held*, that the application for possession was not a step-in-aid and that sec. 14 (2) did not apply to the case so as to save limitation, because the reliefs sought in the two proceedings were wholly distinct. 50 A. 670=26 A.L.J. 498 =1928 A. 368; 11 P. 513=139 I.C. 843= 1932 P. 286. But *see* 50 A. 211=1928 A. 46; 1929 A. 390; 30 L.W. 683=57 M.L.J. 468. Where a decree-holder purchases property in execution but loses possession of the same in a separate suit by a third party, his fresh application for execution or for revival of execution, if one is maintainable, must be filed within three years of the trial Court's decree. 50 A. 211=107 I.C. 42=1928 A. 46. An opposition by the decree-holder to the judgment-debtor's application to set aside the execution sale is not a step-in-aid of execution. 1929 L. 529. Per *Sulaiman, J.*—The deposit of pre-emption money within the time fixed by the Court is neither a proceeding in execution nor any step-in-aid of it. (*Boye, J.*, contra.) 51 A. 998=1929 A. 953. The sending of the decree for execution to another Court is not by itself an execution of the decree, though an application for such a transmission may amount to taking a step-in-aid of such execution. 27 A.L.J. 533=115 I.C. 865= 1929 A. 390. Payment made out of Court does not operate as step-in-aid of execution. 1935 A.W.R. 531=1935 A.L.J. 1291=1935 A. 259. *See* 1929 P.C. 19=56 M.L.J. 233 (P.C.); nor certification of payment under O. 21, R. 2 (1). *See* 7 Luck. 590=137 I.C. 768= 1932 O. 148 (F.B.); 1933 A.L.J. 256=1933 A. 364=146 I.C. 836=55 A. 393; because under that rule no application is necessary. 137 I.C. 768=1932 O. 148 (F.B.); 9 Luck. 288=10 O.W.N. 1251=1934 O. 426. In order to save limitation, the payment must fall in with the provisions of S. 23. Decree-holder's certification is not an application to the Court. (56 I.A. 30, Rel. on.) 134 I.C. 922=35 C.W.N. 1192=1931 C. 719 (F.B.). A certification of payment made by a decree-holder, after the decree is statute barred, is not a step-in-aid and cannot revive limitation. 1933 S. 365. *See also* (1941) 1 M.L.J. 614=1941 M. 616=I.L.R. 1941 M. 703. An application for modifying or cancelling an order recording satisfaction of a decree to revive the decree, which according to the record stands satisfied cannot be regarded as a step-in-aid of execution of that decree, which, unless and until it is revived, has no judicial existence. 50 L.W. 497=1939 Mad. 892. Payment of a portion of decree amount out of Court will not save limitation, S. 20 proviso applying to the case. 1932 A.L.J. 1035 =1933 A. 49. *See also* 1933 M. 674. Uncertified payment by one defendant for himself only—Limitation not extended against others. 1932 A.L.J. 1035=1933 A. 49. An infructuous application for execution is no step-in-aid. 6 R. 566=1928 R. 317. Decree for possession on payment of compensation— Application for extension of time for payment is not step-in-aid. 1930 M.W.N. 979 =59 M.L.J. 579=1930 M. 995. A memorandum for the return of sale papers or an oral application for grant of time to file the sale papers or an affidavit filed subsequent to the petition for leave to bid is not a step-in-aid.

1931 M.W N 413. An application under O. 21, R. 16 is not a step-in-aid of execution. 152 I.C. 987=1934 P. 662. An application for execution against a dead person is not in accordance with law and cannot amount to an application for taking steps-in-aid. 1934 A. 463 =1934 A.L.J. 829=4 A W.R. 509. But *see* 1934 L. 55. An application for reconstruction of a decree destroyed by fire is not a step-in-aid. (46 B 269, Dist.) 150 I.C. 866=36 Bom.L.R. 115=1934 B. 113 (2). The obtaining of a certificate of search of certain documents from the office of the sub-registrar cannot be called a step-in-aid: nor the fact that the decree-holder got back certain documents filed by him in the previous execution. 9 Luck. 288=10 O.W.N. 1251 =1934 O. 426. An order for attachment of the decree sought to be executed cannot be treated as a step-in-aid of the original decree. 149 I.C. 999=1934 C. 234=60 C. 1357.

(*c*) ORAL APPLICATION.—An application to the Court to pay out money in satisfaction of a decree is a step-in-aid of execution. Such an application need not be in writing. 1927 B. 443=27 Bom.L.R. 671=89 I.C. 228 (22 B. 340, Foll.); 2 Luck. 419=1927 Oudh 134. Under Art. 182 the application need not necessarily be in writing. Where during the pendency of an execution application, several applications were made for arrest and for attachment and a second application was filed after the expiry of three years from the first petition but within three years of the subsidiary applications, *held*, that the later application was not time-barred. 7 R. 132=117 I.C. 578=1929 R. 152. A verbal application for amendment of the petition for execution which was already in proper form cannot be said to be a step-in-aid. 1930 C. 304 An oral application by a decree-holder for time to make inquiries as to the legal representatives of a deceased judgment-debtor is a step-in-aid. 151 I.C. 767=36 Bom.L.R. 510=1934 Bom. 266. As to presumption of an oral application from the mere facts of certification under O. 21, R. 2, *see* 7 Luck. 590=137 I.C. 768=1932 O. 148 (F.B.).

(*d*) APPLICATION IN ACCORDANCE WITH LAW—DEFECTIVE APPLICATIONS.—The words "in accordance with law" cannot be read as meaning "in accordance with the Civil Procedure code." The words are general and mean applying to the Court to do something in execution which by law the Court is competent to do. An application to the Court to do something which, either to the decree-holder's direct knowledge in fact or from his presumed knowledge of the law, he must have known that the Court was incompetent to do, is not an application "in accordance with law" within the meaning of Art. 182 (5). 12 Cut.L.T. 62. *See also* I.L.R. (1942) Kar. 428; 1943 Bom. 353. The words ('made in accordance with law to the proper Court" in Art. 182 (5) is to be read also along with the concluding words "to take some step-in-aid of execution." As an Insolvency Court is not a proper Court for execution, any so-called steps-in-aid taken in that Court do not extend the period of limitation. I.L.R. (1942) Nag. 306=1942 N.L.J. 294. *See also* (1943) 2 M.L.J. 513. Whether an application which is defective should be treated as one in accordance with law must depend on the facts of each particular case and no hard and fast rule can be laid down in this behalf. 27 S.L.R. 314=1933 S 341. What has to be looked is whether the executing Court would or would not issue execution on the application as preferred to it. The expression "in accordance with law" must be taken to mean that the application, though defective in some particulars, is one on which execution could lawfully be ordered. If the omissions are such as to make it impossible for the Court to issue execution upon it, it must be held that the application is not in accordance with law. But an application in substantial compliance with the law will be effectual to stay the progress of limitation, whether the Court admits, or rejects, or returns the application or allows it to be amended. 1934 B. 307=59 B. 1= 36 Bom.L.R. 643; 1934 A. 307. *See also* 38 L.W. 877=1933 M. 872; 1937 O. W. N. 169=167 I.C. 34=1937 O. 233; 1937 S. 108; 1939 N.L.J. 596=1940 Nag. 87. It is well-settled that the words "in accordance with law" in Art. 182 (5) mean in accordance with the law relating to the execution of decrees. An application which is dismissed on the ground that the applicant did not produce certified extracts from the Collector's register as required by the Court under R. 14 of O. 21, C.P. Code, cannot be held to be one not in accordance with law within the meaning of Art. 182 (5). I. L. R. (1943) Nag. 669=1943 N. L. J. 587=1943 A. L. J. 323=56 L W. 444=1943 M. W. N. 565=47 C.W N. 715=1943 P.C. 98= (1943) 2 M.L J. 121 (P.C.). The question whether an application for execution is or is not in accordance with law must be determined by a scrutiny of the exact defects in it. It is not in accordance with law if it is so materially defective that a Court cannot exercise its legal powers of execution on the basis of that application. When the right to apply exists, a mere omission to give correctly the amount of interest due or the date of the previous execution or the names of the parties, is a mere irregularity and does not affect the legality of the application. An order dismissing that application for default in making the corrections ordered by Court does not amount to an adjudication that it is not in accordance with law. I.L.R. (1943) Nag. 584=1943 N.L.J. 391=1943 Nag 296. The expression "in accordance with law" must have some reference to the material content, apart from the form and formal con-

tent, of the application for execution. A mere compliance with the formal requirements of the Code of Civil Procedure as to the manner of filing, and the particulars to be shown in an application for execution, (*i.e.*), O. 21, R. 11, C.P. Code, would not suffice to make it an application in accordance with law. It is essential that the particulars of the mode in which the assistance of the Court is required must be one in accordance with law. If the decree-holder would not be entitled to ask for the relief in the "mode" stated in the application and if the Court has no power to grant such relief, *prima facie*, the application would be one not "in accordance with law." The main test of an application being in accordance with law is whether it is possible for the Court to issue execution upon it, *i.e.*, whether it is within the power of the Court to grant the kind of relief asked for, though, in the particular case, the relief may not, on the merits, be granted, *e.g.*, owing to some finding on facts, not to the nature of the application itself. 45 Bom.L.R. 707 =1943 Bom. 353. The expression "in accordance with law" does not imply that the application in question must be successful. A valid application made in accordance with law cannot cease to be "in accordance with law" by any subsequent default on the part of the applicant. It may be in accordance with law for purposes of Art. 182 (5) and yet the applicant may not be entitled to any relief on account of circumstances other than there being any defect in the application itself. I.L.R. (1945) Bom. 463=47 Bom.L.R. 104=1945 Bom. 380. The words "in accordance with law" are not necessarily limited to the provisions of law contained in O. 3 and O. 21; if the law required that an execution application should be accompanied by a particular certificate, but if it is not so accompanied by a certificate, that application will not be in accordance with law. (*Ibid.*) Even if the previous execution application was dismissed on the ground of gross carelessness because the judgment-debtor's name was wrongly spelt, it is an application in substantial compliance with the law to save limitation, whether it was admitted, rejected, returned, or allowed to be amended. (53 C. 664, Rel. on.) 149 I.C. 102=1934 P. 289. The words "in accordance with law" in Art. 182 (5) are general and cannot be construed to mean only in accordance with the Civil Procedure Code. The expression applying in accordance with law in Art. 182 (5) means applying to the Court to do something in execution which by law that Court is competent to do and it does not mean applying to the Court to do something which either to the decree-holder's direct knowledge in fact or from his presumed knowledge of the law he must have known the Court was incompetent to do. 1937 Pat. 522. *See also* 1939 Sind 272 application for arrest of person not liable under decree is not step-in-aid. *See also* 1941 M. 30=52 L.W. 415 =(1940) 2 M.L.J. 502. The expression "in accordance with law" does not necessarily mean an application prescribed or required by law. An application would be in accordance with law, even though it is not required by law, provided it does not contravene any express provision of law or conflict with any principle of law. The words "in accordance with law" are adjectival not only to the words "to the proper Court for execution" but also to the words "to take a step-in-aid of execution." Therefore it is necessary to show that the prior application which is relied on as a step-in-aid of execution was in accordance with the law of limitation, *i.e.*, was within time. 170 I.C. 189=1937 Sind 121. *See also* 1937 Sind 108; 1938 Mad. 323=(1938) 1 M.L.J. 135; 8 Cut. L.T. 7. An execution application can be held to be not in accordance with law or if the defects, or omissions to be found therein were such as to make it impossible for the Court to issue execution upon it, and not merely because it was defective in some minor particulars. An omission to comply with O. 21, R. 12, C. P. Code, *viz.*, failure to annex a *talika* or inventory of the property to be attached, cannot *per se* be held to render the application not in accordance with law. 18 Pat.L.T. 954=1937 P.W.N. 957 =1938 Pat. 75. An execution petition which complies with the requirements of O. 21, Rr. 11 to 14, C. P. Code, is in accordance with law; the mere non-production of sale papers and encumbrance certificate would not make it one not in accordance with law so as to justify its return. It is not till a later stage that these papers can be called for under R. 194 of the Civil Rules of Practice. 1943 M.W.N. 68= (1942) 2 M.L.J. 768. *See also* I.L.R. (1942) Kar. 428. Application for arrest of defendant not residing within Court's jurisdiction—Step-in-aid. If a decree-holder gives all the particulars that he is required to give in an execution application under O. 21. R. 11 (2) (*j*), C.P. Code, and asks for the attachment and sale of a property within the territorial limits of another Court the mere omission on the part of the decree-holder to say expressly that the decree should be transferred to that Court does not make the application one not in accordance with law and not made to a proper Court, when the Court to which the application is made is the only Court competent to issue a certificate of non-satisfaction and transfer the decree for execution. The test applicable in such a case is "could the Court have proceeded with the case notwithstanding the defect?" and if it could, then the application can be considered to be one in accordance with law and as filed in the proper Court. I.L.R. (1946) Nag. 563 =1946 N.L.J. 354. An application under O. 21, R. 15 duly made is a step-in-aid, and does not cease to be one in accordance with law merely on the ground that no order is passed by the Court under R. 15 (2). Similarly an application under O. 21, R. 16 is a regular application for execution, and the mere fact that notices are not issued as required by the Proviso would not make it otherwise than one in accordance with law. I.L.R. (1945) Bom. 463=47 Bom. L.

R. 104=1945 Bom. 380. A Court hearing an application by an assignee of a decree under O. 21, R. 16, C.P. Code, is an executing Court. An application made to the Court which passed the decree by the assignee in time for transfer of the decree for execution to another Court is one in accordance with law and is a step-in-aid of execution within the meaning of Art. 182 (5). 48 Bom.L.R. 583. An application for execution which is not accompanied by a copy of the decree cannot be held not in accordance with law, because there is no obligation on the decree-holder to produce a copy of the decree under O. 21, R. 11, C. P. Code. 46 L.W. 700=1938 Mad. 144=(1937) 2 M.L. J. 881. *See also* 1937 O.W.N. 169=1937 Oudh 233. Where the only defect in an application for execution is a mistake in the description of the suit given in it, the application is one in accordance with law within the meaning of Art. 182 (5). 42 C.W.N. 842. *See also* 1938 P.W.N. 73=1938 P. 513. An application for execution filed, not with any real intention of proceeding with it, but solely for the purpose of keeping the decree alive, is an application in accordance with law if all the requirements of O. 21, R. 11 are satisfied and would save limitation under Art. 182 (5). I.L.R. (1942) Kar. 428. There is no presumption in favour of the regularity or an execution application and the entire burden is upon the decree-holder to show that the requirements of law were complied with. 76 C.L.J. 35 =1943 Cal. 131. The mere fact that more money is claimed in execution application than what is due would not render the application one not in accordance with law. It is not every defect contained in an execution application which renders it unavailing for the purpose of saving limitation under Art. 182 (5). (1941) 1 M.L.J. 267=1941 M. 528; 1940 M.W.N. 547=1940 Mad. 893. An application presented by a person on his own behalf and as next friend of his minor brothers cannot be held to be not in accordance with law on the ground that the applicant did not get himself appointed as next friend. 1940 Mad. 893. An application made to a Court passing a decree to execute it in respect of property situated outside its territorial jurisdiction is an application made to a proper Court and is in accordance with law and is effective to constitute a fresh starting point for running of limitation, although the Court has no jurisdiction to carry on such execution. 1936 Rang. 271=14 Rang. 550. An application by the decree-holder for transmission of the decree for execution to a Court which does not in fact exist but which the decree-holder wrongly believes to exist is one "in accordance with law." A mistake in the description of the Court to which the decree-holder requests that his decree may be transferred is a mistake of fact, and cannot make the application one otherwise than in accordance with law, so long as he wants his decree to be transferred to a Court with jurisdiction to execute his decree. 1939 Mad. 378= (1939) 1 M.L.J. 827. *See also* 19 P. 354 =1940 Pat. 677. An application by a decree-holder, after assigning his decree, for the transfer of the decree, is an application made in accordance with law and is sufficient to save limitation for a subsequent application made by the assignee for execution after three years of the date of the decree. I.L.R. (1943) Kar. 88=1943 Sind 106. The fact that an execution petition is not numbered or registered is not a ground for holding that it is not one filed in accordance with law. If the petition is one in accordance with law when it is presented, the fact that it is not registered or numbered as such cannot make it one not in accordance with law. 1943 M.W.N. 569=56 L.W. 562= 1944 Mad. 43=(1943) 2 M.L.J. 513. Where the Court dismissed the prior application in the following words: "Decree-holder absent; application is incorrect. It is rejected", *held*, that the order of rejection should contain an express or implied finding that the application is not in accordance with law; and that there was no definite finding of the Court to that effect; and that the appellate Court can consider the previous application to determine if it was in accordance with law. 142 I.C. 762=1934 N. 117 (2)=16 N.L.J. 47. *See also* 1939 N. L. J. 596=1940 Nag. 57. Even a defective application for execution keeps decree alive as step-in-aid. 88 I.C. 266=1925 L. 535. *See also* 1924 B. 64; 1923 N. 236; 100 I.C. 475=1927 L. 106; 6 P. 440=1927 P. 324. Where an application for execution of a decree for past and future mesne profits filed without paying court-fee on the relief claimed in respect of the future profits, it cannot be said that the application is not one in accordance with law. Payment of court-fee is not a condition precedent to the filing of the application. An order dismissing the same for non-payment of court-fee gives a fresh starting point of limitation under Art. 182 (5), Limitation Act. The fact that it is dismissed without being numbered does not indicate that it is not in accordance with law. 1943 M.W.N. 607=56 L.W. 567=1944 Mad. 38=(1943) 2 M.L. J. 521. An execution application without filing succession certificate is good as a step-in-aid of execution. 31 N.L.R. 126=153 I.C. 955=1935 N. 1. An application made to a Court passing a decree to execute it in respect of property situated outside its territorial jurisdiction is one made to a proper Court and is in accordance with law and is effective to constitute a fresh starting point for running of limitation, although the Court has no jurisdiction to carry on such execu-

tion. 14 R. 550=163 I.C. 403=1936 R. 271. An execution petition filed after the institution of insolvency proceedings without the leave of Insolvency Court is not one in accordance with law. 59 M. 759=162 I.C. 376=1936 M. 284=71 M.L.J. 180. *See also* 41 P.L.R. 799=1939 L. 270. Where the previous application contained only minor defects which would not vitiate the application, it would be a step-in-aid. 1934 N. 117=142 I.C. 762 (Nag.); 142 I.C. 489=1933 S. 78; 1936 A.M.L.J. 110. Omission to give form of notice to be issued is a minor defect. 142 I.C. 435=1933 R. 87. So also omission to note time and place of verification. 159 I.C. 494=1936 P. 62. Where the guardian *ad litem* of a minor judgment-debtor had died, but an execution application was made against him, the application would be a step-in-aid. 134 I.C. 1107=1931 L. 636. An application for execution against two judgment-debtors, one of whom was dead at the time, saves limitation against the living judgment-debtor and the legal representatives of the deceased judgment-debtor. 1922 Nag. 112; 106 I.C. 391 =1927 M. 1103. *See also* 1927 M. 1103 =39 M.L.T. 336; 11 P. 546=138 I.C. 91=1932 P. 222; 1938 M. 323=(1938) 1 M.L.J. 135; 1937 Lah. 792=39 P.L.R. 1008; 41 L.W. 173=1935 M. 161=68 M. L.J. 261. Application to execute decree by arrest of heirs of deceased judgment-debtor and for attachment and sale of property outside jurisdiction—If saves time—application to amend first application by insertion of properties within jurisdiction—Effect—If new application or relates back. 23 Pat. 707. All *bona fide* applications against wrong persons as the legal representatives save limitation. 132 I.C. 262=1931 O. 312; 41 L.W. 173=1935 M. 161=68 M. L.J. 261; 52 L.W. 415=(1940) 2 M.L.J. 502 (Decree against joint family in hands of defendant.—Application for arrest of defendant saves limitation). 40 P.L.R. 25 (application made *bona fide* against dead judgment-debtor or wrong legal representative is step-in-aid of execution); 1937 Pat. 607 (Execution application by son in respect of decree obtained by father of joint Hindu family). Where the only defect alleged in an execution application against legal representative is that his name is not mentioned as such in the appropriate column, the application is still one in accordance with law. 45 L.W. 457=1937 M. 385=(1937) 1 M.L.J. 453=I.L.R. (1937) M. 616. Formal defects in execution application are immaterial and would be good as steps-in-aid. 45 C.L.J. 86. Application for execution against wrong person by *bona fide* mistake. 8 Pat.L.T. 217=1927 P. 92. An execution application which does not give the correct number of the suit in which the decree sought to be executed was made is not one in accordance with law and hence is not a step-in-aid of execution. 58 L.W. 568= 1945 M.W.N. 695=(1945) 2 M.L.J. 427. Application signed by pleader but not verified. *See* 1945 Mad. 97=(1944) 2 M.L.J. 224. Description of property to be attached not given in execution application—Effect. 218 I.C. 265. Application to execute rent decree—Non-issue of notice to judgment-debtor under S. 148 (*g*), Bihar Tenancy Act —Effect. 1945 P.W.N. 61=1945 P. 268= 24 P. 153. Where the application did not specify the mode in which the assistance of the Court was required, and it appeared that the object was to realise the decree amount by sale of property, *held*, that the application was valid in law so as to extend limitation. 138 I.C. 249=1932 L. 534. An execution petition in which the name of the defendant is given wrongy does not cease to be an application in accordanee with law. 1930 M. 172=119 I.C. 596. An application for execution in which owing to *bona fide* mistake. the minor judgment-debtor was described to be under the guardianship of a dead person, constitutes a step-in-aid. 4 P. L.T. 54=1924 P. 333. Where a major judgment-debtor was wrongly described as minor in execution petition and notice was issued thereon the decree-holder is entitled to compute the period of limitation for a subsequent application for execution from the date of issue of such notice. 1929 A. 795=118 I.C. 237 (All.). An application for execution made against one only of two executors under the *bona fide* belief that he was the only executor and that the other had resigned is an application in accordance with law, and in any event it is an application to take a step-in-aid. 11 P. 508=139 I.C. 840=1932 P. 306. 'In accordance with law'—Application for arrest when Judgment-Debtor was not personally liable under decree. Is not an application 'in accordance with law'. I.L.R. (1944) All. 183=1944 A.W.R. (H.C.) 7=1944 All. 35=1943 A.L.J. 607. A mere mistake in the calculation of interest in an application for execution does not make the application one not in accordance with law. 1921 A. 208 (2)=43 A. 550=63 I.C. 362; 8 O.W.N. 639=132 I.C. 262=1931 O. 312; nor mere clerical error in the description of defendant. 1937 A. 397=1937 A.L.J. 278. Where in a suit which falls under S. 11, Court-Fees Act, a decree is passed and subsequently a final decree is passed for an amount larger than the amount in suit on which court-fees have been paid, and the Court demands the deficit court-fee and an application for execution is filed without the payment of such deficit court-fees, the application cannot fall within Art. 182 (5) and is not therefore a step-in-aid of execution. 1937 S. 108. Application returned for payment of additional fees is step-in-aid. 2

P. 809=4 P.L.R. 513=1924 P. 23. An application under R. 15 (1), O. 21, C.P. Code, though defective, saves limitation. A notice under R. 22, O. 21 issued on a defective application saves limitation. 1922 P. 597=1 P. 609; 2 P. 597. "In accordance with law" is a phrase ajectival not only to the words "proper court for execution" but also to the words "to take some step-in-aid of execution." 15 S. L.R. 156=1922 S. 29=137 I.C. 768= 1932 O. 148 (F.B.); 27 S.L.R. 214=1933 S. 341; 1937 S. 121. A decree under sec. 15-B, Dekkhan Agriculturists Relief Act, passed by consent of the parties does not require to be made final. Where, therefore, the decree-holder applies for making the decree final or absolute, the application and the Court's order thereon making the decree absolute are not in accordance with law, and the decree is a nullity and cannot be regarded as a step-in-aid of execution so as to save limitation. (*Ibid.*) But *see* 1937 L. 404. Where, under the terms of a decree, the surety was liable only to the extent of one-sixth of a decree, but nevertheless the decree-holder applied for execution of the whole of the decree against the surety and the judgment-debtors and that application was dismissed as incompetent, it is not 'an application in accordance with law' so as to save from the bar of limitation a susequent application for execution. The former was for a relief which the Court had decided could not be given and which was entirely outside the law. 10 P. 183=131 I.C. 815=1931 P. 274. An order deciding that an application for execution by one or two or more plaintiffs is not competent, amounts to holding that the application is not "in accordance with law." 1921 S. 13=62 I.C. 507=15 S.L.R. 11. Execution in regard to two suits—Application not according to law with regard to one—Effect of. 163 I.C. 841=1936 A. L.J. 571=1936 A. 467. An application for execution, though not duly signed and verified by the decree-holder but actually signed and verified by the pleader in the original suit, is in accordance with O. 21, R. 11 (2). 31 Bom.L.R. 355=1929 B. 196. But *see* 61 M.L.J. 516. Presentation of execution application by pleader who has no *vakalat* from his client, is not one in accordance with law. 1937 M. 239=44 L.W. 528=165 I.C. 659=71 M.L.J. 604. *See also* 1937 Mad. 760. Application signed by the vakil, who does not profess to be acquainted with the facts of the case, is not in accordance with law. An application for execution which does not contain any description of the property and other particulars required by O. 21, R. 13 cannot be deemed to be 'an application in accordance with law.' 129 I.C. 159 (1)=32 Bom.L.R. 1368=1931 B. 128. *See also* 42 Bom.L.R. 423=1940 B. 250; 51 L.W. 426=(1940) 1 M.L.J. 477. If the application is signed by a properly authorized person, it is in order. Non-production of the power of agency, if its production is ordered by the Court, may entail the dismissal of the application, but it will not render an application itself, otherwise valid, invalid. 159 I.C. 494=1936 P. 62. When the application is defective in material particulars and is rejected as being not in accordance with law, the application must be regarded as not having been presented at all. 134 I.C. 681=1931 N. 154 (F.B.). Where the previous execution application was not in accordance with law and the decree-holder refused to correct the same in spite of the Court's order, *held*, that the execution petition did not save limitation. 1931 A. 722=131 I.C. 33 (2). An application which has been returned for amendment but not represented is sufficient to save limitation. 143 I.C. 844=1933 M. 568 =38 L.W. 224. But *see* 44 L.W. 59=1936 M. 613=71 M.L.J. 336. An execution application which does not contain the correct number of the suit, the decree in which it is proposed to execute, cannot be deemed to be an application in accordance with law. It has no judicial existence after it is returned without being filed for rectification; and if it is barred by limitation when re-presented, any order passed upon it, dismissing it, subsequently cannot avail to save limitation for a fresh execution petition presented contemporaneously. 50 L.W. 793=1940 Mad. 215=(1939) 2 M. L.J. 864.

An execution petition may give a fresh starting point of limitation even though the relief asked for cannot be allowed. An execution petition asking for a relief which is no longer available is none the less one "in accordance with law" when there is no question of the competency of the Court. Where a decree contains a personal liability, but the arrest of the judgment-debtor is no longer possible because of his discharge in insolvency proceedings subsequent to decree, an execution application asking for arrest of the judgment-debtor is not incompetent or one not in accordance with law. There being no question of the competency of the courts the application must be deemed to be one in accordance with law and would give a fresh start under Art. 182 (5). 58 L.W. 300=1945 Mad. 352=(1945) 1 M. L.J. 355.

Where a decree creates a charge on immovable property in respect of the decretal amount and provides for recovery of the amount by sale of the charged properties, an application in execution of such a decree praying for rateable distribution under sec. 73, C. P. Code, out of the sale proceeds realised in another decree-holder's execution, is not an application "in accordance with law". 45 Bom.L.R. 707=1943 Bom. 353.

It is not every defect in an execution petition that will render it one not in accordance with law. Where the execution petition as made is in accordance with law, but it is dismissed for persistent refusal on the part of the decree-holder to carry out certain directions which are necessary for effectual execution, the order of dis-

missal furnishes a fresh starting point of limitation as a step-in-aid. 58 L.W. 379 (2) =1945 M.W.N. 491=1945 Mad. 511=(1945) 2 M.L.J. 152.

In the case of an application for execution of an equitable mortgage decree, the omission of the decree-holder to comply with the order of Court directing him to file the documents of title that were mentioned in the decree could not be held to be a defect in the application which would prevent the Court from proceeding with it and selling the mortgaged properties, full particulars of which were given in the decree attached to the application. 76 C.L J. 35=1943 Cal. 131.

Execution petition returned for production of document—Re-presentation beyond time, with prayer for excusing delay and for further time—If "in accordance with law". 1944 Mad. 71=(1943) 2 M.L.J. 454.

Where a decree directs delivery of certain properties on payment of a certain sum of money, an application for delivery without at the same time depositing the amount directed to be paid, is still a proper application in accordance with law. 1945 M.W. N. 513=1945 Mad. 485=(1945) 2 M.L.J. 197.

UNSTAMPED EXECUTION APPLICATION IS NOT NECESSARILY INVALID.—Where action was taken on the application and properties were attachted, it will save a subsequent application from the bar of limitation. 106 I.C. 485=1928 M. 142.

INSTALMENT DECREE.—Default in payment of instalment under decree waived by decree-holder—Limitation runs from date of default. 86 I.C. I.C. 1051=1925 C. 1012. *See also* 85 I.C. 784=1926 C. 212; 42 Bom.L. R. 276=1940 Bom. 148=I.L.R. (1940) Bom. 317. Mortgage—Instalment decree—Failure to pay instalments—Execution application——Effect—Step-in-aid of execution of all instalments. 46 B. 719=1922 B. 194=24 Bom.L.R. 284.

STARTING POINT— FINAL ORDER.—"Final order" meaning of. (1941) 2 M.L.J. 493; (1943) 1 M.L.J. 445. An application for execution which is accepted by the Court, though out of time, starts a fresh period of limitation. 1922 B. 118=46 B. 269= 63 I.C. 844=23 Bom.L.R. 1013. Under Art. 182 (5) as amended, the three years' time is to be calculated not from the date when the previous application is filed, but from the date when the final order on such application is passed. 34 C.W.N. 733. *See also* 1930 P. 207; 7 Luck. 590=137 I.C. 768=1932 O. 148 (F.B.); 1934 P.C. 14= 61 I.A. 62 (P.C.) noted *supra*. *See* 1924 P. 576=3 P. 596 under the article as it was prior to amendment. An order is a "final order" if it terminates the execution proceeding so far as the Court passing it is concerned. It need not be on the merits. An order of rejection or dismissal would be a final order. 45 L.W. 457=1937 M. 385= (1937) 1 M.L.J. 453 (F.B.); 54 L.W. 708= (1941) 2 M.L.J. 1018=1942 M. 216; I.L. R. (1938) Mad. 326=46 L.W. 540=1938 Mad. 113. *See also* 41 C.W.N. 310=1937 C. 16. The question whether an order is a "final" order within the meaning of Art. 182 (5) of the Limitation Act is not to be judged by reference to what the Court passing the order thought at the time nor by the language employed by it. It is for the Court before which the nature of the order is properly in question at a later stage which has to deal with the matter and to consider the legal character of the earlier order and the decision must be arrived at on an independent consideration of the correct rule of law as applied to the true facts. 1943 M.W.N. 68=(1942) 2 M.L.J. 768. *See also* I.L.R. (1942) Nag. 245=1940 Nag. 301. (Dismissal of execution application for default).

It cannot be held that no order of any kind can be a final order" on an application within the meaning of Art. 182 (5), unless that application has been first of all regularly admitted by the Court which disposes of it. All that is necessary is that the application must be in accordance with law and made to the proper Court, whether it is or is not numbered or is admitted or not. An application in accordance with law and presented to the proper Court was returned on more thn one occasion for production of sale papers. Finally a further fortnight's adjournment was asked for by the decree-holder but refused by the Court which thereupon passed an order dismissing the application. *Held*, that it was a "final order" under Art. 182 (5). 56 L.W. 151= 1943 M.W.N. 174=1943 Mad. 340=(1943) 1 M.L.J. 236.

Where an execution application has formed the subject of appeal, the date of the "final order" is the date of the final order of the final Court of appeal. 1945 M.W.N. 513=1945 Mad. 485=(1945) 2 M.L.J. 197; 1944 Pesh. 5.

It is the duty of the executing Court to take an execution petition on file and to give it a number if there is no defect in the petition. It should give a number and call for further papers if they are needed for enabling the executing Court to order execution and to dismiss the petition if there is default in complying with the requisition. If that is done, time for the next execution petition would run from the date of dismissal. When there is no defect in the previous execution petition and the same is returned for compliance with certain particulars and the petition is re-presented without undue delay, the order of the executing Court refusing to excuse the delay and dismissing the petition is a "final order" within the meaning of Art. 182, and saves limitation. 58 L.W. 285=1945 Mad. 347= (1945) 1 M.L.J. 428.

Where an order *prima facie* disposing of an execution application is found in fact to be a surreptitious order upon which the initials of the Civil Judge, who was temporarily in charge of the routine work of the

Court of the Munsiff, were obtained by means of fraud of some official of that Court, it cannot amount to a 'final order' within the meaning of Art. 182 (5). The Civil Judge never had the consciousness that he was passing an order by which the execution proceedings were finally disposed of. I.L.R. (1945) All. 213=1945 A.L.J. 92=1945 All. 172. 'Final order' means final order in the proceeding to which the application gave rise. Where the Judge ordered notice to issue to the judgment-debtor returnable on the 13th November, 1929, and on that date the cases were closed at the decree-holder's request and he applied for execution against the same judgment-debtors on 8th November, 1932. *Held*, that the order closing the case was the final order and the application was in time. The fact that the application for execution is withdrawn or struck off at the request of the decree-holder does not prevent it from giving rise to a new starting point for limitation. 142 I.C. 435=1933 R. 87. Final order means an order which conclusively decides the matter between the parties as distinguished from interlocutory. 149 I.C. 136=1934 Pesh. 23. *See also* 53 L.W. 726=1941 Mad. 671=(1941) 2 M.L.J. 66 (Order stating that appeal has abated). *See also* I.L.R. (1941) A. 658=1941 A.L.J. 480=1941 A. 371; I.L.R. (1942) A. 658. The words do not mean an order which finally adjudicates upon the rights of the parties and disposes of the application for execution on its merits. Where the Court intends to dispose of the matter completely and no longer keeps it pending on its file, and does not merely suspend the execution or consign the record to the record room for the time being, the order must be deemed to be a final order. 1936 A.W.R. 996=1936 A. L.J. 1140=1936 A. 820 (F.B.). Where the order striking off the case is coupled with an order for payment of costs by the judgment-debtors to the decree-holders, the Court must be deemed to have intended to dispose of the matter so far as itself is concerned, and such an order should be considered as a final order. 1936 A. 820 (F.B.); 1937 M. 385=(1937) 1 M.L. J. 453 (F.B.); 1940 Mad. 281=(1939) 2 M.L.J. 469; 1940 Nag. 301; 1939 Rang. 406; 1939 Mad. 841=50 L.W. 311=(1939) 2 M.L.J. 671. An order merely returning an execution petition as defective is not a final order, though in special circumstances it may amount to one, notwithstanding the language employed. The true test is whether the order puts an end to the petition in respect of which it is made so far as the Court passing it is concerned. When a petition is returned for the purpose of the petitioner doing something to enable the Court to proceed further with it, the Court really defers its consideration until it is brought back with the defects remedied. It is only then that the Court is placed in a position to consider it judicially and make what can be regarded as a final order on it. An execution petition returned for amendment but not represented has no legal existence till it is re-presented, and if it is re-presented after the time limit it does not acquire the status of a petition calling for an order unless the delay is excused. Where the application for excusing the delay is rejected by the Court, the consequence is that there is no valid petition before the Court to be ordered or rejected. And it cannot be the subject of a "final" order. 1943 M. W.N. 68=(1942) 2 M.L.J. 768. An order returning an execution petition contemplates a final order to be passed at a subsequent stage after the petition is represented, and is not itself a final order as it does not deal judicially with the matter of the petition. Consequently, when an execution petition is returned for the purpose of remedying certain defects therein, but it is not re-presented by the decree-holder, the order of return does not furnish the decree-holder a fresh starting point for limitation. 163 I.C. 354=44 L.W. 59 =1936 M. 613=71 M.L.J. 336. *See also* 1942 Mad. 216=(1941) 2 M.L.J. 1018= 1942 M.W.N. 254=1942 Mad. 495=(1942) 1 M.L.J. 542. An order returning an application for execution for amendment and re-presentation on a certain date is not a final order within the meaning of Art. 182 of the Limitation Act. Although the order of return is illegal, the application cannot be held to be pending by a fiction. Nor can the Court be deemed to have passed an order rejecting the application on the date on which it was directed to be represented on that date. Art. 182 refers to an actual order passed by the Court and not an order which may be deemed to have been passed by the Court. 46 P.L.R. 68= 1944 Lah. 158. Where an execution petition which is returned for amendment and remedying of defects, is re-presented after rectifying and amending all defects, but with the indorsement that it is "not pressed and may be dismissed for the present", and the petition is "rejected" by the Court, the order rejecting the petition though it is one for default of prosecution, is a valid "final order" contemplated by Art. 182 (5) of the Limitation Act and saves limitation. (1943) M.W.N. 569=56 L.W. 562=1944 Mad. 43=(1943) 2 M.L.J. 513. Art. 182 (5)—"Final order"—Application returned for compliance with requirements—Application not taken away but allowed to remain in Court—Order of rejection for non-compliance—If "final order". 56 L.W. 327=1943 Mad. 517=(1943) 1 M.L.J. 445. Amendment of decree after filing of execution petition, if gives fresh starting point. 161 I.C. 969=43 L.W. 390=1936 M. 434 =70 M.L.J. 700. Where the execution Court transfers the execution to another Court to enable the decree-holder to receive his rateable distribution, so far as the Court seized with the execution is concerned, this is the final order. 149 I.C. 136= 1934 Pesh. 23. *See also* 54 L.W. 34= 1941 Mad. 731=(1941) 1 M.L.J. 837

(Order returning application for transmission of decree to another Court as decree had not been received from transferee Court saves limitation). An application for transmission of a decree to another Court for execution is not an application for execution and is not a revival of the decree by itself. The order of transmission which is sought for and which is actually made is a purely ministerial act and not a judicial act. The date on which the certificate of non-satisfaction is prepared and the copy of the order transferring the decree and the certificate of non-satisfaction are ordered to be sent out under the hand of the Judge is the date of the final order on the application to take a step-in-aid of execution. The fact that the case is ordered to be put up on another later date and on such later date an order is passed to the effect "let the case be disposed of" does not make that later date, the date of the final order. 23 Pat. 707. It is not incumbent upon a decree-holder to furnish the sale papers along with the execution petition itself. The duty of the Court is to see whether all the requirements of O. 21, rr. 11 to 14 are complied with. Where these requirements are complied with, an order returning the execution petition on the ground that the sale papers had not been produced is clearly illegal. Such an execution petition must be considered to be still pending, and the order returning it is not a 'final order" contemplated by Art. 182 (5). (1942) 1 M.L.J. 542=1942 M.W.N. 254=1942 M. 495. A Judge has jurisdiction to decide wrongly as well as rightly, and when the execution proceedings begin upon an application which is valid in its inception, for the purposes of limitation, it does not matter whether the final order passed therein is in accordance with law or not; time will begin to run from the date of such final order. So, the fact that in the previous application, no notice to the assignor of the decree was issued as required by O. 21, r. 16 does not make all the execution proceedings void as if they never existed for purposes of limitation. 149 I.C. 98=1934 R. 101. Where a decree-holder makes an application to the Court which passed the decree asking for a certificate of transfer to another Court for execution, the final order on such application cannot be considered to have been passed until the date on which the required certificate is prepared and handed over to the decree-holder who has undertaken to present it before the other Court, and limitation is to be reckoned only from such date and not from the date of the order of the Court merely directing the office to prepare a certificate. 154 I.C. 718=1935 A.L.J. 370=1935 A. 757. R. 14 of O. 21, C. P. Code, is merely permissive and not mandatory. Where an execution application complies with the provisions of rr. 11 to 13 of O. 21, which the mandatory, an order dismissing the application for default in compliance with the direction of the Court under r. 14 is a "final order" within the meaning of Art. 182 (5), Limitation Act, and starts a fresh period of limitation. The application must be regarded as one in accordance with law, the requirements of rr. 11 to 13, being complied with, though it may not be registered or numbered. I.L.R. (1945) Mad. 684=58 L.W. 153=1945 Mad. 154=(1945) 1 M.L.J. 270 (F. B.). "Final order"—Date of—Date of writing or date of pronouncing. 1944 Mad. 371=(1944) 1 M.L.J. 454.

WHO MUST APPLY IN ORDER TO SAVE LIMITATION.—Application to take some step-in-aid of execution need not be made during the pendency of application by the same decree-holder. 1928 L. 7. Execution application by decree-holder auction-purchaser. 1 P. 701=1922 P. 310. Mere mentioning of the name of a person having several liabilities does not save limitation against him. 85 I.C. 657=1926 C. 267. Execution application by defendant in decree for partition gives fresh starting point in favour of plaintiff. 1922 M. 456=43 M.L.J. 379. *See also* 36 C.W.N. 772=139 I.C. 786=1932 C. 869. Sureties are not co-judgment-debtors within the meaning of the article. 85 I.C. 657=1926 C. 267. Execution against sureties does not save limitation against the principal debtors. 1926 Cal. 267; *see also* I.L.R. (1940) Lah. 223=42 P.L.R. 723=1939 Lah. 587; 1937 O.W.N. 680=1937 Oudh 351; 1939 A.L.J. 415=1939 All. 463=I.L.R. 1939 A. 538. Steps taken by a person claiming adversely to the decree-holder cannot be taken advantage of by the decree-holder as steps-in-aid of execution. Though the decree-holder prefers objections to the proceedings taken by the adverse claimant, and though there might be an agreement between the decree-holder and the rival to act in a particular manner; the steps taken by the rival claimant cannot enure to the benefit of the decree-holder nor can the judgment-debtor be deprived of his right to plead limitation by any agreement between persons with interests hostile to each other, who have been carrying on litigation amongst themselves. 1938 P.W.N. 652=1938 Pat. 531.

STAY OF EXECUTION BY ORDER OF COURT.—Order of the Court refusing to execute the decree until the judgment is produced amounted virtually to a stay of execution and the period must be excluded in computing the period of limitation for execution. 64 I.C. 598=19 A.L.J. 905=1921 A. 174.

RES JUDICATA.—An adjudication by Court that a certain application is in time cannot be re-considered when a question that it is out of time is raised at a later stage of execution proceedings. 46 B. 269=1922 B. 118. *See also* 41 C.W.N. 310=1937 Cal. 16; 1942 Mad. 5=(1941) 2 M.L.J. 754.

PLEA IN BAR.—A judgment-debtor is at liberty to raise, on a subsequent application for execution, that it is not maintainable on the ground that the previous appli-

cation had been filed out of time. 37 C. W.N. 1145. The plea that a previous application for execution was barred by limitation and hence the subsequent application was not valid should be raised at the earliest possible opportunity. 22 L.W. 747=1926 M. 177.

PROPER COURT TO WHICH APPLICATION IS TO BE MADE—EXPL. II.—*See* 42 L.W. 5=69 M.L.J. 215=1935 M. 849=58 M. 1009. The words "made in accordance with law to the proper Court" in Art. 182 (5) is to be read also along with the concluding words "to take some step-in-aid of execution". As an Insolvency Court is not a proper Court for execution, any so called steps-in-aid taken in that Court do not extend the period of limitation. The time between adjudication of judgment-debtor and his discharge cannot be excluded. I.L.R. (1942) Nag. 306=1941 N. 60. Application for transfer of a decree already transferred not a step. 47 B. 56=1922 B. 359. Decree transferred for execution—Second application to same Court for transfer—Certificate of non-satisfaction obtained only later—Effect. 1926 L. 113=89 I.C. 958. *Per* Full Bench.—When a money decree has been transferred by the Court which passed it for execution to another Court, an application to the first Court (*a*) to execute the decree, (*b*) and to transfer it to another Court for execution is a valid application and is a step-in-aid of execution so as to save limitation. *Per* Skemp, J.—The application to the first Court to execute the decree may be regarded as an application to that Court to obtain the decree from the Court to which it has been transferred for execution after certification in order to execute it. 1935 L. 465 (F.B.). *See also* 48 Bom.L.R. 583. A Court which transmits its decree for execution to another Court does not thereby divest itself of all its jurisdiction but has jurisdiction to take certain measures in execution. It is therefore a "proper Court" within the meaning of Art. 185 (5) and an application made to it is a valid application which would save limitation under Art. 182 (5). 54 L.W. 34=1941 Mad. 731=(1941) 1 M. L.J. 837. In order to constitute an executing Court the "proper Court" within sec. 182 (5) of the Limitation Act, it is essential that the Court must possess both pecuniary and territorial jurisdiction, apart from being otherwise competent. 48 C.W. N. 821. Where a Court transfers a decree to another Court for execution and the decree has not been returned to the transferring Court with the certificate of non-satisfaction, the transferring Court is the 'proper Court' for purposes of making applications for substitution of parties or for setting aside substitutions made. 1945 A. W.R. (C.C.) 137=1945 O.W.N. 210=1945 Oudh 298. But *see* 23 Pat. 729; 25 Pat. 50=1946 Pat. 301. Decree—Transfer for execution to another Court—Subsequent application to decree Court to assign transfer decree to same Court is one made to proper Court and step-in-aid. *See* I.L.R. (1943) Bom. 7=44 Bom.L.R. 830=1943 B. 1. Transfer of decree for execution—Subsequent application for execution to Court which passed the decree before receipt of certificate from transferee Court—Is not one made to the "proper" Court. 23 Pat. 729=1945 P.W.N. 15=1945 Pat. 129. An application made after transfer of decree to another Court for execution to the Court passing the decree for certificate of part satisfaction of the decree is not an application for execution or to take a step-in-aid of execution. 78 I.C. 241=1925 L. 233. *See also* 101 I.C. 279=23 N.L.R. 126=1927 N. 367=1928 N. 29. An application for execution properly made to a Court to which the decree had been transferred for execution but returned by the Court under a misapprehension that a fresh certificate of transfer was necessary, is, though never re-presented, nevertheless tantamount to a step-in-aid of execution. 11 P. 513=139 I.C. 843=1932 P. 286. Where a decree was not shown to have been transferred to a Court at the time when the execution application was filed in that Court, *held*, that such a proceeding was not a step-in-aid of execution. 55 C. 608=32 C.W.N. 192=1927 C. 952. Where a decree was ordered to be transferred by the trial Court to another Court, an application for execution made to the latter Court is one made to the proper Court though the papers may not have been actually transferred. 142 I.C. 489=1933 S. 78=27 S.L.R. 109. An application to the Court of a Native State to transmit its decree to a British Indian Court for execution is a step-in-aid. 43 M.L.J. 700=1923 M. 72=45 M. 1014. Application to transfer decree for execution—Court having no pecuniary jurisdiction—Not a step-in-aid of execution. 1 P. 651=1922 P. 188. The jurisdiction to transfer a decree for execution from one Court to another arises under sec. 39 and not under rr. 5 and 8 of O. 21, C. P. Code. Rr. 5 and 8 of O. 21, merely prescribe the procedure by which the transfer is to be carried out and does not touch the jurisdiction. The transferee Court acquires jurisdiction by the transfer under sec. 39, C. P. Code. Hence an application to the transferee Court for execution, after transfer, is made to the "proper Court" and is a step-in-aid, notwithstanding that rr. 5 and 8 of O. 21, C. P. Code, have not been complied with; non-compliance with rr. 5 and 8, is a mere irregularity and does not affect jurisdiction. 25 Pat. 50=1946 Pat. 301. Even if an application is made to a Court which passed the decree to execute it in respect of property outside its territorial limits the Court will not have jurisdiction to carry on such execution. Where however the limits of the jurisdiction of the old Court were altered and an application was made by the Court which passed the decree for execution, *held*, that the decree should be forwarded to the proper Court, but that it had the effect of saving limitation. 35

Description of application.	Period of limitation.	Time from which period begins to run.
		6. [1][(in respect of any amount, recovered by execution of the decree or order, which the decree-holder has been directed to refund by a decree passed in a suit for such refund) the date of such last mentioned decree or in the case of an appeal therefrom, the date of the final decree of the appellate Court or of the withdrawal of the appeal], or 7. (where the application is to enforce any payment which the decree or order directs to be made at a certain date) such date

LEG. REF.

[1] Substituted by Act IX of 1927, sec. 2.

C.W.N. 77=58 C. 832=132 I.C. 149=1931 C. 312. An application by the decree-holder to the Court which passed the decree to attach the judgment-debtor's property beyond the limits of the Court's jurisdiction is one in accordance with law and made to the proper Court, so as to save limitation under Art. 182 (5). 8 Cut.L.T. 7. Where it has not been shown that the decree-holder knew that the judgment-debtor lived outside the jurisdiction and the application for his arrest is made on the face of it to the Court which had jurisdiction, it cannot be said that the application is not made to the proper Court. 184 I.C. 769=1939 Rang. 345. Transfer of an application from one Court to another consequent on the adjustment of territorial jurisdiction does not affect the date of original presentation material under cl. (5). 1931 M. W.N. 413. Where the relief asked for in the application is to sell property not situated within the jurisdiction of the Court, it cannot be step-in-aid. So also where relief is to sell movables of the judgment-debtor and the judgment-debtor has no movable property within the jurisdiction of the Court. If the decree-holder had a *bona fide* belief as to the existence of such movables, the application might be step-in-aid. 134 I.C. 1182=1931 S. 160. The application for execution of a decree of Additional Munsif to the Court of first Munsif is made in accordance with law and saves limitation. 13 P. 5=151 I.C. 375 =15 Pat.L.T. 215=1934 P. 199 (1). The "Collector" acting under sec. 59 (1) (*b*) of the Bombay Co-operative Societies Act is some agency for carrying out an award, different from a Court. Sec. 59 makes a distinction between a Civil Court as such and the Collector as such. An application to the Collector to enforce an award under the Bombay Co-operative Societies Act cannot therefore be regarded as an application made to a Court, and proceedings so taken are not steps-in-aid of execution so as to save limitation under Art. 182 (5). 40 Bom.L.R. 889=1938 Bom. 424. A decree-holder's application to the Collector for declaration of his mortgage lien under the decree is not an application made "to the proper Court" to take some step-in-aid of execution of the decree for sale of the mortgaged property, as the Collector is not certainly "the Court whose duty it is to execute the decree" within the meaning of Expl. 2, Art. 182. 9 Luck. 273=146 I.C. 805=1933 O. 564. A Tahsildar deputed by the Collector to enforce a decision under r. 14 (5) of the rules framed by the Government of Madras under sec. 43 (1) of the Co-operative Societies Act is not a "Court" within the meaning of Art. 182 (5) and therefore an application for execution before the Tahsildar is not one made to the proper Court for execution and does not save limitation. 59 M. 257=43 L.W. 58=1936 M. 150=70 M.L.J. 31. Execution of mortgage decree—Local area assigned to another Court under sec. 13 (2) of Civil Courts Act subsequent to decree—Application for execution to that Court—If made to proper Court. *See* 75 C.L.J. 255=I.L.R. (1942) 1 C. 289=1942 C. 821.

Art. 182 (6).—If a decree-holder has realized an amount of money by execution, but is compelled to refund that amount by a decree in a subsequent suit, he will be entitled to take out execution for this amount under Art. 182 (6) if the application is presented within three years from the date of the final decree in the refund suit. But he will not be entitled to avail himself of this provision if his decree comes within the prohibition contained in sec. 48, C. P. Code, (*i.e.*) if 12 years had already expired from the date of the original decree. Where the decree was fully satisfied and the execution case was dismissed on full satisfaction, the subsequent application for execution for recovery of the amount which the decree-holder had to refund is in substance a new application and cannot be treated as a continuation of the original application for execution. 46 C.W.N. 149=I.L.R. (1942) Cal. 245=(1942) Cal. 255.

ART. 182 (7).—Compromise decree—Provision for plaintiff executing decree on exe-

Description of application.	Period of limitation.	Time from which period begins to run.
		Explanation I.—Where the decree or order has been passed severally in favour of more persons than one, distinguishing portions of the subject-matter as payable or deliverable to each, the application mentioned in clause 5 of this article shall take effect in favour only of such of the said persons or their representatives as it may be made by. But where the decree or order has been passed jointly in favour of more persons than one, such application, if made by

cuting receipt within 6 months of majority —Death of plaintiff before majority—Execution by legal representative—Limitation—Starting point. 40 L.W. 875=1935 M. 107 (2). The words "such date" in Cl. (7) refers to the date on which a default was made in payment of any of the instalments, and on the occasion of each default, the decree-holder is entitled to enforce his claim for the entire amount due except in respect of which the claim had become barred. 11 P. 440; 4 P.L.J. 365 and 51 A. 237, Foll.) 9 Luck. 602=149 I.C. 603=11 O.W.N. 498 =1934 O. 334; 1939 O.W.N. 768=1939 Oudh 281; 1942 Oudh 219=199 I.C. 636. But *see* 56 A. 921=149 I.C. 598 =1934 A.L.J. 772=1934 A. 534. In the case of instaments "such date" will be the date on which each instalment falls due. When the first instalment has fallen due and can be recovered by the decree-holder by means of execution, the mere fact that the non-payment of the second instalment entitles the decree-holder to bring the property to sale and recover the whole amount (including the third instalment) does not necessarily mean that he could not recover the first instalment by proceeding against the judgment-debtor in the normal way. 1943 Pesh. 52. Decree directing payment of annuity, and in default delivery of certain property to decree-holder—Each instalment of annuity is a claim under the decree and each default gives rise to right to recover property. 54 I.A. 272=5 R. 422=1927 P. C. 146=53 M.L.J. 22 (P.C.). Instalment decree—Default—Waiver. 109 I.C. 272. *See* 54 C. 143=1925 C. 1012; 33 Bom.L.R. 459 =1931 B. 263; 141 I.C. 745=1933 Pesh. 14; 1939 Sind 49; 1942 Oudh 31. Instalment decree— Default clause— Application for execution claiming whole amount on default —Return for amendment—Failure to amend and re-present—If amounts to election to treat whole amount as due—Limitation for execution. 55 L.W. 522=1942 Mad. 679= (1942) 2 M.L.J. 225. *See also* 50 C.W.N. 735. In the case of a decree providing for payment by instalments and allowing the decree-holder to take out execution for the whole amount on default of payment of any instalment, limitation will only run against the decree-holder in respect of each instalment separately from the time when it became due and payable, unless the decree leaves him no option on the happening of default but to execute the decree once for all for the whole amount. 11 P. 440=1932 P. 253. *See also* 1935 A.W.R. 531=1935 A. 259; 1939 Sind 49; 1941 O.A. 915=1941 O. W.N. 1205=1942 Oudh 31=17 Luck. 346= 1941 O.W.N. 1313=1941 O.A. 987=1942 Oudh 219=17 Luck. 449. But where in case of default, the decree-holder exercises his option by appying for the sale of property, he cannot later on fall back upon the period fixed for payment and apply to execute the decree after 3 years of that date. 132 I.C. 437=33 Bom.L.R. 459=1931 B. 263. Where a plaintiff has alternative remedies, he pursues all or any of his remedies up to judgment; and general it is only on obtaining judgment on one remedy that he would lose the right to proceed on the other remedy. But where a man has two inconsistent rights, he must elect which of them he is going to rely on, and having elected to rely on one right, he is not allowed to retract his election. It is irrelevant in such a case that the action does not proceed to judgment. He has alternative rights and the debtor is subject to alternative obligations. Once the decree-holder elects to enforce his rights to recover the whole debt in one lump sum and files an execution petition for such recovery, the future obligation of the debtor is fixed accordingly, and it is not open to the decree-holder subsequently, after an unsuccessful application to recover the whole amount, to turn round and seek to enforce the decree as an instalment decree, more than three years after the first application. I.L.R. (1943) Bom. 55=44 Bom.L.R. 880 =1943 Bom. 36. Instalment decree—Default clause—Appeal from decree—Application for execution on default for whole amount pending appeal—Decree subsequently confirmed — Application for execution

Description of Application.	Period of limitation.	Time from which period begins to run.
		any one or more of them, or by his or their representatives, shall take effect in favour of them all. Where the decree or order has been passed severally against more persons than one distinguishing portions of the subject-matter, as payable or deliverable by each, the application shall take effect against only such of the said persons or their representatives as it may be made against. But, where the decree or order has been passed jointly against more persons than one, the application if made against any one or more of them or against his or their representatives.

more than three years after appellate decree —Bar of—Effect of appeal. 44 Bom.L.R. 903=1943 Bom. 63. Rent decree under Bihar Tenancy Act—Provision for instalments—Execution—Limitation. *See* 24 Pat. 222=1945 P. 398. Direction for payment in instalments—Omission of clause making whole amount payable on default—Limitation for execution—Payment of instalment—If part payment of decree amount saving limitation. *See* 45 Bom.L.R. 497=1943 B. 260. Mortgage suit—*Ex parte* decree—Subsequent setting aside and re-trial ending in new decree—Sale in execution by mortgagee prior to re-trial—New decree awarding less amount than that realised by decree-holder by sale—Application by mortgagor for restitution. *Held*, that it was governed by Art. 182 (7), and that limitation commenced from the date fixed for payment in new decree after re-trial and not from date when *ex parte* decree was set aside. 44 L.W. 798= 1936 M.W.N. 119=71 M.L.J. 795. *See also* 1938 Lah. 590; 204 I.C. 614.

ART. 182, EXPL. (1): JOINT DECREE.—*See* 103 I.C. 867=9 P.L.T. 264=1927 P. 116; 1945 B. 489=47 Bom.L.R. 434; 32 C.W.N. 1107=1928 C. 861; 26 A.L.J. 966=51 A. 237 =1928 A. 629 (F.B.); 23 P. 150=1944 Pat. 188. Expl. 1 of Art. 182 contemplates only cases in which a decree has been passed either jointly or severally in favour of or against more persons than one. It does not apply to a case where certain persons have made themselves liable for the decretal amount as sureties after the passing of the decree. 13 Luck. 353=1937 O.W. N. 680=1937 Oudh 351. A decree is a joint decree within the meaning of Explanation 1 to Art. 182, if any one of the reliefs given in the decree is against the defendants jointly, even though some other reliefs may be given against the defendants separately. Ordinarily a decree in a partition suit is one decree. The fact that the decree grants separate reliefs will not by itself transform the decree into separate decrees. The fact that the combinations of the decree-holders and judgment-debtors entitled to reliefs under the decree are different and the reliefs are granted both severally and jointly in favour of and against more persons than one, will not also transform the decree into distinct and separate decrees, if the facts taken as a whole justify the conclusion that the decree is one decree. An application for execution of such a decree in respect of the reliefs granted jointly against the defendants, will save limitation against them even in respect of the reliefs which have been decreed against them separately. 50 C.W.N. 155. A decree against a judgment-debtor cannot be regarded as a decree passed jointly against the judgment-debtor and a person who has entered into a surety bond for the due satisfaction of any decree that may be passed against the judgment-debtor, and consequently an application for execution against the judgment-debtor will not save limitation for an application for execution against the surety. 6 R. 334=1928 R. 282. *See also* 142 I.C. 368=1933 M. 219=37 L.W. 127; 1937 Oudh 351. Surety—Application against—Surety not a joint judgment-debtor—Events availing against judgment-debtor not saving limitation against surety. 8 P. 310=1929 P. 595. A surety is not a joint judgment-debtor within the meaning of Art. 182. 1929 P. 597. As to instalment decree, *see* 109 I.C. 272; I.L.R. (1943) B. 55 =1943 Bom. 36=44 Bom.L.R. 880. Suit on mortgage against several persons—Preliminary mortgage decree for sale for certain sum against all defendants and money decree against executants of mortgage alone—Money portion of decree—Execution—Limitation—Application for execution of final decree—If saves limitation. 23 Pat. 150= 1944 Pat. 188. A decree, though it differentiates between the judgment-debtors as regards the mode of execution, as for exam-

Description of Application.	Period of limitation.	Time from which period begins to run.
183. To enforce a judgment, decree or order of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction, or an order of His Majesty in Council.	Twelve years ..	shall take effect against them all. *Explanation* II.—"Proper Court" means the Court whose duty it is to execute the dercee or order. When a present right to enforce the judgment, decree or order accrues to some person capable of releasing the right: Provided that when the judgment, decree or order has been revived, or some part of the principal money secured thereby, or some interest on such money has been paid, or some acknowledgment of the right thereto has been given in writing signed by the person liable to pay such princi-

ple, providing a personal remedy against some and only a remedy against the property of others may still be a joint decree against all the defendants. 118 I.C. 237=1929 A. 795. Expl. 1 of Art. 182 saves limitation even where the execution application is taken out against one of several judgment-debtors. 31 P.L.R. 961=134 I.C. 194=1931 L. 116. But the Act does not apply where a decree specifies clearly the respective liabilities of the various judgment-debtors and puts it beyond doubt that the decree-holder could proceed against an individual judgment-debtor in respect of his share of the decretal amount and costs. 35 P.L.R. 692=1934 L. 637 (2). *See also* 1937 Cal. 547. Where some out of several joint decree-holders apply for execution on their own behalf and during the pendency of such application the others also apply but the latter application is not competent the two applications cannot be considered to supplement each other in order to extend limitation. 152 I.C. 443=1934 Pesh. 40. A decree for partition allotting various lands in severalty to each of the parties and reserving a strip of land as common road, was, so far as that strip was concerned, one for joint possession in favour of all the parties, and as that was an integral part of the arrangement, the whole decree should be deemed to be joint and a previous application by plaintiff would save limitation for a subsequent application by the defendant to be put in possession. 36 C.W.N. 772=139 I.C. 786==1932 C. 869. *See also* 145 I.C. 968=38 L.W. 568=1933 M. 789=65 M.L.J. 582. *Quaere.*—Whether in a final decree for partition merely awarding several plots to several sharers, an application for one plot cannot save from limitation the application for another plot. 65 M L.J. 582. *See also* 1940 Pat. 147. Where a decree for partition has allotted certain properties in severalty to each of the parties but has reserved a portion of the properties as joint between the parties, such decree must be regarded as a joint decree within the meaning of Explanation 1 to Art. 182. If, therefore, one of the parties to the decree starts on execution within three years of the final decree, it would enure to the benefit of the other parties as well so as to give a fresh start of limitation under Art. 182 (5). 25 Pat. 95=27 P.L.T. 205. *See also* I.L.R. (1945) Kar. 445=1945 S. 3; 50 C.W.N. 155. Under Expl. 1 to Art. 182, the execution of a decree against a joint judgment-debtor would be sufficient against all and would keep alive the decree against all, the suspension of the running of limitation against one of the judgment-debtors owing to the supervening of insolvency so far as he is concerned, cannot keep the remedy of the decree-holder alive against all of them, because there is no bar to the decree-holder executing the decree against the other judgment-debtors during the pendency of the insolvency proceedings against one of them. 1938 P.W.N. 397=19 Pat.L.T. 831=1938 Pat. 395; 197 I.C. 480=1942 P. 285. Though by reason of sec. 164, Companies Act, the District Judge has the same jurisdiction and the same powers as the High Court, yet the District Judge by virtue of sec. 164 does not become the High Court for purpose of Art. 183, Limitation Act. Hence to a payment order passed by the District Judge under powers conferred by sec. 164, Art. 183 has no application and the only article applicable is Art. 182. 178 I.C. 288=1938 Lah. 368.

EXPL. II.—The term "representatives" in Explanation 2, does not apply to transferees *pendente lite*. If the application against the judgment-debtors is in time, it must be in time against transferees *pendente lite*. (1944) Nag. 852.

ART. 183: SCOPE AND APPLICATION.—The provisions of Art. 183 regarding acknowledgment as well as payments are self-contained and must be read independently of

Description of application	Period of limitation.	Time from which period begins to run.
		pal or interest, or his agent to the person entiled thereto or his agent, the twelve years shall be computed from the date of such revivor paymet or acknowledgment or the latest of such revivors, payments or acknowledgment as the case may be.

secs. 19 and 20 of the Limitation Act. 10 P. 213=132 I.C. 109=1931 P. 218. The proviso to Art. 183, dealing with revival, has application only if the application for execution on the face of it was made more than 12 years after the date of the decree; where the application is within 12 years. Art. 183 is no bar to execution. 45 Bom.L. R. 400=A.I.R. 1943 Bom. 238. According to law, decree bears the same date as the judgment, and the right to enforce the decree under Art. 183 of the Limitation Act would *prima facie* accrue from the date of the judgment. Ordinarily, prepartion of the decree (including assessment of costs) does take a little time but there is no provision of law allowing this time to be deducted in computing the period for an application for execution. I.L.R. (1939) Lah. 319=41 P.L. R. 105=1939 Lah. 110. The word "payment" is used in Art. 183 in a wider sense than in sec. 20 and not qualified in any way as to the mode in which the payment is to be made or as to the person who is to make it. A sum of money realised in execution in partial satisfaction of the decree amounts to "payment" and provides a fresh starting point for limitation. 1931 Pat. 218. "Money" secured by decree includes costs, and payment of costs would save limitation. 10 P. 213=1931 Pat. 218. To constitute a revivor of the decree, there must be expressly or by implication a determination that the decree is still capable of execution and the decree-holder is entitled to enforce it. 41 C.L.J. 159=1925 C. 668. *See also* 32 C.W.N. 336=55 C. 578=1928 C. 686; 15 P. 102=17 Pat.L.T. 317=163 I.C. 411 =1936 P. 398; 40 Bom.L.R. 1180=1939 Bom. 51; 19 Pat.L.T. 193=1938 Pat. 372; 19 Pat. 909=1940 Pat. 596. "Revivor" means a decision holding that the decree was still capable of execution. *Per* Mitter, J., in 1936 Pat. 398. Application for transfer of decree is not revival of decree. *See* 54 I.A. 129=54 C. 500=1927 P.C. 73=52 M.L.J. 565 (P.C.). An application for transmission of a decree does not operate as revivor within the meaning of Art. 183 though it may be a step-in-aid of execution under Art. 182. 54 Cal. 500=54 I.A. 129 =52 M.L.J. 565 (P.C.). The revivor contemplated by Art. 183, is an order in execution against a particular person consequent upon a notice. When that person is a minor on the date of the decree a notice served on his guardian would be sufficient and would operate as a revivor though in fact he has become a major subsequently. The failure on the part of the minor to get himself declared a major cannot affect the proceedings taken by the decree-holder, or render them illegal. 58 L. W. 174=1945 M.W.N. 334=A.I.R. 1945 Mad. 325=(1945) 1 M.L.J. 284.

"Revivor"—Meaning of—Order for arrest of judgment-debtor within one year of decree—Subsequent transfer of decree for execution and application for execution in transferee Court beyond 12 years—Prior order for arrest—If "revivor". 23 Pat. 923=1945 Pat. 182. Although the term "revivor" has not been anywhere defined or explained in the Limitation Act, it is well-settled that to constitute "revivor" of the decree there must be expressly or by implication a determination that the decree is still capable of execution and the decree-holder is entitled to enforece it. In other words there must be an order for execution which amounts to a decision that the decree is capable of execution. 21 Pat.L.T. 431=1940 P.W.N. 896=1940 Pat. 596. An order of revivor of a decree against two persons jointly, *e.g.*, partners of a firm against whom the decree has been passed, when made in an application for execution against one of them only, does not keep the decree alive against the other. No one can be prejudicially affected by any judicial order to which he is not a party. Art. 182 contains a distinct provision which is an exception to this general rule. A similar exception cannot be imported into Art. 183 which is silent on the point. 21 Pat.L.T. 431=1940 Pat. 596. An application under O. 21, r. 50 (2), C. P. Code, for leave to execute a decree passed against a firm by the original side of the High Court against a person alleged to be a partner is one to enforce the decree and is, therefore, governed by Art. 183. The period of limitation commences, not from the date of adjudication of that person as partner but from the date of the decree. 48 C.W.N. 645. A notice issued under O. 21, r. 16, C. P. Code, does not operate as revivor to extend the period of limitation under Art. 183, nor is the application for transfer of a decree an application in execution. 28 C.W.N. 963=1925 C. 23. *See also* 1940 Pat. 596; 1938 Pat. 372; 15 P. 102=1936 Pat. 398. An application to enforce an order absolute made by the High Court in a suit to enforce the mortgage

THE SECOND SCHEDULE.
[*Repealed by Act VIII of* 1930, *S.* 3 *and Sch.* II.]
THE THIRD SCHEDULE.
[*Repealed by Act XVII of* 1914, *S.* 3 *and Sch. II.*]

THE LOCAL AUTHORITIES LOANS ACT (IX OF 1914).

Year.	No.	Short title.	Amendments.
1914	IX	The Local Authorities Loans Act, 1914.	Am. (in C.P.), C.P. Act XXXVIII of 1922. Rep. in pt. and am., Act XII of 1920. Rep. in p t., Act III of 1927; A.O., 1937.

security must be made within 12 years from the date when the order absolute for sale was made. 60 I.C. 880=47 C. 746. Properties belonging to the judgment-debtor were sold and the proceeds brought into Court. The Court ordered payment thereout to the decree-holder but the money was actually paid only sometime later. *Held*, that the payment by Court operated to give fresh starting point of limitation for execution of the decree under Art. 183. 46 M.L.J. 453=1924 M. 638. Applicability of article to award filed in chartered High Court. *See* 31 C.W.N. 1097=1927 C. 853; 43 Bom.L.R. 1006=I.L.R. (1942) B. 124=1942 B. 34. Under Art. 183 payment is not required to be made either by the debtor or by some person acting on his behalf for the purpose of saving limitation. Payment for judgment-debtor or to his account is sufficient. 49 M.L.J. 101=1925 M. 1131. Application for restitution in pursuance of Privy Council decree—Limitation applicable—"To enforce", meaning of. 44 A. 555=1922 A. 238; 50 A. 767=26 A.L.J. 587=1928 A. 293. *See also* I.L.R. (1940) 1 Cal. 486=1940 C. 260=44 C.W.N. 438. Where the preliminary decree in a mortgage suit was an order of His Majesty in Council, the preparation of the final decree was a purely ministerial act to enable the order of His Majesty in Council to be enforced. 3 P. 596=1924 P. 576. *See also* 40 Bom.L.R. 507=I.L.R. (1938) Bom. 273=1938 B. 354; I.L.R. (1939) 1 Cal. 477=43 C.W.N. 401=1939 Cal. 601. When a Court has recognised the assignment of a decree and passed an order allowing the assignee to execute it, that gives fresh starting point of limitation and it is not open to the judgment-debtor to contend that it did not act as a revivor. Where the Deputy Registrar of the High Court after due notice to parties ordered the transmission of a decree to another Court for execution, *held*, that the order operated as a revivor within the meaning of Art. 183 of the Limitation Act. 52 M. 590=1929 M. 252 (2)=56 M.L.J. 555. But *see* 15 P. 102=1936 Pat. 398. Where a tabular statement in accordance with O. 21, r. 11 was filed before the Master who issued notice to the other side, *held*, that it amounted to an application to the Court within the meaning of Art. 183 read in conjunction with sec. 3 of that Act and that limitation was saved thereby. 55 C. 1341=1929 C. 193. Words "capable of releasing the right" exclude persons who are legally incapacitated, such as infants and lunatics, and therefore the words of Art. 183 are not governed by secs. 6, 7 and 8. 123 I.C. 411=1930 P. 141. An application against the sons for execution of a decree for costs obtained against the father is governed by Art. 183. 11 P. 445=1932 P. 261. The decree of the Chief Court of Burma when put in execution in the High Court is governed by Art. 182. It does not become the decree of the original side of the High Court so as to get the benefit of an extended period of limitation. 6 R. 566=1928 R. 317. On this section, *see also* 13 R. 325=1935 R. 106.

ARTS. 183 AND 181.—An application for execution of a conditional decree was passed by the High Court is governed by Art. 183 and not by Art. 181. In the case of conditional decrees, the proper practice is for the decree-holder to apply for the execution of the decree on notice to the judgment-debtor and to file in support of his application a petition alleging default. If the judgment-debtor does not deny default or if his denial is not believed, the decree-holder obtains the order he seeks. It is not necessary for him to file an application merely to establish default as a preliminary to a further application for a substantive order. 41 C.W.N. 1133. The tranmission order being a *sine qua non* for execution proceedings an application under O. 45, r. 15, is one for enforcing an order in Council of His Majesty and is covered by Art. 183, and therefore the residuary Art. 181 cannot apply. 1942 Pesh. 14=199 I.C. 46. An application for leave to execute a decree against the legal representatives of the judgment-debtor is governed, not by Art. 181, but by Art. 183. I.L.R. (1939) 2 Cal. 173=1940 Cal. 171. Restitution—Application for, in consequence of order of His Majesty in Council—Article applicable. *See* 44 C.W.N. 438=71 C. L.J. 127=I.L.R. (1940) 1 Cal. 486=1940 C. 260.

[28*th February*, 1914.

An Act to consolidate and amend the law relating to the grant of loans to Local Authorities.

WHEREAS it is epxedient to consolidate and amend the law relating to the borrowing powers of local authorities; It is hereby enacted as follows:—

Preamble.

Short title and extent.

1. (1) This Act may be called THE LOCAL AUTHORITIES LOANS ACT, 1914.

(2) It extends to the whole of British India, including the Sonthal Parganas.

Definitions.

2. In this Act, "local authority" means any person legally entitled to the control or management of any local or municipal fund, or legally entitled to impose any cess, rate, duty or tax within any local area;

"funds," used with reference to any local authority, includes any local or municipal fund to the control or management of which such authority is legally entitled, and any cess, rate, duty or tax which such authority is legally entitled to impose, and any property vested in such authority;

"prescribed" means prescribed by rules made under this Act; and

"work" includes a survey, whether incidental to any other work or not.

[1]["The Government" or "the appropriate Government" means, in relation to cantonment authorities and in relation to port authorities in major ports, the Central Government, and in relation to other local authorities, the Provincial Government.]

Borrowing powers of local authorities.

3. (1) A local authority may, subject to the prescribed conditions, borrow on the security of its funds or any portion thereof for any of the following purposes, namely:—

(*i*) the carrying out of any works which it is legally authorised to carry out,

(*ii*) the giving of relief and the establishment and maintenance of relief works in times of famine or scarcity,

(*iii*) the prevention of the outbreak or spread of any dangerous epidemic disease,

(*iv*) any measures which may be connected with or ancillary to any purposes specified in clauses (*ii*) and (*iii*),

(*v*) the repayment of money perviously borrowed in accordance with law:

Provided that nothing in clause (*v*) shall be deemed to empower a local authority to fix a period for the repayment of any money borrowed thereunder which, when the period fixed for the repayment of the money previously borrowed is taken into account, will exceed the maximum period fixed for the repayment of a loan by or under any enactment for the time being in force:

[1] [a]Provided further that, in the case of loans other than loans made by the [2][appropriate Government], no amount exceeding twenty-five lakhs of rupees shall be borrowed unless the terms, including the date of flotation, of such loan have been approved by the [3][appropriate Government].

(2) Nothing in this section shall be deemed to authorize any local authority—

(*a*) to borrow or spend money for any purpose for which, under the law for the time being in force, it is not authorized to apply its funds, or

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LEG. REF.

[1] Inserted by A.O., 1937.

[1-a] This proviso was inserted by Act XXXVIII of 1920, S. 2 and Sch. I.

[2] Substituted by A.O., for 'Local Government'.

[3] Substituted by A.O., for 'Governor-General in Council'.

(*b*) to borrow money by means of the issue of bills or promissory notes payable within any period not exceeding twelve months.

Power of appropriate Government to make rules.

4. (1) The [1][appropriate Government] may make rules consistent with this Act as to—

(*i*) the nature of the funds on the security of which money may be borrowed;

(*ii*) the works for which money may be borrowed;

(*iii*) the manner of making applications for permission to bororw money;

(*iv*) the inquiries to be made in relation to such loans, and the manner of conducting such inquiries;

(*v*) the cases and the forms in which particulars of applications and proceedings, and orders thereon, shall be published;

(*vi*) the cases in which the [2][appropriate Government] may make loans [3][* * * * * * *];

[4][(*vii*) the cases in which local authorities may take loans from persons other than the [2][appropriate Government];

(*viii*) the manner of recording and enforcing the conditions on which money is to be borrowed;

(*ix*) the manner and time of making or raising loans;

(*x*) the inspection of any works carried out by means of loans;

(*xi*) the instalments, if any, by which loans shall be re-paid, the interest to be charged on loans, and the manner and time of re-paying loans and of paying the interest thereon;

(*xii*) the sum to be charged against the funds which are to form the security for the loan, as costs in effecting the loan;

(*xiii*) the attachment of such funds, and the manner of disposing of or collecting them;

(*xiv*) the accounts to be kept in respect of loans;

(*xv*) the utilization of unexpended balances of loans either in the reduction in any way of the debt of the local authority, or in carrying out any works which that authority is legally authorised to carry out; and the sanction necessary to such utilization;

and as to all other matters incidental to carrying this Act into effect.

(2) [5][* * * * * *]

(3) All rules made under this Act shall be published [6][* * *] in the Official Gazette. and on such publication, shall have effect as if enacted in this Act.

Remedy by attachment if loan not repaid.

5. If any money borrowed in accordance with the provisions of this Act, or any interest or costs due in respect thereof is or the [2][appropriate Government], if itself the lender, the [3][appropriate Government], if itself the lender, may, and, if the [2][appropriate Government], is not the lender, shall, on the application of the lender, attach the funds on the security of which the loan was made. After such attachment, no person, except an officer appointed in his behalf by the [2][appropriate Government], shall in any way deal with the

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LEG. REF.

[1] Substituted by A.O., for "Local Government" which were substituted by Act XXXVIII of 1920, S. 2 and Sch. I, for "Governor-General in Council".

[2] Substituted by A.O., 1937, for "Local Government".

[3] Certain words were omitted by Act XXXVIII of 1920, S. 2 and Sch. I.

[4] Substituted by *ibid.*

[5] Sub-S. (2) was omitted by Act XXXVIII of 1920, S. 2 and Sch. I.

[6] Certain words were omitted by *ibid.*

SEC. 4.—Where a Panchayat Board contracts a loan without obtaining the sanction of the Local Government as required by the rules framed under S. 4 of the Act, the contract is void and no suit to enforce it would lie. But the creditor may in a proper case be entitled to the restoration of his money under S. 65 of the Contract Act. 54 L.W. 488=1942 Mad 111=(1941) 2 M. L.J. 216.

attached funds; but such officer may do all acts in respect thereof which the borrowers might have done if such attachment had not taken place, and may apply the proceeds in satisfaction of the loan and of all interests and costs due in respect thereof, and of all expenses caused by the attachment and subsequent proceedings:

Attachment not to defeat prior charges legally made.

Provided that no such attachment shall defeat or prejudice any debt for which the funds attached were previously pledged in accordance with law; but all such prior charges shall be paid out of the proceeds of the funds before any part of the proceeds is applied to the satisfaction of the liability in respect of which such attachment is made.

Issue of short-term bills.

6. (1) Subject to the provisions of section 26 of the Indian Paper Currency Act, 1910, the local authorities mentioned in Schedule I and any other local authority to which the [1][appropriate Government] may, by notification in the Official Gazette, extend the provisions of this section, may, with the previous sanction of the [1][appropriate Government] borrow money by means of the issue of bills or promissory notes payable within any period, not exceeding twelve months, for any purpose for which such local authority may lawfully borrow money under any law for the time being in force:

Provided that the amount of the bills or promissory notes, which may be so issued, shall not exceed, when the amount of the other moneys, for the time being borrowed by such local authority is taken into account, the total amount which such local authority is empowered by law to borrow.

(2) The [1][appropriate Government] may, by general or special order, regulate the conditions on which money may be borrowed or repaid under this section.

Loans not to be effected except under this Act.

7. Except as provided by or under this Act, no local authority shall, for any purpose, borrow money upon, or otherwise charge, its funds; and any contract otherwise made for that purpose after the passing of this Act shall be void:

Provided that nothing herein contained shall be deemed—

(*a*) to preclude any local authority from exercising the borrowing powers conferred on it by any special enactment now or hereafter in force; or

(*b*) to affect the power conferred on any local authority by any such enactment to charge its funds, by guaranteeing the payment of interest on money to be applied to any purpose to which the funds of the local authority can legally be applied.

Application of Act to loans existing previous to the fifth September, 1871.

[2][**8.** The remedy mentioned in section 5 shall be available for the recovery of any money lent by the Secretary of State in Council to any local authority before the fifth day of September, eighteen hundred and seventy-one, and the interest due on such money.]

9. [*Repeals.*] *Rep. by the Repealing Act* (*XII of* 1927), *S.* 2 *and Sch.*

SCHEDULE I.

[See *Section* 6.]

The Corporation of Calcutta.
The Commisisoners for the Port of Calcutta.
The Commissioners for the Port of Chittagong.
The Municipal Corporation of the City of Bombay.
The Trustees of the Port of Bombay.
The Corporation of Madras.
The Trustees for the Port of Madras.
[3][* * * * *]
The Municipality of Karachi.

LEG. REF.

[4] Substituted by A.O., 1937, for "Governor-General in Council".

[2] Substituted by A.O., 1937.

[3] The entries relating to the 'Municipal Committee of Rangoon' and 'the Commissioners for the Port of Rangoon' omitted by A.O., 1937.

[1] Substituted by A.O., 1937, for "Gover- The Trustees for the Improvement of the City of Bombay

The Trustees for the Improvement of the City of Calcutta.

SCHEDULE II.[1]

[ENACTMENTS REPEALED.] (*Rep. by the Repealing Act XII of* 1927), *S. 2 and Sch.*

THE LOCAL AUTHORITIES PENSIONS AND GRATUITIES ACT (I OF 1919).[2]

Year.	No.	Short title.	Amendments.
1919	I	The Local Authorities Pensions and Gratuities Act.	Amended, XXXVIII of 1920, A.O., 1937.

[26*th February*, 1919.

An Act to extend the powers of local authorities in regard to the granting of pensions and gratuities.

WHEREAS it is expedient to extend the powers of local authorities in regard to the granting of pensions and gratuities; It is hereby enacted as follows:—

Short title and extent.

1. (1) This Act may be called THE LOCAL AUTHORITIES PENSIONS AND GRATUITIES ACT, 1919.

(2) It extends to the whole of British India, including the Sonthal Parganas.

Definition.

2. In this Act "officer" means any person who has undertaken [3][service under the Crown] and who, immediately prior to undertaking such service, was paid and employed solely by a local authority and, but for undertaking such service, would in the ordinary course have continued in such employment, [4][and the 'appropriate Government' means, in relation to cantonment authorities and port authorities in major ports, the Central Government, and in relation to other authorities, the Provincial Government].

Power to grant extraordinary pensions and gratuities.

3. Notwithstanding anything contained in any enactment or in any rule made thereunder regulating the powers of local authorities, and without prejudice to any powers conferred by or under any such enactment, a local authority may grant a pension or gratuity to any officer thereof who may, since the fourth day of August, 1914, have been wounded or otherwise incapacitated in [3][service under the Crown] and to the widow or child of any such officer who may have died in consequence of injuries received or illness contracted since the fourth day of August, 1914, in the course of such service.

Provision as to pensions and gratuities.

4. (1) Such pension or gratuity may be granted in addition to any pension or gratuity payable to the officer or his wife or child, as the case may be, under any general or special orders of His Majesty in Council or of [5][the Central Government or any Provincial Government], but shall not, save with the sanc-

LEG. REF.

[1] Substituted by A.O., 1937.

[2] For Statement of Objects and Reasons, see *Gazette of India*, 1919, Pt. V, p. 18. For Proceedings in Council, *see ibid.*, 1919, Pt. VI, pp. 144, 145 and 197.

[3] Substituted for the words "the service of Government' by A.O., 1937.

[4] Inserted by *Ibid.*

[5] Substituted by A.O., 1937, for "Governor-General in Council".

tion of the [1][appropriate Government] exceed the amount of the pension or gratuity to which the officer or his wife or child would have been entitled under any such orders if his employment by the local authority had been service for the same time and on the same pay [2][under the Crown].

(2) Any pension granted under this Act may be made to take effect from such date subsequent to the fourth day of August, 1914, and subject to such conditions as the local authority may think fit.

Procedure.

5. Subject to the provisions of this Act, the decision of a local authority to grant a pension or gratuity thereunder shall be made in such manner and shall be subject to such sanction as may be prescribed by any enactment or rule regulating the grant by such local authority of pensions and gratuities:

Provided that in every case the sanction of the [3][appropriate Government] shall be necessary.

THE INDIAN LUNACY ACT (IV OF 1912).

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LEG. REF.

[1] Substituted by A.O., 1937, for "Local Government" which had been substituted for "Governor-General in Council" by Act XXXVIII of 1920, S. 2 and Sch. I.

[2] Substituted by A.O., 1937, for "under Government".

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[THE INDIAN LUNACY ACT, 1912: Repealed in part, XVII *of* 1914, *s.* 3; *XVIII of* 1919; *XXXVIII of* 1920. Amended, *XII of* 1916; *VI of* 1922; *XI of* 1923; *XXXII of* 1923; *XXXIII of* 1923; *V of* 1926; *X of* 1927; *XIV of* 1932; *XXXV of* 1934; Madras Acts *XIV and XV of* 1938 *and XII of* 1943.]

[16*th March*, 1912

An Act to consolidate and amend the law relating to Lunacy.

WHEREAS it is expedient to consolidate and amend the law relating to lunacy: It is hereby enacted as follows:—

PART I.
PRELIMINARY.
CHAPTER I.

Short title and extent.

1. (1) This Act may be called THE INDIAN LUNACY ACT, 1912.

(2) It extends to the whole of British India, including British Baluchistan. the Sonthal Parganas, and the Pargana of Spiti.

LEG. REF.

[1] Substituted for "established under the Indian High Courts Acts, 1861 to 1911" by A.O., 1937.

SEC. 1: OBJECT OF THE ACT.—The law does not contemplate that a person alleged to be a lunatic should be exposed to the publicity and harassment of a trial unless there is some foundation for apprehension that he is incapable to manage his affairs. 9 I.C. 207=8 A.L.J. 179. *See also* 19 C. W.N. 45.

APPLICABILITY OF THE ACT.—The Act is not absolutely exhaustive. 42 C.W.N. 92 =I.L.R. (1938) C. 180=1937 C. 735. Act XXXV of 1858 had no application to a Hindu coparcener who has no separate property. 23 M.L.J. 706=17 I.C. 473=1913 M.W.N. 79. *See also* 25 C. 585. The provisions should be strictly followed. 1930 L. 289. As to jurisdiction in Lunacy under the Lunacy (District Courts) Act (1858), *see* 58 Cal. 1919=35 C.W.N. 1045; under Lunacy (Supreme Courts) Act, 1858, *see* 58 Cal. 1919=35 C.W.N. 1045=1932 C. 91.

Savings.

2. Nothing contained in Part II shall be deemed to affect the powers of any High Court which is or hereafter may be [1][constituted by His Majesty by Letters Patent], over any person found to be a lunatic by inquisition or over the property of such lunatic, or the rights of any person appointed by such Court as guardian of the person or manager of the estate of such lunatic.

Definitions.

3. In this Act, unless there is anything repugnant in the subject or context,—

(1) "asylum" means an asylum [1][or mental hospital] for lunatics established or licensed by [any Government in British India][2]:

(2) "cost of maintenance" in an asylum includes the cost of lodging, maintenance, clothing, medicine and care of a lunatic and any expenditure incurred in removing such lunatic to and from an asylum [1][together with any other charges specified in this behalf by the [3][Provincial Government], in exercise of any power conferred upon [4][it] by this Act]:

(3) "District Court" means the principal Civil Court of original jurisdiction in any area outside the local limits for the time being of the presidency-towns:

(4) "criminal lunatic" means any person for whose [5][detention] in, or removal to an asylum, jail or other place of safe custody an order has been made in accordance with the provisions of section 466 or section 471 of the Code of Criminal Procedure, 1898, or of section 30 of the Prisoners Act, 1900, [6][or of section 103-A of the Indian Army Act, 1911]:

(5) "lunatic" means an idiot or person of unsound mind:

(6) "Magistrate" means a Presidency Magistrate, District Magistrate, sub-Divisional Magistrate or a Magistrate of the first class specially empowered by the Provincial Government to perform the functions of a Magistrate under this Act:

(7) "medical officer" means a 'gazetted' [7][medical officer in the service of the Crown] and includes a medical practitioner declared by general or special order of the Provincial Government to be a medical officer for the purposes of this Act:

(8) "medical practitioner" means a holder of a qualification to practise medicine and surgery which can be registered in the United Kingdom in accordance with the law for the time being in force for the registration of medical practitioners, and includes any person declared by general or special order of the Provincial Government to be a medical practitioner for the purposes of this Act:

LEG. REF.

[1] Inserted by Act VI of 1922, S. 2.

[2] Substituted for "Government" by A.O., 1937.

[3] Substituted for "Governor-General is Council" by A.O., 1937.

[4] Substituted for "him" by *ibid.*

[5] Substituted for 'confinement' by Act XI of 1923, S. 2 and Sch. I.

[6] Inserted by Act XXXIII of 1923, S. 5.

[7] Substituted for 'medical officer of Bovernment' by A.O., 1937.

SEC. 3, CL. (1): Where there is no provision in the order of appointment of joint managers for the estate of lunatic, the office of the survivor manager terminates on the death of the co-manager. 61 Cal. 986=60 C.L.J. 14=38 C.W.N. 1054=1935 C. 33. As to appointment of manager in respect of the lunatic's interests in Hindu coparcenary property, *see* 1942 All. 267=1942 A.L.J. 197=I.L.R. (1942) All. 518.

SEC. 3, CL. (2).—Under the Lunacy Act, the Court has no power to award costs to an unsuccessful applicant out of the estate of the alleged lunatic, even though the application is *bona fide* and in the best interests of the lunatic. In the absence of a provision in the Act, similar to S. 109 of the English Lunacy Act of 1890, the Court has no discretion to award costs. 58 M. 281=152 I. C. 882=40 L.W. 710=1935 M. 91=67 M. L.J. 797.

SEC. 3 (5).—The elaborate procedure prescribed by the Act should be strictly fol-

(9) "prescribed" means prescribed by this Act or by rule made thereunder:

(10) "reception order" means an order made under the provisions of this Act for the reception into asylum of a lunatic other than a lunatic so found by inquisition:

(11) "relative" includes any person related by blood, marriage or adoption: and

(12) "rule" means a rule made under this Act.

PART II.

RECEPTION, CARE AND TREATMENT OF LUNATICS.

CHAPTER II.

RECEPTION OF LUNATICS.

Reception of persons in asylum.

[1]4. (1) No person other than a criminal luantic or a lunatic so found by inquisition shall be received or detained in an asylum without a reception order save as provided by sections 8, 16 and 98:

Provided that any person in charge of an asylum may, with the consent of two of the visitors of such asylum, which consent shall not be given except upon a written application from the intending boarder, receive and lodge as a boarder in such asylum any person who is desirous of submitting himself to treatment.

(2) A boarder received in an asylum under the proviso to sub-section (1) shall not be detained in the asylum for more than twenty-four hours after he has given to the person in charge of the asylum notice in writing of his desire to leave such asylum.

Reception orders on petition.

Application for reception order.

5. (1) An application for a reception order shall be made by petition accompanied by a statement of particulars to the Magistrate within the local limits of whose jurisdiction the alleged lunatic ordinarily resides, shall be in the form prescribed and shall be supported by two medical certificates on separate sheets of paper, one of which certificates shall be from a medical officer.

(2) If either of the medical certificates is signed by any relative, partner or assistant of the lunatic or of the petitioner, the petition shall state the fact and, where the person signing is a relative, the exact manner in which he is related to the lunatic or petitioner.

LEG. REF.

[1]MADRAS AMENDMENT.—In sub-S. (1) of sec. 4 of the Indian Lunacy Act, 1912, for the words and figures "save as provided by secs. 8, 16 and 98", the words, figures and letter "save as provided by secs. 8, 16 and 98 of this Act and by sec. 39-A of the Prisons Act, 1894" shall be substituted (Madras Act XIV of 1938).

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lowed, the Court should not consider itself relieved of its responsibility by the mere circumstance that some or all of the relatives of the person concerned have declared that he is a lunatic. The Court ought to form its own independent judgment on the point. 122 I.C. 570=1930 L. 289. Unsoundness of mind includes imbecility, lunacy or mental aberration. 7 B. 15. *See also* 1905 A.W. N. 8; 4 C.L.J. 115. But mere weakness of intellect is not. 4 C.L.J. 115. As to what is lunacy, *see also* 24 W.R. 124; 20 W.R. 55.

LUNATIC.—The term "Lunatic" also includes one who is so found by a competent Court on proper evidence. 2 A.L.J. 154; 31 C. 210. A man is not a lunatic simply because he had delusions on one or two points and is incapable of managing his own affairs. 9 I.C. 207=8 A.L.J. 179.

SEC. 3 (11).—The brother of the wife is related by marriage to the husband of his sister and is therefore a "relative" within S. 3 (11) of the Act and he is competent to make an application for inquisition under S. 62 of the Act. A narrow construction should not be placed upon the term "relative" as defined in S. 3 (11). 22 C.W.N. 547=43 I.C. 511.

SEC. 4.—*See* 4 L. 1=73 I.C. 696=1924 L 55.

(3) The petition shall also state whether any previous application has been presented for an inquiry into the mental capacity of the alleged lunatic in any Court; and if such application has been made, a certified copy of the order made thereon shall be attached to the petition.

(4) No application for a reception order shall be entertained in any area outside the Presidency-towns unless the Provincial Government has, by notification in the Official Gazette, declared such area as an area in which reception orders may be made.

Application by whom to be presented.

6. [1][(1) Subject to the provisions of sub-section (3), the petition shall be presented by the husband or wife of the alleged lunatic, or, if there is no husband or wife or the husband or wife is prevented by reason of insanity, absence from India or otherwise from making the presentation, by the nearest relative of the alleged lunatic who is not so prevented.]

(2) [1][If the petition is not presented by the husband or wife, or, where there is no husband or wife, by the nearest relative of the alleged lunatic, the petition] shall contain a statement of the reasons why it is not so presented, and of the connection of the petitioner with the alleged lunatic, and the circumstances under which the presents the petition.

(3) No person shall present a petition unless he has attained the age of majority as determined by the law to which he is subject, and as within fourteen days before the presentation of the petition, personally seen the said lunatic.

(4) The petition shall be signed and verified by the petitioner, and the statement of prescribed particulars by the person making such statement.

Procedure upon petition for reception order.

7. (1) Upon the presentation of the petition the Magistrate shall consider the allegations in the petition and the evidence of lunacy appearing by the medical certificates.

(2) If he considers that there are grounds for proceeding further, he shall personally examine the alleged lunatic unless for reasons to be recorded in writing he thinks it unnecessary or inexpedient so to do.

(3) If he is satisfied that a reception order may properly be made forthwith, he may make the same accordingly.

(4) If he is not so satisfied, he shall fix a date (notice whereof shall be given to the petitioner and to any other person to whom in the opinion of the magistrate notice should be given) for the consideration of the petition, and he may make such further or other inquiries of or concerning the alleged lunatic as he thinks fit.

Detention of alleged lunatic pending inquiry.

8. Upon the presentation of the petition, the Magistrate may make such order as he thinks fit for the suitable custody of the alleged lunatic pending the conclusion of the inquiry.

Consideration of petition.

9. The petition shall be considered in private in the presence of the petitioner, the alleged lunatic (unless the Magistrate in his discretion otherwise directs), any person appointed by the alleged lunatic to represent him and such other persons as the Magistrate thinks fit.

Order.

10. (1) At the time appointed for the consideration of the petition, the Magistrate may either make a reception order or dismiss the petition, or may adjourn the same for

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LEG. REF.

[1] Substituted by Act V of 1926, S. 2.

SEC. 7: DUTY OF JUDGE IN MAKING AN ORDER FOR INQUISITION.—It must be a judicial determination carefully made on adequate materials. 54 C. 836=1927 C. 636; 35 C.W.N. 481=1932 C. 20.

further evidence or inquiry and may make such order as to the payment of the costs of the inquiry by the person upon whose application it was made, or out of the estate of the alleged lunatic if found to be of unsound mind, or otherwise as he thinks fit.

(2) If the petition is dismissed, the Magistrate shall record in writing his reasons for dismissing the same, and shall deliver or cause to be delivered to the petitioner a copy of such order.

Further provisions as to reception orders on petition.

11. No reception order shall be made under section 7 or section 10, save in the case of a lunatic who is dangerous and unfit to be at large, unless—

(*a*) the Magistrate is satisfied that the person in charge of an asylum is willing to receive the lunatic, and

(*b*) the petitioner or some other person engages in writing to the satisfaction of the Magistrate to pay the cost of maintenance of the lunatic.

Power to appoint substitute for the person upon whose application a reception order has been made.

[1][**11-A.** (1) The Magistrate may, subject to the provisions of this section by order in writing (hereinafter referred to as an order of substitution), transfer the duties and responsibilities under this Act of the person on whose petition a reception order has been made to any other person who is willing to undertake the same, and such other person shall thereupon be deemed for the purposes of this Act to be the person on whose petition the reception order was made, and all references in this Act to such last-mentioned person shall be construed accordingly:

Provided that no such order of substitution shall release the person upon whose petition the reception order was made or, if he is dead, his legal representative from any liability incurred before the order of substitution was made.

(2) Before making any order of substitution, the Magistrate shall send a notice to the person upon whose petition the reception order was made, if he is alive, and to any relative of the lunatic to whom, in the opinion of the Magistrate, notice should be given; the notice shall specify the name of the person in whose favour it is proposed to make such order and the date, which shall be not less than twenty days from the sending of the notice, upon which any objection to the making of the order will be considered.

(3) On such date or any subsequent date to which the proceedings may be adjourned ,the Magistrate shall consider any objection made by any person to whom notice has been sent, or by any other relative of the lunatic, and shall receive all such evidence as may be produced by or on behalf of any such persons and such further evidence, if any, as the Magistrate thinks necessary, and may thereafter make or refrain from making an order of substitution;

Provided that, if the person on whose petition the reception order was made is dead and any other person is willing and, in the opinion of the Magistrate, fitted to undertake the duties and responsibilities under this Act of such first-mentioned person, the Magistrate shall make such an order.

(4) If in proceedings under this section any question arises as to the person to whom the duties and responsibility under this Act of a person upon whose petition a reception order has been made shall be entrusted, the Magistrate shall give preference to the person who is the nearest relative of the lunatic unless, for reasons to be recorded in writing, the Magistrate considers that such preference would not be in the interests of the lunatic.

(5) The Magistrate may make such order for the payment of the costs of an inquiry under this section by any person who is a party thereto or out of the estate of the lunatic, as he thinks fit.

LEG. REF.

[1] S. 11-A was inserted by Act V of 1926, sec. 3.

SECS. 11 TO 14.—Orders of a District Magistrate are executive and cannot form the subject-matter of revision. 4 L. 1=73

(6) Any notice under sub-section (2) may be sent by post to the last known address of the person for whom it is inteded.]

Reception order in case of lunatics from foreign States of India.

[1][11-B. (1) When an arrangement has been made with any foreign European State with respect to the reception of lunatics in asylums in British India. the Central Government may, by notification in the Official Gazette, direct that reception orders may be made under this Act in the case of any lunatic or class of lunatics residing in the territories in India of such foreign European State, and shall in such notification specify the province or provinces within which such reception orders may be made.

(2) On publication of a notification under sub-section (1), the provisions of this Act as to the making of reception orders on petition and for temporary detention in suitable custody shall apply in the case of such lunatics, with the following modifications, namely:—

(*a*) an application for a reception order may be made by petition presented by such officer or agent of the foreign State in which the alleged lunatic ordinarily resides, as may by general or special order be approved by the Provincial Government in this behalf:

(*b*) the functions of the Magistrate shall be performed by such officer as the Provincial Government may, by general or special order, appoint in this behalf, and such officer shall be deemed to be the Magistrate having jurisdiction over the alleged lunatic for all the purposes of the said provisions:

(*c*) for the purposes of sections 5 and 18 (1), the expressions "medical officer" and "medical practitioner" shall include such person or class of persons as the Provincial Government may specify in this behalf;

(*d*) the Magistrate may in his discretion extend the period prescribed by section 19 within which the alleged lunatic must have been medically examined; and

(*e*) sections 6 (1), (2), (3), 11, [1a][11-A] and 34 of the Act, shall not apply, and with such other modifications, restrictions or adaptations as the Central Government may, by notification in the Official Gazette ,direct for the purpose of facilitating the application of the said provisions.

(3) A reception order made under this section shall be deemed to be a reception order made under section 7 or section 10, as the case may be.

Reception orders otherwise than on petition.

Reception order in case of a European lunatic soldier, sailor or airman.

12. When any European who is subject to the provisions of the Army Act [2][the Naval Discipline Act or that Act as modified by the Indian Navy (Dicipline) Act, 1934,] [3][the Air Force Act or the Indian Air Force Act, 1932] has been declared a lunatic in accordance with the provisions of the military [2][,Naval] [4][or air force] regulations in force for the time being, and it appears to any administrative medical officer that he should be removed to an asylum, such administrative medical officer may, if he thinks fit, make a reception order under his hand for the admission of the said lunatic into any asylum which has been duly authorized for the purpose by the Central Government.

LEG. REF.

[1] This section was originally inserted as S. 11-A by Act XII of 1916 and was renumbered as S. 11-B by Act V of 1926, S. 3.

[1a] Inserted by Act V of 1926, sec. 4.

[2] Inserted by Act XXXV of 1934, S. 2 and Sch.

[3] Substituted by Act XIV of 1932, S. 130 and Sch. for "or the Air Force Act" which had been inserted by Act X of 1927, S. 2 and Sch. I.

[4] Inserted by Act X of 1927, S. 2 and Sch. I.

1.C. 696=1924 L. 55. Great care is to be taken before declaring a person a lunatic. 5 W.R. (Mis.) 5.

Powers and duties of police in respect of wandering or dangerous lunatics and lunatics cruelly treated or not under proper care and control.

13. (1) Every officer in charge of a police station may arrest or cause to be arrested all persons found wandering at large within the limits of his station whom he has reason to believe to be lunatics, and shall arrest or cause to be arrested all persons within the limits of his station whom he has reason to believe to be dangerous by reason of lunacy. Any person so arrested shall be taken forthwith before the Magistrate.

(2) Every officer in charge of a police-station who has reason to believe that any person within the limits of his station is deemed to be a lunatic and is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the charge of him, shall immediately report the fact to the Magistrate.

Reception order in case of wandering and dangerous lunatics.

14. Whenever any person is brought before a Magistrate under the provisions of sub-section (1) of section 13, the Magistrate shall examine such person, and if he thinks that there are grounds for proceeding further, shall cause him to be examined by a medical officer, and may make such other inquiries as he thinks fit; and if the Magistrate is satisfied that such person is a lunatic and a proper person to be detained, he may, if the medical officer who has examined such person gives a medical certificate with regard to such person, make a reception order for the admission of such lunatic into an asylum:

Provided that, if any friend or relative desires that the lunatic be sent to a licensed asylum and engages in writing to the satisfaction of the Magistrate to pay the cost of maintenance of the lunatic in such asylum, the Magistrate shall, if the person in charge of such asylum consents, make a reception order for the admission of the lunatic into the licensed asylum mentioned in the engagement:

Provided further that if any friend or relative of the lunatic enters into a bond with or without sureties for such sum of money as the Magistrate thinks fit, conditioned that such lunatic shall be properly taken care of, and shall be prevented from doing injury to himself or to others, the Magistrate, instead of making a reception order, may, if he thinks fit, make him over to the care of such friend or relative.

Order in case of lunatic cruelly treated or not under proper care and control.

15. (1) If it appears to the Magistrate, on the report of a police-officer or the information of any other person, that any person within the limits of his jurisdiction deemed to be a lunatic is not under proper care and control or is cruelly treated or neglected by any relative or other person having the charge of him, the Magistrate may cause the alleged lunatic to be produced before him, and summon such relative or other person as has or ought to have the charge of him.

SEC. 13.—*See* 5 W.R. (Mis.) 5; 9 C. 341=9 I.A. 152 (P.C.).

SECS. 14, 15 (3) AND 16.—Sec. 16 which applies only to temporary detention for specific time and purpose, also applies to a case where Magistrate acting under sec. 14 thinks detention necessary for observation. In such a case, by reason of sec. 15 (3), the two provisos of sec. 14 will also apply if necessary. 29 S.L.R. 431=165 I.C. 119=1936 Sind 156.

SEC. 15.—Words "report of Police Officer etc," do not suggest personal presentation of a written complaint. Information contained in official correspondence is sufficient. 29 S.L.R. 431=165 I.C. 119=1936 Sind 156. Where a lunatic is not 'under proper care and control,' it is not necessary, though desirable, to formally summon the relatives. But omission to do so does not render the proceedings illegal. (*Ibid.*)

SECS. 15 AND 88.—A Magistrate who passes a reception order against a lunatic under S. 15 has no jurisdiction to pass an order for the payment of the costs of the maintenance of the lunatic. He must under the provisions of S. 88 apply to the High Court or the District Court for such an order. 10 P.L.R. 496.

(2) If such relative or other person is legally bound to maintain the alleged lunatic, the Magistrate may make an order for such alleged lunatic being properly cared for and treated, and, if such relative or other person wilfully neglects to comply with the said order, the Magistrate may sentence him to imprisonment for a term which may extend to one month.

(3) If there is no person legally bound to maintain the alleged lunatic, or if the Magistrate thinks fit so to do, he may proceed as prescribed in section 14, and upon being satisfied in manner aforesaid that the person deemed to be a lunatic is a lunatic and a proper person to be detained under care and treatment may, if a medical officer gives a medical certificate with regard to such lunatic, make a reception order for the admission of such lunatic into an asylum.

Detention of alleged lunatic pending report by medical officer.

16. (1) When any person alleged to be a lunatic is brought before a Magistrate under the provisions of section 13 or section 15, the Magistrate may, by an order in writing authorize the detention of the alleged lunatic in suitable custody for such time not exceeding ten days as may be, in his opinion necessary to enable the medical officer to determine whether such alleged lunatic is a person in respect of whom a medical certificate may be properly given.

(2) The Magistrate may, from time to time, for the same purpose by order in writing, authorize such further detention of the alleged lunatic for periods not exceeding ten days at a time as he thinks necessary:

Provided that no person shall be detained in accordance with the provisions of this section for a total period exceeding thirty days from the date on which he was first brought before the Magistrate.

Commissioner of Police, etc., to act in the Presidency-town.

17. All acts which the Magistrate is authorized or required to do by sections 14, 15 or 16 may be done in the Presidency-towns [1][* * *] by the Commissioner of Police; and all duties which an officer in charge of a police station is authorized or required to perform may be performed in any of the Presidency-towns by an officer of the police force not below the rank of an inspector.

Further provisions as to reception orders and medical certificates.

Medical certificates.

18. (1) Every medical certificate under this Act shall be made and signed by a medical practitioner or a medical officer, as the case may be, and shall be in the form prescribed.

(2) Every medical certificate shall state the facts upon which the person certifying has formed his opinion that the alleged lunatic is a lunatic, distinguishing facts observed by himself from facts communicated by others; and no reception order on petition shall be made upon a certificate founded only upon facts communicated by others.

(3) Every medical certificate made under this Act shall be evidence of the facts therein appearing and of the judgment therein stated to have been formed by the person certifying on such facts, as if the matters therein appearing had been verified on oath.

LEG. REF.

[1] Words "or Rangoon" omitted by A.O., 1937.

SEC. 16.—A Gazetted Resident Medical Officer of a hospital is a medical officer under this section. 29 S.L.R. 431=165 I. C. 119=1936 Sind 156. It is competent to Magistrate to vary and shorten the period of detention originally ordered, on medical report. (*Ibid.*) Under the Lunacy Acts IV of 1912 and X of 1914 the Magistrates or Courts are themselves competent to direct the reception of a criminal lunatic into any asylum prescribed for the purpose without reporting the case for orders of the Local Government under S. 471 (1), Cr.P. Code. 8 L.B.R. 290=30 I.C. 654.

Time and manner of medical examination of lunatic.

19. (1) A reception order required to be founded on a medical certificate shall not be made unless the person who signs the medical certificate, or, where two certificates are required, each person who signs a certificate has personally examined the alleged lunatic, in the case of an order upon petition, not more than seven clear days before the date of the presentation of the petition, and, in all other cases not more than seven clear days before the date of the order.

(2) Where two medical certificates are required, a reception order shall not be made unless each person signing a certificate has examined the alleged lunatic separately from the other.

Authority for reception.

20. A reception order, if the same appears to be in conformity with this Act, shall be sufficient authority for the petitioner or any person authorised by him, or in the case of an order not made upon petition, for the person authorized so to do by the person making the order, to take the lunatic and convey him to the place mentioned in such order and for his reception and detention therein, or in any asylum to which he may be removed in accordance with the provisions of this Act, and the order may be acted on without further evidence of the signature or of the jurisdiction of the person making the order:

[1][Provided that no reception order shall continue to have effect—

(*a*) After the expiry of thirty days from the date on which it was made, unless the lunatic has been admitted to the place mentioned therein within that period, or

(*b*) After the discharge, under the provisions of this Act, of the lunatic from such place or from any asylum to which he may have been removed.]

Copy of reception order to be sent to person in charge of asylum.

21. Any authority making a reception order under this Part shall forthwith send a certified copy of the order to the person in charge of the asylum into which such lunatic is to be admitted.

Restriction as to asylums into which reception orders may direct admission.

22. Subject to the provisions of section 85, no Magistrate shall make a reception order for the admission of any lunatic into [2][any Government asylum] outside the province in which the Magistrate exercises jurisdiction.

Detention of lunatics pending removal to asylum.

Detention of lunatics pending removal to asylum.

23. When any reception order has been made under sections 7, 10, 14 or 15, the Magistrate may, for reasons to be recorded in writing, direct that the lunatic, pending his removal to an asylum, be detained in suitable custody in such place as the Magistrate thinks fit.

Reception and detention of criminal lunatics.

Reception and detention of criminal lunatics.

24. An order under section 466 or section 471 of the Code of Criminal Procedure, 1898, or under section 30 of the Prisoners Act, 1900 [3][or under section 103-A of the Indian Army Act, 1911], directing the reception of a criminal lunatic into any asylum which is prescribed for the reception of criminal

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LEG. REF.

[1] Inserted by Act XXXII of 1923, S. 2.

[2] Substituted for "any asylum established by Government" by A.O., 1937.

[3] Inserted by Act XXXIII of 1923, S. 5.

lunatics shall be sufficient authority for the reception and detention of any person named therein in such asylum or in any other asylum to which he may be lawfully transferred.

Reception after inquisition.

Reception after inquisition.

25. A lunatic so found by inquisition may be admitted into an asylum—

(1) in the case of an inquisition under Chapter IV, on an order made by, or under the authority of, the High Court;

(2) in the case of an inquisition under Chapter V, on an order made by the District Court.

Order for payment of cost of maintenance of lunatic.

26. (1) When any lunatic has been admitted into an asylum in accordance with the provisions of section 25, the High Court or the District Court, as the case may be, shall, on the application of the person in charge of the asylum, make an order for the payment of the cost of maintenance of the lunatic in the asylum, and may from time to time direct that any sum of money payable under such order shall be recovered from the estate of the lunatic or of any person legally bound to maintain him:

Provided that if at any time it shall appear to the satisfaction of the Court that the lunatic has not sufficient property, and that no person legally bound to maintain such lunatic has sufficient means for the payment of such cost, the Court shall certify the same instead of making such order for the payment of the cost as aforesaid.

(2) An order under sub-section (1) shall be enforced in the same manner and shall be of the same force and effect and subject to the same appeal as a decree made by the Court in a suit in respect of the property or person therein mentioned.

Amendment of order or certificate.

Amendment of order or certificate.

27. If, after the reception of any lunatic into any asylum on a reception order, it appears that the order upon which he was received or the medical certificate or certificates upon which such order was made is or are defective or incorrect, the same may at any time afterwards be amended by the person or persons signing the same with the sanction of two or more of the visitors of the said asylum, one of whom shall be a medical officer.

CHAPTER III.

CARE AND TREATMENT.

Visitors.

Appointment of visitors.

28. (1) The Provincial Government shall appoint for every asylum not less than three visitors, one of whom at least shall be a medical officer.

(2) The Inspector-General of Prisons (where such office exists) shall be a visitor *ex officio* of all the asylums within the limits of his jurisdiction.

Monthly inspection by visitors.

29. Two or more of the visitors, one of whom shall be a medical officer, shall, once at least in every month, together inspect every part of the asylum of which they are visitors, and see and examine, as far as circumstances will permit, every lunatic and boarder therein, and the order and certificate for the admission of every lunatic admitted since the last visitation of the visitors, and shall enter in a book to be kept for that purpose any remarks which they may deem proper in regard to the management and condition of the asylum and the inmates thereof.

Inspection of criminal lunatics by Inspector-General or visitors.

30. (1) When any person is [1][detained] under the provisions of section 466 or section 471 of the Code of Criminal Procedure, 1898 [2][or under the provisions of section 103-A of the Indian Army Act, 1911] the Inspector-General of Prisons, if such person is [1][detained] in a jail or the visitors of the asylum or any two of them, if he is [1][detained] in an asylum, may visit him in order to ascertain his state of mind; and he shall be visited once at least in every six months by such Inspector-General or by two of such visitors as aforesaid; and such Inspector-General or visitors shall make a special report as to the state of mind of such person to the authority, under whose order he is [1][detained].

(2) The Provincial Government may empower the officer in charge of the jail in which such person may be [1][detained] to discharge all or any of the functions of the Inspector-General under sub-section (1).

Discharge of lunatics.

Order of discharge from asylum by visitors.

31. (1) Three of the visitors of any asylum, of whom one shall be a medical officer, may, by order in writing, direct the discharge of any person detained in such asylum, and such person shall thereupon be discharged:

Provided that no order under this sub-section shall be made in the case of a person detained under a reception order under section 12, or, in the case of a criminal lunatic, otherwise than as provided by section 30 of the Prisoners Act, 1900.

(2) When such order is made, if the person is detained under the order of any public authority, notice of the order of discharge shall be immediately communicated to such authority.

Discharge of lunatics in other cases and of European military lunatics.

32. (1) A lunatic detained in an asylum under a reception order, made on petition, shall be discharged if the person on whose petition the reception order was made so applies in writing to the person in charge of the asylum:

Provided that no lunatic shall be discharged under the provisions of sub-section (1) if the officer in charge of the asylum certifies in writing that the lunatic is dangerous and unfit to be at large.

(2) A person detained in an asylum under a reception order made under section 12 shall be detained therein until he is discharged therefrom in accordance with the military [3][,naval] [4][or air force] regulations in force for the time being, or until the officer making the order applies for his transfer to the military [3][,naval] [4][or air force] authorities in view to his removal to England.

(3) Whenever it appears to the officer in charge of an asylum that the discharge of a person therein detained under an order made under section 12 is necessary either on account of his recovery, or for any other purpose, such person shall be brought before the visitors of the asylum, and on the visitors recording their opinion that the discharge should be made, the General or other Officer commanding the division, district, brigade or force, or other officer authorized to order the admission of such persons into an asylum, shall forthwith direct him to be discharged, and such discharge shall take place in accordance with the military [3][,naval] [4][or air force] regulations in force for the time being.

LEG. REF.

[1] Substituted by Act XI of 1923, S. 2 and Sch. I for "confined".

[2] Inserted by Act XXXIII of 1923, S. 5.

[3] Inserted by Act XXXV of 1934, S. 2 and Sch.

[4] Inserted by Act X of 1927, S. 2 and Sch. I.

Order of discharge on undertaking of relative for due care of the lunatic.

33. When any relative or friend of a lunatic detained in any asylum under the provisions of sections 14, 15 or 17 is desirous that such lunatic shall be delivered over to his care and custody, he may make application to the authority under whose order the lunatic is detained, and such authority, if it thinks fit in consultation with the person in charge of the asylum and with the visitors or with one of them being a medical officer and upon such relative or friend entering into a bond with or without sureties for such sum of money as the said authority thinks fit conditioned that such lunatic shall be properly taken care of and shall be prevented from doing injury to himself or to others may make an order for the discharge of such lunatic, and such lunatic shall thereupon be discharged.

Discharge of person subsequently found on inquisition not to be of unsound mind.

34. If any lunatic detained in an asylum on a reception order made under sections 7, 10, 14, 15 or 17 is subsequently found on an inquisition under Chapter IV or Chapter V not to be of unsound mind and incapable of managing himself and his affairs, the person in charge of the asylum shall forthwith, on the production of a certified copy of such finding, discharge the alleged lunatic from the asylum.

Removal of lunatics.

Removal of lunatics and criminal lunatics.

35. (1) [1][Any lunatic may, in accordance with any general or special order of the Provincial Government, be removed from [2][any Government asylum] to any other asylum within the province, or to any other asylum in any other province, with the consent of the Provincial Government of that province]:

Provided that no lunatic admitted into an asylum on a reception order made on petition shall be removed in accordance with the provisions of this sub-section until notice of such intended removal has been given to the petitioner.

(2) The Provincial Government may make such general or special order as [3][it] thinks fit directing the removal of any person for whose [4][detention] an order has been made under section 466 or section 471 of the Code of Criminal Procedure, 1898 [5][or under section 103-A of the Indian Army Act, 1911], from the place where he is for the time being [6][detained] to any asylum, jail or other place of safe custody [7][in the province, or to any asylum, jail or other place of safety in any other province with the consent of the Provincial Government of that province].

LEG. REF.

SEC. 33: MADRAS AMENDMENT.—After S. 33 of the Indian Lunacy Act, 1912, the following shall be inserted, namely:—

"Sec. 33-A.—If the person in charge of any asylum in which a lunatic is detained under the provisions of Ss. 14, 15 or 17, is satisfied that in the interests of the health of the lunatic, it is necessary to discharge him temporarily, the person aforesaid may order such discharge for such period as he may think fit and subject to such conditions as the Provincial Government may by rule prescribe". (Madras Act XV of 1938).

[1] Substituted by Act XXXVIII of 1920, S. 2 and Sch. I.

[2] Substituted for "any asylum established by Government" by A.O., 1937.

[3] Substituted by Act XXXVIII of 1920, S 2 and Sch. I, for "he".

[4] Substituted by Act XI of 1923, S. 2 and Sch I, for "confinement".

[5] Inserted by Act XXXIII of 1923, S. 5.

[6] Substituted by Act XI of 1923, S. 2 and Sch. I for "confined".

[7] Substituted by Act XXXVIII of 1920. S 2 and Sch. I, for "in British India".

SEC. 33.—The appropriate remedy of the relatives of a person who has been wrongly confined as a lunatic is under this section, and not by way of application in *habeas corpus*. 29 S.L.R. 431=165 I.C. 119=1936 Sind 156.

Escape and recapture.

Order to justify detention and recapture after escape.

36. Every person received into an asylum under any such order as is required by this Act, may be detained therein until he is removed or discharged as authorized by law, and in case of escape may, by virtue of such order, be retaken by any police-officer or by the person in charge of such asylum, or any officer or servant belonging thereto, or any other person authorized in that behalf by the said person in charge, and conveyed to and received and detained in such asylum:

Provided that in the case of a lunatic not being a criminal lunatic or a lunatic in respect of whom a reception order has been made under section 12, the power to retake such escaped lunatic under this section shall be exercisable only for a period of one month from the date of his escape.

PART III.

JUDICIAL INQUISITION AS TO LUNACY.

CHAPTER IV.

PROCEEDINGS IN LUNACY IN PRESIDENCY-TOWNS.

Inquisition.

Jurisdiction in lunacy in Presidency-towns.

37. The Courts having jurisdiction under this Chapter shall be the High Courts of Judicature at Fort William, Madras and Bombay.

Court may order inquisition as to persons alleged to be insane.

38. (1) The Court may upon application by order direct an inquisition whether a person subject to the jurisdiction of the Court who is alleged to be lunatic, is of unsound mind and incapable of managing himself and his affairs.

(2) Such order may also contain directions for inquiries concerning the nature of the property belonging to the alleged lunatic, the persons who are his relatives, the time during which he has been of unsound mind, or such other matters as to the Court may seem proper.

SECS. 37 AND 38: SCOPE OF SECTIONS.—The Lunacy Act contemplates the question of lunacy or sanity at the time of the enquiry which shall not extend to the ascertainment of the period at which the alleged lunatic first became of unsound mind. 27 I.C. 459=19 C.W.N. 45. *See also* 4 L. 1=73 I.C. 696=1924 L. 56. Time of commencement of lunacy is beyond scope of inquiry. 13 M.I.A. 519. As to finding of lunacy in case of lucid intervals, *see* 18 M. 472. In order to find a person to be a lunatic the incapacity to manage his affairs must be on account of unsoundness of mind. 1905 A.W.N. 8; 4 C.L.J. 115. Where *D* had two places of residence, one in Patna and the other in Calcutta and his wife instituted proceedings for his inquisition in Patna, *held*, that as resident in Calcutta *D* was subject to the jurisdiction of the High Court and that therefore the District Court of Patna had no jurisdiction to entertain the proceedings. 48 C. 577=65 I.C. 57=25 C. W.N. 178=1921 C. 309=32 C.L.J. 314.

INQUISITION PROCEEDINGS.—A Judge has got discretion under this Act to stop proceedings in an inquisition for proper grounds; a petitioner is not entitled to have the enquiry conducted so long as he is able to tender witnesses for examination. 33 I. C. 857=3 L.W. 402. Where a person has been found a lunatic under the Act the presumption is that he continues to be of unsound mind until the contrary is shown. 3 L.W. 290=33 I.C. 578.

SEC. 38.—The Original Side of the Calcutta High Court has no jurisdiction to direct an inquisition or appoint a guardian of person or property in the case of an Indian not resident in Calcutta. 58 C. 919= 133 I.C. 188=1932 C. 91. In an application for an order directing an inquisition under the Lunacy Act, what has to be found is that the person is of unsound mind and that the unsoundness of mind is such as to make him incapable of managing his affairs. The Court must hold that both unsoundness of mind and incapacity to manage his affairs are present and that the latter is due to the former. 58 M. 281=1935 M. 91=152 I.C. 882=40 L.W. 710=67 M.L.J. 797.

SECS. 38 AND 41.—Court's duty before ordering inquisition. To have an inquisition into the state of health, the state of mind, the state of property and the general capacity of a person is a thing which affects that person so prejudicially that it ought not to be taken except it be first ordered on a careful consideration of evidence. 28 C.W.

Application by whom to be made.

39. Application for such inquisition may be made by any relative of the alleged lunatic, or by the Advocate-General.

Notice of time and place of inquisition.

40. (1) Notice shall be given to the alleged lunatic of the time and place at which it is proposed to hold the inquisition.

(2) If it appears that personal service on the alleged lunatic would be ineffectual, the Court may direct such substituted service of the notice as it thinks fit.

(3) The Court may also direct a copy of such notice to be served upon any relative of the alleged lunatic and upon any other person to whom in the opinion of the Court notice of the application should be given.

Powers of Court in respect of attendance and examination of lunatic.

41. (1) The Court may require the alleged lunatic to attend at such convenient time and place as it may appoint for the purpose of being personally examined by the Court, or by any person from whom the Court may desire to have a report of the mental capacity and condition of such alleged lunatic.

(2) The Court may likewise make an order authorizing any person or persons therein named to have access, to the alleged lunatic for the purpose of a personal examination.

Rules respecting attendance and examination of females alleged to be lunatic.

42 The attendance and examination of the alleged lunatic under the provisions of section 41 shall, if the alleged lunatic be a woman who, according to the manners and customs of the country, ought not to be compelled to appear in public, be regulated by the law and practice for the examination of such persons in other civil cases.

Power to direct District Court to make inquisition in certain cases.

43 (1) If the alleged lunatic is not within the local limits of the jurisdiction of the Court, and the inquisition cannot conveniently be made in the manner hereinbefore provided, the Court may direct the inquisition to be made before the District Court within whose local jurisdiction the alleged lunatic may be; and such District Court shall accordingly proceed to make such inquisition in the same manner as if the alleged lunatic were subject to its jurisdiction, and shall certify its finding upon the matters of inquisition to the Court directing the inquisition.

(2) The record of evidence taken upon the inquisition shall be transmitted, together with any remarks the Court may think fit to make thereon, to the Court by which the inquisition was directed.

N. 513=51 C. 480=1924 C. 658; 1930 L. 289=122 I.C. 570.

SEC. 39.—Application for inquisition must be verified. 5 W.R. Misc. 54; 7 W.R. 267. A member of the same tribe is not a relative. 94 P.R. 1906. Proof of lunacy. 22 W.R 33. On this section, *see also* 18 M. 472; 4 C.L.J. 115; 28 C.W.N. 513=1924 C. 358.

SEC. 40.—Notice under the section is a notice drawn up after an order directing an inquisition. 54 C. 836=103 I.C. 725=1927 C. 636. Where lunatic has been served with notice, inquisition can proceed *ex parte* even though the lunatic cannot be traced thereafter. 96 I.C. 956=1926 S. 223.

SEC. 41.—Cross-examination of a lunatic as witness is not contemplated by this section. 7 W.R. 426; 8 A.L.J. 179. Non-appearance of a lunatic is no ground for striking off the case from the file. (*Ibid.*)

SEC. 42.—S. 42 lays down that the attendance and examination of the alleged lunatic, if she be a woman who according to the manners and customs of the country ought not to be compelled to appear in public shall be regulated by the law and practice for the examination of such persons, in other civil cases. The section in terms refers only to the attendance and examination of the lunatic in Court but the principle would equally apply to her attendance and examination before a doctor. The proper course for the Court under such circumstances would be to have the lady examined by a lady doctor. 7 O.W.N. 483=1930 O. 301.

SEC. 43.—*See* 3 Agra Mis. 3; 11 W.R. 109.

Amendment of finding of District Court if defective or insufficient in form.

44. If the finding of the District Court appears to the Court directing the inquisition to be defective or insufficient in point of form, it may either amend the same or refer it back to the Court which made the inquisition to be amended.

Proceedings on finding of Court.

45. The finding of the Court on the inquisition or the finding of the District Court to which the inquisition may have been referred under the provisions of section 43 with such amendments as may be made under the provisions of section 44, as the case may be, shall have the same effect, and be proceeded on in the same manner in regard to the appointment of a guardian of the person and a manager of the estate of the lunatic as the findings referred to in section 12 of the Lunacy (Supreme Courts) Act, 1858, immediately before the commencement of this Act.

Judicial powers over person and estate of lunatic.

Custody of lunatics and management of their estates

46. (1) The Court may make orders for the custody of lunatics so found by inquisition and the management of their estates.

(2) When upon the inquisition it is specially found that the person to whom the inquisition relates is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself, and is not dangerous to himself or to others, the Court may make such orders as it thinks fit for the management of the estate of the lunatic including proper provision for the maintenance of the lunatic and of such members of his family as are dependent on him for maintenance, but it shall not be necessary to make any order as to the custody of the person of the lunatic.

Powers of Manager in respect of management of lunatic's estates.

47. The Court, on the appointment of a manager of the estate of a lunatic, may direct by the order of appointment, or by any subsequent order, that such manager shall have such powers for the management of the estate as to the Court may seem necessary and proper, reference being had to the nature of the property, whether movable or immovable, of which the estate may consist:

Provided that no manager so appointed shall without the permission of the Court—

(*a*) mortgage, charge or transfer by sale, gift, exchange or otherwise, any immovable property of the lunatic; or

(*b*) lease any such property for a term exceeding five years.

Such permission may be granted subject to any condition or restriction which the Court thinks fit to impose.

Power to make order concerning any matter connected with the lunacy.

48. The Court may, on application made to it by petition concerning any matter whatsoever connected with the lunatic or his estate, make such order, subject to the provisions of this Chapter, respecting the application, as in the circumstances it thinks fit.

SECS. 46 AND 47.—Lunatic's estate—Appointment of manager—Court of Wards—Superintendence of an estate of lunatic—Guardian of property. *See* 21 I.C. 879=14 M.L.T. 489; 20 W.R. 477; 23 M.L.J. 706 =12 M.L.T. 585; 30 C. 973; 15 I.C. 265; 16 I.C. 885; 6 I.C. 158; 18 M. 472.

SEC. 48.—The language of S. 48 is not mandatory but permissive. By the use of the word "may" a discretion is given to the Court to make an order under the section. The words "concerning any matter whatsoever connected with the lunatic or his estate" are very wide, and empower the Court by the proceedings mentioned in the section to decide a question as to whether the properties referred to in the application before the Court form part of the estate of the lunatic. The intention of the legislature is to provide a summary procedure in regard to matters concerning lunatics and their estates. The Court should, however,

Management and administration.

Power to dispose of lunatic's property for certain purposes.

49. The Court may, if it appears to be just or for the lunatic's benefit order that any property, movable or immovable, of the lunatic, and whether in possession, reversion, remainder, or contingency, be sold, charged, mortgaged, dealt with or otherwise disposed of as may seem most expedient for the purpose of raising or securing or repaying with or without interest money to be applied or which has been applied to all or any of the following purposes, namely:—

(1) the payment of the lunatic's debts or engagements;

(2) the discharge of any incumbrance on his property;

(3) the payment of any debt or expenditure incurred for the lunatic's maintenance or otherwise for his benefit;

(4) the payment of or provision for the expenses of his future maintenance and the maintenance of such members of his family as are dependent on him for maintenance, including the expenses of his removal to Europe, if he shall be so removed, and all expenses incidental thereto;

(5) the payment of the costs of any inquiry under this Chapter, and of any costs incurred by order or under the authority of the Court.

Execution of conveyances and powers by manager under order of Court.

50. (1) The manager of the lunatic's estate shall in the name and on behalf of the lunatic execute all such conveyances and instruments of transfer relative to any sale, mortgage or other disposition of his estate as the Court may order.

(2) Such manager shall, in like manner, under the order of the Court exercise all powers whatsoever vested in a lunatic, whether the same are vested in him for his own benefit or in the character of trustee or guardian.

Court may order performance of contract.

51. Where a person, having contracted to sell or otherwise dispose of his estate or any part thereof, afterwards becomes lunatic, the Court may, if the contract is such as the Court thinks ought to be performed, direct the manager of the estate to execute such conveyances and to do such other acts in fulfilment of contract as it shall think proper.

Dissolution and disposal of property of partnership on a member becoming lunatic.

52. (1) Where a person, being a member of a partnership firm, is found to be a lunatic, the Court may, on the application of the other partners, or of any person who appears to the Court to be entitled to require the same, dissolve the partnership.

(2) Upon such dissolution or upon a dissolution by decree of Court or otherwise by due course of law, the manager of the estate may, in the name and on behalf of the lunatic, join with the other partners in disposing of the partnership property upon such terms, and shall do all such acts for carrying into effect the dissolution of the partnership, as the Court shall think proper.

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refer the parties to a regular suit in cases which it considers likely to be complex or lengthy or properly matters which should be voiced by way of a suit and which cannot conveniently be dealt with by the summary procedure indicated in sec. 48. 1938 M.W. N. 1143=48 L.W. 856=1939 M. 224= (1938) 2 M.L.J. 1072. The use of the word "*petition*" in S. 48 of the Act is used in contradistinction to a "suit" and indicates that matters properly the subject of the provisions of the section can be brought before the Court by a proceeding other than a suit. The Court having been seized of the matter regarding the lunatic and his estate by means of an original petition under which it is found that the person is of unsound mind and incapable of managing his affairs, it is not necessary that any further proceedings arising in respect of the matter should have to be prosecuted by means of an original petition. (1938) 2 M.L.J. 1072.

SEC. 49.—Permission not necessary for ordinary cultivating lease. 6 I.C. 158. On this section, *see also* 20 W.R. 477; 15 W.R. 259.

Disposal of business premises.

53. Where a lunatic has been engaged in business the Court may, if it appears to be for the lunatic's benefit that the business premises should be disposed of, order the manager of the estate to sell and dispose of the same, and the moneys arising from such sale shall be applied in such manner as the Court may direct.

Manager may dispose of lease.

54. Where a lunatic is entitled to a lease or under-lease, and it appears to be for the benefit of his estate that it should be disposed of, the manager of the estate may, by order of the Court surrender, assign or otherwise dispose of the same to such person for such valuable or nominal consideration, and upon such terms, as the Court thinks fit.

Assumption of charge by Court of Wards of land belonging to a lunatic in certain cases.

55. If a lunatic is possessed of any immovable property situate beyond the local limits of the jurisdiction of the Court which by the law in force in the Province wherein such property is situated, subjects the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the said Court of Wards may assume the charge of such property and manage the same according to the law for the time being in force for such management:

Provided that—

(1) in such case, no further proceedings in respect of the lunacy shall be taken under any such law, nor shall it be competent to the Court of Wards or to any Collector to appoint a guardian of the person of the said lunatic or a manager of the estate except of the immovable property which so subjects the proprietor as aforesaid;

(2) the surplus of the income of such property, after providing for the payment of the Government revenue and expenses of management, shall be disposed of from time to time in such manner as the High Court may direct;

(3) nothing contained in this section shall affect the powers given to the High Court by sections 49, 50 and 51 or (except so far as relates to the management of the said immovable property which so subjects the proprietor as aforesaid) the powers given by any other section.

Power to apply property for lunatic's maintenance without appointing manager in certain cases.

56. (1) If it appears to the Court, having regard to the situation and condition in life of the lunatic and his family and the other circumstances of the case to be expedient that his property should be made available for his or their maintenance in a direct and inexpensive manner it may, instead of appointing a manager of the estate, order that the property if money or if of any other description the produce thereof, when realized, be paid to such person as the Court may think fit, to be applied for the purpose aforesaid.

(2) The receipt of the person so appointed shall be a valid discharge to any person who pays any money or delivers any property of the lunatic to such person.

Vesting orders.

Power to order transfer of stock belonging to lunatic in certain cases.

57. Where any stock or Government securities or any share in a company (transferable within British India or the dividends of which are payable there) is or are standing in the name of, or vested in, a lunatic, beneficially entitled thereto, or in a manager of the estate of a lunatic, or in a trustee for him, and the manager dies intestate, or himself becomes lunatic,

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SEC. 55.—Appointment of manager is valid assumption of charge by Court of Wards. 15 I.C. 265; 6 S.L.R. 65.

SEC. 57.—*See* 8 B. 280; 16 I.C. 885.

or is out of the jurisdiction of the Court, or it is uncertain whether the manager is living or dead, or he neglects or refuses to transfer the stock, securities or shares, or to receive and pay over thereof the dividends to a new manager or as the Court directs, within fourteen days after being required by the Court to do so, then the Court may order some fit person to make such transfer, or to transfer the same, and to receive and pay over the dividends in such manner as the Court directs.

Power to order transfer of stock of lunatic residing out of British India and the United Kingdom.

58. Where any such stock or Government securities or share in a company is or are standing in the name of, or vested in, any person residing out of British India and not in any part of the United Kingdom, the Court upon being satisfied that such person has been declared lunatic, and that his personal estate has been vested in a person appointed for the management thereof, according to the law of the place where he is residing, may order some fit person to make such transfer of the stock, securities or shares or of any part thereof, to or into the name of the person so appointed or otherwise, and also to receive and pay over the dividends and proceeds as the Court thinks fit.

General.

Power to apply property for lunatic's maintenance in case of temporary lunacy.

59. If it appears to the Court that the unsoundness of mind of a lunatic is in its nature temporary, and that it is expedient to make temporary provision for his maintenance or for the maintenance of such members of his family as are dependent on him for their maintenance, the Court may, in like manner as under section 56, direct his property or a sufficient part of it to be applied for the purpose aforesaid.

Proceedings in lunacy to cease or to be set aside if Court finds that the unsoundness of mind has ceased.

60 (1) When any person has been found under this Chapter to be of unsound mind, and it is subsequently shown to the Court that there is reason to believe that such unsoundness of mind has ceased, the Court may make an order for inquiring whether such person is still of unsound mind and incapable of managing himself and his affairs.

(2) The inquiry shall be conducted as far as may be in the manner prescribed in this Chapter for an inquisition into the unsoundness of mind of an alleged lunatic; and if it is found that the unsoundness of mind has ceased, the Court shall order all proceedings in the lunacy to cease or to be set aside on such terms and conditions as to the Court may seem fit.

Power of Court to make rules.

61. The Court may, from time to time, make rules for the purpose of carrying into effect the provisions of this Chapter in matters of lunacy.

CHAPTER V.

PROCEEDINGS IN LUNACY OUTSIDE PRESIDENCY TOWNS

Inquisition.

62. Whenever any person not subject to the jurisdiction of any of the

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SEC. 60.—As to evidence, *see* 31 C. 210; 2 A.L.J. 154.

SEC. 61.—S. 61 and the rules framed thereunder are applicable only to cases in Presidency Towns and in the absence of a rule applicable to cases outside the Presidency Towns those rules may be made applicable to such cases also. 22 C.W.N. 547 =43 I.C. 511=27 C.L.J. 205.

SEC. 62.—Adjudication of lunatic, when made. 30 C.W.N. 180=1926 C. 155. Under S. 65 it is open to the Courts to find that a man is of unsound mind so as to be incapable of managing himself and is not dangerous to himself or to others. Both conditions must be satisfied before a man can be found to be a lunatic under the Act. The mere fact that a man's mental condition is weak will not enable such an order being passed. 90 I.C. 878=1926 C.

Power of District Court to institute inquisition as to persons alleged to be lunatic.

Courts mentioned in section 37 is possessed of property and is alleged to be a lunatic, the District Court, within whose jurisdiction such person is residing may, upon application, by order direct an inquisition for the purpose of ascertaining whether such person is of unsound mind and incapable of managing himself and his affairs.

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155. It is indubitable that an order directing an inquisition into a man's state of mind is a very serious thing and that such an order is intended by the statute to be a judicial determination carefully made upon adequate materials. It will not be wise to make such an order without serving a notice upon the lunatic first. In such an application the Judge should then consider carefully whether the case is one which calls for an order directing an inquisition. 54 C. 836 =1927 C. 636. Where lunatic is served with notice, inquisition can proceed *ex parte*, even though the lunatic cannot be traced thereafter. *See* 96 I.C. 956=1926 S. 223. Orders for the custody of lunatic and for the management of their estate do not come into question at all until there has been a finding of lunacy as a result of an inquisition. There is no question of interim orders on such matters pending the determination as to the person's state of mind. Where notices were issued on a petition for inquisition and on the date of hearing evidence was recorded and orders were passed simultaneously ordering an inquisition and declaring the person to be a lunatic. *Held*, that the procedure adopted was wrong in law. 54 C. 836=103 I.C. 725=1927 C. 636. Applicants in cases under S. 62 should come into Court fortified with a valid medical certificate of insanity. 96 I. C. 778=24 A.L.J. 906=49 A. 3. Where the fact of lunacy is bein disputed, Court should not have its conclusions on mere personal observation, but follow the procedure laid down in this section. 27 Punj.L.R. 649= 1926 L. 586. [*See also* cases under Ss. 38 and 41, *supra*.] An inquisition under S. 62 once started must be prosecuted to the very end. Before such an inquisition is ordered or started, there ought to be a careful and thorough preliminary enquiry and the Judge ought to satisfy himself that there is a real ground for an inquisition. An application for an inquisition should ordinarily be supported by affidavit or by examination on oath of the applicant and by a medical certificate of some doctors as to the condition of the alleged lunatic. It would also be desirable in many cases that the Judge should seek some personal interview with the alleged lunatic with a view to satisfy himself that there is a real ground for supposing the existence of an abnormal mental condition which might bring the person within the Lunacy Act. 42 A. 504=58 I.C. 617; 49 A. 3=1927 A. 225 (1). On the section, *see also* 29 M. 310.

JURISDICTION.—The alleged lunatic was a person ordinarily residing within the District Court of Nadia where he had his house and family. In 1927, however, he was for sometime living temporarily in Calcutta for the purpose of his treatment and during that time the Chief Presidency Magistrate of Calcutta had passed an order directing the authorities of the mental hospital to receive the alleged lunatic. In 1928 an application was made to the District Court, Nadia, for an inquisition under the Lunacy Act. *Held*, that at the date of the application the alleged lunatic was not subject to the jurisdiction of the High Court of Calcutta so as to take away the jurisdiction of the District Court to make an order for inquisition. 35 C.W.N. 543=134 I.C. 1135=1931 C. 711. Where a lunatic is a permanent resident within the jurisdiction of a particular District Court and has properties in that district and his wife applies to the District Court for the appointment of a person as manager of his properties, that District Judge has jurisdiction to take cognizance of the application, and to direct inquisition under S. 62, notwithstanding the fact that the lunatic temporarily resides in a mental hospital outside the jurisdiction of that Court. 1929 C. 512. Temporary removal of a lunatic to the mofussil does not oust the jurisdiction of the High Court over the lunatic and an application under S. 62 in relation to such lunatic must be made on the Original Side of the High Court. 48 C. 577=1921 C. 309 =57 I.C. 768=32 C.L.J. 314. A temporary removal vests jurisdiction over the lunatic in the District Court in whose jurisdiction he is removed unless the lunatic is at the same time subject to the jurisdiction of the High Court. It is not necessary that the property of the lunatic must be within the jurisdiction of the District Judge. 48 C. 577=1921 C. 309.

SECS. 62 AND 65.—Where an application is made to ascertain whether certain persons are of sound mind by an inquisition, the Judge should form his independent judgment on the point. After examining the parties he may reject the petition *in limine* if he thinks that no *prima facie* case for enquiry is disclosed. Or he may after examining the pleadings of the parties or as a result of his own personal interview with the alleged lunatic come to the conclusion

Lunacy.

Application by whom to be made.

63. (1) Application for such inquisition may be made by any relative of the alleged lunatic or by any public Curator appointed under the Succession (Property Protection) Act, 1841 (hereinafter referred to as the Curator), or by the Government Pleader, as defined in the Code of Civil Procedure, 1908, or if the property of the alleged lunatic consists in whole or in part of land or any interest in land, by the Collector of the District in which it is situate.

(2) If the property or any part thereof is of such a description that it would by the law in force in any Province where such property is situate subject the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the application may be made by the Collector on behalf of the Court of Wards.

Regulation of proceedings of District Courts.

64. The provisions of sections 40, 41 and 42 shall regulate the proceedings of the District Court with regard to the matters to which they relate.

Inquisition by District Court and finding thereon.

65. (1) The District Court, if it thinks fit, may appoint two or more persons to act as assessors to the Court in the said inquisition.

(2) Upon the completion of the inquisition, the Court shall determine whether the alleged lunatic is of unsound mind and incapable of managing himself and his affairs or may come to a special finding that such alleged lunatic is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others.

Inquisition by subordinate Court on commission issued by District Court and proceedings thereon.

66. (1) If the alleged lunatic resides at a distance of more than fifty miles from the place where the District Court is held to which the application is made, the said Court may issue a commission to any subordinate Court to make the inquisition, and such subordinate Court shall thereupon conduct the inquisition in the manner hereinbefore provided in this Chapter.

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that there are grounds for supposing that the mental condition is such as to bring him within the Lunacy Act. In that case he must order an "inquisition" and proceed in the manner mentioned in S. 65 (*a*). It is only when these findings have been arrived at as a result of the inquisition that the jurisdiction of the Court to proceed further with the case arises. In determining these questions the paramount consideration is the benefit of the luantic. 122 I.C. 570=1930 L. 289.

SEC. 63.—*See* cases under Ss. 61 and 62. *See alo* 1926 Sind 223.

SECS. 63 AND 80: "CURATOR"—MEANING OF.—The word "curator" is used in the Lunacy Act in the sense of a public curator appointed under the Succession (Property Protection) Act. Hence a person who has not been appointed curator in the above sense can be removed from guardian of the lunatic under S. 80, Lunacy Act. 146 I.C. 553=1933 L. 626.

SEC. 65.—*See* 30 C.W.N. 180=1926 C. 155; 1930 L. 289, cited under S. 62.

ORDER IN LUNACY—BINDING NATURE OF.—Although an order in lunacy is not a judgment which is conclusive against the world as one of the judgments enumerated in S. 41 of the Evidence Act, it is still relevant and binding upon the parties thereto and those who claim under them. 56 M. 904=1933 M. 624=65 M.L.J. 279.

FINDING AS TO LUNACY—INTERFERENCE BY HIGH COURT.—A person who is not sufficiently intelligent to manage his own affairs, is not necessarily of unsound mind. Under S. 65 there must be a finding that the alleged lunatic is of unsound mind and incapable of managing himself and his affairs. The High Court has power to interfere to correct a wrong finding under S. 65 (2). 30 N.L.R. 224=148 I.C. 462=1934 N. 27.

SECS. 65 AND 67.—For purposes of S. 65 the degree of unsoundness of mind of a person has to be found in relation to his capacity to manage the affairs of his estate. Where it is found that a person could not look after his property, but could at best only look to his physical needs, a Court would be stultifying the scope of the Act if it deprived such a person of the protection that law gives him. A suitable person should be appointed for his estate as contemplated by S. 67 (2). I.L.R. (1939) All. 510=1939 All. 333.

(2) On the completion of the inquisition, the subordinate Court shall transmit the record of its proceedings with the opinions of the assessors if assessors have been appointed, and its own opinion on the case; and the District Court shall thereupon proceed to dispose of the application in the manner provided in section 65, sub-section (2):

Provided that the District Court may direct the subordinate Court to make such further or other inquiries as it thinks fit before disposing of the application.

Judicial powers over person and estate of lunatic.

Custody of lunatics and management of their estates

67. (1) The Court may make orders for the custody of lunatics so found by inquisition and the management of their estates.

(2) When upon the inquisition it is specially found that the person to whom the inquisition relates is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others, the Court may make such orders as it thinks fit for the management of the estate of the lunatic including proper provisions for the maintenance of the lunatic and of such members of his family as are dependent on him for maintenance, but it shall not be necessary to make any order as to the custody of the person of the lunatic.

Court of Wards to be authorized in certain cases to take charge of estate of lunatic.

68. If the estate of a lunatic so found or any part thereof consists of property which, by the law for the time being in force, subjects the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the Court of Wards shall be authorized to take charge of the same.

Power to direct Collector to take charge of person and estate of lunatic in certain cases.

69. (1) If the estate of a lunatic so found consists in whole or in part of land or any interest in land, but is not of such a nature that it would subject the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the District Court may direct the Collector to take charge of the person and estate of the lunatic:

Provided that no such order shall be made without the consent of the Collector previously obtained.

(2) The Collector shall thereupon appoint a manager of the estate, and may appoint a guardian of the person of the lunatic.

Control over proceedings of Collector.

70. All proceedings of the Collector in regard to the person or estate of a lunatic under this Chapter shall be subject to the control of the Provincial Government or of such authority as it may appoint in this behalf.

SEC. 67.—*See* 23 M L.J. 706. *See also* 1939 All. 333, cited under S. 65, *supra*. The guardian of a lunatic's property appointed under S. 67 is not competent to maintain a suit after the lunatic's death for recovery of arrears of rent accrued due subsequent to the lunatic's death. The right of action in respect of such rent would rest in the heir entitled to take the property after the death of the lunatic. Whether or not the manager appointed under S. 67 would have power to realise assets outstanding at the time of the lunatic's death in respect of the claim arising subsequent to the death of the lunatic, the Court has no jurisdiction to sanction the institution of proceedings. 56 L W. 129=A.I.R. 1943 Mad. 265=(1943) 1 M.L.J. 22 (2). There is no provision in the Act to appoint an interim curator of a lunatic. 45 Bom.L.R. 782=A.I.R. 1943 Bom. 387.

SEC. 68.—*See* 15 I.C. 265; 6 S.L.R. 65. The Court of Wards must be given an opportunity of assuming charge of the estate of a lunatic landlord, if they do desire. Till the Court of Wards has not elected to exercise jurisdiction, the Courts are precluded from appointing his brother manager of the estate of the lunatic. 211 I.C. 487 =A.I.R. 1944 Sind 72.

SEC. 69.—*See* 7 W.R. 5.

Power of District Court to appoint guardian and manager and take security from manager.

71. (1) In all other cases the District Court shall appoint a manager of the estate of the lunatic and may appoint a guardian of his person:

Provided that a District Court may, instead of appointing a manager of the estate of a lunatic, exercise any of the powers conferred on the High Court under sections 56 and 59.

(2) Any person who has been appointed by the District Court or Collector to manage the estate of a lunatic shall, if so required, enter into a bond in such form and with such sureties as to the Court or the Collector, as the case may be, may seem fit, engaging duly to account for what he may receive in respect of the property of the lunatic.

Restriction on appointment of legal heir of lunatic to be guardian of his person.

72. The legal heir of a lunatic shall not be appointed to be the guardian of the person of such lunatic unless the Court or the Collector, as the case may be, for reasons to be recorded in writing, considers that such an appointment is for the benefit of the lunatic.

Remuneration of managers and guardians.

73. A guardian of the person of a lunatic or a manager of his estate appointed under this Chapter shall be paid such allowance, if any, as the Court or the Collector, as the case may be, thinks fit for his care and pains in the execution of his duties.

Duties of guardian.

74. (1) The person appointed to be guardian of a lunatic's person shall have the care of his person and maintenance.

(2) When a distinct guardian is appointed, the manager shall pay to the guardian such allowance as may be fixed by the District Court or the Collector, as the case may be, for the maintenance of the lunatic and such members of his family as are dependent on him for their maintenance.

Powers of manager.

75. (1) Every manager of the estate of a lunatic appointed as aforesaid may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a lunatic, and may collect and pay all just claims, debts and liabilities due to or by the estate of the lunatic:

Provided that no manager so appointed shall without the permission of the Court—

SEC. 71.—If a member of a joint Hindu family under the Mitakshara law be a lunatic, where it is shown that his property is being wasted the Civil Courts have power to appoint a manager of the lunatic's share under the Lunacy Act, but strong case must be made out for the appointment of a manager. 25 N.L.R. 61=116 I C. 663=1929 N. 93. On this section, *see* 33 I.C. 106; 24 C. 133; 16 B. 132; 6 M. 380; 39 A 158. A person who has been appointed guardian of the person of a lunatic under S. 71 is, in the absence of every special circumstances, entitled to the custody of the lunatic and the Court appointing the guardian has power to give such custody. 58 M. 252=40 L.W. 712=1934 M. 724=67 M.L.J. 661. The Legislature never intended that a manager appointed under S. 9 of the Lunacy Act should be competent to interfere with the personal law of a lunatic member of a joint Hindu family. I.L.R. (1942) All. 518=1942 A.L J. 197=A.I.R. 1942 All 267 (2).

SEC. 72.—*See* 39 A. 158; 23 C. 512; 15 A. 29. Section does not apply where near relations only can be appointed guardians of lunatic. 85 I C. 276=1925 O. 642. S. 72 operates as a kind of warning that particular care should be exercised by the Court, where a person is entitled to inherit part of the property of a lunatic and would therefore benefit by his death, to see that the appointment of such person as the guardian of a lunatic is a beneficial one. Hence a legal heir whose interest would be greater if the lunatic dies should not be appointed guardian of the person of the minor in preference to another who is a non-heir. (15 A. 29 and 39 A. 158, Ref.) 152 I.C. 512 =1934 R. 164

SEC. 74.—*See* 23 C. 512.

SEC. 75.—*See* 20 B. 150; *also* (1943) 1 M. J. 22=1943 Mad. 265 cited under **S. 67.**

(*a*) mortgage, charge, or transfer by sale, gift, exchange or otherwise any immovable property of the lunatic.

(*b*) lease any such property for a term exceeding five years.

Such permission may be granted subject to any condition or restriction which the Court thinks fit to impose.

(2) Before granting any such permission, the Court may cause notice of the application for such permission to be served on any relative or friends of the lunatic, and may make or cause to be made such inquiries as to the Court may seem necessary in the interests of the lunatic.

Manager to furnish inventory and annual accounts.

76. (1) Every person appointed by the District Court or by the Collector to be manager of the estate of a lunatic shall, within six months from the date of his appointment, deliver in Court or to the Collector, as the case may be, an inventory of the immovable property belonging to the lunatic and of all such money, or other movable property, as he may receive on account of the estate, together with a statement of all debts due by or to the same.

(2) Every such manager shall also furnish to the Court or to the Collector annually, within three months of the close of the year of the era current in the district, an account of the property in his charge, exhibiting the sums received and disbursed on account of the estate and the balance remaining in his hands.

Proceeding if accuracy of inventory or accounts is impugned.

77. If any relative of the lunatic, or the Collector by petition to the Court, impugns the accuracy of the said inventory and statement, or of any annual account, the Court may summon the manager and inquire summarily into the matter and make such order thereon as it thinks fit; or the Court, at its discretion, may refer any such petition to any subordinate Court or to the Collector if the manager was appointed by the Collector.

Payment into public treasury and investment of proceeds of estate.

78. All sums received by a manager on account of any estate in excess of what may be required for the current expenses of the lunatic or of the estate, shall be paid into the public treasury on account of the estate, and shall be invested from time to time in any of the securities specified in section 20 of the Indian Trusts Act, 1882, unless the Court or the Collector, as the case may be, for reasons to be recorded in writing, directs that such sums be in the interests of the lunatic otherwise invested or applied.

Relative may sue for an account.

79. Any relative of a lunatic may with the leave of the District Court sue for an account from any manager appointed under this Chapter, or from any such person after his removal from office or trust, or from his legal repre-

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SEC. 77.—Where accounts filed by manager of lunatic's estate are impugned under this section, some kind of inquiry and record should be made. Reasons also should be shown in passing orders, as the orders are appealable. 161 I.C. 591 (2)=1936 Rang. 51.

SECS. 77 AND 83.—Order passed under S. 77 simply to the effect that the accounts are passed, implies that the objections to the accounts are rejected, and hence appeal lies under S. 83. 161 I.C. 591 (2)=1936 Rang. 51.

SECS. 77 AND 79: CLAIMS FOR ACCOUNTS AGAINST MANAGER—APPLICATION OR SUIT.—Where a large number of items of expenditure by the manager of the estate of a lunatic are questioned and it appears to be also necessary to inquire into the amount of profits likely to have been realised from the estate, it is not a matter that can be enquired into conveniently by the District Judge in an application, and leave should be granted to file a suit against the manager for account or against his legal representatives as the case may be. (1944) 2 M.L.J. 377=1945 Mad. 89.

SEC. 79: SUIT AGAINST SURETY FOR MANAGER—LEAVE OF COURT—NECESSITY—ASSIGNMENT OF SECURITY BOND—DUTY OF COURT.—No sanction is necessary to sue a surety, who has executed a security

sentative in case of his death, in respect of any estate then or formerly under his care or management or of any sums of money or other property received by him on account of such estate.

Removal of managers and guardians.

80. (1) The District Court, for any sufficient cause, may remove any manager appointed by it not being the Curator, and may appoint such Curator or any other fit person in his place, and may compel the person so removed to make over the property in his hands to his successor and to account to such successor for all money received or disbursed by him.

(2) The Court may also for any sufficient cause, remove any guardian of the person of the lunatic appointed by it, and may appoint any other fit person in his place.

(3) The Collector, for any sufficient cause, may remove any manager of the estate of a lunatic or guardian of the person of a lunatic appointed by him and may appoint any other fit person in place of such manager or guardian; and the District Court, on the application of the Collector, may compel any manager removed under this section to make over the property and all accounts in his hands to his successor and to account to such successor for all money received or disbursed by him.

Penalty on manager for refusing to deliver accounts or property.

81. The District Court may impose a fine not exceeding five hundred rupees on any manager of the estate of a lunatic who wilfully neglects or refuses to deliver his accounts or any property in his hands within the time fixed by the Court, and may realize such fine as if it were a sum due under a decree of the Court, and may also commit the recusant to the civil jail until he delivers such accounts or property.

Proceedings in lunacy to cease or to be set aside if Court finds that the unsoundness of mind has ceased.

82. (1) When any person has been found under this Chapter to be of unsound mind, and it is subsequently shown to the District Court that there is reason to believe that such unsoundness of mind has ceased, such Court may make an order for inquiring whether such person is still of unsound mind and incapable of managing himself and his affairs.

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bond along with the manager. Nor is there any express provision in the Act for the assignment of the security as in cases under the Guardians and Wards Act. If there are sufficient circumstances to indicate that some amount is likely to be due from the manager to the estate, the proper course would be to assign the security bond even before the suit is filed, if there be a *prima facie* case, as it would be necessary and desirable to have the matter decided in the presence of the sureties and the manager or his legal representatives as to whether any amount had become payable from the manager to the estate of the lunatic. (1944) 2 M.L.J. 377=1945 Mad. 89.

SEC. 81: ORDER IMPOSING FINE FOR CONTUMACIOUS CONDUCT—IF "DECREE" UNDER SCH. II, ART. 2, COURT-FEES ACT.—Although the fine imposed on a guardian of a lunatic by the Court for contumacious conduct under S. 81 can be recovered as if it were due under a decree of Court, it is doubtful if the order imposing the fine can be said to have the force of decree under Sch. II, Art. 2, Court-Fees Act, for the purposes of appeal. 150 I.C. 664=36 P.L.R. 179=1934 L. 853 (1).

SEC. 82.—The District Judge under this Act is partly a judicial and partly an administrative authority. The enquiry into the state of mind of a person affected is to satisfy his own mind, the relatives to whom notices are issued, being merely *amici curiae* and not parties to the proceedings. They are allowed to be heard and have no right to be heard. 36 I.C. 705=19 O.C. 353. Where material is placed before a Judge to show that a lunatic had come to his normal soundness of mind, the Judge should proceed with the inquiry prescribed by law irrespective of the fact that certain proceedings were pending in Court relating to his rights as if he were a lunatic. 88 I.C. 580 =1925 L. 533. It is sufficient to invite the application of S. 88 if the father as the manager of a joint Hindu family is liable to maintain his son as a member thereof. In that case he is a person legally bound to maintain the lunatic within the meaning of the section and it does not matter for the purposes of the section whether under the

(2) The inquiry shall, as far as may be, be conducted in the same manner as is prescribed in this Chapter for an inquisition into the unsoundness of mind of an alleged lunatic, and if it is found that the unsoundness of mind has ceased, the Court shall order all proceedings in the lunacy to cease or to be set aside on such terms and conditions as to the Court may seem fit.

Appeals.

83. An appeal shall lie to the High Court from any order made by a District Court, under this Chapter.

PART IV.

MISCELLANEOUS.

CHAPTER VI.

ESTABLISHMENT OF ASYLUMS.

Provincial Government may establish or license the establishment of asylums.

84. The Provincial Government may establish or licence the establishment of asylums at such places as it thinks fit [1][if it is satisfied that provision has been or will be made for the curative treatment therein of persons suffering from mental diseases].

Power to cancel licence if provision for curative treatment is insufficient.

[2][**84-A.** If in any licensed asylum no provision for curative treatment has been made, or the Provincial Government considers that the provision made is insufficient, the Provincial Government may require the person in charge of the asylum to take such measures for making or supplementing such provision as it may deem necessary, and, if such person does not comply with the requisition within a reasonable time, the Provincial Government may revoke the licence.]

Provision for admission of lunatics in asylums outside a province.

[3][**85.** The Magistrate or Courts exercising jurisdiction in any province may send lunatics or any class of lunatics to any asylum situate in any other province in accordance with any general or special order of the Provincial Government made in that behalf with the consent of the Provincial Government of such other province.]

CHAPTER VII.

EXPENSES OF LUNATICS.

Payment of cost of maintenance in licensed asylums in certain cases by Government.

86. (1) When any lunatic is admitted to a licensed asylum under a reception order or an order under section 25, and no engagement has been taken from the friends or relatives of the lnatic or order made by the Court for the payment of expenses under the provisions of this Act, the cost of maintenance of such lunatic shall, subject to the provision of any law for the time being in force, be paid by the Government to the person in charge of such asylum.

(2) The paymaster of the military circle within which any asylum is situated shall pay to the officer in charge of such asylum the cost of maintenance

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LEG. REF.

[1] Inserted by Act VI of 1922, S. 3.
[2] Inserted by *ibid.*, S. 4.
[3] Substituted by Act XXXVIII of 1920, S. 2 and Sch. I.

Hindu Law his liability is limited to the extent of the joint family property in his hands. 51 B. 120=29 Bom.L.R. 52=1927 B. 91.

SEC. 83.—*See* 4 C.W.N. 526; 8 C. 263; 28 P.L.R. 1911. An order of the District Judge, dismissing the application of a guardian for custody of the lunatic is appealable under S. 83. 58 M. 252=40 L.W. 712=1934 M. 724=67 M.L.J. 661. Order under S. 77 simply to the effect that accounts are passed, implies that the objections to the accounts have been rejected, and hence an appeal lies under this section. 161 I.C. 591 (2)=1936 Rang. 51.

of every lunatic received and detained therein under an order made under section 12.

Application of property in the possession of a lunatic found wandering.

87. Any money in the possession of a lunatic found wandering at large may be applied by the Magistrate towards the payment of the cost of maintenance of the lunatic or of any other expenses incurred on his behalf, and any movable property found on the person of the lunatic may be sold by the Magistrate, and the proceeds thereof similarly applied.

Application to Civil Court for order for the payment of cost of maintenance out of the lunatic's estate, or by person bound to maintain him.

[1]**88.** If a lunatic detained in an asylum or a reception order made under section 14, section 15 or section 17 has an estate applicable to his maintenance, or if any person legally bound to maintain such lunatic has the means to maintain him, the authority which made the reception order or any local authority liable for the cost of maintenance of such lunatic under any law for the time being in force may apply to the High Court or District Court within the local limits of the original jurisdiction of which the estate of the lunatic is situate or the person legally bound to maintain him resides, for an order for the payment of the cost of maintenance of the lunatic.

Order of Court and enforcement thereof.

[2]**89.** (1) The Court shall inquire into the matter in a summary way, and on being satisfied that such lunatic has an estate applicable to his maintenance, or that any person is legally bound to maintain and has the means of maintaining such lunatic, may make an order for the recovery of the cost of maintenance of such lunatic, together with the cost of the application out of such estate or from such person.

(2) Such order shall be enforced in the same manner, and shall be of the same force and effect and subject to the same appeal as a decree made by the said Court in a suit in respect of the property or person therein mentioned.

Fixation of cost of maintenance.

[3][**89-A.** (1) In computing the amount payable on account of the cost of maintenance of lunatics detained in any asylum for the cost of whose maintenance any Provincial Government is liable, charges may be included on account of the upkeep of the asylum and of the capital cost of establishment thereof.

LEG. REF.

[1] MADRAS AMENDMENT.—In S. 88 of this Act, for the words and figures "on a reception order made under S. 14, S. 15 or S. 17," the words and figures "on a reception order made under Ss. 7, 10, 14, 15 or 17 or on an order made under S. 8 or 16" and for the words "authority which made the reception order" the words "authority which made the reception or other order aforesaid" shall be substituted (Madas Act XV of 1938).

[2] MADRAS AMENDMENT.—In sub-S. (1) of S. 89 of this Act, for the words "may make an order for the recovery of the cost of maintenance of such lunatic together with the costs of the application out of such estate or from such person," the following words shall be substituted, namely:—

"may make an order for the recovery of the whole or any portion of the cost of maintenance of such lunatic and of the costs of the application, out of such estate or from such person:

Provided that an order directing recovery out of such estate shall be made only after making due allowance for the needs of the wife, children and other dependants, if any, of the lunatic" (Madras Act XV of 1938).

[3] Substituted by A.O., for the original S. 89-A, which was inserted by Act VI of 1922, S. 5.

SEC. 88.—*See* 51 B. 120=1927 B. 91, cited under S. 88. The father in a joint Hindu family is liable to pay the maintenance charges of his lunatic daughter-in-law. 32 Bom.L.R. 606=124 I.C. 813=1930 B. 319. *See also* 40 P.L.R. 496, cited under S. 15, *supra*.

SEC. 89.—Under S. 89 the Court has to determine whether the father has the means to maintain the son. The word "means" in that section has no relation to their source. Thus if there is a person legally bound to maintain the lunatic and if he has the means to maintain him with or without reference to joint family property, under the Lunacy Act

(2) In the case of any such lunatic under detention immediately before the commencement of Part III of the Government of India Act, 1935, the amount payable by any Provincial Government on account of the cost of his maintenance shall be determined in accordance with any general or special orders of the Governor-General in Council in force immediately before that date and applicable to his case.]

Incidence of costs of maintenance payable by Government.

[1][89-B. (1) When under the provisions of this Act the cost of the maintenance of a lunatic is payable by the Government, then such cost shall be payable—

(*a*) in the case of a lunatic not domiciled in British India, by the Provincial Government of the province in which the reception order or the order under section 25, as the case may be, was made; and

(*b*) in the case of a lunatic domiciled in British India, by the Provincial Government of the province in which the lunatic has last resided for a period of five years before the reception order or the order under section 25, as the case may be, was made; or, if the lunatic has not been resident in any one province for such period, by the Provincial Government of the province in which such order was made.

[2][* * * * *].

Saving of liability of relatives to maintain lunatic.

90. The liability of any relative or person to maintain any lunatic shall not be taken away or affected by any provision contained in this Act.

CHAPTER VIII.

RULES.

Power of Provincial Government to make rules.

[3]91. (1) [4][* * * * * *] The Provincial Government may make rules for all or any of the following purposes, namely:—

(*a*) to prescribe forms for any proceeding under this Act other than a proceeding before a High Court which is or may hereafter be [5][constituted by His Majesty by Letters Patent];

(*b*) to prescribe places of detention and regulate the care and treatment of persons detained under section 8 or section 16;

(*c*) to regulate the [6][detention], care, treatment and discharge of criminal lunatics;

(*d*) to regulate the management of asylums and the care and custody of the inmates thereof and their transfer from one asylum to another;

(*e*) to regulate the transfer of criminal lunatics to asylums;

(*f*) to prescribe the procedure to be followed by District Courts and Magistrates before a lunatic is sent to any asylum established by Government;

LEG. REF.

[1] Inserted by Act VI of 1922, S. 5.

[2] Sub-S. (2) omitted by A.O., 1937.

[3] MADRAS AMENDMENT.—In sub-S. (1) of S. 91 of this Act, after Cl. (*c*), the following clause shall be inserted, namely:—

"(*cc*) to prescribe the conditions subject to which lunatics may be discharged temporarily under S. 33-A" (Madras Act XV of 1938).

[4] The words "Subject to the control of the Governor-General in Council" were omitted by Act XXXVIII of 1920, S. 2 and Sch. I.

[5] Substituted for 'established under the Indian High Courts Acts, 1861-1911' by A.O., 1937.

[6] Substituted for "confinement" by Act XI of 1923, S. 2, and Sch. I.

the Court can make an order for the costs of his maintenance in the asylum. 51 B. 120=29 Bom.L.R. 52=1927 B. 91.

SEC. 91 (1) (*c*).—Rule 18 (*ii*) of the rules framed under the Act prescribing fees for maintenance is not *ultra vires*. 51 B. 120=29 Bom.L.R. 52=1927 B. 91. The words "District funds" in R. 185 of the Rules framed by the Punjab Government under Lunacy Act does not include the funds of the Small Town Committee. 15 L. 480=36 P.L.R. 350=1934 L. 148.

(*g*) to prescribe the [1][Government asylums] within the province to which lunatics from any area or any class of lunatics shall be sent:

(*h*) to prescribe conditions subject to which asylums may be licensed;

(*i*) save as otherwise provided in this Act, generally to carry into effect the provisions of the Act.

(2) In making any rule under this section ,the Provincial Governments may direct that a breach of it shall be punishable with fine which may extend to fifty rupees.

Publication of rules.

92. All rules made under section 91 shall be published in the Official Gazette, and shall thereupon have effect as if enacted in this Act.

CHAPTER IX.

SUPPLEMENTAL PROVISIONS.

Penalty for improper reception or detention of lunatic.

93. Any person who—

(*a*) otherwise than in accordance with the provisions of this Act receives or detains a lunatic or alleged lunatic in an asylum, or

(*b*) for gain detains two or more lunatics in any place not being an asylum,

shall be punishable with imprisonment which may extend to two years or with fine or with both.

Provision as to bonds

94. The provisions of Chapter XLII of the Code of Criminal Procedure, 1898, shall, so far as may be, apply to bonds taken under this Act.

Pension of lunatic payable by Government.

95. (1) When any sum is payable in respect of pay, pension, gratuity, or other similar allowance to any person [2][by the Secretary of State or any Government in British India] and the person to whom the sum is payable is certified by a Magistrate to be a lunatic, the Government officer under whose authority such sum would be payable if the payee were not a lunatic may pay so much of the said sum as he thinks fit to the person having charge of the lunatic, and may pay the surplus, if any, or such part thereof, as he thinks fit for the maintenance of such members of the lunatic's family as are dependent on him for maintenance.

(2) [3][The Secretary of State or, as the case may be, the Government concerned] shall be discharged of all liability in respect of any amounts paid in accordance with this section.

Use of forms in Schedule.

96. Subject to any rules, the forms set forth in the First Schedule, with such variation as the circumstances of each case may require, shall be used for the respective purposes therein mentioned, and if used shall be sufficient.

Protection to persons acting under Act.

97. No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

LEG. REF.

[1] Substituted for 'asylums established by Government' by A.O., 1937.

[2] Substituted for 'by Government' by A.O., 1937.

[3] Substituted for 'Secretary of State for India in Council' by A.O., 1937.

98. Any officer in charge of an asylum may give effect to any order or warrant for the reception and detention of any lunatic made or issued by any Court or tribunal beyond the limits of British India in the exercise of jurisdiction conferred by His Majesty or [1][the Central Government or the Crown Representative or by the law of Burma].

Power to give effect to warrants and orders of certain Courts outside British India.

99. The [2][Provincial Government] may make rules regulating the procedure for the reception and detention in asylums in [3][the province] of lunatics whose reception and detention are provided for by section 98.

Power to make rules for reception of lunatics received from outside British India.

100. (1) In the case of orders made before the commencement of this Act under section 7 of the Indian Lunatic Asylums Act, 1858, for the reception of persons into an asylum, the persons who signed the order shall have all the powers and be subject to the obligations by this Act conferred or imposed upon the petitioner for reception order, and the provisions of this Act relating to persons upon whose petition a reception order was made shall apply in the case of a person who has signed an order, under section 7 of the Indian Lunatic Asylums Act, 1858, before the commencement of this Act as if the order had been made after the commencement of this Act upon a petition presented by him.

Orders under repealed Acts.

(2) All orders for the detention of lunatics made and all undertakings given under any enactment hereby repealed shall have the same force and effect as if they had been made or given under this Act and by or to th autnority empowered thereby in such behalf.

*[100-A. The powers conferred by this Act upon the Provincial Government shall, in relation to the Ranchi European Mental Hospital, be powers of the Central Government.]

Ranchi European Mental Hospital.

101. [*Repeal of enactments*]. *Rep. by the second Repealing and Amending Act* (*XVII of* 1914), *S.* 3 *and Sch. II.*

SCHEDULE I.

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FORMS.

(*See section* 96.)

FORM I.

APPLICATION FOR RECEPTION ORDER.

(See *sections* 5 *and* 6.)

In the matter of A.B.,[5] residing at , by occupation , son of ; a person alleged to be a lunatic.

To Presidency Magistrate, for [*or* District Magistrate of , *or* Sub-Divisional Magistrate of *or* Magistrate specially empowered under Act IV of 1912 for].

The petition of C.D.,[5] residing at , by occupation , son of , in the town of [*or* sub-division of in the district of].

1. I am [6]years of age.

2. I desire to obtain an order for the reception of A.B. as a lunatic in the

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LEG. REF.

[1] Substituted for 'the Governor-General in Council' by A.O., 1937.

[2] Substituted by A.O., for "Local Government" which were substituted by Act XXXVIII of 1920, S. 2 and Sch. I, for "Governor-General in Council".

[3] Substituted for "British India" by Act XXXVIII of 1920, S. 2 and Sch. I.

[4] Inserted by A.O., 1937.

[5] Full name, caste and titles.

[6] Enter the number of completed years. The petitioner must be at least 18 or 21 whichever is the age of majority under the law to which the petitioner is subject.

3. I last saw the said A.B. at on the [2]day of

4. I am the [3]of the said A.B.

[*or if the petitioner is not a relative of the patient state as follows*:]

I am not a relative of the said A.B. The reasons why this petition is not presented by a relative are as follows: [*State them.*]

The circumstances under which this petition is presented by me are as follows: [*State them.*]

5. The persons signing the medical certificates which accompany the petition are.[4]

6. A statement of particulars relating to the said A.B. accompanies this petition.

7. [*If that is the fact.*] An application for an enquiry into the mental capacity of the said A.B. was made to the on the and a certified copy of the order made on the said petition is annexed hereto.

[*Or if that is the fact.*]

No application for an inquiry into the mental capacity of the said A.B has been made previous to this application.

The petitioner therefore prays that a reception order may be made in accordance with the foregoing statement.

The statements contained or referred to in paragraphs are true to my knowledge; the other statements are true to my information and belief.

(Sd.) C.D.

(Sd.) C.D.

Dated

STATEMENT OF PARTICULARS.

[*If any of the particulars in this statement is not known, the fact to be so stated.*]

The following is a statement of particulars relating to the said A.B.:—

Name of patient at length.
Sex and age.
Married, single or widowed.
Previous occupation.
Caste and religious belief, as far as known.
Residence at or immediately previous to the date hereof.
Names of any near relatives to the patient who are alive.
Whether this is first attack of lunacy.
Age (if known) on first attack.
When and where previously under care and treatment as a lunatic
Duration of existing attack.
Supposed cause.
Whether the patient is subject to epilepsy.
Whether suicidal.
Whether the patient is known to be suffering from phthisis or any form of turbercular disease.
Whether dangerous to others, and in what way
Whether any near relative (stating the relationship) has been afflicted with insanity.
Whether the patient is addicted to alcohol, or the use of opium, ganja, charas, bhang; cocaine or other intoxicant.

[The statements contained are referred to in paras. are true to my knowledge. The other statements are true to my information and belief]

[*Signature by person making the statement.*]

FORM 2.

RECEPTION ORDER ON PETITION.

(*See sections 7 and 10.*)

I, the undersigned E.F., being a Presidency Magistrate of [*or* the District Magistrate of *or* the Sub-Divisional Magistrate of *or* a Magistrate of the first class specially empowered by Government to perform the function of a Magistrate under Act IV of 1912] upon the petition of C.D. of[5] in the matter of A.B.[5] a lunatic accompanied by the medical certificates of G.H., a medical officer, and of J.K., a medical practitioner [*or* medical officer], under the said Act, hereto annexed, hereby authorize you to receive the said A.B. into your asylum. And I declare that I have [*or*

asylum of situate at[1]

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[1] Insert the full description of the name and locality of the asylum or the name, address and description of the person in charge of the asylum.

[2] A day within 14 days before the date of the presentation of the petition is requisite.

[3] Here state the relationship with the patient.

[4] Here state whether either of the persons signing the medical certificates is a relative, partner or assistant of the lunatic or of the petitioner and, if a relative of either, the exact relationship.

[5] Address and description.

have not] personally seen the said A.B. before making this order.

(Sd.) E.F.
(*Designation as above.*)

To[1]

FORM 3.

MEDICAL CERTIFICATE.

(*See sections* 18 *and* 19.)

In the matter of A.B. of[2] in the town of [*or* the sub-division of in the district of] an alleged lunatic.

I, the undersigned C.D., do hereby certify as follows:—

1. I am— a gazetted medical officer [*or* a medical practitioner declared by a holder of[3] [*or* declared by Provincial Government to be a Government to be medical officer under Act IV of 1912] and I am in the actual practice medical practitioner under Act IV of 1912] of the medical profession.

2. On the day of 19 at[4] in the town / village of [*or* the sub-division of in the district of] [separately from any other practitioner],[5] I personally examined the said A.B. and came to the conclusion that the said A.B. is a lunatic and a proper person to be taken charge of and detained under care and treatment.

3. I formed this conclusion on the following grounds, *viz.*:—

(*a*) Facts indicating insanity observed by myself, *viz.*:—

(*b*) Other facts (if any) indicating insanity communicated to me by others, *viz.*:—

Here state the information and from whom.

(Sd.) C.D.
(*Designation as above.*)

FORM 4.

RECEPTION ORDER IN CASE OF LUNATIC SOLDIER.

(*See section* 12.)

Whereas it appears to me that A.B., a European, subject to the Army Act, who has been declared a lunatic in accordance with the provisions of the military regulations, should be removed to an asylum, I do hereby authorise you to receive the said A.B. into your asylum.

To[6]

(Sd.) E.F.
(*Administrative Medical Officer.*)

FORM 5.

RECEPTION ORDER IN CASE OF WANDERING OR DANGEROUS LUNATICS OR LUNATICS NOT UNDER PROPER CONTROL OR CRUELLY TREATED (SENT TO AN ASYLUM ESTABLISHED BY GOVERNMENT.)

(*See sections* 14, 15 *and* 17.)

I, C.D., Presidency Magistrate of [*or* Commissioner of Police for] [*or* the District Magistrate of *or* the Sub-Divisional Magistrate of *or* a Magistrate specially empowered by Government under Act IV of 1912] having caused A.B. to be examined by E F., a Medical Officer under the Indian Lunacy Act, 1912, and being satisfied that A.B. [*describing him*] is a lunatic who was wandering at large [*or* is a person dangerous by reason of lunacy] [*or* is a lunatic not under proper care and control *or* is cruelly treated or neglected by the person having the care or charge of him] and a proper person to be taken charge of and detained under care and treatment, hereby direct you to receive the said A.B. into your asylum.

(Sd.) C.D.
(*Designation as above.*)

Dated the

To the Officer in charge of the asylum at

FORM 6.

SAME WHEN SENT TO A LICENSED ASYLUM.

I, C.D., [*as above down to* "care and treatment"] and being satisfied with the engage-

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LEG REF.

[1] To be addressed to the officer or person in charge of the asylum.

[2] Insert residence of patient.

[3] Insert qualification to practise medicine and surgery registrable in the United Kingdom.

[4] Insert place of examination.

[5] Omit this where only one certificate is required.

[6] To be addressed to the person in charge of an asylum duly authorised by Government to receive lunatic Europeans subject to the Army Act.

ment entered into in writing by G.H. of [*here insert address and description*] who has desired that the said A.B. may be sent to the asylum at [*here insert description of asylum and name of the person in charge*] to pay the cost of maintenance of the said A.B., in the said asylum, hereby authorize you to receive the said A.B., into your asylum.

(Sd.) C.D.
(*Designation as above.*)

Dated the

To the person in charge of the asylum at

FORM 7.

BOND ON THE MAKING OVER OF A LUNATIC TO THE CARE OF RELATIVE OR FRIEND.

(*See sections* 14, 15 *and* 17.)

WHEREAS A.B., son of , inhabitant of , has been brought up before C.D., a Presidency Magistrate for the town of [*or* Commissioner of Police for District] [*or* the ——— Magistrate of , *or* a Sub-Divisional Magistrate of the first class specially empowered under Act IV of 1912] and is a lunatic who is believed to be dangerous [*or* deemed to be a lunatic who is not under proper care and control *or* is cruelly treated or neglected by the person having the charge of him] and whereas, I, E.F., son of , inhabitant of have applied to the Magistrate [*or* Commissioner of Police], that the said A.B. may be delivered to my care:

I, E.F., abovenamed hereby bind myself that on the said A.B. being made over to my care, I will have the said A.B. properly taken care of and prevented from doing injury to himself or to others; and in case of my making default therein, I hereby bind myself to forfeit to His Majesty the King-Emperor of India, the sum of Rupees.

Dated this day of 19 .

(Sd.) F.F.

(*Where a bond with sureties is to be executed add*)—We do hereby declare ourselves sureties for the abovenamd E.F , that he will, on the aforesaid A.B. being made over to his care, have the said A.B. properly taken care of and prevented from doing injury to himself or to others; and in case of the said E.F. making default therein, we bind ourselves, jointly and severally, to forfeit to His Majesty the King-Emperor of India, the sum of rupees

Dated this day of 19 .

(*Signature*).

FORM 8.

BOND ON THE DISCHARGE OF A LUNATIC FROM AN ASYLUM ON THE UNDERTAKING OF RELATIVE OR FRIEND TO TAKE DUE CARE.

(*See section* 33.)

WHEREAS A.B , son of , inhabitant of , is a lunatic who is now detained in the asylum at under an order made by C.D., a Presidency Magistrate for the town of District] [*or* the ——— Magistrate of Sub-Divisional , *or* a Magistrate of the first class specially empowered under Act IV of 1912] under section 14 [*or* section 15] of Act IV of 1912, and whereas I, E.F.. son of , inhabitant of , have applied to the said Magistrate [*or* Commissioner of Police] that the said A.B. may be delivered to my care and custody:

I hereby bind myself that on the said A.B. being made over to my care and custody, I will have him properly taken care of and prevented from doing injury to himself or to others; and in case of my making default therein, I hereby bind myself to forfeit to His Majesty the King-Emperor of India, the sum of rupees .

Dated this day of 19 .

(Sd.) E.F.

(*Where a bond with sureties is to be executed add*)—We do hereby declare ourselves sureties for the abovenamed E.F. that he will, on the aforesaid A.B. being delivered to his care and custody, have the said A.B. properly taken care of and prevented from doing injury to himself or to others; and in case of the said E.F. making default therein, we bind ourselves, jointly and severally, to forfeit to His Majesty the King-Emperor of India, the sum of rupees .

Dated this day of 19 .

SCHEDULE II.

[*Repealed by Act XVII of* 1914.]

THE INDIAN LUNACY (MADRAS AMENDMENT) ACT (XV OF 1938).

[See *Madras Act XII of* 1943].

[*3rd October,* 1938.

An Act further to amend the Indian Lunacy Act, 1912, *in its application to the Province of Madras for certain purposes.*

WHEREAS it is expedient further to amend the Indian Lunacy Act, 1912, in its application to the Province of Madras for the purposes hereinafter appearing; It is hereby enacted as follows:—

Short title.

1. This Act may be called THE INDIAN LUNACY (MADRAS AMENDMENT) ACT, 1938.

Insertion of new section 33-A in Act IV of 1912.

2. After section 33 of the Indian Lunacy Act, 1912 (hereinafter referred to as the said Act), the following section shall be inserted, namely:—

Temporary order of discharge of lunatic in interests of his health.

"33-A. If the person in charge of any asylum in which a lunatic is detained under the provisions of sections 14, 15 or 17, is satisfied that in the interests of the health of the lunatic, it is necessary to discharge him temporarily, the person aforesaid may order such discharge for such period as he may think fit and subject to such conditions as the Provincial Government may by rule prescribe."

Amendment of section 88, Act IV of 1912.

3. In section 88 of the said Act, for the words and figures "on reception order made under section 14, section 15 or section 17," the words and figures "on a reception order made under sections 7, 10, 14, 15 or 17 or on an order made under sections 8 or 16" and for the words "authority which made the reception order" the words "authority which made the reception or other order aforesaid" shall be substituted.

Amendment of section 89, Act IV of 1912.

4. In sub-section (1) of section 89 of the said Act, for the words "may make an order for the recovery of the cost of maintenance of such lunatic together with the costs of the application out of such estate or from such person," the following words shall be substituted, namely:—

"may make an order for the recovery of the whole or any portion of the cost of maintenance of such lunatic and of the costs of the application, out of such estate or from such person:

Provided that an order directing recovery out of such estate shall be made only after making due allowance for the needs of the wife, children and other dependants, if any, of the lunatic."

Amendment of section 91, Act IV of 1912.

5. In sub-section (1) of section 91 of the said Act, after clause (*c*), the following clause shall be inserted, namely:—

"(*cc*) to prescribe the conditions subject to which lunatics may be discharged temporarily under section 33-A."

THE MAINTENANCE ORDERS ENFORCEMENT ACT (XVIII OF 1921).[1]

An Act to facilitate the enforcement in British India of Maintenance Orders made in other parts of His Majesty's Dominions and Protectorates and vice versa.

WHEREAS it is expedient to facilitate the enforcement in British India of Maintenance Orders[2] made in other parts of His Majesty's Dominions and Protectorates and *vice versa;* It is hereby enacted as follows:—

LEG. REF.

[1] For Statement of Objects and reasons, see *Gazette of India,* 1921, Pt. V, p. 5. For Report of Select Committee, see *ibid.,* Pt. V, p. 127.

[2] For extension by the Colony of Seychel-

Short title and extent.

1. (1) This Act may be called THE MAINTENANCE ORDERS ENFORCEMENT ACT, 1921.

(2) It extends to the whole of British India including the Sonthal Parganas and British Baluchistan.

Definition.

2. In this Act, unless there is anything repugnant in the subject or context,—

"Court of summary jurisdiction" means the Court of a Chief Presidency Magistrate or of a District Magistrate;

"dependants" means such persons as a person against whom a maintenance order is made is liable to maintain according to the law in force in the part of His Majesty's Dominions in which the maintenance order is made;

"maintenance order" means a decree or order, other than an order of affiliation, made by a Court in the exercise of civil or criminal jurisdiction for the periodical payment of sums of money towards the maintenance of the wife or other dependants of the person against whom the order is made;

"prescribed" means prescribed by rules made under this Act;

"proper authority" means the authority appointed by or under the law of a reciprocating territory to receive and transmit documents to which this Act applies; and

"reciprocating territory" means any part of His Majesty's Dominions outside British India in respect of which this Act for the time being applies.

Reciprocal arrangements.

3. (1) If the Central Government is satisfied that provisions have been made by the Legislature of any part of His Majesty's Dominions for the enforcement within that part of maintenance orders made by Courts in British India, the Central Government may, by notification in the Official Gazette, declare that this Act applies in respect of that part of His Majesty's Dominions and thereupon it shall apply accordingly.

(2) The Central Government may, by like notification, declare that this Act applies in respect of any British portectorate, or in respect of any State in India, and where such a declaration has been made, this Act shall apply as if such protectorate or State were a reciprocating territory.

Registration in British India of maintenance orders made in other parts of His Majesty's Dominions.

4. (1) Where a maintenance order has, whether before or after the passing of this Act, been made against any person by any Court in any reciprocating teritrtory, and a certified copy of the order has been transmitted by the proper authority of that territory to the Central Government, the Central Government shall send a copy of the order to the prescribed officer of a Court in British India for registration, and, on receipt thereof, the order shall be registered in the prescribed manner.

(2) The Court in which an order is to be so registered as aforesaid shall, if the Court by which the order was made was, in the opinion of the Central Government, a Court of superior jurisdiction, be a High Court, and, if the Court was not, in its opinion, a Court of superior jurisdiction, be a Court of summary jurisdiction.

5. Where a Court in British India has, whether before or after the com-

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les and New South Wales of their respective Maintenance Orders Legislation to British India, see *Gazette of India*, 1924 Pt. I, pp. 316 and 1021.

SEC. 1.—Jurisdiction of Magistrate under this section is limited by sec. 488, Cr. P. Code. This Act confers no jurisdiction on Magistrates in India to award any sum they think fit as maintenance payable to wife and children who are in India and whose husbands or fathers are in England. This Act is merely an extension of the principle laid down in sec. 488, Cr. P. Code, and was enacted to meet cases where the wife and children are in India and the husband in England and *vice versa*. 1937 M. W. N. 1127.

Transmission of maintenance order made in British India.

mencement of this Act, made a maintenance order against any person, and it is proved to that Court that the person against whom the order was made is resident in a reciprocating territory, the Court shall send to the Central Government, for transmission to the proper authority of that territory, a certified copy of the order.

Power of summary courts to make provisional maintenance orders against persons resident in His Majesty's Dominions outside British India.

6. (1) Where application is made to a Court of summary jurisdiction in British India for a maintenance order against any person, and it is proved that that person is resident in a reciprocating territory, the Court may, in the absence of that person, if after hearing the evidence it is satisfied of the justice of the application, make any such order as it might have made if that person had wilfully neglected to attend the Court; but in such case the order shall be provisional only and shall have no effect unless and until confirmed by a competent Court in such territory.

(2) The evidence of every witness who is examined on any such application shall be reduced to writing, and such deposition shall be read over to, and signed by, him.

(3) Where such an order is made, the Court shall send to the Central Government, for transmission to the proper authority of the reciprocating territory in which the person against whom the order is made is alleged to reside, the depositions so taken and a certified copy of the order together with a statement of the grounds on which the making of the order might have been opposed if the person against whom the order is made had been duly served with a summons and had appeared at the hearing and such information as the Court possesses for facilitating the identification of that person and ascertaining his whereabouts.

(4) Where any such provisional order has come before a Court in a reciprocating territory for confirmation, and the order has by that Court been remitted to the Court of summary jurisdiction which made the order for the purpose of taking further evidence, the Court shall, after giving the prescribed notice, proceed to take the evidence in like manner and subject to the like conditions as the evidence in support of the original application.

(5) If it appears to the Court hearing such evidence that the order ought not to have been made, the Court may rescind the order but in any other case the depositions shall be sent to the Central Government and dealt with in like manner as the original depositions.

(6) The confirmation of an order made under this section shall not affect any power of a Court of summary jurisdiction to vary or rescind that order:

Provided that, on the making of a varying or rescinding order, the Court shall send a certified copy thereof to the Central Government for transmission to the proper authority of the reciprocating territory in which the original order was confirmed, or to which it was sent for confirmation and that, in the case of an order varying the original order, the order shall not have any effect unless and until confirmed in like manner as the original order.

7. (1) Where a maintenance order has been made by a Court in a recipro-

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SECS. 6 AND 7.—Order of Chief Presidency Magistrate under the Act, finality of—Power of High Court to interfere in revision. *See* 30 Bom.L.R. 350. Court has wide powers before confirming a provisional order under the Act to take further evidence and its powers are not limited to the provisions of sec. 7; evidence of desertion subsequent to the date of the provisional order is admissible for purposes of confirmation of the said order. 52 B. 262=30 Bom.L.R. 350=1928 B. 117.

Power of Court of summary jurisdiction to confirm maintenance order made out of British India.

cating territory and the order is provisional only, and has no effect unless and until confirmed by a Court of summary jurisdiction in British India, and a certified copy of the order, together with the depositions of the witnesses and a statement of the grounds on which the order might have been opposed, has been transmitted to the Central Government, and it appears to the Central Government that the person against whom the order has been made is resident in British India, the Central Government may send the said documents to the prescribed officer of a Court of Summary jurisdiction, with a requisition that a summons be issued calling upon the person to show cause why that order should not be confirmed, and, upon receipt of such documents and requisition, the Court shall issue such a summons and cause it to be served upon such person.

(2) A summons issued under sub-section (1) shall for all purposes be deemed to be a summons issued by the Court in the exercise of its original criminal jurisdiction.

(3) At the hearing it shall be open to the person to whom the summons was issued to arise any defence which he might have raised in the original proceedings had he been a partly thereto, but no other defence, and the certificate from the Court which made the provisional order stating the grounds on which the making of the order might have been opposed if the person against whom the order was made had been a party to the proceedings shall be conclusive evidence that those grounds are grounds on which objection may be taken.

(4) If at the hearing the person served with the summons does not appear or, on appearing, fails to satisfy the Court that the order ought not to be confirmed, the Court may, notwithstanding any pecuniary limit imposed on its power by any law for the time being in force in British India, confirm the order either without modification or with such modifications as to the Court after hearing the evidence may seem just:

Provided that no sum shall be awarded as maintenance under this section, or shall be recoverable as such, at a rate exceeding that proposed in the provisional order.

(5) If the person to whom the summons was issued appears at the hearing and satisfies the Court that for the purpose of any defence it is necessary to remit the case to the Court which made the provisional order for the taking of any further evidence the Court may for that purpose send a certified copy of the record to the Central Government for transmission to that Court through the proper authority of the reciprocating territory, and may adjourn the proceedings.

(6) Where a provisional order has been confirmed under this section, it may be varied or rescinded in like manner as if it had originally been made by the confirming Court, and where on an application for rescission or variation the Court is satisfied that it is necessary to remit the case to the Court which made the provisional order for the purpose of taking any further evidence, the Court may for that purpose send a certified copy of the record to the Central Government for transmission to that Court through the proper authority of the reciprocating territory, and may adjourn the proceedings.

Enforcement of maintenance orders.

8. (1) Subject to the provisions of this Act, where an order has been registered under this Act in a High Court, the order shall, from the date of such registration, be of the same force and effect, and all proceedings may be taken thereon as if it had been an order originally obtained in the High Court in the exercise of its civil jurisdiction, or in such Civil Court subordinate to that High Court as may be named by the High Court in this behalf, and that Court shall have power to enforce the order accordingly.

(2) A Court of summary jurisdiction in which an order has been regis-

tered under this Act or by which an order has been confirmed under this Act, and the officers of such Court, shall have such powers and perform such duties, for the purpose of enforcing the order, as may be prescribed.

Payment of charges for transmission of sums awarded as maintenance and other costs and charges.

9. A Court in registering or confirming an order for maintenance in accordance with the provisions of this Act shall direct that the charges for the transmission to the Court, from which the order has been received or in which the provisional order has been made, as the case may be, of the sum awarded as maintenance shall be borne by the person against whom the order has been so made or confirmed, and shall be recovered from him in addition to the sum awarded as maintenance and in addition to, and in the same manner as, such other costs and charges as may be awarded or levied by the Court.

Proof of documents signed by officers of Court.

10. For the purposes of this Act, any document purporting to be signed by a judge or officer of a Court outside British India shall, until the contrary is proved, be deemed to have been so signed without proof of the signature of judicial or official character of the person appearing to have signed it, and the officer of a Court by whom a document is signed shall, until the contrary is proved, be deemed to have been the proper officer of the Court to sign the document.

Depositions to be evidence.

11. Depositions taken in a Court in any reciprocating territory may, for the purposes of this Act, be received in evidence in proceedings before Courts of summary jurisdiction under this Act.

Rule-making power.

12. The Central Government may make rules for the purpose of carrying into effect the purposes of this Act, and in particular may make rules, for the levy of the costs or charges for anything done under this Act and for all matters which are directed or permitted to be prescribed.

THE INDIAN MAJORITY ACT (IX OF 1875).[1]

Year.	No.	Short title.	Amendment.
1875	IX	The Indian Majority Act.	Amended, VIII of 1890, S. 52.

[*2nd March*, 1875.

An Act to amend the Law respecting the age of majority.

Preamble.

WHEREAS, in the case of persons domiciled in British India, it is expedient to prolong the period of nonage, and to attain more uniformity and certainty respecting the age of majority than now exists; It is hereby enacted as follows:—

Short title.

1. This Act may be called THE INDIAN MAJORITY ACT, 1875.

LEG. REF.

[1] For the Statement of Objects and Reasons, see *Gazette of India*, 1874, Pt. IV, p. 153; for Proceedings in Council, see *ibid.*, Supplemental, p. 668, and Extra Supplement, dated 12th May, 1874, p. 4, and *ibid.*, 1875, Supplement, p. 333.

SEC. 1.—The Majority Act applies to Hindus also. 33 A. 525. *See also* A.W.N. (1887) 71=9 A. 480 (age for making of contract by a Hindu). A Hindu can make a will only when he is major under the Act. 38 M. 166=24 M.L.J. 517. *See also* 36 B. 622=14 Bom.L.R. 748; 6 I.C. 6; 33 A. 525. A Mussalman boy is under the Act bound to remain in the custody of his guardian till he attains 18, notwithstanding that under personal law, his emancipation would have taken place earlier. 39 M. 608=30 M.L.J. 21. In order that the reservation of the Act should be applicable to a case

Local extent.

It extends to the whole of British India, and, so far as regards [1][British subjects, to all Indian States];

Commencement and operation.

and it shall come into force and have effect only on the expiration of three months from the passing thereof.

Savings.

2. Nothing herein contained shall affect—

(*a*) the capacity of any person to act in the following matters (namely), —marriage, dower, divorce and adoption;

LEG. REF.

[1]Substituted by A.O., 1937 for "subjects of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty".

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relating to dower, it is essential that the minor should have made the gift, at the time of or by reason of or in consideration of the marriage. 1913 M.W.N. 365= 24 M.L.J. 49.

SEC. 2: SCOPE OF SECTION.—*See* 1928 C. 303=47 C.L.J. 372. In considering the age of majority for purpose of marriage in the case of Mahomedans reference should be made to the provisions of the Mahomedan Law. 1923 L. 102. The capacity of minors as regards questions of marriage, adoption, etc., is the same as if this Act had not been passed. 42 M.L.J. 129=1922 M. 1 (2). Relinquishment of claim to dower—Mahomedan lady of 15 years of age—Age of majority is governed by this Act. 41 M. 1026=35 M.L. J. 468. *See also* 17 Pat. 303=1939 Pat. 133. "To act in the matter of dower" means to act or do such acts as may relate to the dower. 80 I.C. 914=1925 C. 322. *See also* 24 M.L.J. 49. A contract entered into by a Mahomedan husband, who is a minor under this Act, but a major according to his personal law, to pay dower to his wife is valid and there is nothing in S. 11, Contract Act, invalidating the same. 80 I. C. 914=1925 C. 322. Majors under personal law though not under this Act can fix amount and nature of dower. 1925 Cal. 322. As to power of a Mahomedan minor to execute post-nuptial agreement for divorie in favour of wife, *see* 47 C.L.J. 372. S. 2 only governs the performance of marriage or effecting of divorce by persons who, though not major according to the Act, are so according to their personal law. But the relinquishment by a Mahomedan wife of the whole or part of her dower fixed at the time of the marriage or changing its character from prompt into deferred does not fall within the exception provided by S. 2 of the Act. Once a marriage is performed, and the dower settled, the dower becomes property of the wife. It is a debt payable to her and any transfer or relinquishment of the same, is not a matter in any way connected with marriage, and such an act must be governed by the ordinary law of the land. The operation of the section cannot be extended beyond what is specified therein. So an ekrarnama executed by a Mahomedan wife who is a minor under Act, but a major under tht Mohamedan law, surrendering a portion of her dower debt and making the other portion a deferred instead of prompt cannot be valid and binding on her, and cannot operate either to reduce the amount of the dower or change its character. 17 Pat. 303=1939 P. 133. A breach of promise of marriage is a matter of marriage within S. 2. Nothing contained in that shall affect the capacity of any person to act in matters of marriage. 46 I.C. 421. A Hindu widow of age 15 might validly adopt if she had attained sufficient maturity of understanding to comprehend the nature of the Act. 43 B. 481=50 I.C. 736. The Act does not affect the religion or religious rites or usages of any class. The age of majority fixed by the Act does not apply to offices which involve the performance of religious duties. 28 I.C. 934. Under this section in the case of an Indian Christian, the age of majority for purposes of a divorce suit is 21, and if one of the parties is below that age, a guardian should be appointed to him or her. 79 I.C. 535=1925 S. 95.

SEC. 2 (*a*).—The expression "capacity to act in the matter of marriage" means the capacity to be a party to a valid marriage and relates to the acts of the parties by which their status is changed. It does not refer and is not applicable to a pre-nuptial agreement to contract a marriage in future. 14 R. 215=1936 R. 212 (F.B.). The words 'to act in the matter of marriage' in S. 2 (*a*) must be construed in a restricted sense and means only, to enter into the contract of marriage. S. 2 (*a*) of the Majority Act merely relieves a Mahomedan girl of some of the consequences of her minority, but she remains a minor none the less. That being so the provisions of O. 32, R. 1, C. P. Code, still apply. Hence a Mahomedan girl of 15 can file a suit for dower only through her next friend. 1942 O.W.

(*b*) the religion or religious rites and usages of any class of Her Majesty's subjects in India; or

(*c*) the capacity of any person who before this Act comes into force has attained majority under the law applicable to him.

Age of majority of persons domiciled in British India.

3. Subject as aforesaid, [1][every minor of whose person or property or both a guardian, other than a guardian for a suit within the meaning of Chapter XXXI of the Code of Civil Procedure, has been or shall be appointed or declared by any Court of Justice before the minor has attained the age of eighteen years, and every minor of whose property the superintendence has been or shall be assumed by any Court of Wards before the minor has attained that age] shall,

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LEG. REF.

[1]Substituted by Act VIII of 1890, S. 52.

N. 22=1942 Oudh 243=17 Luck. 572. The right of a Mahomedan wife of sixteen and over to sue for a divorce under the Mahomedan Law is expressly saved by the section. 55 B. 160=32 Bom.L.R. 1372=1931 B. 76. *See also* 1941 L. 394. A Mahomedan woman who is a major under the personal law is capable of relinquishing the dower as consideration for obtaining *khula, khula* being a form of divorce recognised by the Mahomedan Law and therefore coming within the exception mentioned in S. 2. 1932 A. L.J. 781=1932 A. 649=54 A. 806.

SEC. 3.—The words "Court of Justice" in the Act means a Court of Justice which has jurisdiction to do an act. 26 I.C. 708= 10 N.L.R. 159. The civil status of a person is always to be determined by the law of his domicile; a person not domiciled in British India is not entitled to the benefit of S. 3 of the Act though he may reside or have dealing in British India, because the age of majority is determined by the law of domicile. But the subject of an Indian State, which has adopted the Indian Majority Act as its law, is governed by the Act and hence attains majority only at the age of twenty-one and he is therefore entitled to the extended period of minority when his estate is taken over for management by the Court of Wards. 48 Bom.L.R. 244. Person cannot be major with respect to one and minor with respect to another property. 46 A. 744= 1924 A. 892. Married woman governed by the Succession Act—Guardian appointed by Court—Age of minority extends to 21 years of age—Incapacity to make a will. 1924 C. 644=28 C.W.N. 527. Under S. 3, minority is extended to the completion of the twenty-first year when a guardian of the property of the minor has been appointed. 31 Bom.L.R. 1009=1929 B. 475; 134 I.C. 293=1931 L. 394. Where the mother has been appointed guardian of her two minor sons forming a joint Hindu family, the age of majority for the latter is 21 years. 35 A. 150=18 I.C. 251. Act has modified the Hindu Law on the question of minority except in respect of marriage and adoption. A Hindu who has not attained the age of majority cannot make a will. 36 B. 622=17 I.C. 86=14 Bom.L.R. 748. Where once a guardian has been appointed under the Act, however that guardianship may terminate, the minor cannot attain majority until the age of 21. 1924 L. 127. Once a guardian of a minor is validly appointed by a Court, the minor's age of majority becomes fixed by law at 21, and nothing which may subsequently transpire can have the effect of reducing it again to 18. 57 I.C. 678=11 L.W. 596. An invalid order of appointment (as a conditional order of appointment of a person on his furnishing security) has not the effect of postponing the age to 21. 49 M. 809=1927 M. 36=51 M.L.J. 726 (F.B.). "Appointed" —Meaning—Orders appointing guardian on condition of furnishing security—Security not furnished—Effect on order of appointment— Minority—If extended. *See* 47 Bom.L.R. 83. In order to extend the minority of a person to 21 years under S. 3, there must in the first instance be a lawful appointment of a guardian. An appointment which is not lawful but null and void cannot extend the period of minority. S. 19 of the Guardians and Wards Act specifically prohibits the Court from making an appointment of a guardian for a person whose father is alive and who is not unfit to be guardian. An appointment of guardian for such a minor is not a lawful appointment, as it is one which cannot be made under the Guardians and Wards Act. The Court has the power to vacate or rescind such an order which should never have been made. Nor would such an order extend the period of minority to 21 years under S. 3 of the Act. 32 S.L.R. 215. The grant of letters of administration does not amount to the appointment of a guardian of the property of the minor concerned so as to extend the period of the minority under S. 3. *See* 18 I.C. 378=24 M.L.J. 450. Release of the minor from the guardianship of the appointed guardian does not make him a major so as to affect limitation. Such a minor becomes major after the age of 21 years. 58 I.C. 196. Whether age of majority is postponed to 21 if the order of appointment of guardian is invalid, *see* 99 I.C. 213=1927 M. 36. Where an appointment of guardian to a minor is

notwithstanding anything contained in the Indian Succession Act (X of 1865,)[1] or in any other enactment, be deemed to have attained his majority when he shall have completed his age of twenty-one years and not before.

Subject as aforesaid, every other person domiciled in British India shall be deemed to have attained his majority when he shall have completed his age of eighteen years and not before.

Age of majority how computed.

4. In computing the age of any person, the day on which he was born is to be included as a whole day, and he shall be deemed to have attained majority, if he falls within the first paragraph of section 3, at the beginning of the twenty-first anniversary of that day, and if he falls within the second paragraph of section 3, at the beginning of the 18th anniversary of that day.

Illustrations.

(*a*) *Z* is born in British India on the first day of January, 1850, and has a British Indian domicile. A guardian of his person is appointed by a Court of Justice. *Z* attains majority at the first moment of the first day of January, 1871.

(*b*) *Z* is born in British India on the twenty-ninth day of February, 1852, and has a British Indian domicile. A guardian of his property is appointed by a Court of Justice. *Z* attains majority at the first moment of the twenty-eighth day of February, 1873.

(*c*) *Z* is born on the first day of January, 1850. He acquires a domicile in British India. No guardian is appointed of his person or property by any Court of Justice, nor is he under the jurisdiction of any Court of Wards. *Z* attains majority at the first moment of the first day of January, 1868.

THE MARRIAGE VALIDATION ACT (II OF 1892).[2]

Year.	No.	Short title.	Amendments.
1892	II	The Marriage Validation Act.	Repealed in part, Act X of 1914.

[29*th January*, 1892.

An Act to validate certain marriages solemnized under Part VI of the Indian Christian Marriage Act, 1872.

WHEREAS provision is made in Part VI of the Indian Christian Marriage Act, 1872, for the solemnization of marriages between persons of whom both are Native Christians, but not of marriages between persons of whom one only is a Native Christian;

AND WHEREAS persons licensed under section 9 of the said Act have in divers parts of British India, through ignorance of the law, permitted marriages to be solemnized in their presence under the said part between persons of whom one is a Native Christian and the other is not a Native Christian;

AND WHEREAS it is expedient that such marriages, having been solemnized in good faith, should be validated; It is hereby enacted as follows—

LEG. REF.

[1] *See* now Act XXXIX of 1925.

[2] Short title: "The Marriage Validation Act, 1892". *See* the Indian Short Titles Act (XIV of 1897), *infra*.

cancelled by an appellate Court, there is in fact no valid appointment at all and the age of majority in such cases is 18 and not 21. 14 I.C. 301=15 O.C. 153. But *see also* 6 P.L.J. 273=1921 P. 166 (2) *infra*. Once a guardian is appointed, the age of the majority of the minor is 21 years and the mere fact that the certificate of guardianship is subsequently cancelled makes no difference. 61 I.C. 807=6 P.L.J. 273=1921 P. 166 (2). Once a guardian is appointed a minor does not attain majority till the completion of 21 years even if the guardian is discharged before the minor is 18 years of age. Per *Das, J.*—An order appointing a guardian is not evidence of his age. 5 Pat.L.J. 460=57 I.C. 333=1921 P. 69. A Muslim girl who has attained her puberty, is competent to sue for dissolution of her marriage without a next friend although she is below the age of majority prescribed under S. 3 of the Act. To institute a suit for dissolution of marriage is clearly "to act in the matter of marriage" within the meaning of S. 2. 50 C.W.N. 689.

1. [*Commencement.*] *Rep. by the Repealing and Amending Act (X of* 1914).

Definitions.

2. In this Act the expression "Native Christian" has the same meaning as in the Indian Christian Marriage Act, 1872.

Validation of irregular marriages.

3. All marriages which have already been solemnized under Part VI of the Indian Christian Marriage Act, 1872, between persons of whom one only was a Native Christian, shall be as good and valid in law as if such marriages had been solemnized between persons of whom both were Native Christians;

Provided that nothing in this section shall apply to any marriage which had been judicially declared to be null and void, or to any case where either of the parties has, since the solemnization of such marriage and prior to the commencement of this Act, contracted a valid marriage.

Validation of records of irregular marriages.

4. Certificates of marriages which are declared by the last foregoing section to be good and valid in law, and register-books, and certified copies of true and duly authenticated extracts therefrom, deposited in compliance with the law for the time being in force, in so far as the register-books and extracts relate to such marriages as aforesaid, shall be received as evidence of such marriages as if such marriages had been solemnized between persons of whom both were Native Christians.

Application of Act to marriages under Act V of 1865.

5. References in this Act to the Indian Christian Marriage Act, 1872, shall, so far as may be requisite, be construed as applying also to the corresponding portions of the Indian Marriage Act, 1865.[1]

Penalty for solemnizing irregular marriages.

6. If any person licensed under section 9 of the said Act to grant certificates of marriage between Native Christians shall at any time after the commencement of this Act solemnize or affect to solemnize any marriage under Part VI of the said Act or grant any such certificate as therein mentioned, knowing that one of the parties to such marriage or affected marriage was at the date of such solemnization not a Christian, he shall be liable to have his licence cancelled, and in addition thereto he shall be deemed to have been guilty of an offence prohibited by section 73 of the said Act, and shall be punishable accordingly.

THE MARRIED WOMEN'S PROPERTY ACT (III OF 1874).[2]

Year.	No.	Short title.	Amendments.
1874	III	The Married Women's Property Act.	Repealed in part XII of 1876; VI of 1888, S. 9; XII of 1891; XXXIX of 1925. Amended, XXXVIII of 1920; XIII of 1923; XVIII of 1927; XXI of 1929.

[*24th February,* 1874.

An Act to explain and amend the law relating to certain married women, and for other purposes.

WHEREAS it is expedient to make such provision as hereinafter appears

LEG. REF.

1 Repealed (except as to Straits Settlements) by Act XV of 1872.

2 For the Statement of Objects and Reasons, see *Gazette of India,* 1873, Pt. V, p. 457; for proceedings in Council, see *ibid.*, Extra Supplements, dated 2nd August and 6th September, 1873, respectively, pp. 9 and 12; and *ibid.*, 1874, Supplement, p. 239.

Preamble.

for the enjoyment of wages and earnings by women married before the first day of January, 1866, and for insurances on lives by persons married before or after that day:

AND WHEREAS by the Indian Succession Act, 1865, section 4, it is enacted that no person shall by marriage acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property, which he or she could have done, if unmarried:

AND WHEREAS by force of the said Act all women to whose marriages it applies are absolute owners of all property vested in, or acquired by, them, and their husbands do not by their marriage acquire any interest in such property, but the said Act does not protect such husbands from liabilities on account of the debts of their wives contracted before marriage, and does not expressly provide for the enforcement of claims by or against such wives:

It is hereby enacted as follows:—

I.—Preliminary.

Short title.

1. This Act may be called THE MARRIED WOMEN'S PROPERTY ACT, 1874.

Extent and application.

2. It extends to the whole of British India, and, so far as regards [1][British subjects, to all Indian States].

But nothing herein contained applies to any married woman who at the time of her marriage professed the Hindu, Muhammadan, Buddhist, Sikh or Jaina religion, or whose husband, at the time of such marriage, professed any of those religions.

And the [2][Provincial Government] may from time to time, by order, either retrospectively from the passing of this Act or prospectively, exempt from the operation of all or any of the provisions of this Act the members of any race, sect or tribe, or part of a race, sect or tribe, to whom [3][it] may consider it impossible or inexpedient to apply such provisions.

The [2][Provincial Government] may also revoke any such order, but not so that the revocation shall have any retrospective effect.

All orders and revocations under this section shall be published in the Official Gazette.

[4][* * * * *].

3. [*Commencement.*] *Rep. by the Repealing Act (XII of* 1876).

II.—Married Women's Wages and Earnings.

Married women's earnings to be their separate property.

[5]4. The wages and earnings of any married woman acquired or gained by her after the passing of this Act, in any employment, occupation or trade carried on by her and not by her husband,

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LEG. REF.

[1] Substituted by A.O., 1937, for "subjects of Her Majesty to the dominions of Princes and States in India in alliance with Her Majesty".

[2] Substituted by A.O., 1937, for "Local Government" which was substituted for "Governor-General in Council" by Act XXXVIII of 1920, S. 2 and Sch. I.

[3] Substituted by A.O., 1937, for "he".

[4] Last para. omitted by Act XXXIX of 1925, S. 392 and Sch. IX.

[5] *Cf.* the Married Women's Property Act, 1870 (33 & 34 Vict., c. 93), S. 1, now repealed by the Married Women's Property Act, 1882 (45 & 46 Vict., c. 75).

SEC. 1: APPLICATION.—The Married Women's Property Act whether not applicable to Hindus. *See* 35 M. 162=10 I.C. 263. But *see also* 37 B. 471=15 Bom.L.R. 320; 25 M.L.J. 65=37 M. 483 (F.B.); nor to contracts made before the Act. 13 Bom.L.R. 383=22 W.R. 175. Act applies to persons having an English as well as those having an Indian domicile. 12 C. 522; 4 C. 140. Applicability to Buddhists. *See* 20 C.L.J. 44 =18 C.W.N. 1335.

SECS. 2 AND 6.—[*See also* cases cited under S. 6] S. 6 applies to a policy of insurance effected by a Hindu male for the benefit of his wife or his children or of his wife and children or any of them. The words "for the benefit of his wife or his wife and children or any of them" mean "for the benefit of his wife or of his children or any

and also any money or other property so acquired by her through the exercise of any literary, artistic or scientific skill,

and all savings from and investments of such wages, earnings and property,

shall be deemed to be her separate property, and her receipts alone shall be good discharges for such wages, earnings and property.

III.—Insurance by Wives and Husbands.

Married women may effect policy of insurance.

[1]5. Any married woman may effect a policy of insurance on her own behalf and independently of her husband; and the same and all benefit thereof, if expressed on the face of it to be so effected, shall enure as her separate property, and the contract evidenced by such policy shall be as valid as if made with an unmarried woman.

Insurance by husband for benefit of wife.

[2]6. [3][(1)] A policy of insurance effected by any married man on his own life, and expressed on the face of it to be for the benefit of his wife, or of his wife and children, or any of them, shall enure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband, or to his creditors, or form part of his estate.

LEG. REF.

[1] *Cf.* the Married Women's Property Act, 1870 ((33 & 34 Vict., c. 93), S. 10, para. 1.

[2] *Cf.* the Married Women's Property Act, 1870 (33 & 34 Vict., c. 93), S. 10, para. 2.

[3] Re-numbered by S. 2 of Act XIII of 1923.

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of them" "Married woman" in S. 2 does not apply to a daughter of the assured, even if she is married 37 M. 483=25 M L J. 65 (F.B.).

SEC 6.—[*See also* cases cited under Ss. 1 and 2, *supra*.] S. 2 of Act XIII of 1923 declares that the provisions of S. 6 of the Married Women's Property Act of 1874 shall apply in the case of any policy effected by any Hindu in Madras after 31st December, 1913. It does not further enact that they shall not apply to policies effected before that date Those policies are governed by the old Act. 52 M. 936= 1929 M. 825=57 M.L.J. 793 The Act does not apply to Hindus. A Hindu wife cannot claim the benefit of its provision. 37 B. 471=19 I.C. 736=15 Bom.L.R. 320. (*See* also cases cited under S. 1, *supra*.) S. 6 does not apply to a policy of assurance effected by a Hindu on his own life for the benefit of his wife and children, and the money due on it forms part of the estate of the deceased available for payment of his debts 20 C.L.J. 44=18 C.W.N. 1335=25 I C. 220 But *see also* 35 M. 162; 37 B. 471; 25 M.L J. 65=37 M. 483 (F.B.). Life insurance policy—Wife's claim as nominee of deceased husband. *See* 1928 C. 518=114 I.C. 658. The Act does not apply to Hindus. The Governor-General in Council has no power to exempt the Hindu, Mahomedan and Buddhist communities from the operation of the Act. 18 C W.N. 1335=20 C.L.J. 44. Act does not apply where a wife claims to recover the money due to her under a policy of life insurance as the nominee of her deceased husband. 1928 C. 518=47 C.L.J. 587=32 C.W.N. 634=55 C. 1315. Where a Hindu male insured his life "for the benefit of his wife and children" and died leaving a daughter, *held*, that S. 6 creates a trust in favour of the daughter and the amount of the policy is not available to the creditors, but in cases contemplated by S. 6 the beneficiaries have no cause of action apart from the Act. 25 M.L.J. 65=37 M. 483 (F.B.). But *see* 20 C.L.J. 44, *supra*. In order to constitute a trust "for the benefit of the wife" within the meaning of S. 6 of the Married Women's Property Act. it is not necessary that the words "for the benefit of the wife" or other words equivalent thereto should appear in the policy of insurance. If on a reading of the words used in the policy, it appears that the assured has intended, in the event of his death, that the policy should enure for the benefit of his wife, then the policy may be deemed to be for her benefit. 55 M. 171=1932 M 220= 62 M.L.J. 111. The word "policy" in S. 6 means a document or documents evidencing the contract between the parties and constituting the policy. If the document known as the "policy" stands alone, and does not incorporate in it any other document, only the "policy" can be looked at, but if it expressly incorporates another document, *e.g.*, where the policy contains a provision making the proposal and declaration of the assured part of the policy then such proposal or other document must be deemed and treated as part of the policy of insurance.

When the sum secured by the policy becomes payable, it shall, unless special trustees are duly appointed to receive and hold the same, be paid to the Official Trustee of the [1][Province] in which the office at which the insurance was effected is situate, and shall be received and held by him upon the trusts expressed in the policy, or such of them as are then existing.

LEG. REF.

[1] Substituted by A.O., 1937, for "Presidency".

The Court must therefore in such a case look to the proposal or declaration also to discover to whom the insurance money is payable in a case when the "policy" proper does not itself contain any words indicating to whom the money shall be paid. I.L.R. (1938) Mad. 909=1938 Mad. 604=(1938) 2 M.L.J. 22 (F.B.).

LIFE INSURANCE POLICY—BENEFIT RESERVED FOR WIFE—SUIT TO ENFORCE—FORM.—The plaintiff's husband had insured his life for her benefit with a certain company at Calcutta. The business of the said company was subsequently taken over by the defendant company. The insured subsequently obtained a loan from the defendants and he later on surrendered his policy on receipt of a certain amount. After her husband's death the plaintiff sued to recover the insurance amount on the ground that a trust had been created in her favour. She stated that the Official Trustee had refused to move in the matter unless she furnished funds. *Held*, that the contract having been completed in Calcutta, the proper person to sue was the Official Trustee of Bengal. *Held, further*, S. 59 of the Trusts Act had no application because it was not shown that the execution of the trust had become impracticable or that the Official Trustee had disclaimed trusteeship. 57 M. 536=1934 M. 264=66 M.L.J. 667. Before S. 6 (1) can apply to an insurance policy, the policy must be "expressed on the face of it to be for the benefit of his wife". A mere assignment of a policy in favour of the wife does not bring the policy within the terms of S. 6 (1) of the Act. There must be a declaration expressly incorporated in the policy to the effect that the policy was for the benefit of the wife of the assured, to bring within the purview of S. 6 (1). I.L.R. (1946) Kar. 154.

INSURANCE MONEY PAYABLE TO ASSURED—TRUST — ATTACHABILITY IN EXECUTION. —S. 6 applies to Mahomedans and would govern a policy effected by a Mahomedan male on his own life for the benefit of his children. A trust is therefore created in favour of the person or persons for whose benefit the policy is effected though the interest taken by them is contingent. Such interest may be transferred and may also be released by the beneficiaries as it is not in the nature of a mere right to sue. The effect of such release is to revoke the trust. 54 L.W. 544=1942 Mad. 136=(1941) 2 M.L.J. 740. Where a policy of life assurance is expressed to be for the benefit of and to be payable to the assured or his wife if the assured predeceased his wife, no trust is created in favour of the wife at once. There is no vested interest in the wife until the happening of the event contemplated by the policy, namely, the death of the husband. The latter during his lifetime is not fettered by any trust in favour of his wife, as the trust would arise only on his death; and an assignment of the policy by him to a stranger during his lifetime is valid and enforceable against the wife on the death of the assured. 45 L.W. 480=(1937) 1 M.L.J. 735=1937 Mad. 645. *See also* I.L.R. (1946) Kar. 154. The circumstance that the benefit to the wife under a policy of insurance effected by the husband is of a contingent character, *i.e.*, depending on her surviving her husband if he died before the named date mentioned in the policy, does not prevent it from being a benefit under S. 6 of this Act. There will therefore arise a trust in favour of the wife under S. 6. I.L.R. (1937) M. 990=1937 M.W.N. 303=1937 Mad. 571=45 L.W. 616. An endowment policy on the life of the husband which nominates the wife to receive the amount payable in the event of the husband's death, falls within S. 6 of the Act, and creates a trust in favour of the wife. The fact that the wife's interest is rendered contingent by special provision in the nomination does not prevent or affect the creation of a valid trust. I.L.R. (1940) 1 Cal 64=44 C.W.N. 218=1940 Cal. 217. Where the money usder a policy of insurance is made payable to "self or wife," the words "self or wife" can be construed to mean that the policy is to be for the benefit of the assured or in the event of his death, before the policy matures, it is to be for the benefit of his wife. That is the only reasonable interpretation to be placed upon the words "self or wife"; there is therefore a trust created in favour of the wife of the assured in the event of the assured dying before the policy matures. And there can be a contingent trust under S. 6 of the Act. I.L.R. (1938) Mad. 909=1938 Mad. 604=(1938) 2 M.L.J. 22 (F.F.). Where a policy of life insurance effected by a person contained a statement that the amount due thereon should be paid to the assured at the expiry of the period of 15 years, or to his wife on the death of the assured if earlier, the policy must be taken to be for the benefit of the wife of

And in reference to such sum he shall stand in the same position in all respects as if he had been duly appointed trustee thereof by a High Court, under Act No. XVII of 1864 [1][*to constitute an Office of Official Trustee*], section 10.

Nothing herein contained shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of assurance which may have been effected with intent to defraud creditors.

[2][(2) Notwithstanding anything contained in section 2, the provisions of sub-section (1) shall apply in the case of any policy of insurance such as is referred to therein which is effected by any Hindu, Muhammadan, Sikh or Jain, in Madras, after the thirty-first day of December, 1913, or in any other part of British India, after the first day of April, 1923:

Provided that nothing herein contained shall affect any right or liability which has accrued or been incurred under any decree of a competent Court passed before the first day of April, 1923.]

LEG. REF.

[1] *See* now the Official Trustees Act (II of 1913).

[2] Inserted by Act XIII of 1923, S. 2.

the assured, although the *verba impissima* "the policy is for the benefit of the wife" are not to be found in the policy. A trust in favour of the wife attaches itself to the policy under S. 6 from the very moment of its birth, although the wife is not entitled to claim anything under the policy unless and until the event referred to in the policy happens It is not open to a creditor of the assured to treat it as the property of the assured. I.L.R. (1938) Mad. 867=1938 Mad 413=(1938) 1 M.L.J. 281. Where there is no mention in the policy itself that it was for the benefit of the wife and children but there is a statement in the proposal form that the object of the policy was for "family provision," such statement is not sufficient to bring the policy within the ambit of S. 6. Most married men taking out insurance policies on their lives payable only at death do so with the intention of making provision for their family, but it does not follow that they intend to divest themselves of all interest in the policy and to create an irrevocable trust in favour of the wife or children. I L.R. (1940) Nag. 509=1938 Nag. 321. A policy of life assurance contained the words "to the person or persons legally entitled thereto" against the column in the policy headed "to whom payable" The object of the policy as stated in the application by the assured was "for the maintenance of the family." *Held*, that no trust was created in favour of the wife and children of the assured in respect of the amount payable under the policy as the requirements of the section had not been fulfilled; that the word "family" in the application was much wider than the words "wife and children", who alone, under S. 6 of this Act, could be the proper objects of the trust; that the policy alone and not the application for the issue of the policy was the document to be looked at for purposes of the Act; and that consequently the amount due under the policy could be attached after the death of the assured for a debt due by him. 1936 M. 635 =71 M.L.J. 39. The sum payable under an insurance policy was payable at death or at fifty-five to the insured, but in the event of his death before his wife, it was to go to the wife, and failing his wife, to the insured, his executors etc. The insured having died before he reached fifty-five: *Held* that the policy formed part of his estate, and the amount could be attached in execution of a decree against the deceased. 58 B. 513=36 Bom. L R. 608=1934 B. 296.

OFFICIAL TRUSTEE.—S. 6 does not at all require as a condition precedent to the creation of a trust in favour of the wife that the money should be made payable to the Official Trustee. The object of the section is to create a valid trust in respect of the policy moneys without any trust deed or any other document being executed either in favour of the beneficiary or in favour of a trustee and without any trustee being nominated. The fact that the insured has not named a trustee whether such trustee be the Official Trustee or not is no ground for holding that the money made pavable to a wife is not for her benefit. 32 S L.R. 138=1938 Sind 20. Under S. 6 (1), para. 2 of the Act the Official Trustee, unless other trustees are appointed, is the person to receive the proceeds of an insurance policy and he is bound to hold it upon the trusts created. I.L.R. (1939) 2 Cal. 526 =1940 Cal 169. The Official Trustee, mentioned in S. 6 of the Act is not the legal person referred to in the Official Trustees Act of 1913, who is a corporation sole. The Official Trustee referred to in S. 6, who was appointed under the provisions of S 10 of the Act, XVII of 1864, has altogether disappeared. That Office no longer exists and to that extent the provisions of S. 6 of this Act cannot be put into operation. The result is that to enforce the provisions of that section with regard to any policy which is issued under it, trustees must be appointed either by deed executed by the husband in his lifetime, or by the Court under the

IV.—Legal Proceedings by and against Married Women.

[1]7. A married woman may maintain a suit in her own name for the recovery of property of any description which, by force of the said Indian Succession Act, 1865, or of this Act, is her separate property; and she shall have, in her own name, the same remedies, both civil and criminal, against all persons, for the protection and security of such property, as if she were unmarried, and she shall be liable to such suits, processes, and orders in respect of such property as she would be liable to if she were unmarried.

Married women may take legal proceedings.

8. If a married woman (whether married before or after the first day of January, 1866), possesses separate property, and if any person enters into a contract with her with reference to such property, or on the faith that her obligation arising out of such contract will be satisfied out of her separate property, such person shall be entitled to sue her, and, to the extent of her separate property, to recover against her whatever he might have recovered in such suit had she been unmarried at the date of the contract and continued unmarried at the execution of the decree:

Wife's liability for post-nuptial debts.

[2][Provided that nothing herein contained shall—

(*a*) entitle such person to recover anything by attachment and sale or otherwise out of any property which has been transferred to a woman or for her benefit on condition that she shall have no power during her marriage, to transfer or charge the same or her beneficial interest therein, or

(*b*) affect the liability of a husband for debts contracted by his wife's agency expressed or implied.]

V.—Husband's liability for Wife's debts.

[3]9. A husband married after the thirty-first day of December, 1865, shall not, by reason only of such marriage, be liable to the debts of his wife contracted before marriage, but the wife shall be liable to be sued for, and shall, to the

Husband not liable for wife's ante-nuptial debts.

LEG. REF.

[1] *Cf.* the Married Women's Property Act, 1870 (33 and 34 Vict , c. 93), S. 11 repealed by Act, 1882 (45 and 46 Vict., c. 75).

[2] Substituted by Act XXI of 1929, S. 2 for old proviso which stood as follows: "Provided that nothing herein contained shall affect the liability of a husband for debts contracted by his wife's agency, express or implied [or render a married woman liable to arrest or to imprisonment in execution of a decree]". The words in brackets omitted by Act VI of 1888, S. 9.

[3] *Cf.* the Married Women's Property Act, 1870 (33 and 34 Vict., c. 93), S. 12.

(SECTION AS AMENDED IN 1923), S. 6 (2): CONSTRUCTION AND SCOPE—POLICIES EFFECTED BEFORE 1913.—S 6 as amended in 1923 would apply to a policy effected before 1913. Sub-S (2) of S. 6 which was added by the amending Act of 1923 cannot be construed as a declaratory enactment declaring what the previous law was, and therefore from the positive nature of the enactment that from a particular date the Act should apply, it does not arise by necessary implication that the Act would not apply to a policy effected before that date. 54 L.W. 544=(1941) 2 M L J. 740=1942 Mad. 136.

SEC. 7.—*See* 1 C. 285; 4 C. 140; 30 M. 378; 18 M. 19; 10 C.L.R. 536.

powers which it has to appoint trustees under the Indian Trusts Act. It is not, therefore, necessary to appoint the Official Trustee, that is to say, the holder of the Office created under the provisions of the Official Trustees Act of 1913. Nor is it necessary for the Court to appoint more than one trustee, as there is nothing in the Act providing that any number of trustees must be appointed. 41 C.W.N. 517=I.L.R. (1937) 2 Cal. 67=1937 Cal. 379. *See also* I.L.R. (1939) 2 Cal. 526=1940 Cal. 169.

SEC. 8.—*See* 11 B. 348. Under S. 8 apart altogether from the proviso introduced by S. 2 of Act XXI of 1929, before a creditor can obtain a decree against a married woman on her contracts much more has to be done than mere proof of the contract and breach. The question in each case is whether the contract of the married woman was at all covered by the operative part of the section. I.L.R. (1938) 2 Cal. 233=42 C.W.N. 577=1938 Cal. 486. Under the Proviso to S. 8, a contract entered into with a married woman after April, 1930, cannot ope-

extent of her separate property, be liable to satisfy such debts as if she had continued unmarried:

Proviso.

Provided that nothing contained in this section shall [1][1 * *] invalidate any contract into which a husband may, before the passing of this Act, have entered in consideration of his wife's ante-nuptial debts.

[2][*VI.—Husband's liability for Wife's breach of trust or devastation.*

Extent of husband's liability for wife's breach of trust of devastation.

10. Where a woman is a trustee, executrix or administratrix, either before or after marriage, her husband shall not, unless he acts or intermeddles in the trust or administration, be liable for any breach of trust committed by her, or for any misapplication, loss or damage to the estate of the deceased caused or made by her, or for any loss to such estate arising from her neglect to get in any part of the property of the deceased.]

INDIAN MARINE ACT.

[*Repealed by the Indian Navy Discipline Act, XXXIV of* 1934.]

THE MEASURES OF LENGTH ACT (II OF 1889).

[*Amended by Act XXIV of* 1934.]

[15*th February*, 1889.

An Act to declare the Imperial standard yard for the United Kingdom to be the legal standard measure of length in British India.

WHEREAS it is expedient to declare the Imperial standard yard for the United Kingdom to be the legal standard measure of length in British India: It is hereby enacted as follows:—

Title, extent and commencement.

1. (1) This Act may be called THE MEASURES OF LENGTH ACT, 1889.

(2) It extends to the whole of British India; and

(3) It shall come into force on such day[3] as the Central Government may appoint in this behalf.

Standard yard

2. The Imperial standard yard for the United Kingdom shall be the legal standard measure of length in British India and be called the standard yard.

Measure for determining length of standard yard.

3. A copy, approved by the [4][Provincial Government] of the imperial standard for determining the length of the imperial standard yard for the United Kingdom shall be kept in such place within the limits of the [5][Province] as the [4][Provincial Government] may prescribe,[6] and shall be the standard for determining the length of the standard yard:

[7][Provided that, until action is taken by the Provincial Government under this section, the copy of the imperial standard yard approved by the Central Government before the commencement of Part III of the Government of India

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LEG. REF.

[1]The words "affect any suit instituted before the passing of this Act, nor" omitted by Act XII of 1891.

[2]Inserted by Act XVIII of 1927, S. 3

[3]Came into force on 15th June, 1889.

[4]Substituted for 'Governor-General in Council' by A.O., 1937.

[5]Substituted for 'Town of Calcutta' by *ibid.*

[6]For notification prescribing such a place, *see* Genl. Stat. R. & O., Vol. II.

[7]Inserted by A.O., 1937.

late against separate property settled upon her without power of anticipation although such settlement was prior to 1930. 42 C.W.N. 577 The proviso added to S. 8 saves the effect of restraint. But the effective provisions of the Act have not been amended. 42 C.W.N. 577=I.L.R. (1938) 2 Cal. 233.

Act, 1935, and kept in the place within the limits of the Town of Calcutta prescribed before that date by the Central Government, shall be the standard for determining the length of the standard yard in each Province.]

Standard foot and inch.

4. One-third part of the standard yard shall be called a standard foot, and one-thirty-sixth part of such a yard shall be called a standard inch.

Presumption in favour of accuracy of certified measures.

5. Any measure having stamped thereon or affixed thereto a certificate purporting to be made [1][before the first day of April, 1937, under the authority of any Government in British India or on or after that date under the authority of the Provincial Government] and stating that the measure is of the length of the standard yard or that a measure marked thereon as a foot or inch is of the lentgh of the standard foot or standard inch, as the case may be, shall, when produced before any Court by any public servant having charge of the measure in pursuance of any direction, published in an official Gazette [1][by order of the Provincial Government], or by any person acting under the general or special authority of such a public servant, be deemed to be correct until its inaccuracy is proved.

Inspection of certified measures by the public.

6. A public servant having in pursuance of such a direction charge of such a measure as is mentioned in the last foregoing section shall allow any person to inspect it free of charge at all reasonable times and to compare there with or with any measure marked thereon any measure which such person may have in his possession.

Certified measures to be kept by authorities required by existing enactments to keep measures of length.

7. There shall be kept by the Commissioner of Police in the Town of Calcutta under section 55 of the Calcutta Police Act, 1866, [2][* ** *] by the Commissioner of Police in the City of Madras under section 32 of the Madras City Police Act, 1888, by the Municipal Commissioner in the City of Bombay under section 418 of the City of Bombay Municipal Act, 1888 and by the District Magistrate under section 20 of Regulation XII of 1827 of the Bombay Code, such certified measures of the standard yard, standard foot and standard inch as are mentioned in section 5.

THE INDIAN MEDICAL COUNCIL ACT (XXVII OF 1933).

Year.	No.	Short title.	Amendment.
1933	XXVII	The Indian Medical Council Act, 1933.	Amended by Acts V of 1934 and XXXVI of 1947.

[23*rd September*, 1933.

An Act to constitute a Medical Council in India.

WHEREAS it is expedient to constitute a Medical Council in India in order to establish a uniform minimum standard of higher qualifications in medicine for all provinces; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Act may be called THE INDIAN MEDICAL COUNCIL ACT, 1933.

(2) It extends to the whole of British India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

LEG. REF.

[1] Substituted by A.O., 1937.

[2] Omitted by Act XXIV of 1934.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) [1]["British Indian University" means any university in British India established by an Indian law and having a medical faculty];

(*b*) "the Council' means the Medical Council of India constituted under this Act;

(*c*) "medical institution" means any institution, within or without British India, which grants decrees, diplomas or licences in medicine;

(*d*) "medicine" means modern scientific medicine and includes surgery and obstetics, but does not include veterinary medicine and surgery;

(*e*) "Provincial Medical Council" means a medical council constituted under an Act of [2][a local or Provincial Legislature] to regulate the registration of medical practitioners;

(*f*) "Provincial Medical Register" means a register maintained under an Act of [2][a Local or Provincial Legislature] to regulate the registration of medical practitioners;

(*g*) "recognised medical qualification" means any of the medical qualifications included in the First and Second Schedules; and

(*h*) "Regulation" means a Regulation made under section 18.

Constitution and composition of the Council.

3. (1) The Central Government shall cause to be constituted a Council consisting of the following members, namely:—

(*a*) one member from each Governor's province, to be nominated by [3][the Central Government];

(*b*) one member from each British Indian University, to be elected by the members of the Senate of the University (or [4][in case the University has no Senate by the members of the Court] [5][* * * * * * *]) from amongst the members of the medical faculty of the university; [5][* * * *].

(*c*) one member from each province where a Provincial Medical Register is maintained, to be elected from amongst themselves by persons enrolled on the Register who possess recognised medical qualifications or medical qualifications granted by a British Indian University; and

(*d*) [6][four] members to be nominated by the Central Government.

(2) The President of the Council shall be elected by the members of the Council from amongst themselves:

Provided that for four years from the first constitution of the Council the President shall be a person nominated by the Central Government who shall hold office during the pleasure of the Central Government and, where he is not already a member, shall be a member of the Council in addition to the members prescribed in sub-section (1).

(3) No act done by the Council shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Council.

Mode of election.

4. (1) An election under clause (*b*) or clause (*c*) of sub-section (1) of section 3 shall be conducted by the [7][Central Government], in such manner as it may think fit. [8][* *]

(2) Where any dispute arises regarding any election to the Council, it shall be referred to the [7][Central Government] whose decision shall be final

LEG. REF.

[1] Substituted by A.O., 1937.

[2] Substituted by A.O., 1937, for "a local legislature".

[3] Substituted by A.O., 1937, for "the Local Government of the Province".

[4] Substituted by Act XXXVI of 1947.

[5] Omitted by A.O. 1937.

[6] Substituted by A.O., 1937, for "three".

[7] Substituted by A.O., 1937, for "Local Government".

[8] Words "subject to any instructions the Governor-General in Council may issue in this behalf" omitted by A.O., 1937.

Restrictions of nominations and elections.

5. (1) No person shall be eligible for nomination or election under clause (*a*) or (*b*) of sub-section (1) of section (3) unless he possesses a recognised medical qualification or a medical qualification granted by a British Indian University.

(2) No person shall be eligible for nomination under clause (*a*) of sub-section (1) of section 3 unless he resides in the province concerned, and, where a Provincial Medical Register is maintained in that province, unless he is enrolled on that register.

(3) No person shall be eligible for election under clause (*b*) of sub-section (1) of section 3 unless he has had at least four years' experience as a Professor, Assistant Professor, Lecturer or Reader in Medical Colleges or Schools.

(4) No person may at the same time serve as a member in more than one capacity.

Incorporation of the Council.

6. The Council so constituted shall be a body corporate by the name of the Medical Council of India, having perpetual succession and a common seal, with power to acquire and hold property both movable and immovable, and to contract, and shall by the said name sue and be sued.

Term of office.

7. (1) An elected President shall hold office for a term not exceeding five years and not extending beyond the expiry of the term for which he has been nominated or elected to be a member of the Council.

(2) A member, other than a nominated President, shall hold office for the term of five years from the date of his nomination or election or until his successor shall have been duly nominated or elected, whichever is longer.

(3) Where the said term of five years is about to expire in respect of any member, his successor may be nominated or elected at any time within three months before the said term expires, but shall not assume office until the said term has expired.

Meetings of the Council.

8. (1) The Council shall hold its first meeting at such time and place as may be appointed by the [Central Government] and thereafter the Council shall meet at least once in each year at such time and place as may be appointed by the Council.

(2) Until otherwise provided by Regulations, ten members of the Council shall form a quorum, and all the acts of the Council shall be decided by a majority of the members present and voting.

Officers, Committees and servants of the Council.

9. (1) The Council shall—

(*a*) elect from amongst its members a vice-President;

(*b*) constitute from amongst its members an Executive Committee, and such other Committees for general or special purposes as the Council deems necessary to carry out the purposes of this Act;

(*c*) appoint a Secretary, who may also, if deemed expedient, act as Treasurer;

(*d*) appoint or nominate such other officers and servants as the Council deems necessary to carry out the purposes of this Act;

(*e*) require and take from the Secretary, or from any other officer or servant, such security for the due performance of his duties as the Council deems necessary: and

(*f*) with the previous sanction of the [Central Government] fix the remuneration and allowances to be paid to the President, Vice-President, members, officers and servants of the Council.

(2) Notwithstanding anything contained in clause (*c*) of sub-section (1), for the four years from the commencement of this Act, the Secretary of

the Council shall be be a person appointed by the [Central Government], who shall hold office during the pleasure of the [Central Government].

The Executive Committee.

10. (1) The Executive Committee shall consist of seven members, of whom five shall be elected by the Council from amongst its members.

(2) The President and Vice-President of the Council shall be members *ex officio* of the Executive Committee, and shall be President and Vice-President, respectively, of that Committee.

(3) In addition to the powers and duties conferred and imposed upon it by this Act, the Executive Committee shall exercise and discharge such powers and duties as the Council may confer or impose upon it by any Regulations which may be made in this behalf.

Recognition of medical qualifications granted by medical institutions in British India.

11. (1) The medical qualifications granted by medical institutions in British India which are included in the First Schedule shall be recognised medical qualifications for the purposes of this Act.

(2) Any medical institution in British India which grants a medical qualification not included in the First Schedule may apply to the [Central Government] to have such qualification recognised, and the [Central Government] after consulting the Council, may, by notification in the [Official Gazette] amend the First Schedule so as to include such qualification therein.

(3) Such notification may also direct than an entry shall be made in the last column of the First Schedule against sech medical qualification declaring that it shall be a recognised medical qualification only when granted after a specified date.

(4) The Council shall, as soon as may be and without application being made, make all necessary arrangements for the inspection of the medical courses and examinations of the Universities of Patna [1][* * *] and Andhra, and shall submit their recommendations to the [Central Government] regarding the inclusion in the First Schedule of the medical qualifications granted by these Universities.

Non-Indian qualifications in Second Schedule to be recognised.

12. The medical qualifications granted by medical institutions outside British India which are included in the Second Schedule shall be recognised medical qualifications for the purposes of this Act, and shall be sufficient qualification for enrolment on any Provincial Medical Register.

Transitory arrangements for modifying the Second Schedule.

13. (1) At any time during the period of four years after the commencement of this Act the Council may enter into negotiations with the authority in any State or country outside British India which is entrusted by the law of such State or country with the maintenance of a register of medical practitioners, for the settling of a scheme of reciprocity for the recognition of medical qualifications, and the course of such negotiations shall be reported to the [Central Government] along with the decisions of the Council to recognise or to refuse to recognise the medical qualifications proposed by such authority for recognition in British India.

(2) In so far as the decisions of the Council to recognise medical qualifications are accepted by the [Central Government], they shall be embodied in a resolution and published in the [Official Gazette], and such resolution shall

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LEG. REF.

[1] Word "Rangoon" omitted by A.O., 1937.

specify or indicate with sufficient accuracy all medical qualifications finally approved for recognition in British India:

Provided that where any such resolution specifies or indicates a medical qualification which is not included in the Second Schedule, the [Central Government] may, by notification in the [Official Gazette], amend the Second Schedule so as to include such qualification therein, and such amendment may further direct that such qualification shall be deemed to be a recognised medical qualification for the purposes of this Act only when granted after a specified date.

(3) Within one month before the expiry of the period of four years from the commencement of this Act, the [Central Government] shall frame a schedule to include all medical qualifications which have been specified or indicated by [1][it] in resolutions made under sub-section (2), and shall publish the said schedule in the [Official Gazette], and such schedule shall be substituted for the Second Schedule with effect from the expiry of the said period of four years, and shall then have force as if it had been enacted in this Act:

Provided that the [Central Government] shall include in the said schedule all medical qualifications included in the Second Schedule which were granted before the expiry of the said period of four years.

Permanent arrangements for modifying the Second Schedule.

14. (1) At any time after the expiry of the period of four years after the commencement of this Act, the Council may complete or may enter into negotiations with the authority in any State or country outside British India which by the law of such State or country is entrusted with the maintenance of a register of medical practitioners, for the settling of a scheme of reciprocity for the recognition of medical qualifications, and in pursuance of any such scheme the [Central Government] may, by notification in the [Official Gazette], amend the Second Schedule so as to include therein any medical qualification which the Council has decided should be recognised.

(2) Such notification may also direct that an entry shall be made in the last column of the First Schedule against such medical qualification declaring that it shall be a recognised medical qualification only when granted after a specified date.

(3) The [Central Government], after consultation with the Council, may, by notification in the [Official Gazette], amend the Second Schedule by directing that an entry be made therein in respect of any medical qualification declaring that it shall be a recognised medical qualification only when granted before a specified date.

(4) Where the Council has refused to recognise any medical qualification which has been proposed for recognition by any such authority, that authority may apply to the [Central Government], and the [Central Government], after considering such application and after consulting the Council, may, by notification in the [Official Gazette], amend the Second Schedule so as to include such qualification therein, and the provisions of sub-section (2) shall apply to such notification.

Power to require information as to courses of study and examinations.

15. Every medical institution in British India which grants recognised medical qualification shall furnish such information as the Council may from time to time, require as to the courses of study and examinations to be undergone in order to obtain such qualification, as to the ages at which such courses of study and examinations are required to be undergone

LEG. REF.

[1] Substituted by A.O., 1937, for "him".

and such qualification is conferred, and generally as to the requisites for obtaining such qualification.

Inspection of examinations.

16. (1) The Executive Committee shall appoint such number of medical inspectors as it may deem requisite to attend at any or all of the examinations held by medical institutions in British India for the purpose of granting recognised medical qualifications.

(2) Inspectors appointed under this section shall not interfere with the conduct of any examination, but they shall report to the Executive Committee on the sufficiency of every examination which they attend and on any other matters in regard to which the Executive Committee may require them to report.

(3) The Executive Committee shall forward a copy of any such report to the medical institution concerned, and shall also forward a copy, with the remarks of such institution thereon, to the [Central Government].

Visitors at examinations.

[1][**16-A.** (1) The Council may appoint such number of visitors as it may deem requisite to attend at any or all of the examinations held by medical institutions in British India for the purpose of granting recognized medical qualifications.

(2) Any person, whether he is a member of the Council or not, may be appointed as a visitor under this section; but a person who is appointed as an inspector under section 16 for any examination shall not be appointed as a visitor for the same examination.

(3) Visitors appointed under this section shall not interfere with the conduct of any examination, but they shall report to the President of the Council on the sufficiency of every examination which they attend and on any other matters in regard to which the Council may require them to report.

(4) The report of a visitor shall be treated as confidential unless in any particular case the President of the Council otherwise directs.]

Withdrawal of recognition.

17. (1) When, upon report by the executive Committee [1][or by a visitor appointed under section 16-A] it appears to the Council that the courses of study and examination to be gone through in any medical institution in British India in order to obtain a recognised medical qualification or that the standards of proficiency required from candidates at any examination held for the purpose of granting such qualification are not such as to secure to persons holding such qualification the knowledge and skill requisite for the efficient practice of medicine, the Council shall make a representation to that effect to the [Central Government].

(2) After considering such representation, the [Central Government] may send it to the [Provincial Government] of the province in which the medical institution is situated, and the [Provincial Government] shall forward it, along with such remarks as it may choose to make, to the medical institution, with an intimation of the period within which the medical institution may submit its explanation to the [Provincial Government].

(3) On the receipt of the explanation or, where no explanation is submitted within the period fixed, then on the expiry of that period, the [Provincial Government] shall make its recommendations to the [Central Government].

(4) The [Central Government], after making such further inquiry, if any, as [2][it] may think fit, may, by notification in the [Official Gazette], direct that an entry shall be made in the First Schedule against the said medical qualification declaring that it shall be a recognized medical qualification only when granted before a specified date.

LEG. REF.

[1] Inserted by Act IV of 1942.

[2] Substituted by A.O., 1937, for "he".

Power to make regulations.

18. (1) The Council may, with the previous sanction of the [Central Government], make Regulations generally to carry out the purposes of this Act, and, without prejudice to the generality of this power, such Regulations may provide for—

(*a*) the management of the property of the Council;

(*b*) the summoning and holding of meetings of the Council, the times and place where such meetings are to be held, the conduct of business thereat and the number of members necessary to constitute a quorum;

(*c*) the resignation of members of the Council and the filling of casual vacancies;

(*d*) the powers and duties of the President and Vice-President;

(*e*) the mode of appointment of the Executive Committee and other Committees, the summoning and holding of meetings, and the conduct of business of such Committees;

(*f*) the tenure of office, and the powers and duties of the Secretary and other officers and servants of the Council;

(*g*) the appointment, powers, duties and procedure of medical [1][inspectors and visitors]; and

(*h*) any matter for which under this Act provision may be made by Regulations.

(2) Until the first Council is constituted under this Act, any Regulations which may be made under sub-section (1) may be made by the [Central Government] and any Regulation so made may be altered or rescinded by the Council in exercise of its powers under sub-section (1).

Information to be furnished by Council and publication thereof.

19. (1) The Council shall furnish such reports copies of its minutes, abstracts of its accounts, and other information to the [Central Government] as [2][it] may require.

(2) The [Central Government] may publish, in such manner as [2][it] may think fit, any report, copy, abstract or other information furnished to [3][it] under this section or under section 16.

Commissions of inquiry.

20. (1) Whenever it is made to appear to the [Central Government] that the Council is not complying with any of the provisions of this Act, the [Central Government] may refer the particulars of the complaint to a Commission of Inquiry consisting of three persons, two of whom shall be appointed by the [Central Government] one being a Judge of a High Court established by Letters Patent of the Crown, and one by the Council; and such Commission shall proceed to inquire in a summary manner and to report to the [Central Government] as to the truth of the matters charged in the complaint, and in case of any charge of default or of improper action being found by the Commission to have been established, the Commission shall recommend the remedies, if any, which are in its opinion necessary.

(2) The [Central Government] may require the Council to adopt the remedies so recommended within such time as, having regard to the report of the Commission, [2][it] may think fit; and if the Council fails to comply with any such requirement, the [Central Government] may amend the Regulations of the Council, or make such provision or order or take such other steps as may seem necessary to give effect to the recommendations of the Commission.

(3) A Commission of Inquiry shall have power to administer oaths, to enforce the attendance of witnesses and the production of documents, and shall

LEG. REF.

[1] Substituted by Act IV of 1942.

[2] Substituted by A.O., 1937, for "he".

[3] Substituted by A.O., 1937, for "him".

have all such other necessary powers for the purpose of any inquiry, conducted by it as are exercised by a Civil Court under the Code of Civil Procedure, 1908.

THE FIRST SCHEDULE.

(*See Section* 11.)

Recognised medical qualifications granted by medical institutions in British India.

Medical Institution.	Recognised medical qualification.	Abbreviation for Registration.
University of Allahabad.	Bachelor of Medicine and Bachelor of Surgery ..	M.B., B.S., All,
University of Bombay.	Licentiate in Medicine and Surgery ..	L.M.S., Bom.
	Bachelor of Medicine and Bachelor of Surgery .	M.B., B.S., Bom.
	Doctor of Medicine ..	M.D., Bom.
	Master of Surgery ..	M.S., Bom.
University of Calcutta,	Licentiate in Medicine and Surgery ..	L.M.S., Cal.
	Bachelor of Medicine ...	M.B., Cal.
	Doctor of Medicine ..	M.D., Cal.
	Master of Surgery ..	M.S., Cal.
	Master of Obstetrics ..	M.O., Cal
University of Lucknow.	Bachelor of Medicine and Bachelor of Surgery ..	M,B., B.S., Lucknow.
	[1][Doctor of Medicine ..	M.D., Luck now.
	Master of Surgery ..	M.S. Luck now].
University of Madras.	Licentiate in Medicine and Surgery ..	L.M.S. Mad.
	Bachelor of Medicine and Master of Surgery ..	M.B., C.M., Mad.
	Bachelor of Medicine and Baehelor of Surgery ..	M.B.. B.S., Mad.
	Doctor of Medicine ..	M.D.. Mad.
	[2][Master of Surgery ..	M.S., Mad.]
Punjab University.	Licentiate in Medicine and Surgery ..	L.M.S., Pun.
	Bachelor of Medicine ..	M.B., Pun.
	[3][Bachelor of Medicine and Bachelor of Surgery.	M.B., B.S,, Pun.]
	Doctor of Medicine ..	M.D., Pun.
	Master of Surgery ..	M.S., Pun.
[4][University of Patna.	Bachelor of Medicine and Bachelor of Surgery ..	M.B.,B.S.. Patna]
	[5][Doctor of Medicine ..	M.D., Patna.]
	Master of Surgery ..	M.S., Patna.

THE SECOND SCHEDULE,

(*See section* 12.)

Recognised medical qualifications granted by medical institutions outside British India.

A. Registrable qualifications admitting primarily to the Medical Register granted by licensing bodies in the Unted Kingdom, as shown in Table (F) set out in the Medical

LEG. REF.

[1] Inserted by notification No. F. 34-16|34, dated the 23rd August, 1934, see *Gazette of India*, 1934, Pt. I, p. 973.

[2] Inserted by notification No. F. 43-25|37, dated the 11th November, 1937, see *Gazette of India*, 1937, Pt. I. p. 1813.

[3] Inserted by notification No. F. 43.3|36, dated the 31st March, 1936, see *Gazette of India*, 1936, Pt. I, p. 428.

[4] Inserted by notification No. F. 43-10|35, dated the 11th May, 1935, see *Gazette of India*, 1935, Pt. I, p. 656.

[5] Inserted by Notification No. 43-43.11|38, dated 5th May, 1938.

Register for 1931 printed and published under the direction of the General Council of Medical Education and Registration of the United Kingdom in pursuance of the Medical Acts 1858 and 1886.

B. Registrable qualifications granted by licensing bodies in British possessions, as shown in Table (I) set out in the said Medical Register, other than registrable qualifications granted by licensing bodies in India.

C. Registrable qualifications granted by licensing bodies in Foreign Countries, as shown in Table (J) set out in the said Medical Register.

THE INDIAN MEDICAL DEGREES ACT (VII OF 1916[1].

[*Amended by Madras Act XX of* 1940.]

[16*th March*, 1916.

An Act to regulate the grant of titles implying qualifications in western medical science, and the assumption and use by unqualified persons of such titles.

WHEREAS it is expedient to regulate the grant of titles implying qualifications in western medical science, and the assumption and use by unqualified persons of such titles;

It is hereby enacted as follows:—

Short title.

1. This Act may be called THE INDIAN MEDICAL DEGREES ACT, 1916.

Definition.

2. In this Act "western medical science" means the western methods of Allopathic medicine, Obstetrics and Surgery but does not include the Homeopathic or Ayurvedic or Unani system of medicine.

Right to confer degrees, etc.

3. The right of conferring, granting, or issuing in British India degrees, diplomas, licences, certificates or other documents stating or implying that the holder, grantee or recipient thereof is qualified to practise western medical science, shall be exercisable only by the authorities specified in the Schedule, and by such other authority as the [2][Provincial Government] may, by notification in the Official Gazette, and subject to such conditions and restrictions as [3][it] thinks fit to impose authorize in this behalf.

Prohibition of unauthorised conferment of degrees, etc.

4. Save as provided by section 3, no person in British India shall confer, grant, or issue, or hold himself out as entitled to confer, grant, or issue any degree, diploma, licence, certificate or other document stating or implying that the holder, grantee or recipient is qualified to practise western medical science.

Contravention of section 4.

5. Whoever contravenes the provisions of section 4 shall be punishable with fine which may extend to one thousand rupees; and, if the person so contravening is an association, every member of such association who knowingly and wilfully authorises or permits the contravention, shall be punishable with fine which may extend to five hundred rupees.

LEG. REF.

[1] For Statement of Objects and Reasons, see *Gazette of India*, 1915, Pt. V, p. 76; for Report of Sel. Com., see *ibid.*, 1916, Pt. V, p. 7; and for proceedings in Council, see *ibid.*, 1915, Pt. VI, p. 460; *ibid.*, 1916, Pt. VI, pp. 5 and 206.

[2] Substituted for 'Governor-General in Council' by A.O., 1937.

[3] Substituted for 'he' by *ibid.*

SECS. 4 AND 5.—Where the accused led people to believe that his college was an allopathic college and awarded certificates as allopathic diplomas and granted "M. M. B." degree, implying that the holder was qualified to practise western medical science, *held* that the accused was guilty under S. 5. 34 Cr.L.J. 603=37 C.W.N. 767=1933 C. 456. *See also* 1925 S. 71.

Penalty for falsely assuming or using medical titles.

6. Whoever voluntarily and falsely assumes, or uses any title or description or any addition to his name implying that he holds a degree, diploma, licence or certificate conferred, granted or issued by any authority referred to in section 3, or recognized by the General Council of Medical Education of the United Kingdom, or that he is qualified to practise western medical science, shall be punishable with fine which may extend to two hundred and fifty rupees, or, if he subsequently commits, and is convicted of, an offence punishable under this section, with fine which may extend to five hundred rupees:

Provided that nothing in this section shall apply to the use by any person of any title, description, or addition which, prior to the commencement of this Act, he used in virtue of any degree, diploma, licence or certificate conferred upon, or granted or issued to him.[1]

Cognizance of offences.

7. No Court shall take cognizance of an offence punishable under this Act except upon complaint made by order of the Provincial Government, or upon complaint made, with the previous sanction of the Provincial Government, by a Council of Medical Registration established by any enactment for the time being in force in the province.

Jurisdiction of Magistrates.

8. No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

SCHEDULE.

(*See Section* 3.)

1. Every University established by an [2][Act of the Central Leislature].
2. The state medical faculty in Bengal.

LEG. REF.

[1] Insertion of new S. 6-A by Madras Act XX of 1940.

"6-A. (1) No person shall add to his name any title, description, letters or abbreviations which imply that he holds a degree, diploma, licence or certificate as his qualification to practise any system of medicine unless—

(*a*) he actually holds such degree, diploma, licence or certificate; and

(*b*) such degree, diploma, licence or certificate—

(i) is recognized by any law for the time being in force in British India or in any part thereof; or

(ii) has been conferred, granted or issued by an authority referred to in section 3; or

(iii) has been recognized by the General Council of Medical Education of the United Kingdom; or

(iv) in cases not falling under sub-clause (*i*), sub-clause (*ii*) or sub-clause (*iii*) has been conferred, granted or issued by an authority empowered, or recognised as competent, by the Provincial Government to confer, grant or issue such degree, diploma, license or certificate.

(2) Whoever contravenes the provisions of sub-section (1) shall, notwithstanding anything contained in section 6 be punished in the case of a first conviction, with fine which may extend to two hundred and fifty rupees and in the case of a subsequent conviction, with fine which may extend to five hundred rupees".

[2] Substituted for 'Act of the Governor-General in Council" by A.O., 1937.

SEC. 6.—The plain meaning of S. 6 is that when a man voluntarily and falsely assumes or uses any title, etc., or any addition to his name he is liable to be dealt thereunder if the title or description or addition implies (*i*) that he holds a degree, etc., conferred by the authority referred to in S. 3 or the General Council of Medical Education of the United Kingdom or (*ii*) that he is qualified to practise western medical science. A.I.R. 1944 Lah. 384.

SECS. 6 AND 7.—A person was conducting a dispensary with a sign board which contained the initials M.D.B., L.M.H., attached to his name; they were contractions for Doctor of Biochemic Medicines and Licentiate of Homeopathic Medicines. He was convicted under S. 6. *Held*, the conviction was wrong inasmuch as the initials did not represent any degree, diploma, licence or certificate issued by any body or society referred to in the section. 25 Cr.L.J. 709 =81 I.C. 197=1925 S. 71. *See also* 143 I.C. 567=1933 C. 456. As to whether such a person could call himself a Doctor and escape liability under the section, *see* 25 Cr.L.J. 709=81 I.C. 197=1925 S. 71.

3. The College of Physicians and Surgeons of Bombay.
4. The Board of Examiners, Medical College, Madras.

THE MEDICAL DIPLOMAS ACT (XX III OF 1939).

[26*th September*, 1939.

An Act to make the provision referred to in sub-section (1) *of section* 120 *of the Government of India Act,* 1935.

WHEREAS it is expedient to make the provision relating to medical diplomas granted in the United Kingdom or Burma which is referred to in sub-section (1) of section 120 of the Government of India Act, 26, Geo. V, c. 2, 1935;

It is hereby enacted as follows:—

Short title and extent.

1. (1) This Act may be called THE MEDICAL DIPLOMAS ACT, 1939.

(2) It extends to the whole of British India.

Definitions.

2. In this Act—

(*a*) "diploma" has the meaning assigned to it in sub-section (7) of section 120 of the Government of India Act, 1935;

(*b*) "United Kingdom" means the United Kingdom of Great Britain and Northern Ireland.

Conditions for excluding from practice British subjects domiciled in the United Kingdom or India who hold medical diplomas granted in the United Kingdom on the ground of inadequacy of such diplomas.

3. So long as the condition set out in sub-section (3) of section 120 of the Government of India Act, 1935, continues to be fulfilled, a British subject domiciled in the United Kingdom or India who, by virtue of a medical diploma granted to him in the United Kingdom, is, or is entitled to be, registered in the United Kingdom as a qualified medical parctitioner shall not by or under any law for the time being in force be excluded from practising medicine, surgery or midwifery in British India or in any part thereof, or from being registered as qualified so to do, on the ground that such diploma does not furnish a sufficient guarantee of his possession of the requisite knowledge and skill for the practice of medicine, surgery and midwifery, except in accordance with the following conditions, namely:—

(*a*) Notice of every proposal for excluding the holders of any such diploma from practice or registration shall be given in such form and in such manner as the Central Government may by rules made in this behalf prescribe, to the university or other body granting that diploma, and where such proposal is not made by the Central Government, to the Central Government also.

(*b*) No such proposal shall become operative until the expiration of twelve months after the notices referred to in clause (*a*) have been given.

(*c*) Such a proposal shall not become operative, or, as the case may be, shall cease to operate, if His Majesty's Privy Council, on an application made to them under sub-section (2) of section 120 of the Government of India Act, 1935, determine that the diploma in question ought to be recognised as furnishing such a sufficient guarantee as aforesaid.

Conditions for excluding from practice British subjects domiciled in Burma who hold medical diplomas granted in the United Kingdom or Burma on a similar ground.

4. A British subject domiciled in Burma who, by virtue of a medical diploma granted to him in the United Kingdom or Burma, is, or is entitled to be, registered in the United Kingdom as a qualified medical practitioner shall not by or under any law for the time being in force, be excluded from practising medicine, surgery or midwifery in British India or in any part thereof, or from being registered as qualified so to do on the ground that such diploma does not furnish a sufficient guarantee of his posses-

sion of the requisite knowledge and skill for the practice of medicine, surgery and midwifery, except in accordance with conditions such as are set out in clauses (*a*), (*b*) and (*c*) of section 3.

THE INDIAN MERCHANDISE MARKS ACT (IV OF 1889).

Rep. in pt. and Am., Act IX of 1891:
Am. Acts I of 1938, II of 1941 and V of 1945.
Declared in force in Upper Burma (except the Shan States), Act XIII of 1898, S. 4.

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[1*st March,* 1889.

An Act to amend the Law relating to Fraudulent Marks on Merchandise.

WHEREAS it is expedient to amend the law relating to fraudulent marks on merchandise; It is hereby enacted as follows;

Title, extent and commencement.

1. (1) This Act may be called THE INDIAN MERCHANDISE MARKS ACT, 1889.[1]

(2) It extends to the whole of British India; [2][* * *].

(3) It shall come into force on the first day of April, 1889.

Definitions.

2. In this Act, unless there is something repugnant in the subject or context,—

[3][(1) "mark" has the meaning assigned to that expression in clause (*f*) of sub-section (1) of section 2 of the Trade Marks Act, 1940:

(1-A) "trade-mark" means a "registered trade mark" as defined in clause (*j*) of sub-section (1) of section 2 of the Trade Marks Act, 1940, or a mark used in relation to goods for the purpose of indicating or so as to indicate a connection in the course of trade between the goods and some person having the right as proprietor to use the mark:]

LEG. REF.

[1] For Statement of Objects and Reasons, see *Gazete of India,* 1888, Pt. V, p. 109; for Report of Sel. Com., see *ibid.,* 1889. Pt. V, p. 27; and for Proceedings in Council, see *ibid.,* 1888, Pt. VI, pp. 111 and 136 and *ibid.* 1889 Pt. VI p. 38.

[2] Repealed by Act IX of 1891.

[3] Substituted by Act II of 1941.

(2) "trade description" means any description, statement or other indication, direct or indirect,—

(*a*) as to the number, quantity, measure, guage or weight of any goods; or

(*b*) as to the place or country in which, or the time at which, any goods were made or produced; or

(*c*) as to the mode of manufacturing or producing any goods; or

(*d*) as to the material of which any goods are composed; or

(*e*) as to any goods being the subject of an existing patent, privilege or copyright;

and the use of any [1][mark] which according to the custom of the trade is commonly taken to be an indication of any of the above matters shall be deemed to be a trade description within the meaning of this Act;

(3) "false trade description" means a trade description which is untrue in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement or otherwise, where that alteration makes the description untrue in a material respect, and the fact that a trade description is a trade mark or part of a trade mark shall not prevent such trade description being a false trade description within the meaning of this Act;

(4) "goods" means anything which is the subject of trade or manufacture; and

(5) "name" includes any abbreviation of a name.

Amendment of the Indian Penal Code.

3. [*Substitution of new sections for sections* 478 *to* 489 *of the Indian Penal Code.*] *Rep. by Act I of* 1938.

Trade Descriptions.

4. (1) The provisions of this Act respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any such [2][marks], or arrangement or combination thereof, whether including a trade mark or not, as are or is reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are, and to goods having such [1][marks], or arrangement or combination, applied thereto.

Provisions supplemental to the definition of false trade description.

(2) The provisions of this Act respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name or initials of a person, and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description, and for the purpose of this enactment the expression false name or initials means as applied to any goods, any name or initials—

LEG. REF.

[1]Substituted for the words "numeral word or mark" by Act II of 1941.

[2]Substituted for the words "numeral word or mark" by Act II of 1941.

SEC. 2 (2).—*See* 4 M.L.T. 360=15 M. L.J. 45 (F.B.).

SEC. 2 (2) (*b*).—*See* (1906) 95 L.T. 424; (1900) 83 L.T. 592=17 T.L.R. 174; (1901) 1 K.B. 1; 70 L.J.K.B. 15.

SEC. 2 (2) (*e*).—S. 2 (2) (*e*) does not apply where there is no existing patent, privilege or copyright. 146 I.C. 1084=1933 N. 344.

SECS. 2 (2), 4 AND 7.—Where a design covers the whole body of goods and is part and parcel of the goods themselves, it is not a trade mark but a "design" under the Patent asnd Designs Act, 1911. Nor is it a "Trade description" within S. 2 (2) of this Act. 8 S.L.R. 39=25 I.C. 998.

(*a*) not being a trade mark, or part of a trade mark, and

(*b*) being identical with, or a colourable imitation of, the name or initials of a person carrying on business in connection with goods of the same description and not having authorized the use of such name or initials, [1][and

(*c*) being the name or initials of a fictitious person or of a person not carrying on business in connection with the goods of the same description.]

(3) A trade description which denotes or implies that there are contained in any goods to which it is applied more yards, feet or inches than there are contained therein standard yards, standard feet or standard inches is a false trade description.

Application of trade descriptions.

5. (1) A person shall be deemed to apply a trade description to goods who—

(*a*) applies it to the goods themselves, or

(*b*) applies it to any covering, label, reel or other thing in or with which the goods are sold or are exposed or had in possession for sale or any purpose of trade or manufacture, or

(*c*) places, encloses or annexes any goods which are sold, or are exposed or had in possession for sale or any purpose of trade or manufacture, in, with or to any covering, label, reel or other thing to which a trade description has been applied, or

(*d*) uses a trade description in any manner reasonably calculated to lead to the belief that the goods in connection with which it is used are designated or described by that trade description.

(2) A trade description shall be deemed to be applied whether it is woven, impressed or otherwise worked into or annexed or affixed to the goods or any covering, label, reel or other thing.

(3) The expression "covering" includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame or wrapper, and the expression "label" includes any band or ticket.

LEG. REF.

[1] Inserted by *ibid.*

SEC. 2 (3).—*See* (1898) 2 Q.B. 19; (1906) 1 K.B. 16; 75 L.J.K.B. 72; 26 B. 289.

SEC. 2 (4).—*See* 17 M.L.J. 490=31 M. 512; 26 C. 232.

SEC. 4.—*Cf.* the Merchandise Marks Act, 1887 [50 and 51 Vict., c. 28, S. 3 (2)], and Wright thereon, pp. 16 and 38.

SEC. 4 (2).—*Cf.* the Merchandise Marks Act 1887 [50 and 51 Vict., c. 28, S. 3 (3)]. Case-law, *see* 25 I.C. 998; 15 M.L.J. 45 (F.B.).

SEC. 5.—*Cf.* the Merchandise Marks Act, 1887 [50 and 51 Vict., c. 28, S. 5].

SEC. 5 (*c*).—*See* (1910) 103 L.T. 540.

SEC. 5 (*d*).—(1891) 1 Q.B. 408=60 L. J.M.C. 95.

SECS. 5 AND 6.—Using hand-bill intended to mislead. 1935 Sind 107. On this section, *see also* 40 C. 281.

SEC. 6.—*Cf.* the Merchandise Marks Act, 1887 [50 and 51 Vict., c. 28, S. 2 (1)]. For instructions as to prosecutions under this section for offences relating to the short reeling of yarn in Indian mills, *see* Bombay Government Gazette, 1906. Pt. I, p. 487. Mere imitation, if offence. 146 I.C. 1084=1933 Nag. 344. *See* 31 C. 411; 23 I.C. 689.

"FALSE DESCRIPTION TO GOODS."—As to the application of this paragraph, *see* (1891) 1 Q.B. 408; (1890) 24 Q.B.D. 90=59 L.J. M.C. 13. Where the charge under S. 6 is not tried at the place where the offence of applying the false trade description had been committed, the defect is curable under S. 531, Cr.P. Code. 192 I.C. 835=42 C.L. J. 334=1940 Cal. 583.

CORPORATION—LIABILITY TO PROSECUTION.—There is no warrant for holding that a corporation cannot be prosecuted and convicted under S. 6 on the ground that "*mens rea*" is an essential ingredient of an offence under S. 6. A corporation can apply a false trade mark to goods. A corporation through its agents can entertain an intention to apply a false description to goods. 44 Cr.L.J. 574=45 Bom.L.R. 300=1943 Bom. 182.

"MENS REA"—INTENTION—NATURE OF.—"*Mens rea*" merely means a criminal intention. In the case of most crimes against property, that does involve an intention to do something dishonest or fauduleut in the ordinary sense; but in the case of S. 6 of the Act, if *mens rea* be required, it would amount to no more than this that there must be an intention to do that which the Act prohibits. 1943 Bom. 182.

Penalty for applying a false trade description.

6. If a person applies a false trade description to goods, he shall, subject to the provisions of this Act, and unless he proves that he acted without intent to defraud, be punished with imprisonment for a term which may extend to three months or with fine which may extend to two hundred rupees, and in case of a second or subsequent conviction with imprisonment which may extend to one year, or with fine, or with both.

Penalty for selling goods to which a false trade description is applied.

7. If a person sells, or exposes or has in possession for sale or any purpose of trade or manufacture, any goods or things to which a false trade description is applied, [1][or which, being required by notification under section 12-A to have applied to them an indication of the country or place in which they were made or produced, are without the indication required by such notification] he shall, unless he proves—

(*a*) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade description, [1][or that any offence against this section had been committed in respect of the goods], and

(*b*) that, on demand made by or on behalf of the prosecutor he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or

(*c*) that otherwise he had acted innocently,

be punished with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, and in case of a second or subsequent conviction with imprisonment which may extend to one year, or with fine, or with both.

Penalty for tampering with, altering or effacing a mark applied in pursuance of section 12-A.

[1][7-A. If a person tampers with, alters or effaces a mark which has been applied to any goods to which it is required to be applied by notification made under section 12-A, he shall, unless he proves that he acted without intent to defraud, be punished with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees, and, in the case of a second or subsequent conviction, with imprisonment which may extend to two years, or with fine, or with both.]

Unintentional Contravention of the Law relating to Marks and Descriptions.

8. Where a person is accused under section 482 of the Indian Penal Code

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LEG. REF.

[1] Inserted by Act II of 1941.

SECS. 6 AND 7.—The word "Merchandise" includes goods selected or guaranteed by the proprietor of the trade mark, and the selector-importer who affixes his name or trade mark to those goods is a person "whose merchandise they are" within S. 480, I.P. Code. 12 S.L.R. 129=50 I.C. 165=20 Cr.L.J. 277. The main object of the Act is to prevent a trader passing off his own goods as those of aonther. (*Ibid.*) Registration of design of bottle and label thereon under Patents and Designs Act—Rival trader using bottles innocently—Conviction under Ss. 6 and 7 is not sustainable. *See* 32 C.W.N. 1115=1928 C. 873. On this section, *see also* 8 S.L.R. 39=25 I.C. 998, cited under S. 2, *supra*. As to the lability of master or principal for acts of servants or agents, *see* (1898) 2 Q.B. 300 (360)=67 L.J.Q.B. 689.

SEC. 7.—For instructions as to prosecutions under this section for offences relating to the short reeling of yarn in Indian mills, *see* Bombay Government Gazette, 1906, Pt. 1, p. 487.

SEC. 8.—*Cf.* the Merchandise Marks Act, 1887 (50 and 51 Vict., c. 28, S. 6).

Unintentional contravention of the law relating to marks and descriptions.

of using a false trade mark or property mark by reason of his having applied a mark to any goods, property or receptacle in the manner mentioned in section 480 or section 481 of that Code, as the case may be, or under section 6 of this Act of applying to goods any false trade description, or under section 485 of the Indian Penal Code of making any die, plate or other instrument for the purpose of counterfeiting a trade mark or property mark, and proves—

(*a*) that in the ordinary course of business he is employed, on behalf of other persons, to apply trade marks or property marks, or trade descriptions, or, as the case may be, to make dies, plates or other instruments for making, or being used in making, trade marks or property marks, and that in the case which is the subject of the charge he was so employed and was not interested in the goods or other thing by way of profit or commission dependent on the sale thereof, and

(*b*) that he took reasonable precautions against committing the offence charged, and

(*c*) that he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the mark or description, and

(*d*) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons on whose behalf the mark or description was applied.

he shall be acquitted.

Forfeiture of Goods.

Forfeiture of goods.

9. (1) When a person is convicted under section 482 of the Indian Penal Code of using a false trade mark, or under section 486 of that Code of selling, or exposing or having in possession for sale or any purpose of trade or manufacture, any goods, or things with a counter-feit trade mark applied thereto, or under section 487, or section 488 of that Code of making, or making use of, a false mark, or under section 6 or section 7 of this Act of applying a false trade description to goods or of selling, or exposing or having in possession for sale or any purpose of trade or manufacture, any goods or things to which a false trade description is applied, [1][or which, being required by notification under section 12-A to have applied to them an indication of the country or place in which they were made or produced, are without the indication required by such notification,] or is acquitted on proof of the matter or matters specified in section 486 of the Indian Penal Code or section 7 or section 8 of this Act, the Court convicting or acquitting him may direct the forfeiture to Her Majesty of all goods and things by means of, or in relation to, which the offence has been committed or, but for such proof as aforesaid, would have been committed.

(2) When a forfeiture is directed on a conviction, and an appeal lies against the conviction, an appeal shall lie against the forfeiture also.

LEG. REF.

[1] Inserted by Act II of 1941.

SEC. 9.—*Cf.* the Merchandise Marks Act, 1887 [50 and 51 Vict., c. 28, S. 2 (3) (*iii*)].

OFFENCE—INTENT—PROOF OF—NECESSITY—MISDESCRIPTION—IF OFFENCE.—A conviction under S. 6 does not involve the proof of any intention. The offence is made absolute. If a person applies a false trade description to goods, he is liable to be convicted, whatever his intention may have been. Intention is material only under the proviso, and by way of defence. He can escape the consequences of the Act by proving that he acted without intent to defraud. An intent to defraud, no doubt, generally involves an intent to cheat in some form or other, and to cause loss to some one, but there is sufficient intention to defraud if there is an intention to defraud the purchaser. Where there is only a misdescription of goods, without the knowledge that it was a misdescription, it is impossible to say that there is an intent to defraud. 45 Bom.L.R. 300=1943 Bom. 182.

(3) When a forfeiture is directed on an acquittal and the goods or things to which the direction relates are of value exceeding fifty rupees, an appeal against the forfeiture may be preferred, within thirty days from the date of the direction, to the Court to which in appealable cases appeals lie from sentences of the Court which directed the forfeiture.

Amendment of the Sea Customs Act, 1878.

10 and 11. [*Amendment of the Sea Customs Act,* 1878.] *Rep. by the Repealing Act (I of* 1938), *S.* 2 *and Sch.*

[2][*Stamping of Piece-goods, Cotton Yarn and Thread*

Stamping of piece-goods, cotton yarn and thread.

12. (1) Piece-goods, such as are ordinarily sold by length or by the piece, which have been manufactured, bleached, dyed, printed or finished in premises which are a factory, as defined in the Factories Act, 1934, shall not be removed for sale from the last of such premises in which they underwent any of the said processes without having conspicuously stamped in English numerals on each piece the length thereof in standard yards, or in standard yards and a fraction of such a yard, according to the real length of the piece and except when the goods are sold from the factory for export from British India, without being conspicuously marked on each piece with the name of the manufacturer, or of the occupier of the premises in which the piece was finally processed or of the wholesale purchaser in India of the piece.

(2) Cotton yarn such as is ordinarily sold in bundles, and *[cotton thread, namely sewing, darning, crochet or handicraft thread] which have been manufactured, bleached, dyed or finished *[in any premises not exempted by rules made under section 20 of this Act], shall not be removed for sale from those premises unless, in accordance with *[the said rules], in the case of yarn the bundles are conspicuously marked with an indication of the weight of yarn in each bundle and the count of the yarn contained in the bundle and in the case of thread each unit is conspicuously *[marked with the length or weight of thread in the unit] and *[in such other manner as may be required by the said rule], and, except where the goods are sold *[from the premises] for export from British India, unless each bundle or unit is conspicuously marked with the name of the manufacturer or of the wholesale purchaser in India of the goods:

*[Provided that the rules made under section 20 shall exempt all premises where the work is done by the members of one family with or without the assistance of not more than ten other employees, and all premises controlled by a co-operative society where not more than twenty workers are employed on the premises.] (*Proviso added by Act V of* 1945).

(3) If any person removes or attempts to remove or causes or attempts to cause to be removed for sale from such premises or sells or exposes or has in possession for sale any such piece-goods or any such cotton yarn *[or any such thread] which is not marked as required by sub-section (1) and sub-section (2), every such piece and every such bundle of yarn and all such thread, and everything used for the packing thereof, shall be forfeited to His Majesty and such person shall be punished with fine which may extend to one thousand rupees.

Power to require goods to show indication of origin

Power to require goods to show indication of origin.

12-A. (1) The Central Government may, by notification in the Official Gazette, require that goods of any class specified in the notification which are made or produced beyond the ilmits of British India and imported into British India, or which are made or produced within the

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LEG. REF.

[2] New Ss. 12 and 12-A, with their headings inserted by Act II of 1941.

*Substituted and added by Act V of 1945.

limits of British India, shall, from such date as may be appointed by the notification not being less than three months from its issue, have applied to them an indication of the country or place in which they were made or produced.

(2) The notification may specify the manner in which such indication shall be applied. that is to say, whether to the goods themselves or in any other manner, and the times or occasions on which the presence of the indication shall be necessary, that is to say whether on importation only, or also at the time of sale, whether by wholesale or retail or both.

(3) No notification under this section shall be issued, unless application is made for its issue by persons or associations substantially representing the interests of dealers in or manufacturers, producers, or users of the goods concerned, or unless the Central Government is otherwise convinced that it is necessary in the public interest to issue the notification, not without such inquiry as the Central Government may consider necessary.

(4) The provisions of section 23 of the General Clauses Act, 1897, shall apply to the issue of a notification under this section as they apply to the making of a rule or bye-law the making of which is subject to the condition of previous publication.

(5) A notification under this section shall not apply to goods made or produced beyond the limits of British India and imported into British India if in respect of those goods the Chief Customs Officer is satisfied at the time of importation that they are intended for exportation whether after transhipment in or transit through British India or otherwise.]

Supplemental Provisions.

Evidence of origin of goods imported by sea.

13. In the case of goods brought into British India by sea, evidence of the port of shipment shall, in a prosecution for an offence against this Act or section 18 of the Sea Customs Act, 1878, as amended by this Act, be *prima facie* evidence of the place or country in which the goods were made or produced.

Cost of defence or prosecution.

14. (1) On any such prosecution as is mentioned in the last foregoing section or on any prosecution for an offence against any of the sections of the Indian Penal Code, as amended by this Act, which relate to trade, property and other marks, the Court may order costs to be paid to the defendant by the prosecutor or to the prosecutor by the defendant, having regard to the information given by and the conduct of the defendant and prosecutor respectively.

(2) Such costs shall, on appilcation to the Court, be recoverable as if they were a fine.

Limitation of prosecution.

15. No such prosecution as is mentioned in the last foregoing section shall be commenced after the expiration of three years next after the commisison of the offence, or one year after the first discovery thereof by the prosecutor, whichever expiration first happens.

SEC. 13.—*Cf.* the Merchandise Marks Act, 1887 [50 and 51 Vict., c. 28, S. 10 (2)].

SEC. 14.—*Cf.* the Merchandise Marks Act, 1887 (50 and 51 Vct., c. 28, S. 14). Case-law as to power of appellate Court, to award costs, *see* 16 Bom.L.R. 78=24 I.C. 834 (1). On any prosecution mentioned in S. 13, or for an offence under the relevant sections of the Penal Code (*e.g.*, Ss. 482, 486) costs should be awarded under S. 14, Merchandise Marks Act and not under S. 546-A, Cr.P. Code, and these costs include advocate's fees. 187 I.C. 77=41 Cr.L.J. 392 =1940 Rang. 33.

SEC. 15.—*Cf.* the Merchandise Marks Act, 1887 (50 and 51, Vict., c. 28, S. 15). The word "*offence*" in S. 15 means the offence charged; and the words "*first dis-*

Authority of the Central Government to issue instructions as to administration of this Act.

16. (1) The Central Government may, by notification in the Official Gazette, issue instructions[1] for observance by Criminal Courts in giving effect to any of the provisions of this Act.

(2) Instructions under sub-section (1) may provide, among other matters, for the limits of variation, as regards number, quantity, measure, gauge or weight, which are to be recognised by Criminal Courts as permissible in the case of any goods.

Implied warranty on sale of marked goods.

17. On the sale or in the contract for the sale of any goods to which a trade mark or mark or trade description has been applied, the seller shall be deemed to warrant that the mark is a genuine mark and not counterfeit or falsely used, or that the trade description is not a false trade description within the meaning of this Act, unless the contrary is expressed in some writing signed by or on behalf of the seller and delivered at the time of the sale or contract to and accepted by the buyer.

Savings.

18. (1) Nothing in this Act shall exempt any person from any suit or other proceeding which might, but for anything in this Act, be brought against him.

LEG. REF.

[1] For notification containing such instructions, *see* Genl. Stat. R. and O., Vol. II and Bur. R.M., Vol. II.

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covery'' mean ''when the complainant first discovered the offence''. *See* 32 C.W.N. 699=1928 C. 495; 34 C.W.N. 339=1930 C. 274. *See also* 1939 N. L. J. 55. The word *''offence''* in S. 15 does not mean the very first such offence. If such an interpretation of the section be good law a person infringing another's trade mark may merely do so once, clandestinely, sit quiet for three years and then make a public use of it without any fear of a criminal prosecution. 26 S.L.R. 241=139 I.C. 335=1932 S. 94. The word 'offence' means the offence in respect of which the prosecution is launched. The limitation prescribed by S. 15 is three years from the date of commission of the offence charged and one year from the date of discovery by the prosecutor of the offence charged, which ever is less. 1940 Rang. L. R. 244=41 Cr. L. J. 797 =1940 Rang. 114. As to commencement of limitation under this section, *see also* 32 C.W.N. 699=114 I.C. 131=1928 C. 495. The prosecution for using false trade mark will be barred if not brought within three years from the date of the first offence of the series for the same trade mark 10 S. L.R. 45=35 I.C. 671=17 Cr.L.J. 367. The period limited by S. 15 for prosecution under S. 14 begins from the date of the particular infringement alleged against the accused S. 15 does not prevent a prosecution under S. 482. I. P. Code. 36 I. C. 168=17 Cr. L.J. 488. The words 'commission of the offence' mean commisison of the offence in respect of which the prosecution is launched, *i.e.*, the offence charged in the complaint. I.L.R. (1937) Bom. 183=38 Bom. L. R. 1164=1937 Bom. 1 (F.B.), overruling. 59 Bom. 551; 1939 N. L. J. 55 The language of S. 15 is perfectly plain and there is nothing in the rest of the Act to control the natural meaning of the words. The starting point of limitation in all cases under S. 15 is the date of the offence charged. I.L.R. (1937) Bom. 183; 1939 N. L.J. 55. There is nothing in the section to suggest that in a case of series of infringements the prosecution should be commenced within three years from the date of the first offence. 1931 M. 276=131 I.C. 848. *See also* 1930 Cal. 274; 1928 Cal. 495. The owner of a trade mark should not wait for several years while his trade mark is infringed continuously and then bring a criminal complaint in respect of some recent infringement. If the goods of a manufacturer from the mark he has used are known by a particular name the adoption by a rival trader of any mark which would cause his goods to bear the same name in the market may be as much a violation of the rights of that rival as an actual copy of his device. In such cases dissimilarity of the rival mark is not a complete defence. A trade mark applied by a shirt maker to his shirts may be an infringement of a similar mark applied by a manufacturer to his cloth. 36 I.C. 168=17 Cr.L. J. 488 On this section, *see also* 22 M. 488; 10 I.C. 787.

SEC. 17.—*Cf.* the Merchandise Marks Act, 1887 (50 and 51 Vict., c. 28, S. 17).

SEC. 18.—*Cf.* the Merchandise Marks Act, 1887 (50 and 51 Vict., c. 28, S. 19).

(2) Nothing in this Act shall entitle any person to refuse to make a complete discovery or to answer any question or interrogatory in any suit or other proceeding, but such discovery or answer shall not be admissible in evidence against such person in any such prosecution as is mentioned in section 14.

(3) Nothing in this Act shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in British India who in good faith acts in obedience to the instructions of such master, and on demand made by or on behalf of the prosecutor, has given full information as to his master and as to the instructions which he has received from his master.

Definition of piece-goods.

[1]19. For the purpose of section 12 of this Act and clause (*f*) of section 18 of the Sea Customs Act, 1878, as amended by this Act, the Central Government may, by notification in the Official Gazette, declare what classes of goods are included in the expression 'piece-goods, such as are ordinarily sold by length or by the piece.'

Determination of character of goods by sampling.

20. (1) The Central Government may make rules,[2] for the purposes of this Act, to provide with respect to any goods which purport or are alleged to be of uniform number, quantity, measure, gauge or weight, for the number of samples to be selected and tested and for the selection of the samples.

[3]"(1-A) The Central Government may make rules providing for the manner in which for the purposes of section 12 cotton yarn and cotton thread shall be marked with the particulars required by that section, and for the exemption of certain premises used for the manufacture, bleaching, dyeing or finishing of cotton yarn or cotton thread from the provisions of that section."

(2) With respect to any goods for the selection and testing of samples of which provision is not made in any rules for the time being in force under sub-section (1), the Court or officer of Customs, as the case may be, having occasion to ascertain the number, quantity, measure, gauge or weight of the goods, shall, by order in writing, determine the number of samples to be selected and tested and the manner in which the samples are to be selected.

(3) The average of the results of the testing in pursuance of rules under sub-section (1) or of an order under sub-section (2) shall be *prima facie* evidence of the number, quantity, measure, gauge or weight, as the case may be, of the goods.

(4) If a person having any claim to, or in relation to, any goods of which samples have been selected and tested in pursuance of rules under sub-section (1) or of an order under sub-section (2), desires that any further samples of the goods be selected and tested, they shall, on his written application and on the payment in advance by him to the Court or officer of Customs, as the case may be, of such sums for defraying the cost of the further selection and testing as the Court or officer may from time to time require, be selected and tested to such extent as may be permitted by rules to be made by the Central Government in this behalf or as, in the case of goods with respect to which provision is not made in such rules, the Court or officer of Customs may determine in the circumstances to be reasonable, the samples being selected in manner prescribed under sub-section (1), or in sub-section (2), as the case may be.

LEG. REF.

[1] *See* Notes below.

[2] For rules issued under these sections, *see* Genl. Stat. R. and O., Vol. II.

[3] Sub-S. (1-A) of S. 20 substituted by Act V of 1945.

SECS. 19 AND 22.—S. 19 and the heading to S. 19, namely: "Transitory Provision" were repealed by the Indian Merchandise Marks and Sea Customs Act, Amendment Act, 1891 (IX of 1891) and Ss. 19 to 22 here printed were added by the Indian Merchandise Marks and Sea Customs Acts, Amendment Act (IX of 1891), S. 4. *See* 10 C.W.N. 107.

(5) The average of the results of the testing referred to in sub-section (3) and of the further testing under sub-section (4) shall be conclusive proof of the number, quantity, measure, gauge or weight, as the case may be, of the goods.

(6) Rules under this section shall be made after previous publication.

Information as to commission of offence.

21. An officer of the Government whose duty it is to take part in the enforcement of this Act shall not be compelled in any Court to say whence he got any information as to the commission of any offence against this Act.

Punishment of abetment in India of acts done out of India.

22. If any person, being within British India, abets the commission, without British India, of any act which, if committed in British India, would, under this Act, or under any section of that part of Chapter XVIII of the Indian Penal Code which relates to trade, property and other marks, be an offence, he may be tried for such abetment in any place in British India in which he may be found, and be punished therefor with the punishment to which he would be liable if he had himself committed in that place the act which he abetted.

THE MERCHANT SEAMEN (LITIGATION) ACT (XXI OF 1946).

[23*rd April*, 1946.

An Act to provide for the special protection in respect of civil and revenue litigation of serving merchant seamen.

WHEREAS it is expedient to provide for special protection in respect of civil and revenue litigation of serving merchant seamen; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Act may be called the Merchant Seamen (Litigation) Act, 1946.

(2) It extends to the whole of British India.

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

Interpretation.

2. (1) In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "agreement" means articles of agreement entered into by a seaman whereby he engages himself to serve on board a sea-going ship;

(*b*) "Court" means a Civil or Revenue Court;

(*c*) "master" means a person, other than a pilot or harbour master, having command or charge of a sea-going ship;

(*d*) "prescribed" means prescribed by rules made under this Act;

(*e*) "proceeding" includes any suit, appeal or application;

(*f*) "seaman" means every person, other than a person subject to naval law, who is employed or engaged under an agreement on board any sea-going ship in any capacity, other than that of pilot or apprentice but including that of master;

(*g*) "shipping master" means, in relation to any seaman, a shipping master appointed—

(i) for the port at which the seaman entered into, or is believed to have entered into, an agreement, or

(ii) where the seaman did not enter into his agreement in British India, for the port to which the seaman has returned, or is expected to return, on the completion of his latest voyage,

and includes a deputy shipping master or any person carrying out the functions of a shipping master.

(2) For the purposes of this Act a seaman shall be deemed to be a serving seaman during any period commencing on the date on which he enters into an agreement and ending thirty days after the date on which he is finally discharged from such agreement.

Particulars to be furnished in plaints, etc.

3. If any person presenting any plaint, application or appeal to any Court has reason to believe that any adverse party is a serving seaman, he shall make a statement accordingly in the plaint, application or appeal.

Power of Collector to intervene in case of unrepresented seaman.

4. If any Collector has reason to believe that any seaman who ordinarily resides or has property in his district and who is a party to any proceeding pending before any Court, is unable to appear therein or is a serving seaman, the Collector may certify the facts in the prescribed manner to the Court.

Notice to be given in case of unrepresented sea-man.

5. (1) If a Collector has certified under section 4, or if a Court has reason to believe that a seaman who is a party to any proceeding before the Court, is unable to appear therein, or is a serving seaman, the Court shall suspend the proceeding and shall give notice thereof in the prescribed manner to the shipping master:

Provided that the Court may refrain from suspending the proceeding and giving the notice—

(*a*) if the proceeding is one instituted or made by the seaman, alone or conjointly with others, with the object of enforcing a right of pre-emption, or

(*b*) if the interests of the seaman in the proceeding are, in the opinion of the Court, either identical with those of any other party thereto and adequately represented by such other party, or merely of a formal nature.

(2) If it appears to the Court before which any proceeding is pending that a seaman though not a party to the proceeding is materially concerned in the outcome of the proceeding and that his interests are likely to be prejudiced by his inability to attend, the Court may suspend the proceeding and shall give notice thereof in the prescribed manner to the shipping master.

Postponement of proceedings.

6. (1) If on receipt of a notice under section 5, the shipping master certifies to the Court in the prescribed manner that the seaman is a serving seaman, the Court shall thereupon postpone the proceeding in respect of the seaman for the prescribed period, or if no period has been prescribed, for such period as it thinks fit:

Provided that if by reason of the continued absence of the seaman the question of any further postponement of the proceeding in respect of the seaman arises, the Court shall in deciding the question have regard to the purposes of this Act.

(2) If the shipping master either certifies that the seaman is not for the time being a serving seaman or fails within two months from the date of the receipt of the notice under section 5 to certify that the seaman is a serving seaman, the Court may, if it thinks fit, continue the proceeding.

Power to set aside decrees and orders passed against serving seaman.

7. (1) Where in any proceeding before a Court a decree or order has been passed against any seaman while he was a serving seaman, the seaman, or if he dies while he is a serving seaman, his legal representative, may apply to the said Court to have the decree or order set aside, and if the Court, after giving an opportunity to the opposite party of being heard, is satisfied that the interests of justice require that the decree or order should be set aside as against the sea-

man, the Court shall, subject to such conditions, if any, as it thinks fit to impose, make an order accordingly, and may, if it appears that any opposite party in the proceeding has failed to comply with the provisions of section 3, award, subject to such conditions as may be prescribed, damages against such opposite party.

(2) The period of limitation for an application under sub-section (1) shall be sixty days from the date on which the seaman first ceases to be a serving seaman after the passing of the decree or order, or where the summons or notice was not duly served on the seaman in the proceeding in which the decree or order was passed, from the date on which the applicant had knowledge of the decree or order, whichever is later; and the provisions of section 5 of the Indian Limitation Act, 1908 (IX of 1908), shall apply to such applications.

(3) Where the decree or order in respect of which an application under sub-section (1) is made is of such a nature that it cannot be set aside as against the seaman only, it may be set aside as against all or any of the parties against whom it was made.

(4) Where a Court sets aside a decree or order under this section, it shall appoint a day for proceeding with the suit, appeal or application, as the case may be, in respect of which the decree or order was passed.

Modification of law of limitation where seaman is a party.

8. In computing the period of limitation provided in this Act or in the Indian Limitation Act, 1908 (IX of 1908), or in any other law for the time being in force, for any suit, appeal or application to a Court to which a seaman is a party, the period or periods during which the seaman has been a serving seaman, and if the seaman has died while he was a serving seaman, the period from the date of his death to the date on which his next of kin was first informed, by the shipping master or otherwise, of his death, shall be excluded:

Provided that this section shall not apply in the case of any suit, appeal or application instituted or made with the object of enforcing a right of pre-emption except in such areas and in such circumstances as the Central Government may, by notification in the official Gazette, specify in this behalf.

Reference in matters of doubt to shipping masters.

9. If any Court is in doubt whether, for the purposes of section 7 or section 8, a seaman is or was at any particular time or during any particular period a serving seaman, it may refer the question to the shipping master, and the certificate of the shipping master shall be conclusive evidence on the question.

Power to make rules.

10. The Central Government, after consulting the High Courts concerned, may by notification in the official Gazette make rules to provide for all or any of the following matters, namely:—

(*a*) the manner and form in which any notice or certificate under this Act shall be given;

(*b*) the period for which proceedings or any class of proceedings shall be postponed under sub-section (1) of section 6;

(*c*) the conditions subject to which damages may be awarded under sub-section (1) of section 7, and the amount of such damages;

(*d*) any other matter which is to be or may be prescribed, and generally, any matters incidental to the purposes of this Act.

THE MESNE PROFITS AND IMPROVEMENTS ACT (XI OF 1855).[1]

Declared in force throughout B.I., except as regards the Scheduled Districts, Act XV of 1874, S. 3.

Year.	No.	Short Title	Amendments.
1885	XI	The Mesne Profits and Improvements Act, 1855.	Repealed in part (locally), IV of 1882.

[27*th March*, 1855.

An Act relating to mesne profits and to improvements made by holders under defective titles in cases to which the English Law is applicable.

WHEREAS it is expedient, in cases to which the English law is applicable, *to limit the liability for mesne profits and* to secure to *bona fide* holders under defective titles the value of improvements made by them; It is enacted as follows:—

Preamble.

No person chargeable with rent *bona fide* paid to holder under defective title

1. No person shall be chargeable with any rents or profits of any immovable property which he has *bona fide* paid over to any person of whom he *bona fide* held the same, notwithstanding it may afterwards appear that the person to whom such payment was made had no right to receive such rents or profits.

Value of improvements made by *bona fide* holders under defective titles secured to them.

2. If any person shall erect any building or make an improvement upon any lands held by him *bona fide* in the belief that he had an estate in fee-simple, or other absolute estate, and such person, his heirs or assigns, or his or their under-tenants, be evicted from such lands by any person having a better title, the person who erected the building or made the improvement, his heirs or assigns, shall be entitled either to have the value of the building or improvement so erected or made during such holding and in such belief, estimated and paid or secured to him or them, or, at the option of the person causing the eviction, to purchase the interest of such person in the lands at the value thereof, irrespective of the value of such building or improvement:

Provided that the amount to be paid or secured in respect of such building or improvement shall be the estimated value of the same at the time of such eviction.

Amount how fixed

Act to apply only to cases governed by English Law.

3. Nothing in this Act contained shall extend to any case to which the English Law is not applicable.

LEG REF.

[1] SHORT TITLE—The "Mesne Profits and Improvements Act, 1855" *See* the Indian Short Titles Act, 1897 (XIV of 1897).

SEC 1—The words in italics in the title and in the preamble, together with S 1 are repealed in places to which the T P. Act, 1882, extends or is extended, *see* the T. P. Act, 1882 (IV of 1882), S. 2.

SEC. 2.—Act is applicable only to cases tried on the Original Side of the High Court. A permanent lease of the property of religious trust is invalid and a lessee when evicted by proceedings in the mofussal Court is not entitled to compensation for a house built by him either under S. 51 of the Transfer of Property Act or under S. 2 of this Act but can only remove the materials. 10 L.W. 137=52 I.C. 517. The words "other absolute estate" in S. 2 of this Act do not apply to the estate of a lessee with permanent occupancy rights. 52 I.C. 517. For older cases, *see* Bourke's Ref. (O.C.) 159; 1 Agra 244.

THE METAL TOKENS ACT (I OF 1889).[1]

[1*st February*, 1889.

An Act for the Protection of Coinage and other purposes.

WHEREAS it is expedient to prohibit the making, or the possession for issue or the issue, by private persons, of pieces of metal for use as money;

AND WHEREAS it is also expedient to amend section 28 of the Indian Penal Code;

It is hereby enacted as follows:—

Title and extent.

1. (1) This Act may be called THE METAL TOKENS ACT, 1889.

(2) It extends to the whole of British India; [2][*]

(3) [2][* * * * *]

Definition.

2. In this Act "issue" means to put a piece of metal into circulation for the first time for use as money in British India, such piece having been made in contravention of this Act or brought into British India by sea or by land in contravention of any notification for the time being in force under section 19 of the Sea Customs Act, 1878.

Prohibition of making by private persons of pieces of metal to be used as money.

3. No piece of copper or bronze or of any other metal or mixed metal, which, whether stamped or unstamped, is intended to be used as money, shall be made except by the authority of the Central Government.

Penalty for unlawful making, issue or possession of such pieces.

4. (1) In either of the following cases, namely:—

(*a*) if any person makes in contravention of the last foregoing section, or issues or attempts to issue, any such piece as is mentioned in that section,

(*b*) if, after the expiration of three months from the commencement of this Act, any person has in his possession, custody or control any such piece as is mentioned in the last foregoing section, with intent to issue the piece,

the person shall be punished,

(i) if he has not been previously convicted under this section, with imprisonment which may extend to one year, or with fine, or with both; or

(ii) if he has been previously convicted under this section, with imprisonment which may extend to three years, or with fine, or with both.

(2) If any person is convicted of an offence under sub-section (1), he shall, in addition to any other punishment to which he may be sentenced, forfeit all such pieces as aforesaid, and all instruments and materials for the making of such pieces, which may have been found in his possession, custody or control.

(3) If in the trial of any such offence the question arises whether any piece of metal or mixed metal was intended to be used or to be issued for use as money, the burden of proving that the piece was not intended to be so used or issued shall lie on the accused person.

LEG. REF.

[1] For Statement of Objects and Reasons, *see Gazette of India*, 1888, Pt. V, p. 19; for Report of the Select Committee, *see ibid.*, 1889, Pt. IV, p. 3, and for Debates in Council, *see ibid.*, 1888, Pt. VI, pp. 40 and 81, and *ibid.*, 1889, Pt. VI, pp. 3 and 9.

This Act has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), in the Arakan Hill District by Regulation I of 1916, S. 2, Bur. Code.

It had been previously extended there by notification under S. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), *see* Burma Gazette, 1893, Pat. I, p. 154.

[2] The word "and" at the end of sub-S. (2) and sub-S. (3) were repealed by Act X of 1914, S. 3 and Sch. II.

Cognizance of offences under the last foregoing section.

5. (1) The offence of making, in contravention of section 3, any such piece as is mentioned in that section shall be a cognizable offence.

(2) Notwithstanding anything in the [1]Code of Criminal Procedure, 1882, no other offence punishable under section 4 shall be a cognizable offence, or beyond the limits of a presidency-town be taken cognizance of by any Magistrate, except a District Magistrate or Sub-Divisional Magistrate, without the previous sanction of the District Magistrate or Sub-Divisional Magistrate.

Application of certain of the foregoing provisions of this Act to importation of pieces of metal for use as money.

6. If at any time the Central Government sees fit, by notification under section 19 of the Sea Customs Act, 1878, to prohibit or restrict the bringing by sea or by land into British India of any such pieces of metal as are mentioned in section 3, [2][it] may by the notification[3] direct that any person contravening the prohibition or restriction shall be liable to the punishment to which he would be liable if he were convicted under this Act of making such pieces in British India, instead of to the penalty mentioned in section 167 of the Sea Customs Act, 1878, and that the provisions of sub-section (3) of section 4 and sub-section (1) of section 5, or of either sub-section, in relation to the offence of making such pieces shall, notwithstanding anything in the Sea Customs Act, 1878, apply, so far as they can be made applicable, to the offence of contravening the prohibition or restriction notified under section 19 of that Act.

7. [*Addition to section* 98, *Act X of* 1882.] *Rep. by the Code of Criminal Procedure,* 1898 (*V of* 1898).

Prohibition of receipt by local authorities and railways as money of metal which is not coin

8. (1) No piece of metal which is not coin as defined in the Indian Penal Code shall be received as money by or on behalf of any railway-administration or local authority.

(2) If any person on behalf of a railway-administration, or on behalf of a local authority, or on behalf of the lessee of the collection of any toll or other impost leviable by a railway-administration or local authority, receives as money any piece of metal which is not such coin as aforesaid, he shall be punished with fine which may extend to ten rupees.

9. [*Amendment of section* 28 *of the Indian Penal Code.*] *Rep. by the Repealing Act* (*I of* 1938), *S.* 2 *and Sch.*

THE MICA MINES LABOUR WELFARE FUND ACT, 1946 (XXII OF 1946).

[*23rd April,* 1946.

An Act to constitute a fund for the financing of activities to promote the welfare of labour employed in the mica mining industry.

WHEREAS it is expedient to constitute a fund for the financing of activities to promote the welfare of labour employed in the mica mining industry; It is hereby enacted as follows:—

Short title and extent.

1. (1) This Act may be called THE MICA MINES LABOUR WELFARE FUND ACT, 1946.

(2) It extends to the whole of British India.

Imposition and collection of a cess.

2. (1) With effect from such date as the Central Government may, by notification in the official Gazette, appoint in this behalf, there shall be levied and collected, as a cess for the purposes of this Act, on all mica, in whatever state, exported from British India a duty of customs at such

LEG. REF.

[1] *See* now the Code of Criminal Procedure, 1898 (Act V of 1898).

[2] Substituted for 'he' by A.O., 1937.

[3] For notification issued under this power, *see* Genl. R. and O.

rate, not exceeding six and one-quarter *per centum ad valorem*, as may from time to time be fixed by the Central Government by notification in the official Gazette:

Provided that until the 1st day of April 1947, the rate of duty so fixed shall not exceed two and one-half *per centum ad valorem*.

(2) On the last day of each month or as soon thereafter as may be convenient, there shall be paid to the credit of a fund to be called the Mica Mines Labour Welfare Fund (hereinafter referred to as the Fund) the proceeds of the duty of customs recovered during that month after deduction of the expenses, if any, for collection and recovery.

The Mica Mines Labour Welfare Fund.

3. (1) The fund shall be applied by the Central Government to meet expenditure incurred in connexion with measures in the opinion of the Central Government necessary or expedient to promote the welfare of labour employed in the mica mining industry.

(2) Without prejudice to the generality of sub-section (1), the Fund may be utilized to defray—

(*a*) the cost of measures for the benefit of labour employed in the mica mining industry directed towards—

(i) the improvement of public health and sanitation, the prevention of disease, and the provision and improvement of medical facilities,

(ii) the provision and improvement of water supplies and facilities for washing,

(iii) the provision and improvement of educational facilities,

(iv) the improvement of standards of living, including housing and nutrition, the amelioration of social conditions and the provision of recreational facilities,

(v) the provsion of transport to and from work;

(*b*) the grant to a Provincial Government, a local authority or the owner, agent or manager of a mica mine, of money in aid of any scheme approved by the Central Government for any purpose for which the Fund may be utilised;

(*c*) the cost of administering the Fund, including the allowances, if any, of members of the Advisory Committees constituted under section 4, and the salaries and the allowances, if any, of officers appointed under section 5.

(*d*) any other expenditure which the Central Government may direct to be defrayed from the Fund.

(3) The Central Government shall have power to decide whether any particular expenditure is or is not debitable to the Fund, and its decision shall be final.

(4) The Central Government shall publish annually in the official Gazette report of the activities financed from the Fund, together with an estimate of receipts and expenditure of the Fund and a statement of accounts.

Advisory Committees.

4. (1) The Central Government shall constitute two Advisory Committees, one for the Province of Madras and one for the Province of Bihar, to advise the Central Government on any matters arising out of the administration of this Act or the Fund.

(2) The members of the Advisory Committees shall be appointed by the Central Government, and shall be of such number and chosen in such manner as may be prescribed by rules made under this Act:

Provided that each Committee shall include an equal number of members representing mica mine owners and workmen employed in the mica mining industry, and that at least one member of each Committee shall be a woman, and at

least one member of each Committee shall be a member of the Legislature of the Province concerned.

(3) The Chairman of each Advisory Committee shall be appointed by the Central Government.

(4) The Central Government shall publish in the official Gazette the names of all members of the Advisory Committees.

Appointment and powers of officers.

5. (1) The Central Government may appoint Inspectors, Welfare Administrators and such other officers as it thinks necessary to administer the Fund or to supervise or carry out the activities financed from the Fund.

(2) Every officer so appointed shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (XLV of 1860).

(3) Any Inspector or Welfare Administrator may—

(*a*) with such assistance, if any, as he thinks fit, enter at any reasonable time any place which he considers it necessary to enter for the purpose of supervising or carrying out the activities financed from the Fund, and

(*b*) do within such place anything necessary for the proper discharge of his duties.

Power to make rules.

6. (1) The Central Government may, by notification in the official Gazette, make rules to carry into effect the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

(*a*) the making of refunds, remissions and recoveries of the duty of customs imposed by sub-section (1) of section 2;

(*b*) the composition of the Advisory Committees constituted under section 4, the manner in which the members thereof shall be chosen, the term of office of such members, the allowances, if any, payable to them, and the manner in which the Advisory Committees shall conduct their business;

(*c*) the conditions governing the grant of money from the Fund under clause (*b*) of sub-section (2) of section 3;

(*d*) the form of the estimate and statement referred to in sub-section (4) of section 3;

(*e*) the conditions of service and the duties of all officers appointed under section 5;

(*f*) the furnishing by owners or agents or managers of mica mines of statistical or other information, and the punishment by fine of failure to comply with the requirements of any rule made under this clause.

THE MINES MATERNITY BENEFIT ACT (XIX OF 1941).

[*Am. by Acts XVIII of* 1943 *and X of* 1945.]

[*26th November,* 1941.

An Act to regulate the employment of women in mines for a certain period before and after childbirth and to provide for payment of maternity benefit to them.

WHEREAS it is expedient to regulate the employment of women in mines for a certain period before and after childbirth and to provide for payment of maternity benefit to them; It is hereby enacted as follows:—

Short title, extent and commencement

1. (1) This Act may be called THE MINES MATERNITY BENEFIT ACT, 1941.

(2) It extends to the whole of British India.

(3) It shall come into force on such date as the Central Government may by notification in the Official Gazette, appoint.

Definitions

2. In this Act unless there is anything repugnant in the subject or context,—

(*a*) "child" includes a still-born child;

(*b*) "Chief Inspector", "Inspector", "employed", "mine" and "owner" have the meanings assigned, respectively, to these expressions in section 3 of the Indian Mines Act, 1923;

(*c*) "manager" means the manager of the mine appointed in accordance with the provisions of the Indian Mines Act, 1923;

(*d*) "maternity benefit" means the payment referred to in section 5;

(*e*) "prescribed" means prescribed by rules made under this Act.

Prohibition of employment of, and work by, women during certain period.

3. (1) No owner or manager of a mine shall knowingly employ a woman and no woman shall engage in employment in any mine during the four weeks following the day on which she is delivered of a child.

[(2) No owner or manager of a mine shall employ any woman below ground in the mine—

(*a*) if he has reason to believe or if she has informed him that she is likely to be delivered of a child within ten weeks;

(*b*) if she has to the knowledge of the management been delivered of a child within the preceding twenty-six weeks;

(*c*) during the period of ten weeks following the twenty-six weeks referred to in clause (*b*)—

(i) for more than four hours in a day unless a *creche* is provided at the mine;

(ii) in any case, for more than four hours at any one time:

Provided that where the woman informs the management that the child of which she was delivered has died, the provisions of clause (*c*) shall not apply after the management has with due diligence verified the correctness of her statement.] (*Added by* Act X of 1945.)

Right to obtain leave of absence in pregnancy and after delivery.

4. (1) If any woman employed in a mine who is pregnant gives notice either orally or in writing in the prescribed form to the manager of the mine that she expects to be delivered of a child within one month from the date of such notice the manager shall permit her if she so desires to absent herself from work up to the day of her delivery and such absence shall be treated as a period of authorised absence on leave:

Provided that, [1][except in the case of a woman employed below ground in the mine], the manager may, on undertaking to defray the cost of such examination, require the woman to be examined by a qualified medical practitioner or midwife, and, if the woman refuses to submit to such examination or is certified on such examination as not pregnant or not likely to be delivered of a child within one month, he may refuse such permission

[2][(2) If any woman employed below ground in a mine gives notice either orally or in writing in the prescribed form to the manager of the mine that she expects to be delivered of a child within ten weeks from the date of such notice, the manager may, on undertaking to defray the cost of such examination, require the woman to be examined within three days by a qualified medical practitioner or midwife, and shall permit her if she so desires to absent herself from work in any capacity in the mine prior to the said examination, and unless he obtains a certificate that the woman is not pregnant or not likely to be delivered of a child within ten weeks or the woman refuses to submit to such examination, up to the

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LEG. REF.

[1] Inserted and substituted by Act X of 1945.

[2] Substituted by Act X of 1945.

day of her delivery, and such absence shall be treated as a period of authorized absence on leave.

(3) The examination referred to in the proviso to sub-section (1) or in sub-section (2) shall, if the woman so desires, be carried out by a woman.

(4) The absence of a woman in the period during which she is entitled to maternity benefit under this Act shall be treated as authorized absence on leave.]

Right to and liability for payment of maternity benefit

5. (1) Every woman, [1][other than a woman to whom the provisions of sub-section (2) apply,] employed in a mine who has been continuously employed in that mine or in mines belonging to the owner of that mine for a period of not less than six months preceding the date of her delivery shall, if she complies with the conditions imposed by this Act, be entitled to receive, and the owner of the mine shall be liable to make her, in accordance with the provisions of this Act, a payment at the rate of [1][twelve annas] a day for every day [2][* * * *] during the four weeks immediately preceding and including the day of her delivery and for each day of the four weeks following her delivery.

[(2) Every woman who has worked below ground in a mine or mines of the same owner for not less than ninety days in all during a period not exceeding six months immediately preceding the date on which clause (*a*) of sub-section (2) of section 3 becomes applicable to her case shall, if she complies with the other conditions imposed by this Act, be entitled to receive, and the owner of the mine shall be liable to make to her, in accordance with the provisions of this Act, a payment at the rate of six rupees a week for the ten weeks immediately preceding her delivery and for the six weeks following her delivery.] (*Inserted* by Act X of 1945.)

[2][Provided that no such payment shall be made for any day on which she attends work and receives payment therefor during the four weeks preceding her delivery.] (*Added* by Act XVIII of 1943.)

Explanation.—Periods of casual absence as defined by rules made under section 15 or authorised absence on account of illness or leave shall count as employment in determining whether employment has been continuous.

Payment of bonus

6. (1) The Central Government may by rules made under section 15 provide that a woman entitled to maternity benefit under this Act shall, if at the time of her delivery she utilized the services of a qualified midwife or other trained person, receive in addition to the maternity benefit due to her a bonus not exceeding in amount three rupees:

Provided that she shall not receive such bonus if at the place chosen by her for her confinement she would have been entitled free of charge to the services of a qualified midwife or other trained person provided by the owner of the mine.

(2) Such rules may further provide for the determination by the Provincial Government of the amount of the bonus and of the qualifications which shall be possessed by qualified midwives and other trained persons for the purposes of this section.

Notice of delivery to be given to manager.

7. A woman entitled to maternity benefit under this Act unless she has given the notice referred to in sub-section (1) [1][or sub-section (2) as the case may be,] of section 4, shall on being delivered of a child give notice of her delivery in the prescribed manner to the manager before the expiry of seven days from the date of her delivery, and shall before the expiry of six months from such date

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LEG. REF.

[1] Inserted and substituted by Act X of 1945.

[2] Omitted and Proviso added by Act XVIII of 1943.

furnish proof of the presrcibed nature to the manager both of her delivery and of the date of her delivery:

Provided that a woman giving notice under section 4 or this section may therein nominate a person for the purposes of sub-section (2) of section 9.

Payment of maternity benefit.

8. (1) Where a woman entitled to maternity benefit has given the notice referred to in sub-section (1) of section 4 and has obtained permission to absent herself from work up to the date of her delivery, the manager shall either at once or within three days pay to her maternity benefit for four weeks in advance.

[1][(1-A) Where a woman entitled to maternity benefit has given the notice referred to in sub-section (2) of section 4, the manager shall within three days pay to her maternity benefit for ten weeks in advance, unless within the said three days as a result of the examination referred to in that sub-section he obtains a certificate that she is not pregnant or not likely to be delivered of a child within ten weeks or the woman refuses to submit to such examination.]

(2) A woman entitled to maternity benefit who has been delivered of a child shall, on furnishing the proof referred to in section 7,—

(*a*) if she has received an advance payment under sub-section (1) [1][or sub-section 1-A] be paid the balance of the maternity benefit due to her at the end of the fourth week from the date of her delivery or within three days of the furnishing of proof, whichever date is later;

(*b*) if she has received no such advance payment,—

(i) if the proof is furnished before the end of the fourth week from the date of delivery, be paid at once or within three days so much of the maternity benefit as is then due to her, and be paid the balance at the end of the said fourth week;

(ii) if the proof is furnished after the end of the fourth week from the date of delivery, be paid at once or within three days the whole amount of the maternity benefit due to her.

Disposal of maternity benefit in case of death of women entitled to receive it.

9. (1)If a woman entitled to maternity benefit who has received an advance under sub-section (1) [1][or sub-section 1-A] of section 8 dies before being delivered of the child, the advance shall not be recoverable.

(2) If a woman entitled to maternity benefit having been delivered of a child dies before payment of the maternity benefit, or where an advance under sub-section (1) [1][or sub-section 1-A] of section 8 has been made, of the balance of the maternity benefit due to her is made the amount due to her up to the date of her death shall, on the prescribed proof of the birth and date of the birth of the child and of the death and date of death of the woman being furnished at any time before the expiry of six months from the date of delivery, be paid if the child is living to the person who undertakes the care of the child, and if the child is not living to the person nominated by her under the proviso to section 7 or if she has made no such nomination to the legal representative of the deceased woman.

Prohibition of dismissal during or on account of absence from work owing to confinement

10. (1) When a woman absents herself from work in accordance with [2][sub-section (1) of section 3 or in circumstances under which in accordance with this Act the absence is to be treated as authorized absence on leave] it shall be unlawful for the manager to dismiss her during or on account of such absence, or to give notice of dismissal on such a day that the notice will expire during such absence.

LEG. REF.

[1] Substituted and inserted by Act X of 1945.

[2] Substituted by Act X of 1945.

(2) The dismissal of a woman at any time within six months before she is delivered of a child, if the woman but for such dismissal would have been entitled to maternity benefit under this Act, shall not have the effect of depriving her of that maternity benefit if the Chief Inspector is satisfied that her dismissal was without sufficient cause.

Power of Chief Inspector or Inspector to direct payments to be made.

11. (1) Any woman claiming that maternity benefit to which she is entitled under this Act and any person claiming that a payment due under sub-section (2) of section 9 is improperly withheld may make a complaint to the Chief Inspector or any Inspector, [1][or any other officer authorized in this behalf by the Central Government].

(2) On receipt of such complaint or on his own motion without any such complaint being made, the Chief Inspector or Inspector [1][or other officer] may make inquiry or cause an inquiry to be made, and if satisfied that a payment has been wrongfully withheld may direct the payment to be made in accordance with his orders.

Penalty for contravention of Act by a woman

12. Any woman who does any work for which she receives payment in cash or kind after she has been permitted under sub-section (1) of section 4 to absent herself from work, or who engages in employment in any mine in contravention of [2][sub-section (1) of section 37], shall be punishable with fine which may extend to ten rupees, and, if she is entitled to maternity benefit under this Act, shall forfeit her right to any maternity benefit not already paid to her.

Penalty for contravention of Act by owner or manager.

13. (1) Any owner or manager of a mine, who contravenes any provision of this Act for which no express penalty is provided, shall be punishable with fine which may extend to five hundred rupees.

(2) The Court imposing the fine may, if the contravention has resulted in depriving a woman of any maternity benefit due to her, order the whole or any part of the fine when paid to be applied in payment of compensation to the woman for any loss caused to her by the contravention of the provision on account of which the fine has been imposed, and an Appellate Court or the High Court in exercise of its powers of revision may also make such order.

Cognisance of cases

14. (1) No prosecution under this Act shall be instituted except by or with the sanction of the Chief Inspector, [1][or of an officer authorized in this behalf by the Central Government].

(2) No Court inferior to that of a Magistrate of the first class shall try an offence punishable under this Act or any rule made thereunder.

(3) No Court shall take cognizance of an offence punishable under this Act or any rule made thereunder, unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed:

Provided that in computing the said period of six months any time spent in obtaining the sanction of the Chief Inspector required by sub-section (1) shall be excluded.

Power of Central Government to make rules

15. (1) The Central Government may, subject to the condition of previous publication, by notification in the official Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(*a*) require the maintenance of registers and records for the purposes of this Act and prescribe the form thereof;

LEG. REF.

[1] Inserted by Act X of 1945.

[2] Substituted by Act X of 1945.

(*b*) prescribe the form of the notices referred to in section 4 and section 7, and require mines to supply copies thereof to women workers;

(*c*) regulate the examination of women [1][referred to in] section 4, and the grant of the certificates therein referred to;

(*d*) prescribe the nature of and the method of furnishing the proof referred to in section 7, section 8 and section 9;

(*e*) regulate the manner of applying for and paying maternity benefit;

(*f*) assign duties to, and regulate the powers of, the Chief Inspector and Inspectors [2][and the officers authorized by the Central Government referred to in section 11 and sub-section (1) of S. 14], for the purposes of this Act.

(3) Any rule made under this section may provide that a contravention thereof shall be punishable with fine which may extend to fifty rupees.

Abstract of this Act and the rules made thereunder to be exhibited in mines

16. The manager of every mine in which women are employed shall cause an abstract in the local Indian language of the provisions of this Act and of the rules made thereunder to be exhibited in the mine in such manner that they may come to the notice of every woman employed in the mine.

(2) For any contravention of the provisions of this section the manager shall be punishable with fine which may extend to one hundred rupees.

Power of Central Government to exempt mines from operation of Act

17. The Central Government may, by notification in the Official Gazette, exempt any mine or class of mines from the operation of this Act.

Act binding on Crown.

18. The provisions of this Act shall be binding on the Crown.

THE INDIAN MINES ACT (IV OF 1923.)[3]

Year.	No.	Short title.	Amendments.
1923	IV	The Indian Mines Act, 1923.	Amended: Acts, 37 of 1925; 13 of 1918; 22 of 1931; 5 of 1935; 12 of 1936; 19 of 1937; 24 of 1940; and Ordinance XVII of 1945. Rep. in part: 12 of 1927.

[*N.B.*—Throughout this Act, except as otherwise provided, for 'Local Government' the words 'Central Government' have been substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

[*23rd February*, 1923.

An Act to amend and consolidate the law relating to the regulation and inspection of mines.

WHEREAS it is expedient to amend and consolidate the law relating to the regulation and inspection of mines; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement

1. (1) This Act may be called THE INDIAN MINES ACT, 1923.

LEG. REF.

[1] Substituted by Act X of 1945.

[2] Inserted by Act X of 1945.

[3] For Statement of Objects and Reasons, *see* "Gazette of India", 1922, Pt. V, p. 327; and for the Report of Joint Committee, *see ibid*, 1923, Pt. V, p. 25.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

(3) It shall come into force on the first day of July, 1924

2. [1][* * * * * * *]

Definitions

3. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "agent", when used in relation to a mine, means any person appointed or acting as the representative of the owner in respect of the management of the mine or of any part thereof, and as such superior to a manager under this Act;

(*b*) "Chief Inspector" means the Chief Inspector of Mines appointed under this Act;

(*c*) "child" means a person [2][who has not completed his fifteenth year];

[3][(*cc*) "day" means a period of twenty-four hours beginning at midnight];

[4][[3](*ccc*) "District Magistrate" means in a Presidency-town, the person appointed by the Central Government to perform the duties of a District Magistrate under this Act in that town];

(*d*) a person is said to be "employed" in a mine who works under appointment by or with the knowledge of the manager, whether for wages or not, in any mining operation, or in cleaning or oiling any part of any machinery used in or about the mine, or in any other kind of work whatsoever incidental to or connected with, mining operations;

(*e*) "Inspector" means an Inspector of Mines appointed under this Act, and includes a District Magistrate when exercising any power or performing any duty of an Inspector which he is empowered by this Act to exercise or perform;

(*f*) "mine" means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, and includes all works, machinery, tramways and sidings, whether above or below ground, in or adjacent to or belonging to a mine;

Provided that it shall not include any part of such premises on which a manufacturing process is being carried on unless such process is a process for coke making or the dressing of minerals;

(*g*) "owner," when used in relation to a mine, means any person who is the immediate proprietor or lessee or occupier of the mine or of any part thereof, but does not include a person who merely receives a royalty, rent or fine from the mine, or is merely the proprietor of the mine subject to any lease, grant or licence for the working thereof, or is merely the owner of the soil and not interested in the minerals of the mine; but any contractor for the working of a mine or any part thereof shall be subject to this Act in like manner as if he were an owner, but not so as to exempt the owner from any liability;

(*h*) "prescribed" means prescribed by regulations, rules or bye-laws;

(*i*) "qualified medical practitioner" means any person registered under the Medical Act, 1858, or any Act amending the same or under any Act of any Legislature in British India providing for the maintenance of a register of medical practitioners, and includes, in any area where no such last-mentioned Act is in force, any person declared by the Central Government, by notification in the Official Gazette, to be a qualified medical practitioner for the purposes of this Act;

LEG. REF.

[1] Sec. 2 omitted by A.O., 1937

[2] Substituted for the words 'under the age of 13 years' by Act V of 1935.

[3] Cl. (*cc*) inserted and old cl. (*cc*) renumbered as cl. (*ccc*) by *ibid*

[4] Added by Act XXI of 1931.

SEC. 3 (*f*) —*See* 61 C. 445=38 C.W.N. 418=1934 C. 387, cited under sec. 15, *infra*.

(*j*) "regulations", "rules", and "bye-laws" mean respectively regulations, rules and bye-laws made under this Act;

[1][(*jj*) where work of the same kind is carried out by two or more sets of workers working during different periods of the day, each of such sets is called a 'relay';]

(*k*) "serious bodily injury" means any injury which involves, or in all probability will involve, the permanent loss of the use of, or permanent injury to, any limb, or the permanent loss of or injury to the sight or hearing, or the fracture of any limb or the enforced absence of the injured person from work for a period exceeding twenty days; and

(*l*) "week" means the period between midnight on Saturday night and midnight on the succeeding Saturday night.

CHAPTER II.

INSPECTORS.

Chief Inspector and Inspectors.

4. (1) The Central Government may, by notification in the Official Gazette, appoint a duly qualified person to be Chief Inspector of Mines for the whole of British India, and duly qualified persons to be Inspectors of Mines subordinate to the Chief Inspector.

(2) No person shall be appointed to be Chief Inspector or an Inspector, or having been appointed shall continue to hold such office who is or becomes directly or indirectly interested in any mine or mining rights in India.

(3) The District Magistrate may exercise the powers and perform the duties of an Inspector subject to the general or special orders of the Central Government:

Provided that nothing in this sub-section shall be deemed to empower a District Magistrate to exercise any of the powers conferred by section 19 or section 32.

(4) The Chief Inspector and every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code.

Functions of Inspectors

5. (1) The Chief Inspector may, by order in writing, prohibit or restrict the exercise by any Inspector named, or any class of Inspectors specified, in the order, of any power conferred on Inspectors by this Act, and shall, subject as aforesaid, declare the local area or areas within which, or the group or class of mines with respect to which, Inspectors shall exercise their respective powers.

(2) The Inspector shall give information to owners, agents and managers of mines, situate within the local area or areas or belonging to the group or class of mines, in respect of which he exercises powers under sub-section (1) as to all regulations and rules which concern them respectively and as to the places where copies of such regulations and rules may be obtained.

Powers of Inspectors of Mines.

6. The Chief Inspector and any Inspector may—

(*a*) make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Act and of the regulations, rules and bye-laws and of any orders made thereunder are observed in the case of any mine;

(*b*) with such assistants (if any) as he thinks fit, enter, inspect and examine any mine or any part thereof at any reasonable time by day or night, but not so as unreasonably to impede or obstruct the working of the mine;

(*c*) examine into, and make inquiry respecting, the state and condition of any mine or any part thereof, the ventilation of the mine, the sufficiency of

LEG. REF.

[1] Cl. (*jj*) inserted by Act V of 1935.

the bye-laws for the time being in force relating to the mine, and all matters and things connected with or relating to the safety of the persons employed in the mine.

Powers of special officer to enter, measure, etc

7. Any person in the service of the [1][Crown] duly authorized by a special order in writing of the Chief Inspector or of an Inspector in this behalf may, for the purpose of surveying, levelling or measuring in any mine, after giving not less than three days' notice to the manager of such mine, enter the mine and may survey, level or measure the mine or any part thereof at any reasonable time by day or night, but not so as unreasonably to impede or obstruct the working of the mine.

Facilities to be afforded to Inspectors.

8. Every owner, agent and manager of a mine shall afford the Chief Inspector and every Inspector and every person authorised under section 7 all reasonable facilities for making any entry, inspection, survey, measurement, examination or inquiry under this Act.

Secrecy of information obtained.

9. (1) All copies of, and extracts from, registers or other records appertaining to any mine, and all other information acquired by the Chief Inspector or an Inspector or by any one assisting him, in the course of the inspection of any mine under this Act or acquired by any person authorised under section 7 in the exercise of his duties thereunder, shall be regarded as confidential, [1-a][and shall not be disclosed to any person other than a Magistrate or an official superior or the owner, agent or manager of the mine concerned, unless the Chief Inspector or the Inspector considers disclosure necessary to ensure the safety of any person].

(2) If the Chief Inspector, or an Inspector or any other person referred to in sub-section (1) discloses [2][contrary to the provisions of sub-section (1)], any such information as aforesaid without the consent of the [3][Central Government], he shall be guilty of a breach of official trust, and shall be punishable [4][with imprisonment for a term which may extend to one year, or with fine, or with both.].

(3) No Court shall proceed to the trial of any offence under this section, [5][except with the previous sanction of the Central Government].

CHAPTER III.

MINING BOARDS AND COMMITTEES.

Mining Boards

10. (1) The Central Government may constitute [6][for any part of British India] or for any group or class of mines [7][* * *], a Mining Board consisting of—

(a) a person in the service of [8][the Crown] not being the Chief Inspector or an Inspector, nominated by the Central Government to act as chairman;

(*b*) the Chief Inspector or an Inspector;

(*c*) [9][a person, not being the Chief Inspector or an Inspector, nominated by the [10](Central Government)];

LEG. REF.

[1] Substituted for 'Government' by A.O, 1937.

[1-a] Inserted by Act XXIX of 1937.

[2] Substituted for words 'to any one other than a Magistrate or an officer to whom he is subordinate' by *ibid*

[3] Substituted for "Governor-General in Council or of the Local Government" by A. O, 1937.

[4] These words were substituted for the words "in the manner provided by S 4 of the Indian Official Secrets Act, 1889" by S. 2 and Sch. I of the Repealing and Amending Act, 1925 (XXXVII of 1925).

[5] Substituted by Act XXIX of 1937.

[6] Substituted for 'for the province, etc,' by A O, 1937.

[7] Words 'in the Province' omitted by *ibid.*

[8] Substituted by Act XXIV of 1940.

[9] Substituted for old cl (*c*) by Act V of 1935.

[10] Substituted for "Local Government" by A.O., 1937.

(*d*) two persons nominated by owners of mines or their representatives in such manner as may be prescribed;

[1][(*e*) two persons to represent the interest of miners, who shall be nominated in accordance with the following provisions:—

(i) if there are one or more registered trade unions having in the aggregate as members not less than one quarter of the miners, the said persons shall be nominated by such trade union or trade unions in such manner as may be prescribed;

(ii) if sub-clause (*i*) is not applicable and there are one or more registered trade unions having in the aggregate as members not less than 1,000 miners, one of the said persons shall be nominated by such trade union or trade unions in such manner as may be prescribed and the other by the Central Government;

(iii) if neither sub-clause (*i*) nor sub-clause (*ii*) is applicable, the said persons shall be nominated by the Central Government.

Explanation.—In this clause "miner" means a person employed, otherwise than in a position of supervision or management, in any of the mines for which the Mining Board is constituted.]

(2) The chairman shall appoint a person to act as secretary to the Board.

(3) The Central Government may give directions as to the payment of travelling expenses incurred by the secretary or any member of any such Mining Board in the performance of his duty as such secretary or member.

Committees.

11. (1) Where under this Act any question relating to a mine is referred to a Committee, the Committee shall consist of—

(*a*) a chairman nominated by the Central Government or by such officer or authority as the Central Government may authorise in this behalf;

(*b*) a person nominated by the chairman and qualified by experience to dispose of the question referred to the Committee; and

(*c*) two persons of whom one shall be nominated by the owner, agent or manager of the mine concerned, and the other shall be nominated by the Central Government to represent the interests of the persons employed in the mine.

(2) No Inspector or person employed in or in the management of any mine concerned shall serve as chairman or member of a committee appointed under this section.

(3) Where an owner, agent or manager fails to exercise his power of nomination under clause (*c*) of sub-section (1), the Committee may, notwithstanding such failure, proceed to inquire into and dispose of the matter referred to it.

(4) The Committee shall hear and record such information as the Chief Inspector or the Inspector, or the owner, agent or manager of the mine concerned, may place before it, and shall intimate its decision to the Chief Inspector or the Inspector and to the owner, agent or manager of the mine, and shall report its decision to the Central Government.

(5) On receiving such report the Central Government shall pass orders in conformity therewith unless the Chief Inspector or the owner, agent or manager of the mine has lodged an objection to the decision of the Committee, in which case the Central Government may proceed to review such decision and to pass such orders in the matter as it may think fit. If an objection is lodged by the Chief Inspector, notice of the same shall forthwith be given to the owner, agent or manager of the mine.

LEG. REF.

[1] Cl. (*e*) inserted by Act V of 1935.

(6) The Central Government may give directions as to the remuneration, if any, to be paid to the members of the Committee or any of them, and as to the payment of the expenses of the inquiry including such remuneration.

Powers of Mining Boards.

12. (1) Any Mining Board constituted under section 10 and any Committee constituted under section 11 may exercise such of the powers of an Inspector under this Act as it thinks necessary or expedient to exercise for the purpose of deciding or reporting upon any matter referred to it.

(2) Every Mining Board constituted under section 10 and every Committee appointed under section 11 shall have the powers of a Civil Court under the Code of Civil Procedure, 1908, for the purpose of enforcing the attendance of witnesses and compelling the production of documents and material objects; and every person required by any such Mining Board or Committee to furnish information before it shall be deemed to be legally bound to do so within the meaning of section 176 of the Indian Penal Code.

Recovery of expenses.

13. The Central Government may direct that the expenses of any inquiry conducted by a Mining Board constituted under section 10 or by a Committee appointed under section 11 shall be borne in whole or in part by the owner or agent of the mine concerned, and the amount so directed to be paid may, on application by the Chief Inspector or an Inspector to a Magistrate having jurisdiction at the place where the mine is situated or where such owner or agent is for the time being resident, be recovered by the distress and sale of any movable property within the limits of the Magistrate's jurisdiction belonging to such [1][owner or agent].

CHAPTER IV.

MINING OPERATIONS AND MANAGEMENT OF MINES.

Notice to be given of mining operations.

14. The owner, agent or manager of a mine shall, in the case of an existing mine within one month from the commencement of this Act, or, in the case of a new mine, within three months after the commencement of mining operations, give to the District Magistrate of the district in which the mine is situated notice in writing in such form and containing such particulars relating to the mine as may be prescribed.

Managers.

15. (1) Save as may be otherwise prescribed, every mine shall be under one manager who shall have the prescribed qualifications and shall be responsible for the control, management and direction of the mine, and the owner or agent of every mine shall appoint himself or some other person, having such qualifications, to be such manager.

(2) If any mine is worked without there being a manager for the mine as required by sub-section (1), the owner and agent shall each be deemed to have contravened the provisions of this section.

LEG. REF.

[1] These words were substituted for the words "owner, agent or manager" by S. 2 and Sch I of the Repealing and Amending Act, 1925 (XXXVII of 1925).

SEC. 15 (2): 'MINE'—MEANING OF—WORKING OF MINE.—In addition to excavations, machinery, etc., works which are incidental to or connected with mining operations clearly fall within the definition of mine in S. 3 (*f*) of the Act. Whether a particular kind of work comes within the mischief of the definition or not must always be a question of fact. Where at the time when the petitioners were alleged to have been carrying on mining work under the management of a manager appointed without sanction, several persons were employed in loading wagons and others were employed on the surface, and steam was up". *Held,* that the "mine was being worked" within the meaning of S. 15 (2). That term is not confined to actual mining operations, that is to say, such operations as relate to the actual raising of coal. 61 Cal. 445=38 C.W.N. 418=48 I.C. 739=35 Cr.L.J. 742=59 C.L.J. 122=1934 Cal. 387.

Duties and responsibilities of owners, agents and managers.

16. (1) The owner, agent and manager of every mine shall be responsible that all operations carried on in connection therewith are conducted in accordance with the provisions of this Act and of the regulations, rules and bye-laws and of any orders made thereunder.

(2) In the event of any contravention of any such provisions by any person whomsoever, the owner, agent and manager of the mine shall each be deemed also to be guilty of such contravention unless he proves that he had taken all reasonable means, by publishing and to the best of his power enforcing those provisions, to prevent such contravention:

Provided that the owner or agent shall not be so deemed if he proves—

(*a*) that he was not in the habit of taking, and did not in respect of the matter in question take, any part in the management of the mine; and

(*b*) that he had made all the financial and other provisions necessary to enable the manager to carry out his duties; and

(*c*) that the offence was committed without his knowledge, consent or connivance.

(3) Save as hereinbefore provided, it shall not be a defence in any proceedings brought against an owner or agent of a mine under this section that a manager of the mine has been appointed in accordance with the provisions of this Act.

CHAPTER V.

PROVISIONS AS TO HEALTH AND SAFETY.

Conservancy.

17. There shall be provided and maintained for every mine, latrine and urinal accommodation of such kind and on such scale, and such supply of water fit for drinking, as may be prescribed.

Medical appliances.

18. At every mine in respect of which the Central Government may, by notification in the Official Gazette, declare this section to apply,[1] such supply of ambulances as stretchers, and of splints, bandages and other medical requirements, as may be prescribed, shall be kept ready at hand in a convenient place and in good and serviceable order.

Powers of Inspectors when causes of danger not expressly provided against exist or when employment of persons is dangerous

19. (1) If, in any respect which is not provided against by any express provision of this Act or of the regulations, rules or bye-laws or of any orders made thereunder, it appears to the Chief Inspector or the Inspector that any mine, or any part thereof or any matter, thing or practice in or connected with the mine, or with control, management or direction thereof, is dangerous to human life or safety, or defective so as to threaten, or tend to, the bodily injury of any person, he may give notice in writing thereof to the owner, agent or manager of the mine, and shall state in the notice the particulars in which he considers the mine, or part thereof, or the matter, thing or practice, to be dangerous or defective and require the same to be remedied within such time as he may specify in the notice.

[2][(1-A) Without prejudice to the generality of the provisions contained in sub-section (1), the Chief Inspector or the Inspector may, in any area to which the Central Government may by notification in the Official Gazette declare

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LEG. REF.

[1] The provisions of this section were applied to all coal mines and to mines other than coal mines at which more than 20 persons are employed in Bengal, *see* "Calcutta Gazette," 1925, Pt I, p. 960; provisions similarly applied to Baluchistan, *see* Bal. Local Rules and Orders, Pt. II, p. 244.

[2] Inserted by Act XI of 1936 and *see also* Act XXXIX of 1937.

that this sub-section applies, by order in writing addressed to the owner, agent or manager of a mine,—

[1][* *] prohibit the extraction or reduction of pillars in any part of the mine if, in his opinion, such operation is likely to cause the crushing of pillars or the premature collapse of any part of the workings or otherwise endanger the mine, or if, in his opinion, adequate provision against the outbreak of fire has not been made by providing for the sealing off and isolation of the part of the mine in which such operation is contemplated and for restricting the area that might be affected by a fire; [1][* *]

[* * * * * * *]

and the provisions of sub-sections (3), (4), (5) and (6) shall apply to an order made under this sub-section as they apply to an order made under sub-section (2).]

(2) If the Chief Inspector or an Inspector authorised in this behalf by general or special order in writing by the Chief Inspector is of opinion that there is urgent and immediate danger to the life or safety of any person employed in any mine or part thereof, he may, by an order in writing containing a statement of the grounds of his opinion, prohibit, until the danger is removed, the employment in or about the mine or part thereof of any person whose employment is not in his opinion reasonably necessary for the purpose of removing the danger.

(3) Where an order has been made under sub-section (2) by an Inspector, the owner, agent or manager of the mine may, within ten days after the receipt of the order, appeal against the same to the Chief Inspector who may conform, modify or cancel the order.

(4) The Chief Inspector or the Inspector making a requisition under sub-section (1) or an order under sub-section (2), and the Chief Inspector making an order (other than an order of cancellation) in appeal under sub-section (3), shall forthwith report the same to the Central Government and shall inform the owner, agent or manager of the mine that such report has been so made.

(5) If the owner, agent or manager of the mine objects to a requisition made under sub-section (1) or to an order made by the Chief Inspector under sub-section (2), or sub-section (3). he may, within twenty days after the receipt of the notice containing the requisition or of the order or after the date of the decision of the appeal, as the case may be, send his objection in writing, stating the grounds thereof, to the Central Government, which shall refer the same to a Committee.

(6) Every requisition made under sub-section (1), or order made under sub-section (2), or sub-section (3), to which objections is made under sub-section (5) shall be complied with pending the receipt at the mine of the decision of the Committee:

Provided that the Committee may, on the application of the owner, agent or manager, suspend the operation of a requisition under sub-section (1) pending its decision on the objection.

Nothing in this section shall affect the powers of a Magistrate under section 144 of the Code of Criminal Procedure, 1898.

Notice to be given of accidents.

[2][20. (1)] When any accident occurs in or about a mine causing loss of life or serious bodily injury, or when an accidental explosion, ignition, outbreak of fire or irruption of water occurs in or about a mine, the owner, agent or manager of the mine shall give such notice of the occurrence to such authorities, and in such form, and within such time, as may be prescribed.

LEG. REF.

[1] Omitted by Act XXIV of 1940.

[2] Sec. 20 has been re-numbered as sub-sec. (1) of sec 20 and sub-secs (2) and (3) added by Act V of 1935

[1][(2) The Central Government may, by notification in the Official Gazette, direct that accidents other than those specified in sub-section (1) which cause bodily injury resulting in the enforced absence from work of the person injured for a period exceeding 48 hours shall be entered in a register the prescribed form or shall be subject to the provisions of sub-section (1).

(3) A copy of the entries in the register referred to in sub-section (2) shall be sent by the owner, agent, or manager of the mine, within fourteen days after the 30th day of June and the 31st day of December in each year, to the Chief Inspector.]

Power of Government to appoint Court of inquiry in case of accidents

21. (1) When any accidental explosion, ignition, outbreak of fire or irruption of water or other accident has occurred in or about any mine, the Central Government, if it is of opinion that a formal inquiry into the causes of, and circumstances attending, the accident ought to be held, may appoint a competent person to hold such inquiry, and may also appoint any person or persons possessing legal or special knowledge to act as assessor or assessors in holding the inquiry.

(2) The person appointed to hold any such inquiry shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908, for the purpose of enforcing the attendance of witnesses and compelling the production of documents and material objects; and every person required by such person as aforesaid to furnish any information shall be deemed to be legally bound to do so within the meaning of section 176 of the Indian Penal Code.

(3) Any person holding an inquiry under this section may exercise such of the powers of an Inspector under this Act as he may think it necessary or expedient to exercise for the purposes of the inquiry.

(4) The person holding an inquiry under this section shall make a report to the Central Government stating the causes of the accident and its circumstances, and adding any observations which he or any of the assessors may think fit to make.

Publication of reports.

22. The Central Government may cause any report submitted by a Committee under section 11 [2][and shall cause every report submitted] by a Court of inquiry under section 21, to be published at such time and in such manner as it may think fit.

CHAPTER VI.

HOURS AND LIMITATION OF EMPLOYMENT.

Weekly day of rest.

[3][**22-A.** No person shall be allowed to work in a mine on more than six days in any one week.

Hours of work above ground.

22-B. (1) A person employed above ground in a mine shall not be allowed to work for more than fifty-four hours in any week or for more than ten hours in any day.

(2) The periods of work of any such person shall be so arranged that, along with his intervals for rest, they shall not in any day spread over more than twelve hours, and that he shall not work for more than six hours before he has had an interval for rest of at least one hour.

(3) Persons belonging to two or more relays shall not be allowed to do work of the same kind above ground at the same moment:

Provided that for the purposes of this sub-section person shall not be deemed to belong to separate relays by reason only of the fact that they receive their intervals for rest at different times.

LEG. REF.

[1] Sub-sec. (2) and (3) of sec 20 added by Act V of 1935.

[2] Substituted for the word "or" by Act V of 1935.

[3] Secs. 22-A to 22-D inserted by *ibid.*

Hours of work below ground.

22-C. (1) A person employed below ground in a mine shall not be allowed to work for more than nine hours in any day.

(2) Work of the same kind shall not be carried on below ground in any mine for a period spreading over more than nine hours in any day except by a system of relays so arranged that the periods of work for each relay are not spread over more than nine hours.

(3) No person employed in a mine shall be allowed to be in any part of the mine below ground except during the periods of work shown in respect of him in the register kept under sub-section (1) of section 28.

Special provision for night relays.

22-D. Where a worker works in a relay whose period of work extends over midnight, the ensuing day for him shall be deemed to be the period of twenty-four hours beginning at the end of the period of work fixed for the relay, and the hours he has worked after midnight, shall be counted towards the previous day.]

Prohibition of employment of certain persons.

[1][**23.** No person shall be allowed to work in a mine who has already been working in any other mine within the preceding twelve hours.]

[2][**23-A.** *Repealed by Act V of* 1935.]

Notices regarding hours of work.

[2][**23-B.** (1) The manager of every mine shall cause to be posted outside the office of the mine a notice in the prescribed form stating the time of the commencement and of the end of work at the mine and, if it is proposed to work by a system of [3][relays], the time of the commencement and of the end of work for each [3][relay]. [The notice shall also state the time of the commencement and of the end of the intervals for rest fixed for persons employed above ground.] A copy of each such notice shall be sent to the Chief Inspector, if he so requires.

(2) In the case of a mine at which mining operations commence after the 14th day of April, 1930, the notice referred to in sub-section (1) shall be posted not less than seven days before the commencement of work.

(3) Where it is proposed to make any alteration in the time fixed for the commencement or for the end of work in the mine generally or for any [3][relay or in the rest intervals fixed for persons employed above ground], an amended notice in the prescribed form shall be posted outside the office of the mine not less than seven days before the change is made, and a copy of such notice shall be sent to the Chief Inspector not less than seven days before such change. [3][* * *].]

[3][(4) No person shall be allowed to work in a mine otherwise than in accordance with the notice required by sub-section (1).]

Supervising staff.

24. Nothing in [4][section 22-A, section 22-B, section 22-C, section 23, or sub-section (4) of section 23-B] shall apply to persons who may by rules be defined to be persons holding positions of supervision or management or employed in a confidential capacity.

LEG. REF.

[1] Substituted and added by Act V of 1935.

[2] Secs. 23-A and 23-B added by Act XIII of 1928.

[3] (i) In sec. 23-B, sub-sec. (1) for the word "shifts" the word "relays" and for the word "shift" the word "relay" have been substituted by Act V of 1935. (ii) After the word "relay" as so substituted new sentence within brackets has been inserted by *ibid.* (iii) In sub-sec (3) for the word "shift" the words "relay or in the rest intervals fixed for persons employed above ground" have been substituted and all the words after the words "before such change" have been omitted by *ibid.*; (iv) after sub-sec. (3) sub-sec. (4) has been inserted by *ibid.*

[4] Substituted by *ibid.*

Exemption from provisions regarding employment.

25. In case of an emergency involving serious risk to the safety of the mine or of persons employed therein, the manager may, subject to the provisions of section 19, permit persons to be employed in contravention of [1][section 22-A, section 22-B, section 22-C, section 23, or sub-section (4) of section 23-B] on such work as may be necessary to protect the safety of the mine or of the persons employed therein:

Provided that, where such occasion arises, a record of the fact shall immediately be made by the manager and shall be placed before the Chief Inspector or the Inspector at his next inspection of the mine.

Children.

26 No child shall be employed in a mine, or be allowed to be present in any part of mine which is below ground.

Young persons not to be allowed underground without certificates of fitness.

[2][26-A. No person who has not completed his seventeenth year shall be allowed to be present in any part of a mine which is below ground, unless—

(*a*) a certificate of fitness in the prescribed form and granted to him by a qualified medical practitioner is in the custody of the manager of the mine, and

(*b*) he carries while at work a token giving a reference to such certificate.]

Disputes as to age.

27. (1) If any question arises between the Chief Inspector or the Inspector and the manager of any mine as to whether any person is a child, [3][or has not completed his seventeenth year], the question shall, in the absence of a certificate as to the age of such person granted in the prescribed manner, be referred by the Chief Inspector or the Inspector for decision to a qualified medical practitioner.

(2) Every certificate as to the age of a person which has been granted in the prescribed manner and any certificate granted by a qualified medical practitioner on a reference under sub-section (1) shall, for the purposes of this Act, be conclusive evidence as to the age of the person to whom it relates.

Register of employees.

[4][28. (1) For every mine there shall be kept in the prescribed form and place a register of all persons employed in the mine showing, in respect of each such person,—

(*a*) the nature of his employment,

(*b*) the periods of work fixed for him,

(*c*) the intervals for rest, if any, to which he is entitled,

(*d*) the days of rest to which he is entitled, and

(*e*) where work is carried on by a system of relays, the relay to which he belongs.

(2) The entries in the register prescribed by sub-section (1) shall be such that workers working in accordance therewith would not be working in contravention of any of the provisions of this Chapter.

(3) No person shall be employed in a mine until the particulars required by sub-section (1) have been recorded in the register in respect of such person and no person shall be employed except during the periods of work shown in respect of him in the register.

(4) For every mine to which the Central Government may, by general or special order, declare this sub-section to be applicable, there shall be kept in the prescribed form and place a register which shall show at any moment the name of every person then working below ground in the mine.]

LEG. REF.

1 Substituted by Act V of 1935.
2 Sec. 26-A inserted by Act V of 1935.
3 Inserted by *ibid.*
4 New sec. 28 substituted for old section by *ibid.*

CHAPTER VII.

REGULATIONS, RULES AND BYE-LAWS.

Power of Central Government to make regulations.

29. The Central Government may, by notification in the Official Gazette, make regulations[1] consistent with this Act for all or any of the following purposes, namely:—

(*a*) for prescribing the qualifications to be required by a person for appointment as Chief Inspector or Inspector;

(*b*) for prescribing and regulating the duties and powers of the Chief Inspector and of Inspectors in regard to the inspection of mines under this Act;

(*c*) for prescribing the duties of owners, agents and managers of mines and of persons acting under them;

(*d*) for prescribing the qualifications of managers of mines and of persons acting under them;

(*e*) for regulating the manner of ascertaining, by examination or otherwise, the qualifications of managers of mines and persons acting under them, and the granting and renewal of certificates of competency;

(*f*) for fixing the fees, if any, to be paid in respect of such examinations and of the grant and renewal of such certificates;

(*g*) for determining the circumstances in which and the conditions subject to which it shall be lawful for more mines than one to be under a single manager, or for any mine or mines to be under a manager not having the prescribed qualifications;

(*h*) for providing for the making of enquiries into charges of misconduct or incompetency on the part of managers of mines and persons acting under them and for the suspension and cancellation of certificates of competency;

(*i*) for regulating, subject to the provisions of the Indian Explosives Act, 1884, and of any rules made thereunder, the storage and use of explosives;

(*j*) for prohibiting, restricting or regulating the employment in mines or in any class of mines of women either below ground or on particular kinds of labour which are attended by danger to the life, safety or health of such women;

(*k*) for providing for the safety of the persons employed in a mine, their means of entrance thereinto and exit therefrom, the number of shafts or outlets to be furnished, and the fencing of shafts, pits, outlets, pathways and subsidences;

[2][(*kk*) for prohibiting the employment in a mine either as manager or in any other specified capacity of any persons except persons paid by the owner of the mine and directly answerable to the owner or manager of the mine;]

(*l*) for providing for the safety of the roads and working places in mines, including the sitting and maintenance of pillars and the maintenance of sufficient barriers between mine and mine;

(*m*) for providing [3][and regulating] for the ventilation of mines and the action to be taken in respect of dust and noxious gases;

(*n*) for providing for the care, and the regulation of the use, of all machinery and plant and of all electrical apparatus used for signalling purposes;

(*o*) for requiring and regulating the use of safety lamps in mines;

(*p*) [4][for providing against explosions or ignitions or irruptions of or

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LEG. REF.

1 For the Indian Coal Mines Regulations, 1926, *see* Gazette of India, 1926, Pt. I, p. 965; and for the Indian Metalliferous Regulations, 1926, see *ibid.*, p. 1004.

2 Cl. (*kk*) inserted by Act XXIV of 1940.

3 Inserted by Act XI of 1936.

4 Substituted for old cl. (*p*) by *ibid.*

accumulations of water in mines and against danger arising therefrom, and for prohibiting, restricting or regulating the extraction of minerals in circumstances likely to result in or to aggravate irruptions of water or ignitions in mines;]

(*q*) for prescribing the notices of accidents and dangerous occurrences, and the notices, reports and returns of mineral output, persons employed and other matters provided for by regulations, to be furnished by owners, agents and managers of mines, and for prescribing the forms of such notices, returns and reports, the persons and authorities to whom they are to be furnished, the particulars to be contained in them, and the time within which they are to be submitted;

(*r*) for prescribing the plans to be kept by owners, agents and managers of mines and the manner and places in which such plans are to be kept for purposes of record;

(*s*) for regulating the procedure on the occurrence of accidents or accidental explosings or ignitions in or about mines;

(*t*) for prescribing the form of, and the particulars to be contained in the notice to be given by the owner, agent or manager of a mine under section 14; and

(*u*) for prescribing the notice to be given by the owner, agent or manager of a mine before mining operations are commenced at or extented to any point within fifty yards of any railway subject to the provisions of the Indian Railways Act, 1890, or of any public work or classes of public works which the Central Government may, by general or special order, specify in this behalf.

Power of Central Government to make rules.

30. The Central Government may, [1][* * *] by notification in the Official Gazette, make rules consistent with this Act for all or any of the following purposes, namely:—

(*a*) for providing for the appointment of chairman and members of Mining Boards, and for regulating the procedure of such Boards;

[2][(*aa*) for prescribing the form of the register referred to in sub-section (2) of section 20;]

(*b*) for providing for the appointment of Courts of inquiry under section 21, for regulating the procedure and powers of such Courts, for the payment of travelling allowance to the members, and for the recovery of the expenses of such Courts from the manager, owner or agent of the mine concerned;

[(*bb*) for requiring the maintenance in mines wherein any women are ordinarily employed of suitable rooms to be reserved for the use of children under the age of six years belonging to such women, and for prescribing, either generally or with particular reference to the number of women ordinarily employed in the mine, the number and standards of such rooms, and the nature and extent of the supervision to be provided therein."] (*Inserted by Ordinance XVIII of* 1945).

(*c*) for prescribing the scale of latrine and urinal accommodation to be provided at mines, the provision to be made for the supply of drinking-water, the supply and maintenance of medical appliances and comforts, [3][* * * *], and the training of men in ambulance work;

[4][*cc*)] for prescribing the forms of notices required under section 23-B and for requiring such notices to be posted also in specified vernaculars;]

LEG. REF.

[1] The words 'subject to the control of the Governor-General in Council' omitted by A. O., 1937.

[2] Cl. (*aa*) added by Act V of 1935.

[3] The words 'the formation and training of rescue brigades' omitted by Act XI of 1936.

[4] Cl. (*cc*) added by Act XIII of 1928.

To face page 3766.

Amendment of section 30, Act IV of 1923.

2. In section 30 of the Indian Mines Act, 1923, after clause (*bb*) the following clause shall be inserted namely :—

[(*bbb*) for requiring the maintenance at or near pit-heads of bathing places equipped with shower baths and of locker-rooms for the use of men employed in mines and of similar and separate places and rooms for the use of women in mines where women are employed, and for prescribing; either generally or with particular reference to the numbers of men and women ordinarily employed in a mine, the number and standards of such places and rooms.] (Act II of 1946.)

Amendment of section 31, Act IV of 1923.

3. In sub-section (5) of section 31 of the Indian Mines Act, 1923, after the word, brackets and letters "clause (*bb*)" the words brackets and letters "or clause (*bbb*)" shall be inserted. (Act II of 1946.)

(*d*) for defining the persons who shall, for the purpose of section 24, be deemed to be persons holding positions, of supervision or management or employed in a confidential capacity;

(*e*) for prohibiting the employment in mines of persons or any class of persons who have not been certified by a qualified medical practitioner [1][to have completed their fifteenth year], and for prescribing the manner and the circumstances in which such certificates may be granted and revoked;

[2][(*ee*) for prescribing the form of the certificates of witness required by section 26-A and the circumstances in which such certificates may be granted and revoked;]

(*f*) for prescribing the form of [3][registers] required by section 28;

(*g*) for prescribing abstracts of this Act [4][and of the regulations and rules] and the vernacular in which the abstracts and [5][* * *] by-laws shall be posted as required by sections 32 and 33;

(*h*) for requiring the fencing of any mine or part of a mine whether the same is being worked or not, where such fencing is necessary for the protection of the public;

(*i*) for the protection from injury, in respect of any mine when the workings are discontinued, of property vested in His Majesty or any local authority or railway company as defined in the Indian Railways Act, 1890;

(*j*) for requiring notices, returns and reports in connection with any matters dealt with by rules to be furnished by owners, agents and managers of mines, and for prescribing the forms of such notices, returns and reports, the persons, and authorities to whom they are to be furnished, the particulars to be contained in them, and the times within which they are to be submitted; and

(*k*) generally to provide for any matter not provided for by this Act or the regulations, provision for which is required in order to give effect to this Act.

Power of Central Government to require rescue stations to be established.

[6][**30-A.** The Central Government may, by notification in the Official Gazette, make [7][rules] under this section—

[6][(*a*) requiring the establishment of central rescue stations for groups of specified mines or for all mines in a specified area, and prescribing how and by whom such stations shall be established;

(*b*) providing for the management of central rescue stations, and regulating the constitution, powers and functions of, and the conduct of business by, the authorities (which shall include representatives of the owners and managers of, and of the miners employed in, the mines or grops of mines concerned) charged with such management;

(*c*) prescribing the position, equipment, control, maintenance and functions of central rescue stations;

(*d*) providing for the levy and collection of a duty of excise (at a rate not exceeding six pies per ton) on coke and coal produced in and despatched from mines specified under clause (*a*) in any group or included under clause (*a*) in any specified area, the utilisation of the proceeds thereof for the creation of a central rescue station fund for such group or area and the administration of such funds;

LEG. REF.

1 Substituted by Act V of 1935.

2 Inserted by Act V of 1935.

3 Substituted by *Ibid.*

4 These words were inserted by sec. 2 and Sch. I of the Repealing and Amending Act, 1925 (XXXVII of 1925).

5 The words "the regulations, rules and" were omitted by *ibid.*

6 Sec. 30-A inserted by Act XI of 1936; and for cls. (*a*) to (*d*) thereof the present cls. (*a*) to (*f*) have been substituted by Act XXIX of 1937.

7 Substituted for "regulations" by *ibid.*

(*c*) providing for the formation, training, composition, and duties of rescue brigades; and

(*f*) providing generally for the conduct of rescue work in mines.]

Prior publication of regulations and rules.

31. (1) The power to make regulations and rules conferred by sections 29 [1][30 and 30-A] is subject to the condition of the regulations and rules being made after previous publication.

(2) The date to be specified in accordance with clause (3) of section 23 of the General Clauses Act, 1897, as that after which a draft of regulations or rules proposed to be made will be taken under consideration, shall not be less than three months from the date on which the draft of the proposed regulations or rules is published for general information.

(3) Before the draft of any regulation [2][* *] is published under this section it shall be referred [2][* *] to every Mining Board constituted in British India, [3][which is, in the opinion of the Central Government], concerned with the subject dealt with by the regulation [2][* *] and the regulation [2][* *] shall not be so published until each such Board has had a reasonable opportunity of reporting as to the expediency of making the same and as to the suitability of its provisions.

[4][(3-A) No rule shall be made unless the draft therefor has been referred to every Mining Board constituted [5][in the part of British India affected by the rule], and unless each such Board has had a reasonable opportunity of reporting as to the expediency of making the same and as to the suitability of its provisions.]

(4) Regulations and rules shall be published in the Official Gazette [6][* * *], and, on such publication, shall have effect as if enacted in this Act.

[(5) The provisions of sub-sections (1), (2) and (3-A) shall not apply to the first occasion on which rules referred to in clause (*bb*) of section 30 are made.] (*Gazette of India Extraordinary, 26th* May, 1944, pp. 463-464, added by Ord. XVII of 1945).

Power to make regulations without previous publication.

[7][**31-A.** Notwithstanding anything contained in sub-sections (1), (2) and (3) of section 31, regulations under clause (*i*) and clauses (*k*) to (*s*) inclusive of section 29 may be made without previous publication and without previous reference to Mining Boards, if the Central Government is satisfied that for the prevention of apprehended danger or the speedy remedy of conditions likely to cause danger it is necessary in making such regulations to dispense with the delay that would result from such publication and reference:

Provided that any regulations so made shall not remain in force for more than two years from the making thereof.]

Bye-laws.

32. (1) The owner, agent or manager of a mine may, and shall, if called upon to do so by the Chief Inspector or Inspector, frame and submit to the Chief Inspector or Inspector a draft of such bye-laws, not being inconsistent with this Act or any regulations or rules for the time being in force, for the control and guidance of the

LEG. REF.

[1] Substituted for 'and 30' by *ibid.*

[2] In sub-sec. (3) of sec. 31 the words 'or rule', in both places where they occur, the words "in the case of a regulation", and the words and in the case of a rule to every Mining Board constituted in the province." have been omitted by Act XIII of 1928.

[3] Added by Act V of 1935.

[4] Sec. 31, cl. (3-A) added by Act XIII of 1928.

[5] Substituted for 'in the Province for which it is proposed to make the rule' by A.O., 1937.

[6] The words 'and the local official Gazette respectively' omitted by *ibid.*

[7] Sec. 31-A inserted by Act XI of 1936.

persons acting in the management of, or employed in, the mine as such owner, agent or manager may deem necessary to prevent accidents and provide for the safety, convenience and discipline of the persons employed in the mine.

(2) If any such owner, agent or manager—

(*a*) fails to submit within two months a draft of bye-laws after being called upon to do so by the Chief Inspector or Inspector, or

(*b*) submits a draft of bye-laws which is not in the opinion of the Chief Inspector or Inspector sufficient,

the Chief Inspector or Inspector may—

(i) propose a draft of such bye-laws as appear to him to be sufficient, or

(ii) propose such amendments in any draft submitted to him by the owner, agent or manager as will, in his opinion, render it sufficient,

and shall send such draft bye-laws or draft amendments to the owner, agent or manager, as the case may be, for consideration.

(3) If within a period of two months from the date on which any draft bye-laws or draft amendments are sent by the Chief Inspector or Inspector to the owner, agent or manager under the provisions of sub-section (2), the Chief Inspector or Inspector and the owner, agent or manager are unable to agree as to the terms of the bye-laws to be made under sub-section (1), the Chief Inspector or Inspector shall refer the draft bye-laws for settlement to the Mining Board or, where there is no Mining Board, to such officer or authority as the Central Government may, by general or special order, appoint in this behalf.

(4) (*a*) When such draft bye-laws have been agreed to by the owner, agent or manager and the Chief Inspector or Inspector, or, when they are unable to agree, have been settled by the Mining Board or such officer or authority as aforesaid, a copy of the draft bye-laws shall be sent by the Chief Inspector or Inspector to the Central Government for approval.

(*b*) The Central Government may make such modifications of the draft bye-laws as it thinks fit.

(*c*) Before the Central Government approves the draft bye-laws, whether with or without modifications, there shall be published, in such manner as the Central Government may think best adapted for informing the persons affected, notice of the proposal to make the bye-laws and of the place where copies of the draft bye-laws may be obtained, and of the time (which shall not be less than thirty days) within which any objections with reference to the draft bye-laws, made by or on behalf of persons affected, should be sent to the Central Government.

(*d*) Every objection shall be in writing and shall state—

(i) the specific grounds of objection, and

(ii) the omissions, additions or modifications asked for.

(*e*) The Central Government shall consider any objection made within the required time by or on behalf of persons appearing to it to be affected, and may approve the bye-laws either in the form in which they were published or after making such amendments thereto as it thinks fit.

(5) The bye-laws, when so approved by the Central Government, shall have effect as if enacted in this Act, and the owner, agent or manager of the mine shall cause a copy of the bye-laws, in English and in such vernacular or vernaculars as may be prescribed, to be posted up in some conspicuous place at or near the mine, where the bye-laws may be conveniently read or seen by the persons employed; and, as often as the same become defaced, obliterated or destroyed, shall cause them to be renewed with all reasonable despatch.

(6) The Central Government may, by order in writing, rescind, in whole or in part, any bye-law so made, and thereupon such bye-law shall cease to have effect accordingly.

Posting up of extracts from Act, regulation regulations

33. There shall be kept posted up at or near every mine, in English and in such vernacular or vernaculars as may be prescribed, the prescribed abstracts of the Act and of the regulations and rules.

CHAPTER VIII.

PENALTIES AND PROCEDURE.

Obstruction.

34. (1) Whoever obstructs the Chief Inspector, an Inspector or any person authorised under section 7 in the discharge of his duties under this Act, or refuses or wilfully neglects to afford the Chief Inspector, an Inspector or such person any reasonable facility for making any entry, inspection, examination or inquiry authorised by or under this Act in relation to any mine, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(2) Whoever refuses to produce on the demand of the Chief Inspector or Inspector any registers or other documents kept in pursuance of this Act, or prevents or attempts to prevent or does anything which he has reason to believe to be likely to prevent, any person from appearing before or being examined by an inspecting officer acting in pursuance of his duties under this Act, shall be punishable with fine which may extend to three hundred rupees.

Falsification of records, etc.

35. Whoever—

(*a*) counterfeits, or knowingly makes a false statement in, any certificate, or any official copy of a certificate, granted under this Act, or

(*b*) knowingly uses as true any such counterfeit or false certificate, or

(*c*) makes or produces or uses any false declaration, statement or evidence knowing the same to be false, for the purpose of obtaining for himself or for any other person a certificate, or the renewal of a certificate, under this Act, or any employment in a mine, or

(*d*) falsifies any plan or register or record the maintenance of which is required by or under this Act, or

(*e*) makes, gives or delivers any plan, return, notice, record or report containing a statement, entry or detail which is not to the best of his knowledge or belief true,

shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees. or with both.

Omission to furnish plans, etc.

36. Any person who, without reasonable excuse the burden of proving which shall lie upon him, omits to make or furnish in the prescribed form or manner or at or within the prescribed time any plan, return, notice, register, record or report required by or under this Act to be made or furnished shall be punishable with fine which may extend to two hundred rupees.

Contravention of provisions regarding employment of labour.

37. Whoever, save as permitted by section 25, contravenes any provision of this Act or of any regulation, rule or by-law or of any order made thereunder prohibiting, restricting or regulating the employment or presence of persons in or about a mine shall be punishable with fine which may extend to five hundred rupees.

SEC. 35.—This section prescribes punishments for not preparing a plan, and it is very unlikely that in such circumstances an incorrect plan would be submitted. 64 C.L. J. 308=1936 Cal. 727=41 C.W.N. 203.

Notice of accidents.

38. [1][(1)] Whoever, in contravention of the provisions [1][of sub-section (1)] of section 20, fails to give notice of any accidental occurrence shall, if the occurrence results in serious bodily injury, be punishable with fine which may extend to five hundred rupees or, if the occurrence results in loss of life, be punishable with imprisonment which may extend to three months or with fine which may extend to five hundred rupees, or with both.

[1][(2) Whoever in contravention of a direction made by the Central Government under sub-section (2) of section 20 fails to record in the prescribed register or to give notice of any accidental occurrence shall be punishable with fine which may extend to five hundred rupees.]

Disobedience of orders.

39. Whoever contravenes any provision of this Act or of any regulation, rule or bye-law or of any order made thereunder for the contravention of which no penalty is hereinbefore provided shall be punishable with fine which may extend to one thousand rupees, and, in the case of a continuing contravention, with a further fine which may extend to one hundred rupees for every day on which the offender is proved to have persisted in the contravention after the date of the first conviction.

Contravention of law with dangerous results.

40. (1) Notwithstanding anything hereinbefore contained, whoever contravenes any provision of this Act or of any regulation, rule or bye-law or of any order made thereunder shall be punishable, if such contravention results in loss of life, with imprisonment which may extend to one year, or with fine which may extend to two thousand rupees, or with both; or, if such contravention results in serious bodily injury, with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both; or, if such contravention otherwise causes, injury or danger to workers or other persons in or about the mine, with imprisonment which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

(2) Where a person having been convicted under this section is again convicted thereunder, he shall be punishable with double the punishment provided by sub-section (1):

(3) Any Court imposing, or confirming in appeal, revision or otherwise, a sentence of fine passed under this section may, when passing judgment, order the whole or any part of the fine recovered to be paid as compensation to the person injured, or, in the case of his death, to his legal representative:

Provided that, if the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal has been presented, before the decision of the appeal.

Prosecution of owner, agent or manager.

41. No prosecution shall be instituted against any owner, agent or manager for any offence under this Act except at the instance of the Chief Inspector or of the District Magistrate or of an Inspector authorised in this behalf by general or special order in writing by the Chief Inspector.

LEG. REF.

1 (*i*) Sec. 38 has been re-numbered as sub-sec. (1) and in the said section so re-numbered, after the word "provisions" the words "of sub-sec. (1)" have been inserted by Act V of 1935; (*ii*) to the section so re-numbered sub-sec. (2) has been newly inserted by *ibid.*

Limitation of prosecutions.

42. No Court shall take cognizance of any offence under this Act unless complaint thereof has been made within six months of the date on which the offence is alleged to have been committed.

Cognizance of offences.

43. No Court inferior to that of a Presidency Magistrate or Magistrate of the first class shall try any offence under this Act which is alleged to have been committed by any owner, agent or manager of a mine or any offence which is by this Act made punishable with imprisonment.

Reference to Mining Board or Committee in lieu of prosecution in certain cases.

44. (1) If the Court trying any case instituted at the instance of the Chief Inspector or of the District Magistrate or of an Inspector under this Act is of opinion that the case is one which should, in lieu of a prosecution, be referred to a Mining Board or a Committee, it may stay the criminal proceedings, and report the matter to the Central Government with a view to such reference being made.

(2) On receipt of a report under sub-section (1), the Central Government may refer the case to a Mining Board or a Committee, or may direct the Court to proceed with the trial.

CHAPTER IX.

MISCELLANEOUS.

Decision of question whether a mine is under this Act.

45. If any question arises as to whether any excavation or working is a mine within the meaning of this Act, the Central Government may decide the question, and a certificate signed by a Secretary to the Central Government shall be conclusive on the point.

Power to exempt from operation of Act.

46. (1) The Central Government may, by notification in the Official Gazette, exempt[1] [2][either absolutely or subject to any specified conditions] any local area or any mine or group or class of mines or any part of a mine or any class of persons from the operation of all or any specified provisions of this Act:

Provided that no local area or mine or group or class of mines shall be exempted from the provisions of section 26 unless it is also exempted from the operation of all the other provisions of this Act.

[3][(2) * * * * * * * *]

Power to alter or rescind orders.

47. The Central Government [4][* * * * *] may reverse or modify any order passed under this Act [5][* * * * *].

Application of Act to Crown mines.

48. This Act shall apply to mines belonging to the Crown.

Saving.

49. No suit, prosecution or other legal proceeding whatever shall lie against any person for anything which is in good faith done or intended to be done under this Act.

50. [*Repeals.*] *Repealed by the Repealing Act,* 1927 (*XII of* 1927), *sec.* 2 *and Sch.*

THE SCHEDULE.—[*Enactments repealed.*] *Repealed by the Repealing Act,* 1927 (*XII of* 1927), *sec.* 2 *and Sch.*

LEG. REF.

1 For exemption of mines and groups of mines, *see* Gazette of India, 1926, Pt. I, p. 1402; *ibid.*, 1927, Pt. I, p. 1090; *ibid.*, 1928. Pt. I, p. 336.

2 Inserted by Act V of 1935.

3 Sub-sec. (2) of sec. 46 omitted by A. O., 1937.

4 The words 'and every Local Government' omitted by *ibid.*

5 The words "by any authority, etc.," omitted by *ibid.*

THE MORTGAGED ESTATES ADMINISTRATION ACT (XXIII OF 1855).[1]

Short title given, Act XIV of 1897.
Rep. in pt. Act XVI of 1874.
Rep. (except as to descents or devises occurring or made before 1st January, 1866), Act VIII of 1868.
Declared in force throughout B.I., except as regards the Scheduled Districts Act XV of 1874, sec. 3.

[13*th August*, 1855.

An Act to amend the Law relating to the administration of the Estates of deceased persons charged with money by way of mortgage.

WHEREAS it is expedient that the law, under which the real and personal assets of deceased persons subject to the English law are administered, should be amended: It is enacted as follows:—

Preamble.

Heir or devisee of land not to claim payment of mortgage out of personality.

1. [2][*] If any person shall die seised of, or entitled to, any estate or interest in any land or other hereditaments within [3][British India] which shall, at the time of his death, be charged with the payment of any sum or sums of money by way of mortgage, and such person shall not by his will or deed or other document have signified any contrary or other intention, the heir or devisee to whom such land or hereditaments shall descend or be devised shall not be entitled to have the mortgage-debt discharged or satisfied out of the personal estate or any other real estate of such person, but the land or hereditaments so charged shall, as between the different persons claiming through or under the deceased person, be primarily liable to the payment of all mortgage-debts with which the same shall be charged, every part thereof, according to its value bearing a proportionate part of the mortgage-debts charged on the whole thereof:

Proviso as to right of mortgagee to satisfaction, from personal assets.

Provided always that nothing herein contained shall affect or diminish any right of the mortgagee of such lands or hereditaments to obtain full payment or satisfaction of his mortgage-debt, either out of the personal estate of the person so dying as aforesaid or otherwise:

Proviso as to claims made prior to this Act.

Provided also that nothing herein contained shall affect the rights of any person claiming under or by virtue of any will, deed or document, already made, or to be made, before this Act shall have come into operation.

THE MOTOR VEHICLES ACT (IV OF 1939).

[*Amended by Acts XL of* 1939, *XXVI of* 1940, *XX of* 1942, *I of* 1943, *VI of* 1945 *and Ordinance XXIII of* 1942.]

N.B.—Amending Act XL of 1939 came into force on 29th September, 1939; but sections 2 and 3 of that Act shall be deemed to have taken effect on the 1st day of July, 1939 (*see* Act XL of 1939).

[16*th February*, 1939.

An Act to consolidate and amend the law relating to motor vehicles.

WHEREAS it is expedient to consolidate and amend the law relating to motor vehicles in British India; It is hereby enacted as follows:—

LEG. REF.

1 SHORT TITLE.—"The Mortgaged Estates Administration Act, 1855". *See* the Indian Short Titles Act (XIV of 1897).

Based on the Real Estates Charges Act, 1854 (17 and 18 Vict., c. 113). Repealed, except as to descents or devises occurring or made before 1st January, 1866, by the Repealing Act (VIII of 1868).

2 The words "After this Act shall have come into operation" rep. by Act XVI of 1874.

3 Substituted by A.O., 1937, "the territories in the possession of, and under, the Government of the East India Company."

CHAPTER I.

PRELIMINARY.

Short title extent and commencement.

1. (1) This Act may be called THE MOTOR VEHICLES ACT, 1939.

(2) It extends to the whole of British India.

(3) It shall come into force on the 1st day of July, 1939; but [1][section 38 and Chapter IV shall not have effect until the 1st day of April, 1940, or such earlier date as the Provincial Government may, by notification in the Official Gazette, appoint, and] Chapter VIII shall not have effect until the 1st day of July, [2][1946].

Definitions.

2. (*Cf.* Eng. Act, S. 121.) In this Act, unless there is anything repugnant in the subject or context,—

(1) "axle weight" means in relation to an axle of a vehicle the total weight transmitted by the several wheels attached to the axle to the surface whereon the vehicles rests;

(2) "certificate of registration" means the certificate issued by a competent authority to the effect that a motor vehicle has been duly registered in accordance with the provisions of Chapter III;

(3) (*Cf.* S. 61, Eng. Act, 1930) "contract carriage" means a motor vehicle which carries a passenger or passengers for hire or reward under a contract expressed or implied for the use of the vehicle as a whole at or for a fixed or agreed rate or sum and from one point to another without stopping to pick up or set down along the line of route passengers not included in the contract; and includes a motor cab notwithstanding that the passengers may pay separate fares;

Explanation.—"Contract carriage" does not include a motor vehicle, possession of which has been temporarily transferred in accordance with an express agreement of hire for use as a private vehicle and which is used is accordance with the terms of such agreement;

(4) "delivery van" means any goods vehicle the registered laden weight of which does not exceed 5,000 pounds avoirdupois;

(5) (*Cf.* Eng. Act, 1930, S. 121) "driver" includes; where a separate person acts as steersman of a motor vehicle, that person as well as any other person engaged in the driving of the vehicle;

(6) "fares" includes sums payable for a season ticket or in respect of the hire of a contract carriage;

LEG. REF.

1 Inserted by Act XL of 1939.

2 Substituted for the figures "1943" by Act I of 1943.

SEC. 1: "EXTENT".—Some provinces are not in favour of introducing compulsory insurance immediately. It is therefore proposed to allow five years (which period has now expired) as the period in which it may be introduced. (*Statement of Objects and Reasons*).

JURISDICTION OF CIVIL COURT—REJECTION BY COLLECTOR OF APPLICATION FOR REFUND OF MOTOR TAX—INTERFERENCE.—While the Civil Court can only go into the question whether the Collector has disposed of an application for refund of motor vehicles tax under the Motor Vehicles Act, *bona fide* on the materials placed before him, the Collector's rejection of an application without applying his mind to the reasonableness or unreasonableness of the time taken in surrendering the licence is a matter which the civil Court can go into. 57 L.W. 464=1944 Mad. 675 (1)=(1944) 2 M.L. J. 102.

SEC. 2: DEFINITIONS.—"The alterations made by the Select Committee in the various definitions are aimed generally at attaining greater clarity. We have inserted a new definition, that of 'fares', and have removed an unnecessary definition of 'Regional Transport Authority'. The alteration of the definition of 'heavy transport vehicle' has the effect of raising the limit of weight at which a transport vehicle passes from the category of light transport vehicles to that of heavy transport vehicles". (*Select Com. Rep.*).

(7) "goods" includes live-stock, and anything (other than equipment ordinarily used with the vehicle) carried by a vehicle except living persons, but does not include luggage or personal effects carried in a motor car or in a trailer attached to a motor car or the personal luggage of passengers travelling in the vehicle;

(8) "goods vehicle" means any motor vehicle constructed or adapted for use for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods solely or in addition to passengers;

(9) "heavy transport vehicle" means a transport vehicle the registered axle weight of which exceeds 10,600 pounds avoirdupois, or the registered laden weight of which exceeds 14,500 pounds avoirdupois;

(10) "invalid carriage" means a motor vehicle the unladen weight of which does not exceed five hundred weights, specially designed and constructed, and not merely adapted, for the use of a person suffering from some physical defect or disability, and used solely by or for such a person;

(11) "licence" means the document issued by a competent authority authorising the person specified therein to drive a motor vehicle or a motor vehicle of any specified class or description;

(12) "licensing authority" means an authority empowered to grant licences, appointed by the Provincial Government by rule made under section 21;

(13) "light transport vehicle" means any public service vehicle other than a motor cab, or any goods vehicle other than a heavy transport vehicle or a delivery van;

(14) "locomotive" means a motor vehicle which is itself not constructed to carry any load (other than equipment used for the purpose of propulsion), the unladen weight of which exceeds 16,000 pounds avoirdupois; but does not include a road-roller;

(15) "motor cab" means any motor vehicle constructed, adapted or used to carry not more than six passengers excluding the driver, for hire or reward;

(16) "motor car" means any motor vehicle other than a transport vehicle, locomotive, road-roller, tractor, motor cycle or invalid carriage;

(17) "motor cycle" means a motor vehicle, other than an invalid carriage, with less than four wheels, the unladen weight of which, inclusive of any side-car attached to the vehicle, does not exceed 900 pounds avoirdupois;

(18) "motor vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or used solely upon the premises of the owner;

SEC. 2, CL. (16).—*See* 25 C.W.N. 21=33 C.L.J. 19=61 I.C. 641.

CL. (18): DEFINITIONS AND DESCRIPTIVE TERMS—USE OF THE TERM "MOTOR VEHICLES".—A motor car or vehicle is an automobile; and an automobile may be defined as a "wheeled vehicle, propelled by steam, electricity, or gasoline, and used for the transportation of persons or merchandise. The Courts, without making clear distinctions, have generally used the terms automobile, motor vehicle, motor-car, and in the earlier cases, horseless carriage, as being synonymous with each other. Except where special provision is made to the contrary, a motor cycle is considered as falling within statutes which use such terms and the same is generally true of a traction engine. Questions frequently arise as to whether statutes regulating the use of various classes of vehicles and not directly referring to automobiles are broad enough to apply to these machines, which, in many instances, were unknown at the time of the passage of the law. The better view seems to be that an automobile is to be classed as a vehicle, and it may properly be considered as being a vehicle for hire under the terms of ordinances prohibiting the standing of such vehicle in the streets elsewhere than at public hack stands. Whether an automobile falls within the meaning of the word "carriage" depends somewhat on the nature of the statute in which it is used. (*See* 25 C.W.N. 21=61 I.C. 641). In a penal statute it may not be so included, while in a statute which should receive a liberal construction it will be so

(19) "owner" means, where the person in possession of a motor vehicle is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire purchase agreement, the person in possession of the vehicle under that agreement;

(20) "permit" means the document issued by a Provincial or Regional Transport Authority authorising the use of a transport vehicle as a contract carriage, or stage carriage, or authorising the owner as a private carrier or public carrier to use such vehicle;

(21) "prescribed" means prescribed by rules made under this Act;

(22) "private carrier" means an owner of a transport vehicle other than a public carrier who uses that vehicle solely for the carriage of goods which are his property or the carriage of which is necessary for the purposes of his business not being a business of providing transport, or who uses the vehicle for any of the purposes specified in sub-section (2) of section 42;

(23) "public carrier" means an owner of a transport vehicle who transports or undertakes to transport goods, or any class of goods, for another person at any time and in any public place for hire or reward, whether in pursuance of the terms of a contract or agreement or otherwise, and includes any person, body, association or company engaged in the business of carrying the goods of persons associated with that person, body, association or company for the purpose of having their goods transported;

(24) (*Cf.* Madras Traffic Control Act) "public place" means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage;

(25) (*Cf.* English Act, 1930, S. 121) "public service vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a motor cab, contract carriage, and stage carriage;

(26) "registered axle weight" means in respect of any vehicle the axle weight certified and registered by the registering authority as permissible for that vehicle;

(27) "registered laden weight" means in respect of any vehicle the total weight of the vehicle and load certified and registered by the registering authority as permissible for that vehicle;

(28) "registering authority" means an authority empowered to register motor vehicles under Chapter III;

(29) "stage carriage" means a motor vehicle carrying or adapted to carry more than six persons excluding the driver which carries passengers for

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included. An automobile is a "carriage" within the broad meaning of that word, but it has been held not to be a carriage within the meaning of a law requiring municipalities to keep their highways reasonably safe and convenient for travellers, with their horses, teams and carriages. (*See* 36 I.C. 877—a case under a taxing Act).

SEC. 2 (24): 'PUBLIC PLACE'—TEST.—The mere fact that a place would be styled as a public place for the purposes of the Gambling Act and the Penal Code, does not necessarily mean, that it is a public place as defined in sec. 2, Motor Vehicles Act. To make it a public place under the Motor Vehicles Act, it must be a road, street, way or a place over which the public have a right to pass or to which the public are granted access. On the two sides of the motor stand of the petitioners there were houses while the city wall ran along the third side. The fourth side, however, was open and looked towards a public street. The land was privately owned and had been leased by the petitioners. Through the portion leased by them ran a deep city drain which could only be crossed by means of a bridge and it was over the bridge that the lorries of the petitioners were parked. Petitioners were keeping their lorries in an enclosed place except that apparently there was no gate at the bridge. *Held*, that the place was not a public place within the meaning of sec. 2, Motor Vehicles Act. 1938 Lah. 817.

hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey;

(30) "tractor" means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion) the unladen weight of which does not exceed 16,000 pounds avoirdupois; but excludes a road-roller;

(31) (*See* Sch. IX) "traffic signs" includes all signals, warning sign posts, direction posts, or other devices for the information, guidance or direction of drivers of motor vehicles;

(32) "trailer" means any vehicle other than a side-car drawn or intended to be drawn by a motor vehicle;

(33) "transport vehicle" means a public service vehicle, a goods vehicle, a locomotive or a tractor other than a locomotive or tractor used solely for agricultural purposes;

(34) "unladen weight" means the weight of a vehicle or trailer including all equipment ordinarily used with the vehicle or trailer when working, but excluding the weight of a driver or attendant; and where alternative parts or bodies are used the unladen weight of the vehicle means the weight of the vehicle with the heaviest such alternative part or body;

(35) "weight" means the total weight transmitted for the time being by the wheels of a vehicle to the surface on which the vehicle rests.

CHAPTER II.

LICENSING OF DRIVERS OF MOTOR VEHICLES.

Necessity for driving licence.

3. (*Cf.* English Act, S. 4.) (1) No person shall drive a motor vehicle in any public place unless he holds an effective licence issued to himself authorising him to drive the vehicle; and no person shall so drive a motor vehicle as a paid employee or shall so drive a public service vehicle unless his licence specifically entitles him so to do.

(2) A Provincial Government may prescribe the conditions subject to which sub-section (1) shall not apply to a person receiving instruction in driving a motor vehicle.

[(3) Nothing contained in sub-section (1) shall for a period of twelve months after the commencement of this Act invalidate a licence to drive a motor vehicle issued by a competent authority under the provisions of the Indian Motor Vehicles Act, 1914.—This sub-section is *omitted* by Act XX of 1942.]

SEC. 3.—"This section makes a distinction between professional and private drivers. Some provinces already have the distinction and others have an implied distinction in that drivers who intend to work as chauffeurs have photographs on their licences". (*Statement of Objects and Reasons.*)

SELECT COMMITTEE REPORT.—"The amendment in sub-cl. (1) is merely a drafting amendment, and the revision of sub-cl. (2) merely clarifies the intention. The added sub-cl. (3) makes explicit provision for the continuance for one year of licenses issued under the superseded Act of 1914. It is then intended that all such licences shall be replaced by licences issued under the new Act, in the manner and in the form provided by the Act".

Where a person whose driving licence has expired, does not apply for a renewal until some days afterwards, he is contravening sec. 3 (1), if he drives the car after the expiry and before the renewal of his licence. The subsequent application for and grant of the licence cannot have the effect of cancelling the offence committed by him before he obtained a renewal. 54 L.W. 730=1942 Mad. 196=(1941) 2 M.L. J. 1040.

R. 24 (*b*) of the Burma Motor Vehicles Rules does not treat the conductor of a bus as a person in charge of it though in practice he attends to the passengers. In the case of overloading or carrying passengers on the footboard, the person to be prosecuted, would seem to be the owner or person in charge of the vehicle, and not the conductor. 1941 Rang.L.R. 587. There is no provision in the Motor Vehicles Rules or in the Act which authorises a head-constable to demand the name and address of a person who has committed an offence under r. 7 (1). 197 I.C. 136=1941 Lah. 422.

Age limit in connection with driving of motor vehicles.

4. (*Cf.* English Act, S. 9.) (1) No person under the age of eighteen years shall drive a motor vehicle in any public place.

(2) Subject to the provisions of section 14, no person under the age of twenty years shall drive a transport vehicle in any public place.

[(3) Nothing contained in sub-section (1) or sub-section (2) shall prevent any person who, before the commencement of this Act, possessed a licence to drive a motor vehicle from obtaining a licence to drive a motor vehicle of the same class.—This sub-section is *omitted* by Act XX of 1942.]

Responsibility of owners of motor vehicles for contraventions of sections 3 and 4.

5. No owner or person in charge of a motor vehicle shall cause or permit any person who does not satisfy the provisions of section 3 or section 4 to drive the vehicle.

SEC. 4.—"Although most provinces agree to the 21-year minimum age limit for drivers of transport vehicles and have such provision in their existing rules, one or two others see no necessity for this restriction. Sub-cl. (3) will therefore enable them to allow drivers under 21 to drive transport vehicles, particularly delivery vans, within the province only". (*Statement of Objects and Reasons.*)

REPORT OF SELECT COMMITTEE.—"We have reduced the minimum age qualifying a person to drive a locomotive tractor or transport vehicle from 21 years to 20 years. We have eliminated the provision allowing Provincial Governments to modify the requirements of sub-cl. (2), and we have provided that any person who possessed a licence under the pre-existing law should not by reason of the change in the law be deprived of his licence".

SEC. 5.—This section deals with the responsibility of owners of motor vehicles for contravention of the rules as to the necessity of driving licence (sec. 3) and age limit for driver (sec. 4). The Select Committee "have eliminated the provision that the owner of a vehicle may be presumed to have consented to the illegal use of his car". (*Select Committee Report.*)

RESPONSIBILITY OF OWNER FOR DRIVER'S ACTS.—The question often arises as to the responsibility of the owner of an automobile for injuries occasioned by the machine while in the hands of his servants. The general test of the master's liability is whether there was authority expressed or implied for doing the act in question. If it is done in the course of, and within the scope of, his employment, the master will be liable for the act, but a master is not liable for every wrong which the servant may commit during the continuance of the employment, and liability can occur only when that which is done is within the real or apparent scope of the master's business. The driver of an automobile, employed by the owner, is the servant and agent of the latter, and his acts in operating an automobile within the lines of his employment are the acts of a servant for which his employer is responsible. Whether a driver, at the time of an accident, was acting within the scope of his employment generally involves an inquiry into the contract of employment and the relation of his acts at the time of accident to the service he actually performed pursuant to his employment. The owner of an automobile is not liable to one who is injured, by the negligence of his chauffeur while operating the machine without his knowledge or permission, and for a purpose other than that for which he was employed, as where the driver is on an errand personal to himself, or is making a travel for his own purposes; and if a chauffeur takes out his master's automobile in violation of instructions that it must not be taken out without the express orders of himself or his wife, the owner may be relieved from liability in the event of the occurrence of an accident. It is usually held that a chauffeur may act on directions to take out the machine, given by a member of his employer's immediate family and household whose authority to give him orders would naturally be presumed. A statute regulating the speed and operation of motor vehicles may, however, expressly make the owner liable for any violation of the Act. Where a motor bus owner allowed his driver to drive his omnibus without a licence and, when charged, pleaded that the expiry of the licence was without his knowledge, *held*, that he was guilty. A man cannot entrust his car to another person and plead that he presumed that he was licensed. He must assure himself that he was licensed. 105 I.C. 674 (1)=1927 M. 1080=53 M.L.J. 757 (1)=51 M. 187. The word "allow" does not mean "does not prevent". The word "ordinary" involves permission, express or implied, from the circumstances. Where the owner of a motor car was charged for having "allowed" his car to be taken by his driver into British India without a licence, *held*, that, in the absence of evidence that the car had ever been used in that way before or that the owner knew it would be used in that way on the occasion in question, the owner was not liable. 34 Bom.L.R. 897=139 I.C. 270=1932 B. 474. Where a particular intent or state of mind is not of the essence of an offence, a master can be made criminally liable for

his servant's acts if an act is expressly prohibited, but not otherwise; and he cannot be so made liable if the Act provides for liability for permitting and causing a certain thing unless it can be shown that the act was done with the master's knowledge and assent, express or implied. Where a motor bus is driven by a person who has no licence, without the knowledge of the owner, the owner cannot be convicted. Nor can he be convicted on the ground that his licensed driver had given the unlicensed driver permission to drive. (1924 C. 985, Rel. on; 38 C. 415 and 45 C. 430, Dist.) 110 I.C. 326=47 C.L.J. 460=29 Cr.L.J. 694=1928 C. 410. On this subject, *see also* 7 Pat.L.T. 542=1926 P. 446 (As to owner's liability in case of contravention of rules, *see* 45 C. 430=42 I.C. 601=26 C. L.J. 37. As to the liability of owner who was not present and who had prohibited driving at excessive speed, *see* 51 C. 948 =82 I.C. 137=1924 C. 985).

RESPONSIBILITY OF OWNER FOR CHILD'S ACTS.—As to whether children of the owner of an automobile are servants within the meaning of the rules making a master responsible for the acts of his servants, the young son of the owner may be found to be the agent of his father in operating the latter's automobile, where it was purchased mainly at his solicitation, with the understanding that he was to learn to run it for the benefit of the family; and when the son of the owner of an automobile with his father's permission uses the machine while a member of his father's family, to take on a pleasure ride guests or other members of the family, the son is considered to be acting as the servant of the owner, and the father may be held liable in damages for an accident occasioned by the son's negligence. If the son disobeys his father's express commands, his actions in using his father's automobile may be beyond the scope of his authority, and accordingly the owner may not be held responsible for injuries occasioned by the son's negligent management of the car. In the case of a daughter, accustomed to drive her father's automobile whenever she so desires, asking permission when the father is at home, but sometices taking it without permission when he is away from home, she cannot be considered as being in her father's employ at a time when she is driving for her own pleasure and negligently injures a person on the highway.

FATHER PLACING MOTOR-CYCLE IN COMPLETE CONTROL OF MINOR SON IN VIOLATION OF STATUTE.—In the case of Hopkins *v.* Droppers, (198 N.W. 738), an American Supreme Court held a father liable who had placed a motor-cycle under complete control of his 15 year old son and permitted him to drive the motor-cycle on a public highway in violation of the rules. In the course of the opinion the Court said: "But it is claimed by the defendant's counsel that the statute imposes no liability upon any one except the operator of the machine and that the penalties for violation are imposed on him alone and that the minor alone is responsible for breaches of the criminal law. It is probably true that under the terms of the statute the adult defendant would not be liable in a criminal action for any of the acts stated in the complaint. But this is beside the point. The real question is whether under such a state of facts he has incurred any civil liability" * * * The Court concluded: "There remains to be considered the question what is the rule of liability when a father places under the complete control of his son a car or motor-cycle knowing its use by him is forbidden by statute as a criminal act. This is a new problem and the precedents are few in number. In Wilson *v.* Brauer, 97 N.J. Law 482, it appeared that the owner of an automobile authorised a beginner, who had no driver's permit and knew nothing of the operation of the car, to run it upon the streets of a city for the purpose of learning. By reason of his inexperience, injury was caused to a pedestrian. It was *held*, that the owner was liable and that such liability rested, not upon his ownership, but upon the combined negligence of the owner and that of the driver. These cases do not stand on any theory that motor machines are dangerous instrumentalities, or of agency, but are based on the ground that if a father knows that his minor child under his control is committing a tort or violating a statute, and makes no effort to restrain him, he will be regarded as authorising or consenting to the act and held civilly liable for the consequences if that act is the proximate cause of injury to others. These cases apply the principle that a father might be held responsible for injury caused by the negligent acts of his sons committed with his consent. (50 Am. Rep. 381). From the averments in this case it appears, among other things, that the defendant father brought and placed in the complete control of his son, whom he knew or ought to have known was an inexperienced driver, for his free use in a crowded city, a machine which, if carelessly managed might cause serious injury to others, and that by so doing he knowingly countenanced and encouraged his minor son to violate a statute of the state; and that these acts and the negligence of the son were the proximate cause of the injury complained of. The general object of those statutes are clear. These statutes amount to a legislative declaration that a minor is unfit to drive motor machines on the public streets unless accompanied by an adult, and a violation of the statute is negligence. When the father authorised this violation of law, he failed in that duty which every good citizen owes to the public. He failed to observe for the safety of other persons that degree of care which the circumstances justly demanded. Although the motor-cycle was not in itself a dangerous instrumentality, it was a machine of such a nature that when negligently driven it might

menace the safety of other persons. This is a well-known fact and one which in the exercise of ordinary care the father could reasonably anticipate. It is argued the parent in this case could hardly foresee or anticipate the injury complained of. This argument is met by repeated decisions of Courts. "It is not required that the 'specific' injury or 'such' an injury as is complained of was or ought to have been specifically anticipated as the natural and probable consequences of the wrongful act. It is sufficient if the facts and circumstances are such that the consequences attributable to the wrongful conduct charged were within the field of reasonable anticipation; that such consequences might be the natural and probable results thereof, though they may not have been specifically contemplated or anticipated by the person so causing them". (*Chicago Legal News.*)

AUTOMOBILES—THE FAMILY PURPOSE DOCTRINE.—The following extracts from a recent American Law Journal may also be read in this connection:—"Courts have in all recent cases uniformly upheld the family purpose doctrine either by actual decision or by dictum. The doctrine places liability on the owner of an automobile, which is purchased and maintained for the pleasure of his, or her family for negligent injuries inflicted by the vehicle while it is being used by some member with his consent, express or implied, on the theory that it is the owner's business to furnish pleasure for the family. The Court has based its decisions mainly on the principal and agent, and master and servant, theory. It is preferable rather to support the doctrine on the relationship of master and servant, rather than on that of principal and agent, since a principal is liable only for torts (expressly or impliedly) authorized, while a master is liable for all torts committed by the servant, while engaged within the scope of the master's employment. (Salmond on Tort, p. 93.) However, the status of master and servant does not exist unless one of the family is employed in the owner's business. It cannot be seriously contended that it is the father's business or employment to furnish his family with an automobile for their convenience and pleasure, because it is not looked upon as a necessity. It can hardly be said that it is the father's business to furnish his son such pleasure as driving at a reckless speed over a dangerous road, or while intoxicated. A case contrary to the doctrine explodes this idea with this sly bit of sarcastic humor, "if son took his best girl riding, *prima facie* it was father's little outing by proxy".

The conclusion, therefore, must be reached that the owner is simply making a gift of the use of the automobile to one of his family, and that a bailor and bailee relation only exists. It is a well-known principle of law that the negligence of the bailee cannot be attributed to the bailor, Certainly this was the law before the automobile became a widely used source of locomotion. The automobile has not been regarded as an inherently dangerous instrument, so as to cause the owner to be liable as an insurer, since it plays such an integral part in our daily economic life. The automobile, being a lawful means of travel, is not a nuisance *per se*. There is the ground of public policy. This ground, it is admitted, should be availed of only where no other logical theory presents itself on which to rest liability, and weighty reasons exist for its utilization. The frequent accidents, which occur on account of the negligent operation of a parent's car by a member of his family, who is likely to be financially irresponsible, has been given a considerable amount of thought in coming to a decision on this point. Practically, an uncollectible judgment is an empty form, and constitutes a valueless remedy for the evil. While an automobile is not dangerous *per se*, its potential danger in the hands of a careless driver, especially a member of the family who has permission to use the car at his own pleasure, should have an important bearing on the result. Likewise the family purpose doctrine puts the financial responsibility of the owner behind the car, and relieves the injured party from the difficult task of meeting the owner's claim that at the time of the accident the car was not being used for his pleasure or business. It also protects the injured person as fully as if the owner were driving the car himself, thus achieving justice in his case. For these reasons it seems that the advantages to be gained completely outweigh any disadvantages that might accrue from its adoption. And public policy has been used in other branches of the law".

RESPONSIBILITY FOR ACTS OF DRIVER OF LOANED AUTOMOBILE.—Although the general rule is well established that a master may lend a servant, with his consent, to another person for services in the business of the latter, and that while he is engaged in the business of the borrower and subject to his directions and control, he is considered as being a servant of the new master, who accordingly becomes liable for his negligence, nevertheless the courts have refused to apply this rule to cases in which an automobile and driver have been temporarily loaned by the owner and employer to another. This is due to the fact that the operation of an automobile can be trusted safely only to an expert, and it is of importance that the control and management of the machine should not be abandoned to the hirer. Accordingly it has been decided that when the owner of an automobile lends it, with a licensed driver in charge, under an agreement for a specified amount for the use of the car with the driver for a definite period, although the chauffeur is to be under the general directions of the hirer as to route and kindred matters, the owner is liable for an injury to a third person caused by the negligence of the chauffeur while operating the car for the borrower. In like manner,

Restrictions on the holding of licences.

6. (1) No person shall, while he holds any licence for the time being in force, hold any other licence except a licence issued in accordance with the provisions of section 14, or a document authorising, in accordance with the rules made under section 92, the person specified therein to drive a motor vehicle.

(2) No holder of a licence shall permit it to be used by any other person.

(3) Nothing in this section shall prevent a licensing authority having the jurisdiction referred to in sub-section (1) of section 7 from adding to the classes of vehicle which the licence authorises the holder to drive.

Grant of licence.

7. (1) Any person who is not disqualified under section 4 for driving a motor vehicle and who is not for the time being disqualified for holding or obtaining a licence may apply to the licensing authority having jurisdiction in the area in which he ordinarily resides or carries on business or, if the application is for a licence to drive as a paid employee, in which the employer resides or carries on business, for the issue to him of a licence.

(2) Every application under sub-section (1) shall be in Form A as set forth in the First Schedule, shall be signed by, or bear the thumb impression of, the applicant in two places, and shall contain the information required by the form.

(3) Where the application is for a licence to drive as a paid employee or to drive transport vehicle, or where in any other case the licensing autho-

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a person who has hired an automobile as a delivery wagon, together with a driver, is not responsible for injuries occasioned to a third person from a defect in the machine, especially when the hirer of the car had no right to make repairs. When an automobile is loaned without a chauffeur the foregoing rules are not applied, and the owner ordinarily is not responsible for the neligence of the chauffeur of the borrower during the time it is loaned, but the person to whom the machine has been loaned assumes responsibility for accidents occurring through its negligent use while it is in his possession and the owner is not liable. *(Ame. Rul. Case Law.)*

AUTOMOBILES AS INHERENTLY DANGEROUS MACHINES—LIMITATION ON THE OBLIGATIONS OF THE OWNER.—An automobile is not inherently a dangerous machine, and the rules requiring extraordinary care of dangerous instrumentalities do not apply to such a means of conveyance. Therefore the owner is not responsible for injuries which may be sustained by strangers from its careless and wrongful use while in the possession of another who is using it without his consent. The owner of an automobile may keep it at a public garage, where it is possible for his chauffeur or others to obtain it without his authority, and in the event of their doing so he is not accountable to a person who may be run over by it in consequence of the negligence of the driver, for it is not enough to show that the accident would not have occurred without the facilities afforded by the owner of the motor vehicle, or that the owner made it possible for another person to take out the machine without permission and operate it at pleasure. A servant has no implied authority to engage a stranger to do work on behalf of his master so as to render the master liable for the stranger's acts or defaults except in a case of necessity. Where a driver who was in charge of a bus allowed a third person who did not have a licence to drive the bus without the knowledge of the owner, the owner could not be convicted and his licence could not be cancelled. 47 C.L.J. 460=1928 C. 410.

SEC. 6: SELECT COMMITTEE REPORT.—"The change in sub-clause (1) is consequential on the omission of original sub-clause (3) of clause 4. We have added to sub-clause (2) a provision allowing a Court to presume that a licence used by a person other than the holder of the licence was so used with the consent of the holder, because we think that without this provision this very prevalent improper practice cannot be successfully checked. The new sub-clause (3) explicitly saves the power to add further classes of vehicle to those specified in an existing licence."

SEC. 7, CL. (1): SELECT COMMITTEE REPORT.—"The insertion made is to facilitate the obtaining of a licence by a person employed in a place far from his ordinary residence. It seems appropriate that he should be able to apply to the licensing authority of the locality in which his employment lies".

CL. (2).—We have omitted the word "left". *(Select Committee Report.)*

CL. (3).—The consensus of opinion of Provincial Governments is that medical certificates should be obligatory for all drivers other than owner drivers, and even from the latter the licensing authority

rity for reasons to be stated in writing so requires, the application shall be accompanied by a medical certificate in Form C, as set forth in the First Schedule, signed by a registered medical practitioner.

(4) Every application for a licence to drive as a paid employee and every application for a licence to drive a transport vehicle shall be accompanied by three clear copies of a recent photograph of the applicant.

(5) If, from the application or from the medical certificate referred to in sub-section (3), it appears that the applicant is suffering from any disease or disability specified in the Second Schedule or any other disease or disability which is likely to cause the driving by him of a motor vehicle of the class which he would be authorised by the licence applied for to drive to be a source of danger to the public or to the passengers, the licensing authority shall refuse to issue the licence:

Provided that—

(*a*) a licence limited to driving an invalid carriage may be issued to the applicant, if the licensing authority is satisfied that he is fit to drive such a carriage,

(*b*) the applicant may, except where he suffers from a disease or disability specified in the Second Schedule, claim to be subjected to a test of his fitness or ability to drive a motor vehicle of a particular construction or design, and, if he passes such test to the satisfaction of the licensing authority and is not otherwise disqualified, the licensing authority shall grant him a licence to drive such motor vehicle as the licensing authority may specify in the licence.

(6) No licence shall be issued to any applicant unless he passes to the satisfaction of the licensing authority the test of competence to drive specified in the Third Schedule, [or

(*b*) where the application is made within twelve months from the commencement of this Act, he satisfies the licensing authority that he was at the commencement of this Act the holder of a current licence granted under the provisions of the Indian Motor Vehicles Act, 1914, entitling him to drive a vehicle of the class or description which he would be entitled to drive under the licence applied for:] (*Portions within brackets omitted by Act XX of* 1942):

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should be empowered to demand a medical certificate if he is not satisfied as to the applicant's general appearance of fitness. (Statement of Objects and Reasons). "We think a licensing authority which exacts a medical certificate should state its reasons for the demand." (Select Committee Report.)

CL. (4).—The consensus of opinion of Provincial Governments is that photographs should be submitted by these two classes of applicants. (Statement of Objects and Reasons.) "By substituting "transport vehicle" for "public service vehicle" we have extended the scope of the provisions of this sub-clause to vehicles used for the carriage of goods. The other change made is self-explanatory." (Select Committee Report.)

CL. (5).—"The diseases and disabilities which disqualify a person for obtaining a licence are set forth in the Second Schedule. We have accordingly substituted a reference to this Schedule for the reference to Form C. We have also provided that a person confronted with the danger of being held disqualified on the grounds mentioned in that Schedule should have a right to appeal to a Medical Board before he is actually refused a licence." (Select Committee Report).

CL. (6).—"Since the intention is that licences should be valid throughout British India, allapplicants for new licences should pass the test specified in the Third Schedule in driving the class of vehicle specified in the application. An exception is made of existing licences under the Indian Motor Vehicles Act, 1914, as it would be impracticable to insist on their passing the driving test. The proviso will meet the case of applicants particularly from overseas who have previously held licences granted in their own countries. (Statement of Objects and Reasons.) "The change made in cl. (*b*) is for the purpose of avoiding hardship in cases where a licence issued under the 1914 Act might have expired for lack of renewal. It would be unreasonable that an applicant in such a case should have to undergo a test. We have slightly amplified the condition to be satisfied by an applicant for a motor car licence before he can be exempted from the test: and we have made a provision similar to that contained in the Madras Motor Vehicle Rules for the acceptance of certificates given by recognised automobile associations." (Select Committee Report.)

Provided that, where the application is for a licence to drive a motor cycle or a motor car, the licensing authority shall exempt the applicant from Part I of the test specified in the Third Schedule, if the licensing authority is satisfied that the applicant has previously held a licence to drive and has had not less than twelve months' recent experience of driving a motor cycle or a motor car, as the case may be:

Provided further that where the application is for a licence to drive a motor vehicle (not being a transport vehicle) otherwise than as a paid employee, the licensing authority may exempt the applicant from [1][* * *] the test specified in the Third Schedule if the applicant possesses a driving certificate issued by an automobile association recognised in this behalf by the Provincial Government.

(7) The test of competence to drive shall be carried out in a vehicle of the type to which the application refers, and, for the purposes of Part I of the test,—

(*a*) a person who passes the test in driving a motor car or a motor cab or a delivery van shall be deemed to have passed the test for all of these vehicles;

(*b*) a person who passes the test in driving a light transport vehicle shall be deemed also to have passed the test in driving the vehicles referred to in clause (*a*); and

(*c*) a person who passes the test in driving a heavy transport vehicle shall be deemed also to have passed the test in driving any motor vehicle other than a motor cycle.

(8) When an application has been duly made to the appropriate licensing authority and the applicant has satisfied such authority of his physical fitness and of his competence to drive and has paid to the authority a fee of five rupees, the licensing authority shall grant the applicant a licence unless the applicant is disqualified under section 4 for driving a motor vehicle or is for the time being disqualified for holding or obtaining a licence:

Provided that [2][* * *] a licensing authority may issue a licence to drive a motor cycle or a motor car notwithstanding that it is not the appropriate licensing authority, if the licensing authority is satisfied that there is good reason for the applicant's inability to apply to the appropriate licensing authority.

Form and contents of licence.

8. (1) Every licence, except a licence issued under section 14, shall be in Form D as set forth in the First Schedule and shall have affixed thereto one of the signatures or thumb impressions given on the form of application for the licence and, in the case of a licence to drive as a paid employee or to drive a transport vehicle, one of the photographs referred to in sub-section (4) of section 7.

(2) A licence shall specify whether the holder is entitled to drive as a

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LEG. REF.

1 Omitted by Act XX of 1942.

2 Cl. (*a*) of proviso omitted by Act XX of 1942.

CL. (7).—"The change made in sub-clause (*c*) ensures that the test for driving a heavy transport vehicle will cover locomotives and tractors". (Select Committee Report.)

CL. (8).—"We have omitted the reference to residence in the last two lines of the clause preceding the proviso. The change made in clause 7 (1) would necessitate an alteration in any case, but the words are unnecessary since an application cannot be duly made except to the licensing authority specified in clause (7) (1). The other changes are consequential on the omission: the appropriate authority being the authority specified in clause 7 (1)". (Report of Select Committee.)

SEC. 8, CL. (1).—"The words omitted in the first line are superfluous in view of the definition of "licence". The second change is consequential on the change made in clause 7 (4)". (Select Committee Report.)

CL. (2).—The necessity for these various classes of licence is apparent. (*j*) covers the rare case of a man with some physical disability, *e.g.*, only one leg, who may be permitted to drive a very light car or one

paid employee and whether he is entitled to drive a public service vehicle and shall further be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:—

(*a*) motor cycle,
(*b*) motor car,
(*c*) motor cab,
(*d*) delivery van,
(*e*) light transport vehicle,
(*f*) heavy transport vehicle,
(*g*) locomotive,
(*h*) tractor,
(*i*) road-roller,
(*j*) invalid carriage, or
(*k*) motor vehicle of a specified description.

Extent of validity of licence.

9. (1) Subject to any rules made by a Provincial Government under sub-section (3), a licence issued under the foregoing sections shall be effective throughout British India.

(2) Subject, in the case of international driving permits issued in pursuance of the International Convention relative to motor traffic concluded at Paris on the 24th day of April, 1926, or of any Convention modifying the same, to any rules made by the Central Government under section 92 and subject in any other case to the provisions of sub-section (4), a licence to drive a motor vehicle issued by a competent authority in any Indian State or in the French or Portuguese Settlements bounded by India shall, if the holder is ordinarily resident in the State or Settlement in which the licence was issued, be valid throughout British India as if it were a licence issued under this Act:

LEG. REF.

1 Omitted by Act XX of 1942.

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specially adapted for him. (Statement of Objects and Reasons.) "We have included road-rollers as a separate class instead of leaving them to be covered by the expression "motor vehicle of a specified description". (Select Committee Report.)

SEC. 9, CL. (1).—"There are varying opinions as to how far licences should have all India validity. One or two provinces are in favour of extending all-India validity to all licences including those to drive public service vehicles. On the other hand, one province would not extend all-India validity to a licence to drive a goods vehicle. One or two would like power to impose special restrictions in special areas. The majority however feel that drivers of public service vehicles should be under stricter supervision in view of their responsibility for the safety of the public. It is therefore proposed that licences to drive public service vehicles should by provincial rules only be valid in the province when endorsed to that effect, and that, in view of the stringency of the specified test for drivers, all-India validity should be extended to all other forms of licences'. (Statement of Objects and Reasons.)

CL. (2).—The position in respect of the validity of licences issued in States is chaotic. Most provinces have rules extending validity to licences issued in States specified in a schedule to the rules but these have not been uniformly amended and frequently differ in consequence. It is proposed therefore that licences issued by States to *bona fide* residents should generally be valid. (Statement of Objects and Reasons.)

CL. (3).—The general opinion is that while licensing authority should judge as to a person's competence and physical fitness to drive, the transport authority in the discharge of its special responsibility for the control of public service vehicles should have the final say as to the persons by whom such vehicles should be driven. There is however some difference of opinion in this matter, and it is therefore left to the rule making powers of Provincial Governments. (Statement of Objects and Reasons.)

SELECT COMMITTEE REPORT.—"We have recast this clause in order to secure that there shall be reciprocity in connection with the recognition in British India of licences issued outside it. For this purpose we have provided that the privilege of having its licences recognised as valid in British India may be withdrawn from any State or Territory if it is found that the recognition is not mutual, or that the issue of licences in that State or territory is not adequately controlled. In consequence of these changes the references in sub-clauses (2) and (3) to controlling rules to be made by the Provincial Government, and to prescribed conditions have been removed. The other small changes of wording and arrangement made in sub-clause (3) are drafting changes only".

Provided that such holder is not disqualified under any of the provisions of this Act for holding or obtaining a licence in British India.

(3) A Provincial Government may, by rules made under section 21,

(*a*) provide that a specification entitling the holder of a licence to drive a public service vehicle shall be made in the licence only by or under the authority of the Regional Transport Authority constituted under Chapter IV,

(*b*) regulate the submission of applications for such licences to the said authority, or

(*c*) require as a condition of its validity in a province that a licence entitling the holder to drive a public service vehicle shall be counter-signed by a prescribed authority in the province.

(4) If the Central Government is satisfied that licences issued in British India under this Act are not effective in any Indian State or French or Portuguese Settlement bounded by India or are effective subject to unreasonable conditions or that like conditions and requirements to those imposed by this Act are not imposed in a reasonable degree upon the issue of licences in any State or Settlement as aforesaid, the Central Government shall, by notification in the official Gazette, declare that licences generally or any particular class of licence issued in any such State or Settlement shall not be valid in British India.

Currency of licences.

10. A licence issued under the foregoing sections shall, subject to the provisions contained in this Act as to the cancellation of licences and the disqualification of holders of licences for holding or obtaining licences, be effective without renewal for a period of twelve months only from the date of issue or last renewal.

Renewal of licences.

11. (1) Any licensing authority may on application made to it renew a licence issued under the provisions of this Act.

(2) An application for the renewal of a licence shall be made in Form B as set forth in the First Schedule and shall contain the declaration required by that form: provided that where the applicant does not or is unable to subscribe to the said declaration the provisions of sub-section (5) of section 7 shall apply.

(3) The fee payable for the renewal of a licence shall be three rupees, if the application for renewal is made previous to, or not more than fifteen days subsequent to, the date on which the licence is due to expire and shall be five rupees in any other case, unless the licensing authority is satisfied that the holder was prevented by good cause from applying for the renewal of the licence within fifteen days after its expiry.

(4) When the authority renewing the licence is not the authority which issued the licence, it shall intimate the fact of renewal to the authority which issued the licence.

Revocation of licence on grounds of diseaes or disability.

12. Notwithstanding anything contained in the foregoing sections, a licensing authority may at any time revoke a licence issued by it, or may require, as a condition of continuing to hold such licence, the holder thereof to furnish a fresh medical certificate in Form C as set forth in the First Schedule signed as required by sub-section (3) of section 7, if the licensing authority has reasonable grounds to believe that the holder of the licence

SEC. 10: SELECT COMMITTEE REPORT.—"The added words make it clear that a renewal of a licence operates only for twelve months."

SEC. 11.—"A uniform renewal fee is necessary. Provision is made for the renewal at ordinary rates of an expired licence by a person who, for example, has been ill for a sustained period or out of India on long leave and so genuinely unable to renew his licence in time". (Statement of Objects and Reasons.)

CL. (1): REPORT OF SELECT COMMITTEE.—"The added words are intended to secure that licences under the superseded law will not be renewed, but will be replaced by licences issued under the new Act".

is, by virtue of any disease or disability, unfit to drive a motor vehicle.

Orders refusing or revoking licences and appeals therefrom.

13. (1) Where the licensing authority refuses to issue or revokes or refuses to renew any licence, it shall do so by an order communicated to the applicant or the holder, as the case may be, giving the reasons in writing for such refusal or revocation.

(2) Any person aggrieved by the refusal of a licensing authority to grant or renew a licence or by the revocation of a licence may, within thirty days of the service on him of the order of such refusal or revocation, appeal to the prescribed authority, who shall decide the appeal after giving the licensing authority an opportunity of being heard, and the decision of the appellate authority shall be binding on the licensing authority.

(3) The order of a licensing authority shall, unless the appellate authority, conditionally or unconditionally, directs otherwise, be in force pending the disposal of an appeal under sub-section (2).

Licences to drive motor vehicles, the property of the Central Government.

14. (1) The authority specified in Part A of the Fourth Schedule may grant licences, valid throughout British India, to persons who have completed their eighteenth year to drive motor vehicles which are the property [1][or for the time being under the exclusive control] of the Central Government.

(2) A licence issued under this section shall specify the class or classes of vehicle which the holder is entitled to drive and the period for which he is so entitled.

(3) A licence issued under this section shall not entitle the holder to drive any motor vehicle except a motor vehicle which is the property [1][or for the time being under the exclusive control] of the Central Government.

(4) The authority issuing any licence under this section shall at the request of any Provincial Government furnish such information respecting any person to whom a licence is issued as that Government may at any time require.

LEG. REF.

1 Inserted by Act XX of 1942.

CL. (3).—We have allowed a more generous period of grace after the expiry of a licence. (Select Committee Report).

Sec. 11 (3) has nothing whatever to do with the effectiveness of the licence. It merely enables a licensee to obtain his licence at a lower rate, if he applies within fifteen days of the expiration of his old licence. Accused, a motor driver, had a driving licence which expired on 2nd February, 1941. On 17th February, 1941, his licence was examined and was found to have expired. On the same day, however, he got a renewal of his licence with effect from 2nd February, 1941. On 13th June, 1941, a complaint was filed against him under sec. 11 (3) read with sec. 112 of the Act and convicted. *Held*, that though the accused could not claim renewal except for one year from the date of application, the licensing authority having issued him a renewal as from 2nd February, 1941, there was an effective licence on the date of the alleged offence and hence he was not guilty. 201 I.C. 770=43 Cr.L.J. 778=44 Bom.L.R. 449 =1942 Bom. 216.

SEC. 12.—The change made by the Select Committee is merely a drafting improvement. (Select Committee Report.)

SEC. 13.—Sub-clause (2) provides the necessary check upon irregular or arbitrary use of power by licensing authorities. (Statement of Objects and Reasons.)

SELECT COMMITTEE REPORT.—"We have inserted a period of limitation for the making of an appeal. We have also removed the reference to District Magistrates and Presidency Magistrates as appellate authorities, and have provided that the appellate authority should be determined by the Provincial Government".

SEC. 14.—The intention of this is to continue and regularise the present arrangement under which Army and Air Force drivers are licensed by Army and Air Force authorities. This is done at present by a long-standing agreement with Provincial Governments, who have tacitly accepted the arrangement or formally granted exemption under sec. 13 of the existing Act of 1914. The holders of these licences will however be subject to the ordinary law (including punishment by Courts, suspension and endorsement of licence) and in addition will not be enabled by the licences to drive any vehicle other than one owned by the Central Government. (Statement of Objects and Reasons.)

Power of licensing authority to disqualify for holding a licence.

15. (1) If a licensing authority is satisfied after giving him an opportunity of being heard that any person,—

(*a*) is a habitual criminal or a habitual drunkard, or

(*b*) is using or has used a motor vehicle in the commission of a cognisable offence, or

(*c*) has by his previous conduct as driver of a motor vehicle shown that his driving is likely to be attended with danger to the public,

it may, for reasons to be recorded in writing, make an order disqualifying that person for a specified period for holding or obtaining a licence.

(2) Upon the issue of any such order a person affected, if he is the holder of a licence, shall forthwith surrender his licence to the licensing authority making the order, if the licence has not already been surrendered, and the licensing authority shall—

(*a*) if the licence is a licence issued under this Act, keep it until the disqualification has expired or has been removed, or

(*b*) if it is not a licence issued under this Act, endorse the disqualification upon it and send it to the licensing authority by which it was issued.

(3) Any person aggrieved by an order made by a licensing authority under this section may, within thirty days of the receipt of the order, appeal to the prescribed authority, and such appellate authority shall give notice to the licensing authority and hear either party if so required by that party and may make such inquiry into the matter as it thinks fit. An order made by any such appellate authority shall be final.

Power of Regional Transport Authority to disqualify.

16. (1) A Regional Transport Authority constituted under Chapter IV may for reasons to be recorded in writing and subject to any prescribed conditions declare any person disqualified, for a specified period, for holding or obtaining a license to drive a public service vehicle in the province.

(2) Any person aggrieved by an order of a Regional Transport Authority made under sub-section (1) may within thirty days of the receipt of intimation of such order appeal against the order to the prescribed authority.

Power of Court to disqualify.

17. (*Cf.* Eng. Art, Ss. 6 and 7.) (1) Where a person is convicted of an offence under this Act, or of an offence in the commission of which a motor vehicle was used, the Court by which such person is convicted may, subject to the

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SEC. 15.—This repeats, in a form amplified to meet present requirements, the provision in sec. 18 (1) of the old Act of 1914. (Statement of Objects and Reasons.)

SELECT COMMITTEE REPORT.—"The clause has been recast, so as to state specifically the reasons for which a disqulification under this section may be ordered, and the power of disqualification has been given to the licensing authority instead of to the Provincial Government. A right of appeal against any such order is also given".

SEC. 16.—"Transport authorities are responsible for seeing that public service vehicles are run in the best interests of and to the safety of the travelling public. It seems only reasonable therefore that they should have a deciding word as to the persons by whom public service vehicles are driven". (*Statement of Objects and Reasons.*)

REPORT OF SELECT COMMITTEE.—"We have provided that reasons are to be stated for a disqualification made under this clause, and that the disqualification shall be for a specified period only. We have also provided for an appeal". The practice of issuing summons under sec. 16 of the charging the accused merely with an offence under that section without indicating the nature of the charge against him, should be condemned. Where such a summons was issued to the accused and the case itself was taken up before the date fixed and the accused was not granted time to produce his defence, his conviction is not legal and is liable to be set aside. I.L.R. (1940) Lah. 678=1941 Lah. 114. On this section, *see also* 1941 Lah. 422; 1941 Rang. L.R. 587=1942 R. 51.

SEC. 17.—"Some Provincial Governments have made rules under sec. 18 (1-A) of

provisions of this section, in addition to imposing any other punishment authorised by law, declare the person so convicted to be disqualified, for such period as the Court may specify, for holding any licence or for holding a licence to drive a particular class or description of vehicle.

(2) A Court shall not order the disqualification of an offender convicted for the first or second time of an offence punishable under section 115.

(3) A Court shall order the disqualification of an offender convicted of an offence punishable under section 117, and such disqualification shall be for a period of not less than six months.

(4) A Court shall order the disqualification of an offender convicted of an offence against the provisions of clause (c) of sub-section (1) of section 87 or of section 89, and such disqualification shall be for a period of not less than one month.

(5) A Court shall, unless for special reasons to be recorded in writing it thinks fit to order otherwise, order the disqualification of an offender—

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the Indian Motor Vehicles Act, 1914, delegating to licensing authorities power to suspend or cancel licences. Since disqualification is a severe punishment it is considered more satisfactory to leave its infliction to the decision of the Court, after a proper trial. The offences themselves, however, are grouped in two categories: those for which disqualification should be obligatory, and those for which disqualification may be left to the discretion of the Court". (*Statement of Objects and Reasons.*)

SELECT COMMITTEE REPORT.—"The words omitted from sub-cl. (1) we consider to be unnecessary, and to be dangerously wide. The verbal change in sub-cls. (2) and (3) is for clarity only. We have omitted sub-cl. (4). We consider that it would be unfair thus to penalize the driver of an uninsured vehicle in many cases, as the primary responsibility for insuring the vehicle rests on the owner. We have also omitted sub-cl. (9) which applied the provisions of this clause to abetments of certain offences. By our amendment of sub-cl. (10) we have deprived the appellate Court of power to make an order of disqualification which the lower Court did not see fit to make".

DEGREE OF CARE REQUIRED OF OPERATORS.—Although automobiles are comparatively new in use, there is nothing novel in the principles of law to be applied with respect to travel in them on the highways. The general principles applicable to the use of all vehicles upon public highways apply to automobiles and may be summarised in the statement that a driver must use that degree of care and caution which an ordinarily careful and prudent person would exercise under the same circumstances. The right of the driver of a horse and that of the driver of a motor vehicle to use the highway are equal, and each is equally restricted in the exercise of his rights by the corresponding rights of the other. Each is required to regulate his own use by the observance of ordinary care and caution to avoid receiving injury, or inflicting injury upon the other. The degree of care required in the use and operation of an automobile upon the streets of a city depends not only upon the condition of the streets, but also upon the dangerous character of the machine or vehicle, and its liability to do injury to others lawfully using such streets. The more dangerous its character, the greater is the degree of care and caution required in its use and operation. The duty of care which an operator of an automobile is bound to exercise is commensurate with the risk of injury to other vehicles and pedestrians on the road; and this risk of injury is considered to be as great as, if not greater than, the risk of injury to vehicles and pedestrians travelling on and across streets upon which street cars are operated by electric power.

In the application of these principles conditions frequently arise under which conduct amounting to reasonable care in the case of a light and slow moving wogon does not amount to proper and necessary care in the operation of a heavy and rapidly moving automobile. All operators of motor vehicles in addition to exercising reasonable care and caution for the safety of others who have the right to use the highways must do whatever the rules and statute require whenever the conditions therein referred to arise; and a failure to comply with regulations imposed by law or ordinance may, in itself, constitute negligence and render the operator liable for consequential damages. Nevertheless, if the driver of an automobile complies with all the requirements of a statute regulating the operation of motor vehicles, he may yet be liable for the failure to exercise ordinary care to avoid injury to another traveller on the highway.

ANTICIPATION OF PRESENCE OF OTHERS.—It is part of the duty of an operator of a motor vehicle to keep his machine always under control so as to avoid collisions with pedestrians and other persons using the highway. He has no right to assume that the road is clear, but under all circumstances and at all times he must be vigilant and must anticipate and expect the presence of others. Accordingly, the fact that he did

not know that any one was on the highway is no excuse for conduct which would have amounted to recklessness if he had known that another vehicle or person was approaching. Drivers of motor vehicles must be specially watchful in anticipation of the presence of others at places where other vehicles are constantly passing, and where men, women and children are liable to be crossing, such as corners, at the inter-section of streets, or near street cars from which passengers may have alighted or may be about to alight, or in other similar places or situations where people are likely to fail to observe an approaching automobile. It will be the duty of the driver of an automobile, when he has occasion to turn the corner of a street, to slow down the machine in anticipation of the presence of persons in the highway at the street crossing. The duty to anticipate the presence of others applies to private lanes which are open to the public use, and reasonable care must be taken in operating an automobile in such a lane, so as not to injure even a person who, as a mere licensee, may be driving a horse and carriage through the lane as a short cut between two highways.

PRESUMPTION THAT OTHERS WILL EXERCISE DUE CARE.—The duty of care between persons using the highway is mutual, and each person may assume that others travelling on the highway will comply with this obligation. Hence a pedestrian has a right to assume that the driver of an automobile will exercise proper caution in approaching crossings, and that he will not turn a sharp corner and run without warning against a person travelling on foot. In like manner a person operating an automobile has the right to act upon the assumption that every person whom he meets will also exercise ordinary care and caution according to the circumstances, and will not negligently or recklessly expose himself to danger, but rather make an attempt to avoid it; but when an operator of a motor vehicle has had time to realize, or by the exercise of a proper care and watchfulness should realize that a person whom he meets is in a somewhat helpless condition or apparently unable to avoid the approaching machine, he must exercise increased exertion to avoid a collision. A person cannot always rely upon another to use his utmost effort to escape from a place of danger, and if the driver of an automobile sees another in danger of being run down, he should not rely on the other's alertness in getting out of the way, but he must slacken speed and if necessary stop.

DUTY OF PEDESTRIANS.—It is the duty of a pedestrian, travelling in public streets of the city, reasonably to exercise for his personal safety the faculties with which he is endowed by nature, for self-protection, and a person is not entitled to walk the streets with closed eyes and inattentive mind.

DUTY AS TO RIDERS ON BICYCLES.—A person operating an automobile and one riding a bicycle owe to each other the duty to use reasonable care to avoid collision. A bicycle rider must be vigilant under all circumstances and keep a proper lookout for automobiles.

DUTY AS TO FRIGHTENED HORSES.—Whenever a person operating an automobile knows, or in exercise of ordinary care should know, that his machine is frightening the horse of an approaching team and that his further progress will increase the peril of the persons in the carriage, it is his duty, apart from the provisions of any statute, to take such steps for their safety as ordinary prudence may suggest, including the moderation of his pace, or, when necessary, the stopping of his automobile especially when he has received a signal requesting him to stop. (*See* sec. 86). As a matter of prudence and ordinary caution, at the indication of a horse becoming alarmed the person in charge of a motor vehicle must go as far as practicable to the side of the road and remain stationary until the horse has passed. It is the duty of the driver of an automobile to stop it when a horse or other animal becomes frightened, or shows that it is about to become frightened, by the approach of the motor vehicle, and the failure to stop upon the signal as required by statute is usually regarded as negligence. However, it is sometimes considered necessary that a signal be actually made in order to establish a case of negligence. The degree of care required in the use of motor cycles appears to be intermediate between that required in the use of automobiles and of bicycles. The operator of a motor cycle upon the streets of a city is not required to anticipate that a horse will be frightened at his cycle, although it is his duty to stop the machine when he discovers that the horse is frightened by it and likely to get beyond control. Where the accused had been driving cars regularly for about 13 years and had obtained a large number of good certificates from a variety of masters, and where he had never before had a conviction for bad driving, *held*, that the verdict that he was unfit to hold a licence because he was not a good driver was ridiculous in view of his record and must be cancelled. 88 I.C. 998 =23 A.L.J. 790=26 Cr.L.J. 1254=1925 All. 798. The general rule is that the fine imposed on an accused person should not be excessive, having regard to his pecuniary means. The best way to stop dangerous driving, by persons who earn their livelihood by driving motor vehicles, is for the Court, on conviction of the offender, to exercise its powers under which such Court "shall cause particulars of the conviction to be endorsed" on any licence held by the accused, and may (1) cancel or suspend that licence, or even (2) declare the accused disqualified for obtaining a licence either permanently or for such period as it thinks fit. The exercise of that power will have a very deterrent effect, especially in the case of persons who earn their livelihood

(*a*) who having been convicted of an offence punishable under section 116 is again convicted of an offence punishable under that section,

(*b*) who is convicted of an offence punishable under section 120, or

(*c*) who is convicted of an offence punishable under section 123:

Provided that the period of disqualification shall not exceed, in the cases referred to in clauses (*a*) and (*b*), two years, or, in the case referred to in clause (*c*), one year.

(6) A Court ordering the disqualification of an offender convicted of an offence punishable under section 116 may direct that the offender shall, whether he has previously passed the test of competence to drive specified in the Third Schedule or not, remain disqualified until he has subsequent to the making of the order of disqualification passed that test to the satisfaction of the licensing authority.

(7) The Court to which an appeal lies from any conviction of an offence of the nature specified in sub-section (1) may set aside or vary any order of disqualification made by the Court below, and the Court to which appeals ordinarily lie from any Court may set aside or vary any order of disqualification made by that Court, notwithstanding that no appeal lies against the conviction in connection with which such order was made.

Effect of disqualification order.

18. (1) A person in respect of whom any disqualification order is made shall be debarred to the extent and for the period specified in such order from holding or obtaining a licence and the licence, if any, held by such person at the date of the order shall cease to be effective during such period.

(2) The operation of a disqualification order made under section 17 shall not be suspended or postponed while an appeal is pending against such order or against the conviction as a result of which such order is made, unless the appellate Court so directs.

(3) Any person in respect of whom any disqualification order has been made may at any time after the expiry of six months from the date of the order apply to the Court or other authority by which the order was made, to remove the disqualification; and the Court or authority, as the case may be, may, having regard to all the circumstances, either remove or vary the order of disqualification:

Provided that where an application has been made under this section a second application thereunder shall not be entertained before the expiry of a further period of three months.

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by driving motor vehicles. 26 Cr.L.J. 1536 =27 Bom.L.R. 1056=1925 Bom. 526.

APPEAL—ORDER OF DISQUALIFICATION —IF PUNISHMENT.—An order of disqualification for holding a driving licence which is passed on conviction under secs. 78, 86 and 116 of the Motor Vehicles Act in addition to sentences of fine amounting to Rs. 45 in all, cannot be regarded as a punishment. The punishment which has to be specified under sec. 367 (2), Cr. P. Code, cannot include an order of disqualification for holding a licence. Hence no appeal lies in such a case. 57 L.W. 469=(1944) 2 M.L. J. 152=1945 Mad 27.

SEC. 18.—The change made in sub-cl. (2) by the Select Committee transfers to the appellate Court the power to stay an order of disqualification pending appeal. In sub-cl. (3) we have removed the reference to conduct of the person disqualified subsequent to the order of disqualification, leaving the decision to be based on general circumstances of which such conduct might be one. (*Select Committee Report*). "In order to secure a reasonable measure of uniformity in respect of the endorsement of licences, the offences in respect of which the Courts shall be bound to endorse licences are specified in the Fifth Schedule. Licences will therefore invariably be endorsed by the Courts for these offences and by the Courts or other competent authority in respect of any period of disqualification. The offences specified in the Schedule will be those in respect of which endorsement is necessary. Other offences not specified will be of a technical nature and, although no specific provision is made, the intention is that they should not be endorsed". (*Statement of Objects and Reasons.*)

Endorsements.

19. (*Cf.* Eng. Act, S. 8) (1) The Court or authority making an order of disqualification shall endorse or cause to be endorsed upon the licence, if any, held by the person disqualified particulars of the order of disqualification and of any conviction of an offence in respect of which an order of disqualification is made; and particulars of any removal or variation of an order of disqualification made under sub-section (3) of section 18 shall be similarly so endorsed.

(2) A Court by which any person is convicted of an offence specified in the Fifth Schedule shall, whether or not an order of disqualification is made in respect of such conviction, endorse or cause to be endorsed particulars of such conviction on any licence held by the person convicted.

(3) Any person accused of an offence specified in the Fifth Schedule shall when attending the Court bring with him his licence if it is in his possession.

Transfer of endorsement and issue of licence free from endorsement.

20. (*Cf.* Eng. Act, S. 8.) (1) An endorsement on any licence shall be transferred to any new or duplicate licence obtained by the holder thereof until the holder becomes entitled under the provisions of this section to have a licence issued to him free from endorsement.

(2) Where a licence is required to be endorsed and the licence is at the time not in the possession of the Court or authority by which the endorsement is to be made then—

(*a*) if the person in respect of whom the endorsement is to be made is at the time the holder of a licence, he shall produce the licence to the Court or authority within five days, or such longer time as the Court or authority may fix, or

(*b*) if, not being then the holder of a licence, he subsequently obtains a licence, he shall within five days after obtaining the licence produce it to the Court or authority;

and if the licence is not produced within the time specified it shall on the expiration of such time be of no effect until it is produced for the purpose of endorsement.

(3) A person whose license has been endorsed shall, if during a continuous period of three years since the last endorsement was made no further order of endorsement has been made against him, be entitled, on surrendering his licence and on payment of a fee of five rupees, to receive a new licence free from all endorsements. If the endorsement was only in respect of exceeding a speed limit, he shall be entitled to have a clean licence issued on the expiration of one year from the date of the order:

Provided that in reckoning the said period of three years and one year, respectively, any period during which the said person was disqualified for holding or obtaining a licence shall be excluded.

SEC. 20.—"In order to secure uniformity in respect of the issue of a clean licence after three years' clean driving, in conformity with the views expressed by the majority of Provincial Governments, it is proposed that in the Schedules specifying offences , convictions in respect of which are to be endorsed on licences, shall be divided into two parts—Part A will contain the more serious offences, endorsements in respect of which should never be expunged and must be repeated on any new licence issued, and Part B will specify the offences the endorsements in respect of which can be expunged after three years' clean period of driving. Thus, in the event of any person being prosecuted for an offence under this Act, his licence will furnish a record of all previous convictions of a serious nature, as well as recent convictions of a less serious nature and upon demand by the prosecution for the disqualification of the holder the Courts may normally be expected to disqualify a habitual offender. The power of licensing authorities to disqualify will therefore not be as necessary as it is held to be at present". (*Statement of Objects Reasons.*)

SELECT COMMITTEE REPORT.—"The change made in sub-cl. (3) liberalises the provisions of the sub-clause, and follows the provisions of the English law. The changes

(4) When a licence is endorsed by or an order of endorsement is made by any Court, the Court shall send particulars of the endorsement or order, as the case may be, to the licensing authority by which the licence was last renewed and to the licensing authority which granted the licence.

(5) Where the holder of a licence is disqualified by the order of any Court for holding or obtaining a licence, the Court shall take possession of the licence and forward it to the licensing authority by which it was granted or last renewed and that authority shall keep the licence until the disqualification has expired or has been removed and the person entitled to the licence has made a demand in writing for its return to him:

Provided that, if the disqualification is limited to the driving of a motor vehicle of a particular class or description, the Court shall endorse the licence to this effect and shall send a copy of the order of disqualification to the licensing authority by which the licence was granted and shall return the licence to the holder.

(6) Where on an appeal against any conviction or order of a Court which has been endorsed on a licence, the appellate Court varies or sets aside the conviction or order, the appellate Court shall inform the licensing authority by which the licence was last renewed and the licensing authority which granted the licence, and shall amend or cause to be amended the endorsement of such conviction or order.

Power to make rules.

21. (1) A Provincial Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

(*a*) the appointment, jurisdiction, control and functions of licensing authorities and other prescribed authorities;

[1][(*b*) the conduct and hearing of appeals that may be preferred under this Chapter, the fees to be paid in respect of such appeals and the refund of such fees:

Provided that no fee so fixed shall exceed two rupees;]

(*c*) the issue of duplicate licences to replace licences lost, destroyed or mutilated, the replacement of photographs which have become obsolete, and the issue of temporary licences to persons receiving instruction in driving, and the fees to be charged therefor;

(*d*) the conditions subject to which a Regional Transport Authority may disqualify a person for holding a licence to drive a public service vehicle;

(*e*) the medical examination and testing of applicants for licences and of drivers and the fees to be charged therefor;

[1][(*f*) the exemption of prescribed persons, or prescribed classes of persons from payment of all or any of any portion of the fees payable under this Chapter;]

(*g*) the granting by registered medical practitioners of the certificates referred to in sub-section (3) of section 7;

(*h*) the communication of particulars of licences granted by one licensing authority to other licensing authorities;

LEG. REF.

1 Substituted by Act XX of 1942.

made in sub-cls. (4) and (6) are little more than formal, and are self-explanatory". (*Select Committee Report.*)

SEC. 21: SELECT COMMITTEE REPORT.—"The change made in cl. (*d*) of sub-cl. (2) removes the power, which we considered unnecessary in view of the provisions contained in sec. 7 (5), to make rules for periodical medical examination of drivers of public service vehicles and replaces it by a power to make rules for the medical examination of drivers generally. The other changes made are aimed at making explicit provision for certain additional matters requiring to be prescribed".

(*i*) the control of schools or establishments for the instruction of drivers of motor vehicles and the acceptance of driving certificates issued by such schools or establishments as qualifying the holder for exemption from Part I of the test specified in the Third Schedule;

(*j*) the exemptions of drivers of road-rollers from all or any of the provisions of this Chapter or of the rules made thereunder; and

(*k*) any other matter which is to be or may be prescribed.

CHAPTER III.

REGISTRATION OF MOTOR VEHICLES.

Necessity for registration.

22. (1) No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place for the purpose of carrying passengers or goods unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner.

(2) Nothing in this section shall apply to a motor vehicle while being driven within the limits of jurisdiction of one registering authority to or from the appropriate place of registration for the purpose of being registered under sections, 23, 25 or 39 or to a motor vehicle exempted from the provisions of this Chapter while in the possession of a dealer in motor vehicles.

SEC. 22.—*Cf.* Indian Motor Vehicles Act, 1914, sec. 10. Sub-cl. (2) usually appears at present in provincial rules. (*Statement of Objects and Reasons.*)

REPORT OF SELECT COMMITTEE.—"The change made in sub-cl. (1) has the effect of bringing within the scope of this clause vehicles used for the carriage of passengers or goods in such areas as privately owned mill areas, tea gardens, and mine areas to which we think it is desirable that the provisions regarding registration should extend. The change made in sub-cl. (2) is intended to make it impossible for a person residing up-country to drive an unregistered car for long distances from a port".

LICENSING OF MOTOR VEHICLES.—The identification of automobiles by a system of licensing and the requirement that each machine must carry a registration number conspicuously displayed is one of the precautions taken to reduce the danger of injury to pedestrians and other travellers from the careless management of automobiles, and to furnish a means of ascertaining the identity of persons violating the laws and ordinances regulating the speed and the operation of machines upon the highways. Registration laws applying to motor vehicles generally include almost all kinds of vehicles propelled by mechanical power. Motor cycles are also generally included. The legislature has enacted rules requiring every automobile to be registered and to display a registration number in such a manner that it may be plainly visible, and prohibits the operation of an automobile in a street or other public place unless it complies with such regulations. The licence which is issued at the time of registration of a machine is sometimes to the operator, and in other instances to the owner of the machine, and occasionally to both. The business of operating a motor vehicle is one which the legislature regulates in all its details. As an incident to the enforcement of a system of registering and licensing motor vehicles the state or municipality exacts a fixed fee upon the issuing of each licence, and such charges are usually treated as reasonable licence fees and not as taxes.

THE PROPER WAY OF PROVING AN ENTRY IN THE REGISTER OF MOTOR VEHICLES would be either that the Register itself should be produced by a proper official or a duly authenticated copy of the material part of the Register placed before the Court. A mere statement by the Commissioner of Police made in answer to a letter written by the Corporation, without his being called or the Register produced, cannot be accepted in proof of the ownership of a car. 36 C. W.N. 1147=1933 C. 178. It is *ultra vires* of the local Government to fix a time limit in the registration certificate and to make a corresponding change in the Schedule D as no power was given by sec. 11 of the Indian Motor Vehicles Act to make rules for that purpose. R. 6 of the Bombay Motor Vehicle Rules as amended is invalid and inoperative. 46 B. 646=24 Bom.L.R. 50=23 Cr.L.J. 163 =1922 B. 42. *See also* 1933 Bom. 460. R. 7 framed by the Bombay Government under sec. 11, Motor Vehicles Act, is not *ultra vires* as the words "incidental to registration" in sec. 11 are wide enough to cover renewal of certificates. 146 I.C. 3= 35 Bom.L.R. 1027=1933 B. 460 (F.B.). *See also* 1922 B. 42.

INJURY TO UNREGISTERED AUTOMOBILE OR OCCUPANT.—There has been considerable discussion in the cases as to the liability for injuries to persons riding on the highway in an automobile which has not been regis-

23. [1][(1)] Subject to the provisions of section 25 and section 39, every owner of a motor vehicle shall cause the vehicle to be registered by a registering authority in the province in which he has the residence or place of business where the vehicle is normally kept.

Registration where to be made.

[1][(2) A motor vehicle already registered under any enactment in force in British India at the commencement of this Act shall be deemed to be registered under this Act until the 1st day of April, 1941, and on the application of the owner before that date shall be registered under this Act without payment of any registration fee.

(3) A Provincial Government may, by rules made under section 41,

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LEG. REF.

1 Omitted by Act XX of 1942.

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tered as required by law, and some close distinctions have been sought to be drawn. It is, of course, a general principle of law that a person who does an unlawful act is not thereby necessarily put outside the protection of the law, and merely because he is a law-breaker he is not barred of redress for an injury which he may sustain, nor liable for an injury suffered by another. To put him beyond the pale of the law for the purposes of a recovery by or against him the unlawful act must have a connection with the injury suffered. Notwithstanding this salutary principle it has been laid down by some Courts that where the statutes prohibit the use of unregistered automobiles on the highways, a person riding in such an automobile is a trespasser on the highway and the only duty owing to him by persons lawfully on the highway is not wantonly or wilfully to injure him,

The rule which in effect renders an unlicenced automobile and its occupants outlaws on the highways can hardly be said to have the support of reason, and where the statute requires the registration of automobiles merely on pain of a penalty for a violation. the rules have been held not to apply. (*Ame. Rul. Case-law.*)

REGULATIONS AS TO NON-RESIDENTS.—The highways, whether urban or rural, are primarily intended for the use of the public; and the absolute dominion over them is lodged in the legislature although the control of the roads and streets is commonly delegated to the local municipalities within which they are located. Nevertheless their use remains in the public at large, subject only to such limitations as the municipalities are authorised by law to impose. The local authorities generally have power to lay a licence tax upon automobiles of residents of the municipality and upon persons residing outside of the corporate limits who employ their machines in furtherance of business or occupations carried on within the city limits; but they do not have the right to levy such tax on motor vehicles of non-residents whose business or pleasure casually carries them into or through the city, since this might result in compelling the owners of automobiles to obtain licences not only from the authorities of the place where their business had its headquaters, but also from every neighbouring town into which their casual engagements might call them. (*Ame. Rul.* Case-law.)

SECS. 22 & 42.—If a lorry is permitted to be driven on a particular day without registration and permit contrary to the provisions of secs. 22 (1) and 42 (1) of the Motor Vehicles Act, the owner cannot be charged for a number of separate offences, although it is seen at different places on the same day. The offence is using the lorry on the particular day and it is only one offence. 43 Cr.L.J. 673=44 P.L.R. 101=A.I.R. 1942 Lah. 125.

SECS. 23, 28 AND 29.—The increasing interprovincial circulation of vehicles makes it very desirable that registration shall have all-India validity. The object of these sections therefore is that a certificate of registration as such when once taken out shall be valid in perpetuity throughout British India, and shall remain as a history of the vehicle during the vehicle's life. But if the vehicle is transferred from one province to another for a period greater than twelve months, the owner will have to apply in the new province for the allotment of a fresh distinguishing mark (registered number) which will be entered in the certificate of registration. The documents and record of registration will then be transferred to the new province. This will necessitate amendment of some Provincial Taxation Acts, but it is felt that the disadvantages of linking registration to taxation out-weigh the advantages. (Statement of Objects and Reasons.)

SEC. 23: SELECT COMMITTEE REPORT.—"We have re-arranged this clause by converting the proviso into a separate sub clause. We have provided that a registration already in existence shall for a limited period be deemed to be a registration made under the new law, and have given to owners a right during that period to have it converted into a registration under the new law without payment of a registration fee. As the new law requires certain particulars to be carried exhibited on a vehicle, and to be entered in certificates of registration, we have provided by the new sub-cl. (3) a means by which, if necessary, this object can be secured even before a new registration is accomplished."

provide that within a prescribed period certificates of registration of any prescribed class of transport vehicles deemed to be registered under this Act by virtue of sub-section (2) shall be presented to a prescribed authority for the entry therein of all or any of the particulars specified in section 37.] (Sub-sections (2) and (3) omitted by Act XX of 1942.)

Registration how to be made.

24. (1) An application by or on behalf of the owner of a motor vehicle for registration shall be in Form E as set forth in the First Schedule, shall contain the information required by that form, and shall be accompanied by the prescribed fee.

(2) The registering authority shall issue to the owner of a motor vehicle registered by it a certificate of registration in Form G as set forth in the First Schedule and shall enter in a record to be kept by it particulars of such certificate.

(3) The registering authority shall assign to the vehicle, for display thereon in the prescribed manner, a distinguishing mark (in this Act referred to as the registration mark) consisting of one of the groups of letters allotted to the province by the Sixth Schedule followed by a number containing not more than four figures.

Temporary registration.

25. (1) Notwithstanding anything contained in section 23, the owner of a motor vehicle may apply to any registering authority to have the vehicle temporarily registered in the prescribed manner and for the issue in the prescribed manner of a temporary certificate of registration and a temporary registration mark.

(2) A registration made under this section shall be valid only for a period not exceeding one month, and shall not be renewable.

Production of vehicle at time of registration.

26. The registering authority may before proceeding to register a motor vehicle require the person applying for registration of the vehicle to produce the vehicle either before itself or such authority as the Provincial Government may by order appoint in order that the registering authority may satisfy itself that the particulars contained in the application are true and that the vehicle complies with the requirements of Chapter V and of the rules made thereunder.

Refusal of registration.

27. The registering authority may refuse to register any motor vehicle if the vehicle is mechanically defective or fails to comply with the requirements of Chapter V or of the rules made thereunder, or if the applicant fails to furnish particulars of any previous registration of the vehicle, and it shall furnish the applicant whose vehicle is refused registration with the reasons in such writing for refusal.

LEG. REF.

1 Omitted by Act XX of 1942.

SEC. 24.—"The range of vehicles is extending farther and farther bevond provincial boundaries and the desirability of uniform distinguishing marks is becoming more evident". (Statement of Objects and Reasons.)

SEC. 25.—The amendment by the Select Committee in cl. (2) simplifies the wording without making any material change in the effect of the clause. (Select Committee Report.)

SECS. 26 AND 27.—These provisions already appear in provincial rules. (Statement of Objects and Reasons.)

SEC. 26.—The object of the change is to enable the authority referred to be appointed more expeditiously than would be the case if the authority were to be prescribed by rules the making of which is subject to previous publication. (Select Committee Report.)

SEC. 27: SELECT COMMITTEE REPORT.—"We have provided later in sec. 35 for an appeal against a refusal to register under this section. Accordingly we provide here that the reasons for any such refusal shall be recorded.

Effectiveness in British India of registration.

28. (1) Subject to the provisions of section 29, a motor vehicle registered in accordance with this Chapter in any province [1][* * * * * * *] shall not require to be registered elsewhere in British India and a certificate of registration issued or in force under this Act in respect of such vehicle shall be effective throughout British India; [* * *][1]

(2) Subject, in the case of international motor vehicle certificates issued in pursuance of the International Convention relative to motor traffic concluded at Paris on the 24th day of April, 1926 [1][or any convention modifying the same], to any rules made by the Central Government under section 92, and subject in any other case to the provisions of [2][* * *] section 23 and sub-section (3) and sub-section (4) of this section, a motor vehicle registered by a competent authority in any Indian State or in the French or Portuguese Settlements bounded by India shall not require to be registered in British India:

Provided that there is in force in respect of the vehicle a certificate conforming to and containing substantially the same particulars as the certificate of registration in Form G as set forth in the First Schedule issued by such competent authority in respect of such vehicle.

(3) A certificate complying with the requirements of the proviso to sub-section (2) shall be effective throughout British India, as if it were a certificate of registration issued under this Act.

(4) Sub-section (2) shall not apply to any motor vehicle previously registered in British India, if the certificate of registration of the vehicle in British India is for the time being suspended or cancelled for any reason other than that of a permanent removal of the vehicle from British India.

(5) If at any time the Central Government is satisfied that motor vehicles registered in British India under this Act are not permitted to be driven in any Indian State or French or Portuguese Settlement without fresh registration in such State or Settlement, or are permitted to be driven only subject to unreasonable conditions or that like conditions and requirements to those imposed under this Act (including the specification of the particulars required by Form G as set forth in the First Schedule) are not imposed in a reasonable degree upon the issue and for the continued effectiveness of certificates of registration in any State or Settlement as aforesaid, the Central Government shall, by notification in the Official Gazette, declare that certificates of registration generally or in respect of any patricular class of motor vehicle issued in any such State or Settlement shall not be effective in British India.

Assignment of fresh registration mark on removal to another province.

29. (1) When a motor vehicle registered in one province has been kept in another province for a period exeeeding twelve months, the owner of the vehicle shall apply to the registering authority, within whose jurisdiction the vehicle then is, for the assignment of a new registration mark and shall present the certificate of registration to that registering authority.

(2) The registering authority, to which application is made under sub-

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LEG. REF.

1 Omitted and inserted by Act XX of 1942.

2 Omitted by Act VI of 1945.

SEC. 28: SELECT COMMITTEE REPORT.—"In cl. (1) minor changes have been made in the drafting, and we have omitted the reference to liability to provincial taxation as unnecessary and possibly misleading. We have added a proviso affording the Provincial Government a means of securing when it thinks necessary a record of the particulars regarding transport vehicles which are required under sec. 37 (old 36). Cls. (2) and (3) have been recast in order to provide that the recognition of a registration effected in a State of Foreign Settlement shall, as has already been provided in sec. 9 in the case of licences, be conditional on reciprocal treatment in such States or Settlements of a registration effected in British India, and on the existence of adequate measures for the control of registration".

SEC. 29.—A minor drafting change has been made by the Select Committee. (Select Committee Report).

section (1), shall assign the vehicle, a registration mark in accordance with the Sixth Schedule to be carried thenceforth on the vehicle and shall enter the mark upon the certificate of registration before returning it to the applicant and shall, in communication with the registering authority by whom the vehicle was previously registered, arrange for the transfer of the registration of the vehicle from the records of that registering authority to its own records.

(3) A Provincial Government may make rules under section 41 requiring the owner of a motor vehicle not registered within the province, which is brought into or is for the time being in the province, to furnish to a prescribed authority in the province such information with respect to the motor vehicle and its registration as may be prescribed.

Change of residence or place of business.

30. (1) If the owner of a motor vehicle ceases to reside or have his place of business at the address recorded in the certificate of registration of the vehicle, he shall, within thirty days of any such change of address, intimate his new address to the registering authority by which the certificate of registration was issued, or, if the new address is within the jurisdiction of another registering authority, to that other registering authority, and shall at the same time forward the certificate of registration to the registering authority in order that the new address may be entered therein.

(2) A registering authority other than the original registering authority making any such entry shall communicate the altered address to the original registering authority.

(3) Nothing in sub-section (1) shall apply where the change of the address recorded in the certificate of registration is due to a temporary absence not intended to exceed six months in duration or where the motor vehicle is neither used nor removed from the address recorded in the certificate of registration.

Transfer of ownership.

31. (1) Within thirty days of the transfer of ownership of any motor vehicle registered under this Chapter, the transferee shall report the transfer to the registering authority within whose jurisdiction he resides and shall forward the certificate of registration to that registering authority together with the prescribed fee in order that particulars of the transfer of ownership may be entered therein.

(2) A registering authority other than the original registering authority making any such entry shall communicate the transfer of ownership to the original registering authority.

Alteration in motor vehicle.

32. (1) If a motor vehicle is so altered that the particulars contained in the certificate of registration are no longer accurate, the owner of the vehicle shall, within fourteen days of the making of any such alteration, report the alteration to the registering authority within whose jurisdiction he resides and shall forward the certificate of registration to that authority together with the prescribed fee in order that particulars of the alteration may be entered therein:

SECS. 30 AND 32.—"These reproduce the substance of what already appears in provincial rules, but to facilitate matters for the vehicle owner they enable him to report a change of address or of ownership, or alteration in the vehicle to a registering authority who is convenient for the purpose". *(Statement of Objects and Reasons.)*

SEC. 30: SELECT COMMITTEE REPORT.—In cl. (1) we have extended the time limit given for compliance with the provisions of the clause. The change made in cl. (2) and repeated in the similar secs. 31 (2), 32 (2), 33 (3), 34 (2) is merely a simplification of the wording, made possible by the insertion of the explanatory cl. (7) in sec. 34.

SEC. 31.—In cl. (1) the Select Committee had extended the time limit for compliance with the provisions of the section.

SECS. 31 AND 34.—As to necessity for fresh registration on change of ownership of vehicle, *see* 45 C.W.N. 111.

SEC. 32.—The proviso added to cl. (1) makes a provision to be found in certain provincial rules. The changes in cl. (2) are formal only. *(Select Committee Report.)*

Provided that it shall not be necessary to report any change in the unladen weight of the motor vehicle consequent on the addition or removal of fittings or accessories if such change does not exceed two per cent. of the weight entered in the certificate of registration.

(2) A registering authority other than the original registering authority making any such entry shall communicate the details of the entry to the original registering authority.

Suspension of registration.

33. (1) A registering authority or other prescribed authority, which has reason to believe that any motor vehicle within its jurisdiction is in such a condition that its use in a public place would constitute a danger to the public, or that it fails to comply with the requirements of Chapter V or of the rules made thereunder. may, after giving the owner an opportunity of making any representation he may wish to make, for reasons to be recorded in writing supend the certificate of registeration of the vehicle until the defects are remedied to its satisfaction.

(2) An authority other than a registering authority shall, when making a suspension order under sub-section (1), intimate in writing the fact of suspension and the reasons therefor to the registering authority within whose jurisdiction the vehicle is at the time of the suspension.

(3) Where the registration of a motor vehicle has been suspended under sub-section (1) for a continuous period of not less than one month, the registering authority, within whose jurisdiction the vehicle was when the registration was suspended, shall, if it is not the original registering authority, inform that authority of the suspension; and when the suspension has continued without interruption for a period of not less than six months, the registering authority, within whose jurisdiction the vehicle was when the registeration was suspended, may, if it is the original registering authority, cancel the registration, and, if it is not the original registering authority, shall forward the certificate of registration to that authority which may cancel it forthwith.

(4) The owner of a motor vehicle shall, on the demand of a registering authority or other prescribed authority which has suspended the certificate of registration of the vehicle under this section, surrender the certificate of registration and any token or card issued to authorise the use of the vehicle in a public place.

(5) A certificate of registration and any token or card surrendered under sub-section (4) shall be returned to the owner when the order suspending registration has been rescinded and not before.

Cancellation of registration.

34. (1) If a motor vehicle has been destroyed or has been rendered permanently incapable of use, the owner shall, within fourteen days or as soon as may be, report the fact to the registering authority within whose jurisdiction he resides and shall forward to that authority the certificate of registration of the vehicle together with any token or card issued to authorise the use of the vehicle in a public place.

SEC. 33.—This appears in substance in provincial rules, but additional provision is included requiring that if a defective vehicle is not repaired within a reasonable period its registration shall be cancelled. (*Statement of Objects and Reasons.*)

CL. (1): SELECT COMMITTEE REPORT.—"We have provided for the recording of reasons, as an appeal is now given against an order of suspension".

CL. (3).—"We have altered the wording so as to make the original registering authority in every case the authority which may make an order of suspension". (*Select Committee Report.*)

SEC. 34: SELECT COMMITTEE REPORT.—"The provision relating to cancellation of registration on permanent removal of the vehicle from British India has been removed from cl. (1) and reproduced as a sepa-

(2) The registering authority shall, if it is the original registering authority, cancel the registration and the certificate of registration, or, if it is not, shall forward the report and the certificate of registration to the original registering authority and that authority shall cancel the registration and the certificate of registration.

(3) Any registering authority may order the examination of a motor vehicle within its jurisdiction by such authority as the Provincial Government may by order appoint and, if upon such examination and after giving the owner an opportunity to make any representation he may wish to make it is satisfied that the vehicle is in such a condition that its use in a public place would constitute a danger to the public and that it is beyond reasonable repair, may cancel the registration of the vehicle.

(4) If a registering authority is satisfied that a motor vehicle has been permanently removed out of British India, the registering authority shall cancel the registration.

(5) A registering authority cancelling the registration of a motor vehicle under section 33 or under this section shall communicate the fact in writing to the owner of the vehicle and the owner of the vehicle shall forthwith surrender to that authority the certificate of registration of the vehicle and any token or card issued to authorise the use of the vehicle in a public place.

(6) A registering authority making an order of cancellation under this section shall, if it is the original registering authority, cancel the certificate of registration and the entry relating to the vehicle in its records, and, if it is not the original registering authority, forward the certificate of registration to that authority, and that authority shall cancel the certificate of registration and the entry relating to the motor vehicle in its records.

(7) The expression "original registering authority" in this section and in sections 30, 31, 32 and 33 means the registering authority in whose records the registration of the vehicle is recorded.

Appeals.

35. (1) Any owner of a motor vehicle aggrieved by an order of refusal under section 27 to register a motor vehicle or under sub-section (1) of section 38 to issue a certificate of fitness or by an order of suspension or cancellation made under section 33 or 34 or by an order of cancellation under sub-section (3) of section 38 may, within thirty days of the date on which he has received notice of such order, appeal against the order to the prescribed authority.

(2) The appellate authority shall give notice of the appeal to the original authority and after giving opportunity to the original acthority and the appellant to be heard either personally or by pleader in the appeal pass such orders as it thinks fit:

Provided that orders of the original authority shall remain in force pending the disposal of the appeal unless the appellate authority otherwise directs.

36. (1) [1][* * *] A registering authority shall refuse to register

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LEG. REF.

1 Omitted by Act XX of 1942.

rate clause. The period allowed for report to the registering authority under cl. (1) has been extended. In cl. (3) we have provided for the appointment of the examining authority by order of the Provincial Government instead of by rule made after previous publication, and have provided that an owner shall have an opportunity of being heard. In cl. (4) the change made ensures that all orders of suspension or cancellation shall be communicated in writing to owners of vehicle. Cl. (5) follows the principle followed in our revision of sec. 33 (3)". *See* 45 C.W.N. 111.

SEC. 35.—"We have made cl. (6) of sec. 34 into a separate clause, and have elaborated it so as to provide for an appeal against any order of suspension or cancellation, and also against an order refusing under sec. 27 to register a vehicle". (*Select Committee Report.*)

Special requirement for registration of transport vehicle.

any transport vehicle other than a motor cab, unless the application for registration is accompanied by a document in Form F as set forth in the First Schedule signed by the maker of the vehicle or an assembler duly authorised by the maker in this behalf stating the greatest laden weight and greatest axle weights for which the vehicle is and the several axles are designed: [* * *][1]

(2) Where a transport vehicle or chassis as the case may be, has affixed to it a metal plate, bearing the stamp of the maker or assembler and identified as appertaining to the particular vehicle or chassis to which it is attached, which contains the particulars specified in sub-section (1), that plate may at the discretion of a registering authority be deemed to be the document referred to in sub-section (1).

Special particulars to be recorded on registration of transport vehicle.

37. (1) A registering authority, when registering a transport vehicle other than a motor cab shall enter in the record of registration and shall also enter in the certificate of registration of the vehicle the following particulars, namely:—

(*a*) the unladen weight of the vehicle;

(*b*) the number, nature and size of the tyres attached to each wheel;

(*c*) the registered laden weight of the vehicle and the registered axle weights pertaining to the several axles thereof fixed in accordance with sub-section (2) with reference to the particulars of the tyres entered in the certificate of registration; and

(*d*) if the vehicle is used or adapted to be used for the carriage of passengers solely or in addition to goods, the number of passengers for whom accommodation is provided;

and the owner of the vehicle shall have the said particulars exhibited in the prescribed manner on the vehicle.

(2) Notwithstanding any statement contained in the document referred to in sub-section (1) of section 36 as supplied by the maker or assembler of a transport vehicle, the registered weight to be recorded by the registering authority for any axle shall not exceed the permissible weight for that axle calculated in accordance with the Seventh Schedule, nor shall the registered laden weight of the vehicle exceed the sum of the several axle weights as so determined:

Provided that where it appears to a Provincial Government that heavier weights than those specified in the Seventh Schedule may be permitted in a particular locality for vehicles of a particular type, the Provincial Government may by notification in the Official Gazette direct that the provisions of this sub-section shall apply with such modifications as may be specified in the notification.

LEG. REF.

[1] Omitted by Act XX of 1942.

SECS. 36 AND 37.—"In order to check overloading the maximum permissible weight and axle weights must be specified in the registration certificate. The registering authority has no means of determining these and it is proposed therefore to require the manufacturer to certify in respect of every chassis. To guard against the possibility of the certified weight being incorrectly specified, it is proposed that the legal weight on any axle shall be governed by the size of the pneumatic tyres attached to the wheels of that axle in accordance with scheduled permissible loans on tyres of different sizes." (*Statement of Objects and Reasons*)

SEC. 36: SELECT COMMITTEE REPORT.—"In addition to the minor formal amendments, we have by an added proviso to cl. (1) excluded from the operation of the section transport vehicles already registered, owing to the practical difficulty that might be experienced in complying with the requirements contained in the section. We have omitted cls. (2) and (3) dealing with the import of cars and have accordingly omitted the reference to Customs Collector in cl. (4)".

(3) When by reason of an alteration in the number, nature or size of tyres attached to the vehicle the regitsered laden weight or any registered axle weight recorded in the certificate of registration no longer accords with the laden weight or the axle weight as determined in accordance with sub-section (2), the provisions of section 32 shall apply, and the registering authority shall enter in the certificate of registration a revised registered laden weight and registered axle weights.

Certificate of fitness of transport vehicle.

38. (1) Subject to the provisions of section 39, a transport vehicle shall not be deemed to be validly registered for the purposes of section 22, unless it carries a certificate of fitness in Form H as set forth in the First Schedule, issued by the prescribed authority, to the effect that the vehicle complies for the time being with all the requirements of Chapter V and the rules made thereunder. Where the prescribed authority refuses to issue such certificate it shall supply the owner of the vehicle with its reasons in writing for such refusal.

(2) Subject to the provisions of sub-section (3), a certificate of fitness shall remain effective for three years, unless a shorter period, not being in any case less than six months, is specified in the certificate by the prescribed authority.

(3) The issuing authority or other prescribed authority may for reasons to be recorded in writing cancel a certificate of fitness at any time, if satisfied that the vehicle to which it relates no longer complies with all the requirements of this Act and the rules made thereunder; and on such cancellation the certificate of registration of the vehicle and any permit granted in respect of the vehicle under Chapter IV shall be deemed to be suspended until a new certificate of fitness has been obtained.

[(4) Notwithstanding anything contained in sub-section (1), a Provincial Government may, until the expiry of one year from the commencement of this Act, by rules made under section 41, dispense with the necessity for a certificate of fitness in the case of all or any transport vehicles in respect of which certificates of registration and permits had already been issued before the commencement of this Act.] (Sub-section (4) omitted by Act XX of 1942.)

39. (1) The authority specified in Part B of the Fourth Schedule may

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SEC. 37 (3) is intended to meet the case of an owner who registers his vehicle for a specified laden weight on one set of tyres, and then puts on smaller tyres which have a lower carrying capacity. If the gross load on the smaller tyres exceeded the maximum load calculated in accordance with the provisions of the Tenth Schedule an offence of overloading would arise. (*Statement of Objects and Reasons.*) (*Ibid.*)

SEC. 38.—A registration is not to be renewed annually, it is necessary to provide that transport vehicles shall be brought up periodically, or as required, for mechanical inspection. It is proposed to do this by attaching to the registration certificate a certificate of fitness which will specify the date by which the vehicle has to be re-examined. One real advantage to be derived from these certificates is that the inspection will take place as and when due, and there will be no necessity for any disorganisation of passenger service due to all vehicles being called up for examination at a particular time. (*Statement of Objects and Reasons.*)

CL. (1): REPORT OF SELECT COMMITTEE.—"We have introduced a reference by way of a saving clause to sec. 39. We have added provision for communication in writing of the reasons for a refusal to grant a certificate of fitness.

CL. (2) has been revised so as to secure that while a certificate issued in respect of a new vehicle shall remain effective for three years, any other certificate shall require annual renewal. (*Select Committee Report.*)

SECS. 38 AND 42.—The accused was the owner of a Motor Vehicle which was registered as a motor car, but it had the shape and appearance of a van, and it was found that it was used for carrying goods, *viz.*, for the transport of radio sets in which the accused was dealing to the houses of the purchasers of the sets. The accused had not obtained a certificate of fitness as required by sec. 38 (1) or a special permit as required by sec. 42 (1). *Held*, that the accused was guilty under secs. 38 (1) and 42 (1) of the Act and liable to conviction under the same. A.I.R. 1943 Mad. 720= (1943) 2 M.L.J. 197.

SEC. 39.—This provides for the continuance of the existing arrangements under which Defence Department vehicles are ex-

Registration of vehicles, the property of the Central Government.

register any motor vehicle which is the property [1][or for the time being under the exclusive control] of the Central Government; and any vehicle so registered shall not, so long as it remains the property [1][or under the exclusive control] of the Central Government, require to be registered otherwise under this Act.

(2) A transport vehicle registered under this section shall carry a certificate of fitness in Form H as set forth in the First Schedule issued by the authority referred to in sub-section (1).

(3) An authority registering a vehicle under sub-section (1) shall assign a registration mark in accordance with the provisions contained in the Fourth Schedule and shall issue a certificate in respect of the vehicle that the vehicle has been registered under this section.

(4) If a vehicle registered under this section ceases to be the property [or under the exclusive control][1] of the Central Government, the provisions of section 23 shall thereupon apply.

(5) The authority registering a vehicle under sub-section (1) shall furnish to any Provincial Government all such information regarding the general nature, over all dimensions, and axle weights of the vehicle as the Provincial Government may at any time require.

Application of Chapter III to trailers.

40. (1) The registration mark assigned to a trailer shall be displayed in the prescribed manner on the side of the vehicle.

(2) No person shall drive a motor vehicle to which a trailor is or trailers are attached unless the registration mark of the motor vehicle so driven is displayed in the prescribed manner on the trailer or on the last trailer in the train, as the case may be.

Power to make rules.

41. (1) A Provincial Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

(*a*) the conduct and hearing of appeals that may be preferred under this Chapter; [2][the fees to be paid in respect of such appeals and the refund of such fees];

(*b*) the appointment, functions and jurisdiction of registering and other prescribed authorities;

(*c*) the issue of certificates of registration and duplicate certificates of registration to replace certificates lost, destroyed or mutilated;

(*d*) the temporary registration of motor vehicles, and the issue of temporary certificates of registration and marks;

(*e*) the manner in which registration marks and the particulars referred to in sub-section (1) of section 37, and other prescribed particulars shall be exhibited;

(*f*) the fees to be charged for the issue or alteration of certificates of

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LEG. REF.

1 Inserted by Act XX of 1942.

2 Added and inserted by Act XX of 1942.

empt from the ordinary procedure of registration. (*Statement of Objects and Reasons.*)

SELECT COMMITTEE REPORT.—"We are of opinion that transport vehicles registered under the special provision of this clause should not be exempt from the requirement to carry a certificate of fitness, and have provided accordingly both here and in the Fourth Schedule".

SEC. 41: REPORT OF SELECT COMMITTEE.—"We have made one correction in a reference in cl. (*d*) of sub-cl. (2), and have inserted two minor additions in cls. (*d*) and (*e*). We have added a clause giving power to exempt road-rollers from the provisions of Chapter, and to exempt delivery vans from the requirements of cl. 38 regarding the carrying of certificates of fitness". (*Select Committee Report.*)

registration, for certificates of fitness, for registration marks, and for the examination or inspection of motor vehicles, and the refund of such fees;

[1][(*ff*) the exemption of prescribed persons or prescribed classes of persons from payment of all or any portion of the fees payable under this Chapter];

(*g*) the forms, other than those set forth in the First Schedule, to be used for the purposes of this Chapter;

(*h*) the communication between registering authorities of particulars of certificates of registration and by owners of vehicles registered outside the province of particulars of such vehicles and of their registration;

(*i*) the particulars to be furnished by the owner of any motor vehicle to the registering authority, upon the transfer of possession of the motor vehicle under the terms of a hiring agreement;

(*j*) the extension of the validity of certificates of fitness pending consideration of applications for their renewal;

(*k*) the exemption from the provisions of this Chapter, and the conditions and fees for exemption, of motor vehicles, in the possession of dealers;

(*l*) the exemption of road-rollers [1][graders and other vehicles designed and used solely for the construction, repair and cleansing of roads] from all or any of the provisions of the Chapter and the rules made thereunder, and the conditions governing such exemption; and the exemption of delivery vans from the provisions of section 38 and the conditions governing such exemption; and

(*m*) any other matter which is to be or may be prescribed.

CHAPTER IV.

CONTROL OF TRANSPORT VEHICLES.

Necessity for Permits.

42. (1) No owner of a transport vehicle shall use or permit the use of the vehicle in any public place, save in accordance with the conditions of a permit granted or countersigned by a Regional or Provincial Transport Authority authorising the use of the vehicle in that place in the manner in which the vehicle is being used:

Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a contract carriage:

LEG. REF.

[1] Added and inserted by Act XX of 1942.

SECS. 42, 52 AND 53.—The *bona fide* private carrier should not be required to justify his application in the face of opposition by other providers of transport although the private carrier will, in other respects, *e.g.*, weight and speed limits, and safety regulations, be under the same obligation as the public carrier. All provinces, save one, have agreed that a differentiation between the two classes is necessary and that a private carrier should have a permit for identification on the road and to show that the vehicle is being rightly used. One province would make no distinction but the Bill follows the English practice in which this distinction is made. In England a private carrier's permit is easily obtained because the granting of the permit is not open to opposition by providers of public transport.

SEC. 42: GENERAL.—This Chapter legislates specifically for the control of transport vehicles, *i.e.*, vehicles carrying passengers for hire or reward, or goods whether for hire or reward or otherwise. Such vehicles are divided into four classes, namely:—

(*a*) Stage carriages, *i.e.*, motor buses on regular or *quasi* regular services;

(*b*) contract carriages, *i.e.*, taxis and other motor cabs, and buses used for special occasions;

(*c*) private carriers (of goods); and

(*d*) public carriers (of goods).

The general scheme is that the control of these separate classes of vehicles should be in the hands of transport authorities constituted for specified areas within the province; and that for the purpose of co-ordination, hearing appeals, etc., there should also be constituted a transport authority for the province. The constitution of these bodies is a matter upon which the Provincial Governments have particularly been consulted.

All motor transport vehicles must be covered by a permit issued by the transport authority of an area, and the effectiveness of every permit will depend on the observance by the holder of recognised general conditions such as the satisfactory maintenance of the vehicle, the observance of prescribed speed limits, and the avoid-

Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a goods vehicle either when carrying passengers or not:

Provided further that a public carrier's permit shall, subject to any conditions that may be specified in the permit, authorise the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.

(2) In determining for the purposes of this Chapter, whether a transport vehicle is or is not used for the carriage of goods for hire or reward,—

(*a*) the delivery or collection by or on behalf of the owner of goods sold, used or let on hire or hire-purchase in the course of any trade or business carried on by him other than the trade or business of providing transport,

(*b*) the delivery or collection by or on behalf of the owner of goods which have been or which are to be subjected to a process or treatment in the course of trade or business carried on by him, or

(*c*) the carriage of goods in a transport vehicle by a manufacturer of or agent or dealer in such goods whilst the vehicle is being used for demonstration purposes

shall not be deemed to constitute a carrying of the goods for hire or reward; but the carriage in a transport vehicle of goods by a person not being a dealer in such goods who has acquired temporary ownership of the goods for the purpose of transporting them to another place and there relinquishing ownership shall be deemed to constitute a carrying of the goods for hire or reward.

(3) Sub-section (1) shall not apply—

(*a*) to any transport vehicle owned by or on behalf of the Central Government or a Provincial Government other than a vehicle used in connection with the business of an Indian State Railway;

(*b*) to any transport vehicle owned by a local authority or by a person acting under contract with local authority and used solely for road cleansing, road watering or conservancy purposes;

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ance of overloading the vehicle or overworking the drivers". (*Statement of Objects and Reasons.*)

SEC. 42 (4).—This sub-clause will enable Provincial Governments to deal with the private bus, control over which they may deem desirable. (*Statement of Objects and Reasons.*)

SUB-CL. (1) AND CLS. (*a*) AND (*b*) OF SUB-CL. (2).—"The alterations are formal. The new clause inserted in sub-cl. (2) is a provision contained in the English Road Traffic Act, 1933, which we consider desirable. In sub-cl. (3) we have added two new classes of vehicle to those exempted from the provisions of sub-cl. (1), namely, vehicles used for certain public purposes and vehicles used for State purposes by the Governments of Indian States or the Foreign Settlements. Certain minor changes of a formal or consequential nature, are also made in the sub-clause'. (*Select Committee Report.*) *See* 55 L.W. 754=1943 Mad. 41=(1942) 2 M.L.J. 577 (as to the meaning of the term "using" the car and "permitting the use" of the car). Permit requiring issuing of tickets to passengers—Employee of owner failing to issue tickets—Liability of owner—Driver and conductor not liable. I.L.R. (1945) Nag. 742=1945 N. 263=1945 N.L.J. 333.

SECS. 42 AND 48.—An agent of manager of the owner cannot be considered to be the owner within the meaning of that term, occurring in secs. 42 (1) and 48 (*d*). I.L.R. (1943) Nag. 64=1942 N.L.J. 308=1943 Nag. 22.

SECS. 42 AND 123.—There is no rule under the Motor Vehicles Act placing upon the driver or the conductor the duty of seeing that goods are not carried in a vehicle contrary to the conditions of its permit but it is the duty of the conductor under R. 218 of the Rules to exercise supervision over the loading of the vehicle with passengers, luggage and goods. Secs. 42 (1) and 123 of the Act are controlled by the rules under the Act which separately lay down the responsibilities of the driver and the conductor. The driver of a vehicle cannot therefore be convicted under secs. 42 (1) and 123 (1) for carrying goods contrary to the conditions of the permit, for contravention of a rule from the due observance of which he has been statutorily exempted and responsibility solely rests upon the conductor. 56 L.W. 110=A.I.R. 1943 Mad. 347=(1943) 1 M.L.J. 176. Use of motor car for carrying newspapers from office to Railway station would amount to using it as a "Goods Vehicle". To do so without permit is an offence under sec. 123. 1945 M.W.N. 430=58 L.W. 320 =1945 Mad. 440=(1945) 2 M.L.J. 68.

(*c*) to any transport vehicle used solely for public, fire brigade or ambulance purposes;

(*d*) to any transport vehicle used solely for the conveyance of corpses;

(*e*) to any transport vehicle used for towing a disabled vehicle or for removing goods from a disabled vehicle to a place of safety;

(*f*) to any transport vehicle used for any other public purpose prescribed in this behalf;

(*g*) to any transport vehicle owned by, and used solely for the purposes of, any educational institution which is recognised by the Provincial Government or whose managing committee is a society registered under the Societies Registration Act, 1860;

(*h*) subject to any prescribed conditions, to any transport vehicle owned by the Government of any Indian State or French or Portuguese Settlement bounded by India used for Government purposes unconnected with any commercial enterprise; or

(*i*) to any trailer used for any purpose other than the carriage of goods for hire or reward when drawn by a motor vehicle constructed for the carriage of not more than six passengers excluding the driver.

(4) Subject to the provisions of sub-section (3), sub-section (1) shall, if the Provincial Government by rule made under section 68 so prescribes, apply to any motor vehicle adapted to carry more than nine passengers excluding the driver.

Power to Provincial Government to control road transport.

43. (1) A Provincial Government, having regard to—

SEC. 43: SELECT COMMITTEE REPORT.—"This new clause vests in the Provincial Government certain powers of co-ordinating road and rail transport. In the provisions of the Bill relating to Transport Authorities we have revised the references to transport generally by using such expressions as "road transport" and "road passenger transport", indicating thereby that these Authorities will, in considering the relevant factors which are to be weighed by them, confine themselves to the interests of road traffic. We consider that under existing conditions, the Provincial Government itself is the authority in the best position to weigh against each other the conflicting interests of rail traffic and road traffic. The clause contains the considerations to which in our opinion regard should be had, and the powers which we think should be exercisable".

The following extracts from Disney's Carriage by Railway may be read in this connection.

THE RAILWAY COMPANIES' NEW ROAD TRANSPORT POWERS —ORIGIN OF THESE POWERS IN ENGLAND.—"No railway company has ever been expressly prohibited by any Act of Parliament from engaging in road transport in the fullest sense of the term. But no railway company has ever been in the same position as an ordinary limited company. A limited company which requires no compulsory powers can avail itself of the Companies Act, to arrogate to itself by its Memorandum of Association power which embraces every form of activity on the face of the globe. But you cannot build a railway without acquiring land compulsorily and therefore a railway company cannot come into existence without a special Act of Parliament. In granting compulsory powers, Parliament always stands on its dignity and the public interest, and no Act of Parliament authorising a company to make a railway has ever empowered that company to do more than carry on the railway as an effective enterprise. It is and always has been for the Courts to determine what objects the company may lawfully pursue in furtherance of that—its main—purpose. In arriving at this determination the Courts have always held that the objects a railway company may lawfully pursue, and the powers they lawfully use in furtherance of these objects, must either be expressly conferred or derived by reasonable implication from its provisions. In other words, any operations in which at railway company may engage, must be either expressly authorised or impliedly authorised as incidental to the main purpose for which the company was created. From the first the railway companies were fettered by the difficulty of proving that it could be incidental to the main purpose for which a railway company was created to engage in road transport in the full sense of the term. It was, however, soon found that the railway companies could not be confined to the metals. Goods must be brought to the point where the railway journey begins and must be taken from the point at which the journey terminates; for the world at large does not

live at Ry. Stats. It was, therefore, recognised at an early stage in the history of railways that it was appropriate to the railway companies that they should bring the goods to the point where the railway journey begins, and that they should on the completion of the journey distribute what they had carried by rail to the various consignees on the road. Collection and delivery services were mentioned and recognised in a very early English statute the Regulation of Railways Act, 1873, and the Railway Commissioners were empowered by that enactment to decide what was a reasonable sum to be paid to any railway company therefor. By 1888 a large collection and delivery traffic had grown up, and in the Rates and Charges Order of that year "the collection or delivery of merchandise outside the terminal station" is enumerated among the services for which a railway company may undertake and charge for. The Railways Act, 1921, carried the matter still further; for sec. 49 of that Act not only authorised a railway company to make reasonable charges for collection and delivery, but imposed a general obligation to collect and deliver at any place such merchandise as is for the time being ordinarily collected and delivered by the company at that place—Quite apart from this very important and substantial service of collection and delivery, many of the old railway companies in England (which are now amalgamated or absorbed in the four great companies) had from time to time acquired by special Acts of Parliament certain very limited powers of engaging in road transport, *i.e.*, to convey passengers and their luggage (but not goods) to or from any of the Company's railways by road vehicles mechanical or horse-drawn. Apart from these limited powers, which were not of much use, and without any statutory authority, in the beginning of 1928, the Great Western Railway fleet of omnibuses, 287 in number, ran a mileage of 3,814,013 miles and conveyed over 8 million passengers. This was done openly for many years, and the services were advertised in the company's time tables; and though it would have been difficult for the company to establish that what they were doing was legal, no one did in fact apply for an injunction to restrain them. By 1928 the English Railway Companies found themselves seriously threatened by competition in the shape of mechanically propelled long-distance road transport. The invention of the motor car had gradually resulted in one of those commercial revolutions which Cobden—the only English statesman who began life as a commercial traveller—declared to be more important than the political revolutions chronicled by history. Great road transport companies had been built up, and the business of carrying goods for long distances and over wide areas by heavy lorries had been developed on an extensive scale. Motor omnibuses and motor coaches carried passengers on inviting terms from one end of the country to another. The railway monopoly, it it ever existed, had become a thing of the past. In fact, the railway companies were faced with the gravest of human misfortunes, a steady withdrawal of custom. They accordingly represented to Parliament that as a result of this new and growing competition they were suffering materially in their financial resources. They pointed out that the new traffic bade fair to become as extensive and as highly organised and capitalised as railway traffic itself; that whereas the railway companies were subject to public control at every turn, this formidable new rival of theirs were subject to little, if any; and that whereas the road transport undertaker had his track provided for him, the railway companies not only had to provide their own, but had to pay rates on it when provided, and then to contribute to the maintenance of the competitive track. The railway companies further pointed out that the whole system of railway rates, charges and fares had been fundamentally changed since the war. The consequence is that for the future, if a railway company is rendered less prosperus by having its traffic taken away from it, it will be not only the shareholder as in the past, but all the users of railways passengers as well as traders who will suffer Thus the prosperity of the railway companies are also matters of public concern. Such were the reasons which induced Parliament to pass the Four Railway (Road Transport) Act of 1928 and to confer on each of the four great railway companies a general power to act as a carrier by road, subject to certain statutory restrictions. Parliament was impressed by the twin facts that there was a real menace to the railway industry in the country and that the prosperity of the whole trading community is now dependent on the prosperity of the railways. The Acts, which are in substance identical, begin by authorising each of the companies to convey by road passengers and passenger's luggage, parcels and merchandise in any district to which access is affording by its system.

GENERAL PROVISIONS OF THE ENGLISH ACTS.—The general power to engage in road transport within a specified sphere thus conferred on each of the railway companies is subject to the following restrictions:—(*a*) None of the companies may convey by any road vehicle any passenger who on any one journey is both taken up and set down in the area consisting of the Metropolitan Police District and the City of London; (*b*) Where a local authority is maintaining an adequate and satisfactory service of tramcars or omnibuses, no railway company is to compete; (*c*) No road vehicle run by a railway company is to use any railway bridge whose use under like circumstances is prohibited to similar vehicles not belonging to the company; (*d*) If the Local authority is at any time of opinion that the interests of the public are prejudicially affected by the exercise of the new powers by any one of the railway companies, he may after inquiry direct the company in question to make

(*a*) the advantages offered to the public, trade and industry by the development of motor transport, and

(*b*) the desirability of co-ordinating road and rail transport, and

(*c*) the desirability of preventing the deterioration of the road system, and

(*d*) the desirability of preventing uneconomic competition among motor vehicles,

and after having heard the representatives of the interests affected and having consulted the Provincial and Regional Transport Authorities concerned, may, by notification in the Official Gazette,—

(*i*) prohibit or restrict throughout the province or in any area or on any route within the province, subject to such conditions as it may think desirable, the conveying of long distance goods traffic generally or of prescribed classes of goods, by private or public carriers; or

(*ii*) fix maximum or minimum fares or freights for stage carriages and public carriers to be applicable throughout the province or within any area or on any route within the province.

(2) The Provincial Government shall permit, at such intervals of time as it may fix, the interests affected by any notification issued under sub-section (1) to make representations urging the cancellation or variation of the notification on the following grounds, namely:—

(*a*) that the railways are not giving reasonable facilities or are taking

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provision to his satisfaction for the protection of the public interest; and if the company fails to do so, the authorities may by proper procedure withdraw the concession. In the case of every regular service of electrical or mechanical vehicles, the railway company must provide such reasonable services in regard to the conveyance of mails as the Postmaster-General may from time to time require. Each company may demand and take in respect of the new traffic the fixed rates or such reasonable fares, rates and charges as they may think fit. All passenger fares must be exhibited in a conspicuous position inside the vehicle. In the case of passenger fares any local authority interested, and in the case of merchandise charges any trader interested or any representative body of traders, may apply to the Railway Rates Tax Tribunal to reduce any fare, rate or charge on the ground that it is unreasonable; and the tribunal, after hearing all parties whom they consider entitled to be heard, may make such modification as may to them seem just. Any such modification may be reviewed by the tribunal at any time upon the railway company's application. The Acts confer on the railway companies extensive powers of entering into working agreements with local authorities, companies bodies and persons owning or running road vehicles for hire or as public service vehicles. Any such agreement must be notified to the State Officer in charge of traffic and transport and he must be informed whether or not such agreement is an agreement whereby the business of any company, body or person is controlled by the railway company through shareholding or nomination of directors or as the result of a loan or other financial transaction or otherwise. Any road transport service provided by a company, body or person whose business is for the time being thus controlled is subject to the provision of the Acts as regards fares, rates and charges withdrawal of service, and competition with local authorities. In the interests of the motor manufacture industry each of the railway companies is expressly prohibited from manufacturing any part of any road motor vehicle to be used in pursuance of the new road transport powers, except the body. The Acts repeal all the pre-existing special express powers of engaging in road transport conferred by earlier private Acts. The railway companies recognise that a considerable amount of rail traffic has been permanently diverted on to the road; but they believe that by a proper co-ordination of road and rail services they will be able to recover for the rails some traffic that is at present on the roads, and to share in the traffic which was once rail traffic, but has now left the rails for ever." (Disney's Carriage by Railway, Chap. XVIII, pp. 269-274).

SEC. 51-A of the Indian Railways Act may also be read in this connection. The section runs as follows:—

"51-A. (1) Any railway company, not being a company for which the Statute 42 and 43 Vict., Chap. 41 provides, may frame a scheme for the provision and maintenance of a motor transport or air-craft service for passengers, animals or goods with a terminus at or near a station on the railway owned or managed by such company.

Additional power to provide and maintain transport services.

(2) The scheme shall be submitted to the general controlling authority, which may sanction it, subject to such modifications and conditions as it may prescribe.

unfair advantage of the action of the Provincial Government under this section; or

(*b*) that conditions have changed since the publication of the notification; or

(*c*) that the special needs of a particular industry or locality require to be considered afresh;

(3) If the Provincial Government, after considering any representation made to it under sub-section (2) and having heard the representatives of the interests affected and the Provincial and Regional Transport Authorities is satisfied that any notification issued under sub-section (1) ought to be cancelled or varied, it may cancel the notification or vary it in such manner as it thinks fit.

Transport authorities.

44. (1) The Provincial Government shall, by notification in the Official Gazette, constitute for the province a Provincial Transport Authority to exercise and discharge the powers and functions specified in sub-section (3), and shall in like manner constitute Regional Transport Authorities to exercise and discharge throughout such areas (in this Chapter referred to as regions) as may be specified in the notification, in respect of each Regional Transport Authority, the powers and functions conferred by or under this chapter on such Authorities:

Provided that in the North-West Frontier Province and in Chief Commissioners' Provinces the Provincial Government may abstain from constituting any Regional Transport Authority:

Provided further that the area specified as the region of a Regional Transport Authority shall in no case be less than entire district, or the whole area of a Presidency-town.

(2) A Provincial Transport Authority or a Regional Transport Authority shall consist of such number of officials and non-officials as the Provincial Government may think fit to appoint; but no person who has any financial interest whether as proprietor, employee or otherwise in any transport undertaking shall be appointed as or continue as a member of a Provincial or Regional Transport Authority, and, if any person being a member of any such Authority acquires a financial interest in any transport undertaking, he shall, within four weeks of so doing, give notice in writing to the Provincial Government of the acquisition of such interest and shall vacate office.

(3) A Provincial Transport Authority shall exercise and discharge throughout the province the following powers and functions, namely:—

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(3) The scheme shall be published in the Official Gazette and thereupon the railway company shall, subject to sub-sec. (4), have the power to provide and maintain a service in accordance therewith.

(4) In respect of any service provided and maintained by any railway company under this section,—

(*a*) the company shall be deemed not to be a railway administration for the purposes of this Act or of any other enactment affecting railways, and no property used exclusively for purposes of the service shall be deemed to be included in the railway or its rolling-stock; and

(*b*) all enactments and rules for the time being in force relating to motor vehicles, air-craft and roads shall apply accordingly.

(5) The general controlling authority may, by notification in the Official Gazette after giving to the railway company six months' notice of its intention so to do, withdraw its sanction to any scheme sanctioned under sub-sec. (2) or may modify the scheme or impose further conditions on it."

SEC. 44 (1).—"The extent of the region and the constitution of the regional authority are left entirely to Provincial Governments, as it is impossible to specify in the Bill, except by way of the general indication given in cl. (3), a constitution which would suit the different conditions, sizes of region, etc., prevailing in each province". (*Statement of Objects and Reasons.*)

CL. (2).—The constitution of the provincial authority is permissive. It may be required for purposes of co-ordination or to settle differences between regional authorities or to increase control over through routes. Some statutory basis is therefore required. (*Statement of Objects and Reasons*)

CLS. (3) AND (4).—"This indicates how authorities may be constituted. What may suit one province may not suit another; but if a composite authority is constituted con-

(*a*) to co-ordinate and regulate the activities and policies of the Regional Transport Authorities, if any, of the province;

(*b*) to perform the duties of a Regional Transport Authority where there is no such Authority and, if it thinks fit or if so required by a Regional Transport Authority, to perform those duties in respect of any route common to two or more regions;

(*c*) to settle all disputes and decide all matters on which differences of opinion arise between Regional Transport Authorities; and

(*d*) to discharge such other functions as may be prescribed.

(4) For the purpose of exercising and discharging the powers and functions specified in sub-section (3), a Provincial Transport Authority may, subject to such conditions as may be prescribed, issue directions to any Regional Transport Authority and the Regional Transport Authority shall be guided by such directions.

[(5) The Provincial Transport Authority and any Regional Transport Authority. if authorized in this behalf by rules made under section 68, may delegate such of its powers and functions to such authority or person and subject to such restrictions, limitations and conditions as may be prescribed by the said rules.] (*Added by Act XX of* 1942.)

General provision as to applications for permits.

45. Every application for a permit shall be made to the Regional Transport Authority of the region or of one of the regions in which it is proposed to use the vehicle and, if the applicant resides or has his principal place of business in any one of those regions, to the Regional Transport Authority of that region.

Application for stage carriage permit.

46. An application for a permit to use a motor vehicle as a stage carriage (in this Chapter referred to as a stage carriage permit) shall contain the following particulars, namely:

(*a*) the type and seating capacity of the vehicle in respect of which the application is made;

(*b*) the route or routes on which or the area within which it is intended to use the vehicle;

(*c*) the time table, if any, of the service to be provided; and

(*d*) such other matters as may be prescribed.

Procedure of Regional Transport Authority in considering application for stage carriage permit.

47. (1) A Regional Transport Authority shall, in deciding whether to grant or refuse a stage carriage permit, have regard to the following matters, namely:—

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taining representatives of transport interests then it is only equitable that the main transport interests should be accorded equal representation". (Statement of Objects and Reasons.)

SELECT COMMITTEE REPORT.—"The clause has been recast to make it mandatory on Provincial Governments to establish Provincial Transport Authorities, and except in the smaller provinces Regional Transport Authorities also, and to secure that the area of jurisdiction of the Regional Authorities shall be reasonably large. We have provided that both Provincial and Regional Authorities shall be bodies composed of officials and non-officials but have not otherwise fettered the discretion of the Provincial Government in constituting them except by excluding persons having a financial interest in a transport undertaking. We have set forth more fully the functions of Provincial Transport Authorities, and have given them a power to issue directions to Regional Transport Authorities".

SEC. 45.—*See* 1943 N.L.J. 190.

SEC. 46: SELECT COMMITTEE REPORT.—"We have omitted the requirement that proposed fares are to be disclosed. Such a provision would encourage rival applicants to underbid each other. The other alteration is formal".

SECS. 47, 48 AND 55 "lay down the general principles which should guide transport authorities in granting permits for stage or contract carriages or public carriers. These embody the accepted principles of public necessity and convenience, the prevention of uneconomic competition, and the suitability of the roads to carry the forms of transport requiring the permits. In the case of public goods traffic, the principle adopted is that, while the transport of perishables

(*a*) the interest of the public generally;

(*b*) the advantages to the public of the service to be provided, including the saving of time likely to be effected thereby and any convenience arising from journeys not being broken;

(*c*) the adequacy of existing road passenger transport services between the places to be served, the fares charged by those services and the effect upon those services of the service proposed;

(*d*) the benefit to any particular locality or localities likely to be afforded by the service;

(*e*) the operation by the applicant of other transport services and in particular of unremunerative services in conjunction with remunerative services; and

(*f*) the condition of the roads included in the proposed route or routes; and shall also take into consideration any representations made by persons already providing road transport facilities along or near the proposed route or routes or by any local authority or police authority within whose jurisdiction any part of the proposed route or routes lie or by any association interested in the provision of road transport facilities.

(2) A Regional Transport Authority shall refuse to grant a stage carriage permit if it appears from any time table furnished that the provisions of this Act relating to the speed at which vehicles may be driven are likely to be contravened:

Provided that before such refusal an opportunity shall be given to the applicant to amend the time table so as to conform to the said provisions.

Power to restrict the number of stage carriages and impose conditions on stage carriages permits.

48. A Regional Transport Authority may, after consideration of the matters set forth in sub-section (1) of section 47,—

[1][(*a*) limit the number of stage carriages or stage carriages of any specified type for which stage carriage permits may be granted in the region or in any specified area or on any specified route within the region.]

[1](*b*) issue a stage carriage permit in respect of a particular stage carriage or a particular service of stage carriages;

[1](*c*) regulate timings of arrival or departure of stage carriages whether they belong to a single or more owners; or

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LEG. REF.

1 In sec. 48 for cls. (*a*) and (*b*) new cl. (*a*) has been substituted, cls. (*c*), (*d*) and (*e*) have been re-lettered as cls. (*b*), (*c*) and (*d*), respectively by Act XXVI of 1940.

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by short distance transport by road in order to avoid delay and damage caused by terminal transhipment should not be interfered with, long distance traffic should be left primarily to railways". (Statement of Objects and Reasons)

SEC. 47 (1): REPORT OF SELECT COMMITTEE.—"The words omitted from clause (*a*) are redundant, and would, if retained, include a reference to rail transport, which we desire to eliminate. We similarly eliminate a reference to rail transport by our insertion of the word "road" in cl. (*c*). We have omitted as irrelevant the provision requiring consideration of the character, qualifications and financial stability of the applicant. The other alterations are formal".

"Cl. (2) of the original clause has been omitted in view of our transfer of this power to the Provincial Government". (*See* sec. 43.) "We have added a proviso to sub-cl. (2) containing a reasonable relaxation". (Select Committee Report).

SEC. 48 (*d*) (*ii*).—"It has been urged from more than one quarter that a route permit holder in return for the security given to him against unreasonable competition should maintain a regular service, *i.e.*, have the responsibilities of a public utility company". (Statement of Objects and Reasons.)

REPORT OF SELECT COMMITTEE.—"We have omitted the provision for a condition in a permit enabling the Regional Transport Authority to inflict daily fines, and to regulate fares. We have combined the two separate provisions relating to the exhibiting of fare and time tables, and their observation. We have confined the provision relating to halting stations to municipal areas and similar inhabited areas, and we have inserted a provision enabling the issue of tickets to be insisted on".

SEC. 48 (*c*): POWER OF R. T. A.—WHETHER CAN BE DELEGATED TO SECRETARY.—The power of regulation of timings of arrival and departure of stage carriages is under sec. 48 (*c*), possessed by the R. T. A. and not by the Secretary, and there is no

[1](*d*) attach to a stage carriage permit any prescribed condition or any one or more of the following conditions, namely:—

(*i*) that the service specified in the permit shall be commenced not later than a specified date and be continued for a specified period;

(*ii*) that the service may be varied only in accordance with specified conditions;

[2][(*ii-a*) that the stage carriage or stage carriages shall be used only on specified routes or in a specified area;]

(*iii*) that copies of the fare table and time table shall be exhibited on the stage carriage and that the fare table and time table so exhibited shall be observed;

(*iv*) that not more than a specified number of passengers and not more than a specified amount of luggage shall be carried on any specified vehicle at any one time;

(*v*) that within municipal limits and in such other areas and places as may be prescribed, passengers shall not be taken up or set down at or except at specified points; or

(*vi*) that tickets shall be issued to passengers for the fares paid.

Application for contract carriage permit.

49. An application for a permit to use a motor vehicle as a contract carriage (in this Chapter referred to as a contract carriage permit) shall contain the following particulars, namely:—

(*a*) the type and seating capacity of the vehicles;

(*b*) the area for which the permit is required;

(*c*) in the case of a motor vehicle other than a motor cab, the manner in which it is claimed that the public convenience will be served by the vehicle; and

(*d*) any other particulars which may be prescribed.

Procedure of Regional Transport Authority in considering application for contract carriage permit.

50. A Regional Transport Authority shall, in deciding whether to grant or refuse a contract carriage permit, have regard to the extent to which additional contract carriages may be necessary or desirable in the public interest; and shall also take into consideration any representations which may then be made or which may previously have been made by persons already holding contract carriage permits in the region or by any local authority or police authority in the region to the effect that the number of contract carriages for which permits have already been granted is sufficient for or in excess of the needs of the region or any area within the region.

Power to restrict the number of contract carriages and impose conditions on contract carriage permits.

51. A Regional Transport Authority may, after consideration of the matters set forth in section 50,—

LEG. REF.

1 *See* Footnote (1) page 3810, *supra*.

2 In cl. (*d*) as so re-lettered, after sub-cl. (*ii*) the new sub-cl. (*ii-a*) has been inserted by Act XXVI of 1940.

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legal provision for delegation of such authority to the Secretary. 1943 N.L.J. 194.

SEC. 48 (*e*): POWER TO ALTER OF FARE MENTIONED IN FARE TABLE APPROVED BY THE REGIONAL TRANSPORT AUTHORITY.—A permit-holder cannot alter the fares mentioned in the fare table approved by the Regional Transport Authority without the sanction of that authority. I.L.R. (1944) Nag. 173= 1944 N.L.J. 29=A.I.R. 1944 Nag. 89. (*See also* notes of sec. 42.)

SEC. 49.—The change made in clause (*a*) is prompted by the consideration that at the time an application for a permit is made the vehicle may not have been registered. (Select Committee Report.)

SEC. 50: SELECT COMMITTEE REPORT.—"We have omitted clauses (*b*) and (*c*). The essential part of clause (*b*) is already covered by clause (*a*), and in other respects it is too wide as including a reference to rail-transport. Clause (*c*) we have omitted for the same reason as influenced us in omitting the similar provision in sec. 47."

SEC. 51: REPORT OF SELECT COMMITTEE.—"The alteration of clause (*c*) is a drafting amendment only. We have omitted the provision enabling restrictions to be placed on

(*a*) limit the number of contract carriages generally or contract carriages of any specified type for which contract carriage permits may be granted in the region or any specified area within the region;

(*b*) fix in the case of motor cabs the fares which may be charged;

(*c*) require that every motor cab shall carry a copy of the fare table for inspection by passengers;

(*d*) require that any motor cab shall be fitted with a taxi meter; or

(*e*) impose on the use of a contract carriage any other condition which may be prescribed.

Application for private carrier's permit.

52. An application for a permit to use a transport vehicle for the carriage of goods for or in connection with a trade or business carried on by the applicant (in this Chapter referred to as a private carrier's permit) shall contain the following particulars, namely:—

(*a*) the type and carrying capacity of the vehicle;

(*b*) the nature of the goods which the applicant expects normally to carry in connection with his trade or business;

(*c*) the area for which the permit is required; and

(*d*) any other particular which may be prescribed.

Procedure of Regional Transport Authority in considering application for a private carrier's permit.

53. (1) A Regional Transport Authority shall, in deciding whether to grant or refuse a private carrier's permit, have regard to the condition of the roads to be used by the vehicle or vehicles in respect of which the application is made, and shall satisfy itself that the vehicle or vehicles for which the permit is required will not be used except in connection with the business of the applicant.

(2) The Regional Transport Authority may in granting a private carrier's permit impose conditions to be specified in the permit relating to the description of goods which may be carried, or the area in which the permit shall be valid, or the maximum laden weight and axle weights of any vehicle used.

(3) If the applicant is the holder of a private carrier's permit which has been suspended or has been the holder of a private carrier's permit which has been revoked, the Regional Transport Authority may at its discretion notwithstanding anything contained in sub-section (1) refuse the application.

Application for public carrier's permit.

54. An application for a permit to use a motor vehicle for the carriage of goods for hire or reward (in this Chapter referred to as a public carrier's permit) shall contain the following particulars, namely:—

(*a*) the routes on which or the area in which it is intended to use the vehicle;

(*b*) the type and carrying capacity of the vehicle;

(*c*) the manner in which it is claimed that a public need will be served by the vehicle;

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the use of a contract carriage as a stage carriage. Clause (*e*) has been recast, to secure that the Provincial Government will control the nature of any additional conditions imposed."

SEC. 52: REPORT OF SELECT COMMITTEE.—"The change in clause (*a*) follows that made in sec. 49. The omission of the words 'within the region' in clause (*d*) is necessitated by the fact that a permit might be required for two or more regions."

SEC. 53 (1).—The roads generally are not fit for sustained heavy traffic and this is a consideration which must be taken into account. (Statement of Objects and Reasons.)

CL. (2).—For instance, the owner of a sugar mill might hold a private carrier's permit to carry cane, sugar, coal and mill stores within a radius of fifty miles from his mill. If found outside that radius or carrying other goods, breach of the conditions would occur. (Statement of Objects and Reasons.)

CL. (1): REPORT OF SELECT COMMITTEE.—"The omission removes a reference to rail transport, a matter whose consideration we have transferred by the new clause (43) to the Provincial Government. The other changes are formal."

CL. (2).—A reference to axle weights has been inserted. (Select Committee Report).

SEC. 54 (*c*) to (*e*).—The justification for

(*d*) Such particulars as the Regional Transport Authority may require with respect to any business as a carrier of goods for hire or reward carried on by the applicant at any time before the making of the application, and of the rates charged by the applicant;

(*e*) particulars of any agreement or arrangement, affecting in any material respect the provision within the region of the Regional Transport Authority of facilities for the transport of goods for hire or reward, entered into by the applicant with any other person by whom such facilities are provided, whether within or without the region; and

(*f*) any other particulars which may be prescribed.

Procedure of Regional Transport Authority in considering application for public carrier's permit.

55. A Regional Transport Authority shall, in deciding whether to grant or refuse a public carrier's permit, have regard to the following matters, namely:—

(*a*) the interests of the public generally;

(*b*) the advantages to the public of the service to be provided and the convenience afforded to the public by the provision of such service;

(*c*) the adequacy of existing road transport services for the carriage of goods upon the routes or within the area to be served and the effect upon those services of the service proposed;

(*d*) the benefit to any particular locality or localities likely to be afforded by the service;

(*e*) the need for providing for occasions when vehicles are withdrawn from service for overhaul or repair; and

(*f*) the condition of the roads included in the proposed routes or area;

and shall also take into consideration any representations made by persons already providing road transport facilities along or near to the proposed route or routes or by any local authority within whose jurisdiction any part of the proposed route or routes lies.

Power to restrict the number of and attach conditions to public carrier's permits.

56. The Regional Transport Authority may, after consideration of the matters set forth in section 55,—

(*a*) limit the number of transport vehicles or transport vehicles of any specified type for which public carrier's permits may be granted in the region or in any specified area or on any specified routes within the region; or

(*b*) attach to a public carrier's permit all or any of the following conditions namely:—

(*i*) that the vehicle shall be used only on specified routes or in a specified area,

(*ii*) that the laden weight and the axle weights of any vehicle used shall not exceed a specified maximum,

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using the roads for heavy goods traffic where alternative facilities exist depends to a large extent on the nature of the goods to be carried. For some the longer time taken by rail or water will be sufficient justification, for others the time factor can be largely discounted. Regional authorities will have to exercise their discretion. (Statement of Objects and Reasons.) It is desirable that the applicant should be called upon to show public need, *i.e.*, with reference to particular classes of goods, or that certain firms had agreed to employ him. (Statement of Objects and Reasons)

SEC. 54.—"The change in clause (*b*) follows that already made in secs. 49 and 52. We have omitted two clauses requiring the weight of the vehicle and the classes of goods carried to be stated, and have in their place inserted two requirements contained in the English Road Traffic Act, 1933." (Select Committee Report.)

SEC. 55.—These conditions are of common application; (*d*) is intended to indicate that regional authorities should consider any representation that if they allow much highly rated traffic to be diverted from rail to road other railway freights will inevitably be raised. (Statement of Objects and Reasons.)

SELECT COMMITTEE REPORT.—The changes made are mainly in accordance with those already made in such sections as 47 and 53. Clause (*h*) has been omitted because the substance is sufficiently covered by clauses (*a*) and (*c*).

(*iii*) that such records as may be prescribed relating to the plying of the vehicle shall be maintained, and

(*iv*) any other prescribed condition appropriate to the service to be provided by the vehicle which the Regional Transport Authority thinks proper to impose in the public interest or with a view to prevent uneconomic competition between road transport services.

Procedure in applying for and granting permits.

57. (1) An application for a contract carriage permit or a private carrier's permit may be made at any time.

(2) An application for a stage carriage permit or a public carrier's permit shall be made not less than six weeks before the date on which it is desired that the permit shall take effect, or, if the Regional Transport Authority appoints dates for the receipt such applications, on such dates.

(3) On receipt of an application for a stage carriage permit or a public carrier's permit, the Regional Transport Authority shall make the application available for inspection at the office of the Authority and shall publish the application or the substance thereof in the prescribed manner together with a notice of the date before which representations in connection therewith may be submitted and the date, not being less than thirty days from such publication, on which, and the time and place at which, the application and any representations received will be considered.

(4) No representation in connection with an application referred to in sub-section (3) shall be considered by the Regional Transport Authority unless it is made in writing before the appointed date and unless a copy thereof is furnished simultaneously to the applicant by the person making such representation.

(5) When any representations such as is referred to in sub-section (3) is made, the Regional Transport Authority shall dispose of the application at a public hearing at which the applicant and the person making the representation shall have an opportunity of being heard either in person or by a duly authorised representative.

(6) When any representation has been made by the persons or authorities referred to in section 50 to the effect that the number of contract carriages for which permits have already been granted in any region or any area within a region is sufficient for or in excess of the needs of the region or of such area, whether such representation is made in connection with a particular application for the grant of a contract carriage permit or otherwise, the Regional Transport Authority may take any such steps as it considers appropriate for the hearing of the representation in the presence of any persons likely to be affected thereby.

(7) When a Regional Transport Authority refuses an application for a permit of any kind, it shall give to the applicant in writing its reasons for the refusal.

SEC. 57 (3): WHETHER MANDATORY.— The provisions of sec. 57 (3) are unequivocal and mandatory. A permit granted without complying with these provisions is, therefore, liable to be cancelled. 1943 N.L.J. 388.

SEC. 57 (7) is mandatory that when a representation has been made the R. T. A. shall dispose of the application at a public hearing. 1943 N.L.J. 194.

SECS. 57 AND 58: PERMIT OTHER THAN TEMPORARY PERMIT ISSUED WITHOUT FOLLOWING PROCEDURE.—If a permit which is not a temporary permit issued under sec. 62 is issued by a competent Transport Authority without an application from the owner of the vehicle and without following the procedure laid down in sec. 57 of the Act, that permit will be a valid permit if not revoked or till revoked by the appellate tribunal. Such a permit will attract to it the provisions of the first paragraph of sec. 58 and will be valid for a period of three years even though on the face of it is for a shorter term. It is not competent to the Civil Court to determine whether such a permit is a good permit or not. 48 C.W.N. 142.

SECS. 57 AND 64.—The R. T. A. after refusing to grant a permit to a party becomes "*functus officio*" in respect of that matter. It would be acting without jurisdiction in granting the permit some time later to the same party, which had failed to avail itself of its remedy to appeal under sec. 64, and which had presented no fresh application

Duration and renewal of permits.

58. (1) A permit other than a temporary permit issued under section 62 shall be effective without renewal for such period, not less than three years and not more than five years, as the Regional Transport Authority may in its discretion specify in the permit:

Provided that in the case of a permit issued or renewed within two years of the commencement of this Act, the permit shall be effective without renewal for such period of less than three years as the Provincial Government may prescribe.

(2) A permit may be renewed on an application made and disposed of as if it were an application for a permit:

Provided that, other conditions being equal, an application for renewal shall be given preference over new applications for permits.

General conditions attaching to all permits.

59. (1) Save as provided in section 61, a permit shall not be transferable from one person to another except with the permission of the transport authority which granted the permit and shall not without such permission operate to confer on any person to whom a vehicle covered by the permit is transferred any right to use that vehicle in the manner authorised by the permit.

(2) The holder of a permit may, with the permission of the authority by which the permit was granted, replace by another vehicle of the same nature and capacity any vehicle covered by the permit.

(3) The following shall be conditions of every permit—

(*a*) that the vehicle or vehicles to which the permit relates are at all times so maintained as to comply with the requirements of Chapter V and the rules made thereunder;

(*b*) that the vehicle or vehicles to which the permit relates are not driven at a speed exceeding the speed lawful under this Act;

(*c*) that any prohibition or restriction imposed and any maximum or minimum fares or freights fixed by notification made under section 43 are observed in connection with any vehicle or vehicles to which the permit relates;

(*d*) that the vehicle or vehicles to which the permit relates are not driven in contravention of the provisions of section 72;

(*e*) that the provisions of this Act limiting the hours of work of drivers are observed in connection with any vehicle or vehicles to which the permit relates; and

(*f*) that the provisions of Chapter VIII so far as they apply to the holder of the permit are observed.

Cancellation and suspension of permits.

60. (1) The transport authority which granted a permit may cancel the permit or may suspend it for such period as it thinks fit—

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under sec. 57, to the R. T. A. 1943 N.L.J. 188. *See also* 1943 N.L.J. 115.

SEC. 58.—"The period of validity of a permit has been fixed at a minimum of three years with a possible maximum of five years and a saving proviso has been inserted securing preference for holders of permits over applicants for new permits." (Select Committee Report.) *See* Notes under secs. 57 and 64. *See* 1943 N.L.J. 117.

SEC. 59: SELECT COMMITTEE REPORT.—"The changes made in sub-clause (1) enable permits to be transferred with the permission of the Transport Authority. In sub-clause (3) we have added two additional conditions to those deemed to be attached to the holding of a permit."

SECS. 59 AND 60.—A motor service to which a permit was issued lost all its vehicles. It then included in its service vehicles belonging to another service and the 'B' parts issued to them on those vehicles. The address and the Managing Director of the service were all changed. The R. T. A. cancelled the permit. *Held*, that the service had ceased to exist, that the permit was transferred without permission and vehicles replaced without permission as required by sec. 59 (1) and (2), Motor Vehicles Act and that a contravention of sec. 60 (1) (*b*), Motor Vehicles Act, had occurred for which cancellation of the permit was appropriate. 1943 N.L.J. 193.

SEC. 60: SELECT COMMITTEE REPORT.—"The changes made in sub-clauses (1) and (2) are formal. Sub-clause (3) has been

(*a*) on the breach of any conditions specified in sub-section (3) of section 59, or of any condition contained in the permit, or

(*b*) if the holder of the permit uses or causes or allows a vehicle to be used in any manner not authorised by the permit, or

(*c*) if the holder of the permit ceases to possess the vehicle or vehicles covered by the permit, or

(*d*) if the holder of the permit has obtained the permit by fraud or misrepresentation:

Provided that no permit shall be cancelled unless an opportunity has been given to the holder of the permit to submit his explanation.

(2) Where a transport authority cancels or suspends a permit, it shall give to the holder in writing its reasons for the revocation or suspension.

Transfer of permit on death of holder.

61. (1) Where the holder of a permit dies, the person succeeding to the possession of the vehicles covered by the permit may, for a period of three months, use the permit as if it had been granted to himself:

Provided that such person has, within thirty days of the death of the holder, informed the transport authority which granted the permit of the death of the holder and of his own intention to use the permit:

Provided further that no permit shall be so used after the date on which it would have ceased to be effective without renewal in the hands of the deceased holder.

(2) The transport authority may, on application made to it within three months of the death of the holder of a permit, transfer the permit to the person succeeding to the possession of the vehicles covered by the permit.

Temporary permits.

62. [1][(1)] A Regional Transport Authority may, at its discretion, and without following the procedure laid down in section 57, grant permits, to be effective for a limited period not in any case to exceed four months, to authorise the use of a transport vehicle temporarily—

(*a*) for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings, or

(*b*) for the purposes of a seasonal business, or

(*c*) to meet a particular temporary need,

and may attach to any such permit any condition it thinks fit.

[1][(2) * * * *].

Validation of permits for use outside region in which granted.

63. (1) Except as may be otherwise prescribed, a permit granted by the Regional Transport Authority of any one region shall not be valid in any other region, unless the permit has been countersigned by the Regional Transport Authority of that other region, and a permit granted in any one province shall not be valid in any other province unless countersigned by the Provincial Transport Authority of that other province or by the Regional Transport Authority concerned.

(2) A Regional Transport Authority when countersigning the permit

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LEG. REF.

[1] Omitted by Act XX of 1942.

omitted as unnecessary, particularly in view of the new provisions now inserted as sec. 61."

SEC. 61: REPORT OF SELECT COMMITTEE.—"Provision is here made on comprehensive lines for the temporary transfer of permits on the death of a holder."

SEC. 62: REPORT OF SELECT COMMITTEE.—"We have reduced the period of validity of a temporary permit from six to four months. Cl. (*a*) has been omitted as unnecessary; but we have added a power to delegate the function of issuing temporary permits so that they may be issued without the necessity for a formal meeting of the Transport Authority".

SEC. 63.—"Provision has been made for rules whereby provincial authorities may make mutual arrangements for validating permits outside their jurisdiction without countersignature".

may attach to the permit any condition which it might have imposed if it had granted the permit, and may likewise vary any condition attached to the permit by the Authority by which the permit was granted.

(3) The provisions of this Chapter relating to the grant, revocation and suspension of permits shall apply to the grant, revocation and suspension of counter-signatures of permits.

(4) Notwithstanding anything contained in sub-section (1), a Regional Transport Authority of one region may issue a temporary permit under clause (*a*) or clause (*c*) of sub-section (1) of section 62 to be valid in another region or province with the concurrence given generally or for the particular occasion, of the Regional Transport Authority of that other region or of the Provincial Transport Authority of that other province, as the case may be.

Appeals.

64. Any person—

(*a*) aggrieved by the refusal of the Provincial or a Regional Transport Authority to grant a permit, or by any condition attached to a permit granted to him, or

(*b*) aggrieved by the revocation or suspension of the permit or by any variation of the conditions thereof, or

(*c*) aggrieved by the refusal to transfer the permit to the person succeeding on the death of the holder of a permit, or

(*d*) aggrieved by the refusal of the Provincial or a Regional Transport Authority to countersign a permit, or by any condition attached to such countersignature, or

(*e*) aggrieved by the refusal of renewal of a permit, or

(*f*) being a local authority or police authority or an association which, or a person providing transport facilities who, having opposed the grant of a permit, is aggrieved by the grant thereof or by any condition attached thereto, or

(*g*) being the holder of a licence, who is aggrieved by the refusal of a Regional Transport Authority to grant an authorisation to drive a public service vehicle,

may, within the prescribed time and in the prescribed manner, appeal to the prescribed authority who shall give such person and the original authority an opportunity of being heard.

CL. (4).—This is necessary particularly for temporary permits for vehicles for feasts, weddings, funerals, etc. (*Statement of Objects and Reasons.*)

REPORT OF SELECT COMMITTEE.—"In sub-cl. (1) the added words clarify the procedure where the permit is to be used in two separate provinces. The alteration in sub-cl. (4) adds a necessary reference which was omitted in the Bill".

FIXATION OF PERMIT FEES.—The Local Government has nothing to do with the fixation of the permit fees. That falls within the jurisdiction of the Provincial Transport Authority. 48 C.W.N. 142=I.L.R. (1944) 1 C 631=1945 C. 260.

SEC. 64: REPORT OF SELECT COMMITTEE.—"A reference to the Provincial Transport Authority has been inserted in cl. (*a*), and an additional ground of appeal has been added by the new cl. (*c*). The change in original cl. (*c*), now (*d*), is consequential on that made in sec. 47 (1)". *See* notes under sec. 57.

SECS. 64 AND 44 (3) (a): DUTY OF APPELLATE TRIBUNAL.—The duty of the appellate tribunal is only to consider appeals preferred under sec. 64, Motor Vehicles Act. It cannot issue directions under sec. 44 (3) (*a*). 1943 N.L.J. 190.

SECS. 64 (f) AND 57: RIGHT OF APPEAL.—PERSON NOT OPPOSING GRANT OF PERMIT.—It is only the person, or authority who has validly opposed the grant of a permit who can make an appeal under sec. 64 (*f*) of the Motor Vehicles Act. If an authority or person does not oppose the grant of a permit, as provided in sec. 57, Motor Vehicles Act he cannot be said to be aggrieved if the R.T A. passes an order which turns out to be to his prejudice; when power is given under law to oppose in a certain way, then that power must be exercised in that particular way, and cannot be exercised in a manner not warranted by law. 1943 N.L.J. 115.

SECS. 64 AND 58: RIGHT OF APPEAL.—Sec. 64, provides for an appeal by a person aggrieved by refusal to grant a permit, by a person, who opposed the grant of a permit, aggrieved by the grant thereof and by a person aggrieved by the refusal of

Restriction of hours of work of drivers.

65. (1) No person shall cause or allow any person who is employed by him for the purpose of driving a transport vehicle or who is subject to his control for such purpose to work—

(*a*) for more than five hours before he has had an interval of rest of at least half an hour; or

(*b*) for more than nine hours in one day; or

(*c*) for more than fifty-four hours in the week.

(2) The Provincial Government may by rule made under section 68 grant such exemptions from the provisions of sub-section (1) as it thinks fit to meet cases of emergency or of delays by reason of circumstances which could not be foreseen.

(3) The Provincial Government [1][or, if authorized in this behalf by the Provincial Government by rules made under section 68, the Provincial or a Regional Transport Authority], may require persons employing any persons whose work is subject to any of the provisions of sub-section (1) to fix beforehand the hours of work of such persons as to conform with those provisions, and may provide for the recording of the hours so fixed.

(4) No person shall work or shall cause or allow any other person to work outside the hours fixed or recorded for the work of such persons in compliance with any rule made under sub-section (3).

(5) The Provincial Government may prescribe the circumstances under which any period during which the driver of a vehicle although not engaged in work is required to remain on or near the vehicle may be deemed to be an interval for rest within the meaning of sub-section (1).

Voidance of contracts restrictive of liability.

66. Any contract for the conveyance of a passenger in a stage carriage or contract carriage, in respect of which a permit has been issued under this Chapter, shall, so far as it purports to negative or restrict the liability of any person in respect of any claim made against that person in respect of the death of, or bodily injury to, the passenger while being carried in, entering or alighting from the vehicle, or purports to impose any conditions with respect to the enforcement of any such liability, be void.

Power to make rules as to stage carriages and contract carriages.

67. (1) A Provincial Government may make rules to regulate, in respect of stage carriages and contract carriages,—

(*a*) the conduct of persons licensed to act as drivers of, and the licensing of and the conduct of conductors of, such vehicles when acting as such; and

(*b*) the conduct of passengers in such vehicles.

LEG. REF.

[1] Inserted by Act XX of 1942.

renewal of a permit. The provision in sec. 58 is procedural and can have no effect on the clear provisions of sec. 64. The Act provides for no appeal against the sanction of renewal of a permit. 1943 N.L.J. 117.

SECS. 64 AND 59 (1): RIGHT OF APPEAL.—ORDER OF R.T.A. TRANSFERRING A PERMIT FOR A SERVICE OF STAGE CARRIAGE.—There is no provision in sec. 64, Motor Vehicles Act, for an appeal against an order of the R.T.A. transferring under sec. 59 (1), Motor Vehicles Act, read with R. 68 of the C.P. and Berar Motor Vehicles Rules, 1940, a permit for a service of stage carriage from one company to another. 1943 N.L.J. 117.

SEC. 65.—"These provisions are desirable but are not likely to be generally enforced until more regularly times services are established. But they will be used against an owner in the event of an accident where the driver has been grossly over-worked, and also in well-known cases of abuse." (*Statement of Objects and Reasons.*)

SELECT COMMITTEE REPORT.—"The clause has been recast and expanded. A limit of fifty-four hours' work per week has been introduced. The limit for a period of continuous work has been raised from ten to eleven hours. Provision has been made for the keeping of records of working hours in order to facilitate enforcement of the provisions of the clause."

(2) Without prejudice to the generality of the foregoing provision, such rules may—

(*a*) authorise the removal from such vehicle of any person infringing the rules by the driver or conductor of the vehicle, or, on the request of the driver or conductor, or any passenger by any police officer;

(*b*) require a passenger who is reasonably suspected by the driver or conductor, of contravening the rules to give his name and address to a police officer or to the driver or conductor on demand;

(*c*) require a passenger to declare, if so requested by the driver or conductor, the journey he intends to take or has taken in the vehicle and to pay the fare for the whole of such journey and to accept any ticket provided therefor;

(*d*) require, on demand being made for the purpose by the driver or conductor or other person authorised by the owner of the vehicle, production during the journey and surrender at the end of the journey by the holder thereof of any ticket issued to him;

(*e*) require a passenger, if so requested by the driver or conductor, to leave the vehicle on the completion of the journey the fare for which he has paid;

(*f*) require the surrender by the holder thereof on the expiry of the period for which it is issued of a ticket issued to him;

(*g*) require the maintenance of complaint books in stage carriages and prescribe the conditions under which passengers can record any complaints in the same.

Power to make rules for the purposes of this Chapter.

68. (1) A Provincial Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, rules under this section may be made with respect to all or any of the following matters, namely:—

(*a*) the period of appointment and the terms of appointment of and the conduct of business by Regional and Provincial Transport Authorities and the reports to be furnished by them;

(*b*) the conduct and hearing of appeals that may be preferred under this Chapter, [the fees to be paid in respect of such appeals and the refund of such fees][1];

(*c*) the forms to be used for the purposes of this Chapter, including the forms of permits;

(*d*) the issue of copies of permits in place of permits lost or destroyed;

(*e*) the documents, plates and marks to be carried by transport vehicles, the manner in which they are to be carried and thelanguages in which any such documents are to be expressed;

(*f*) the badges and uniform to be worn by drivers and conductors of stage carriages and contract carriages;

(*g*) the fees to be paid in respect of permits, duplicate permits, plates and badges;

[2][(*gg*) the exemption of prescribed persons or prescribed classes of persons from payment of all or any or any portion of the fees payable under this Chapter;]

LEG. REF.

1 Added by Act XX of 1942.

2 Inserted and substituted by Act XX of 1942.

SEC. 68: REPORT OF SELECT COMMITTEE.—Cl. (*f*) has been omitted as sec. 65 adequately provides for all matters connected with hours of work. The other changes made are self-explanatory, and are aimed at supplementing minor deficiencies in the rule-making power.

SEC. 68—RULE 69.—Document extending

(*h*) the custody, production and cancellation on revocation or expiration of permits, and the return of permits which have become void or have been revoked;

(*i*) the conditions subject to which a permit issued in one region shall be valid in another region;

(*j*) the authorities to whom, the time within which and the manner in which appeals may be made;

(*k*) the construction and fittings of, and the equipment to be carried by stage and contract carriages, whether generally or in specified areas;

(*l*) the determination of the number of passengers a stage or contract carriage is adapted to carry and the number which may be carried;

(*m*) the conditions subject to which goods may be carried on stage and contract carriages partly or wholly in lieu of passengers;

(*n*) the safe custody and disposal of property left in a stage or contract carriage;

(*o*) prohibiting the painting or marking of a stage or a contract carriage in such colour or manner as to induce any person to believe that the vehicle is used for the transport of mails;

(*p*) the conveyance in stage or contract carriages of corpses or persons suffering from any infectious or contagious disease or goods likely to cause discomfort or injury to passengers and the inspection and disinfection of such carriages, if used for such purposes;

(*q*) the provision of taxi meters on motor cabs requiring approval or standard types of taxi meters to be used and examining, testing and sealing taxi meters;

(*r*) prohibiting the picking up or setting down of passengers by stage or contract carriages at specified places or in specified areas or at places other than duly notified stands or halting places and requiring the driver of a stage carriage to stop and remain stationary for a reasonable time when so required by a passenger desiring to board or alight from the vehicle at a notified halting place;

(*s*) the requirements (including the provision of proper sanitary arrangements) which shall be complied with in any duly notified stand or halting place;

(*t*) requiring the owners of transport vehicles to notify any change of address or to report the failure of or damage to any vehicle used for the conveyance of passengers for hire or reward;

(*u*) requiring the person in charge of a stage carriage to carry any person tendering the legal or customary fare;

(*v*) the conditions under which and the types of containers or vehicles in which animals or birds may be carried and the seasons during which animals or birds may or may not be carried;

[(*w*) the licensing of and the regulation of the conduct of agents or canvassers who engage in the sale of tickets for travel by public service vehicles or otherwise solicit custom for such vehicles;] (Substituted by Act XX of 1942.)

(*x*) the inspection of transport vehicles and their contents and of the permits relating to them;

(*y*) the carriage of persons other than the driver in goods vehicles;

(*z*) the records to be maintained and the returns to be furnished by the owners of transport vehicles; and

(*z-a*) any other matter which is to be or may be prescribed.

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permit issued under Act of 1914 though not in statutory form is a 'permit' under Act. 48 C.W.N. 142=I.L.R. (1944) 1 Cal. 631=1945 Cal. 260=219 I.C. 363.

CHAPTER V.

CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF MOTOR VEHICLES.

General provision regarding construction and maintenance.

69. Every motor vehicle shall be so constructed and so maintained as to be at all times under the effective control of the person driving the vehicle.

Power to make rules.

70. (1) A Provincial Government may make rules regulating the construction, equipment and maintenance of motor vehicles and trailers.

(2) Without prejudice to the generality of the foregoing power, rules may be made under this section governing any of the following matters either generally in respect of motor vehicles or trailers or in respect of motor vehicles or trailers of a particular class or in particular circumstances, namely:—

(*a*) the width, height, length and overhang of vehicles and of the loads carried;

(*b*) seating arrangements in public service vehicles and the protection of passengers against the weather;

(*c*) the size, nature and condition of tyres;

(*d*) breaks and steering gear;

(*e*) the use of safety glass;

(*f*) signalling appliances, lamps and reflectors;

(*g*) speed governors;

(*h*) the emission of smoke, visible vapour, sparks, ashes, grit or oil;

(*i*) the reduction of noise omitted by or caused by vehicles;

(*j*) prohibiting or restricting the use of audible signals at certain times or in certain places;

(*k*) prohibiting the carrying of appliances likely to cause annoyance or danger;

(*l*) the periodical testing and inspection of vehicles by prescribed authorities;

(*m*) the particulars other than registration marks to be exhibited by vehicles and the manner in which they shall be exhibited; and

(*n*) the use of trailers with motor vehicles.

SEC. 69: MANUFACTURERS' LIABILITY.—Since automobiles are manufactured for the purpose of travelling over highways at a rapid speed, it is indispensable to their being so employed that they should be safely and properly constructed with reference to the use for which they are intended. The danger of injury to their occupants from defects in material or construction is so great that there is imposed upon manufacturers a duty of exercising a high degree of care in their construction and equipping them in such manner as will make them reasonably safe when used with proper care. If an automobile is defectively or insufficiently constructed it becomes immediately dangerous to life and limb, because no matter how competent the drivers employed to operate it, they are helpless to protect themselves from undiscovered and unknown defects. Accordingly a manufacturer of an automobile will normally be charged with notice of the unsafe condition in a machine if the faulty construction is so patent that no person engaged in its manufacture could fail to observe it If a defect of this character is concealed from the purchaser at the time of sale and is unknown to him at the time of an accident which it causes, the manufacturer may be held responsible in damages to any one who is thereby injured.

SEC. 70.—"The rule-making powers outlined in this section are unavoidable. Although uniformity, in respect of rules in this Chapter, is desirable, such rules cannot conveniently be incorporated in the Bill owing to periodical changes in the design of vehicles from time to time". (*Statement of Objects and Reasons.*)

SELECT COMMITTEE REPORT.—"We have added a power to regulate seating accommodation and provision for the comfort of passengers in passenger-carrying vehicle".

REGULATIONS AS TO SAFETY APPLIANCES AND STOPPING.—Acts governing motor vehicles generally provide that automobiles must be equipped with safety devices such as lamps, bells and horns, and require them to carry lighted lamps between sunset and sunrise, and to give warning of danger by sounding a horn; and in like manner a municipal corporation is also authorised to carry signal and other safety appliances.

CHAPTER VI.

CONTROL OF TRAFFIC.

71. (1) No person shall drive a motor vehicle or cause or allow a motor vehicle to be driven in any public place at a speed exceeding the maximum speed fixed for the vehicle by or under this Act or by or under any law for the time being in force:

Limits of speed.

Provided that such maximum speed shall in no case exceed the maximum fixed for the vehicle in Eighth Schedule.

(2) The Provincial Government or any authority authorised in this behalf by the Provincial Government may, if satisfied that it is necessary to restrict the speed of motor vehicles in the interests of public safety or convenience or because of the nature of any road or bridge, by notification in the official Gazette, fix such maximum speed limits as it thinks fit for motor vehicles or any specified class of motor vehicles or for motor vehicles to which a trailer is attached, either generally or in a particular area or on a particular road or roads.

SEC. 71, CL. (1), AND THE EIGHTH SCHEDULE.—"It may with some force be argued that speed limits are connected with the local strength of roads and should be left for local prescription. But, as in the case of permissible weights, there are advantages in making speeds uniform. It is true that motor transport vehicles will ply within the province but there will always be a good deal of traffic across provincial borders. There are other practical reasons why general speed limits should be uniform and imposed by the Act, *e.g.*, insurance risks may vary with permissible speed and it is desirable that premium rates should be uniform throughout India. If mechanical speed governors are introduced, as is to be hoped, they must be set for a certain speed and be sealed by some authority. A governor set for the legal speed in one province may be illegal in another if there is a difference in speed limits. Uniform reasonable speed limits coupled with the compulsory use of speed governors will tend to reduce not only accidents but also premium rates". (*Statement of Objects and Reasons.*)

SELECT COMMITTEE REPORT.—"The changes made are intended to express more clearly the intention of the clause as drafted. In the case of certain vehicles the Eighth Schedule fixes no maximum speed limit. But where such maximum speeds are fixed they are to be effective for the purposes of sub-clause (1)".

REGULATION AS TO SPEED.—Limitation upon the speed of automobiles operated on the public streets and highways are primarily intended for the protection of travellers and drivers of bullock and horse-drawn vehicles. The law establishes a uniform maximum rate of speed, such as so many miles per hour, for all motor vehicles operated anywhere in the country roads, or it may make special regulations for particular localities, such as a prohibition against driving faster than 5 miles per hour or a "common travelling pace" in a designated congested locality. The state may also expressly leave to the municipalities the right of determining within certain limits the proper maximum speed of motor vehicles. In the absence of express or implied prohibition by the legislature a municipality may also pass ordinances fixing within reasonable limits the speed at which motor vehicles may be operated within its boundaries, and it is within the province of a city corporation to prescribe different rates of speed for automobiles in different portions of the city according to the width of the streets, their use, and the density of population. In view of the danger to traffic involved in the use of automobiles on country roads, especially in the night time, an ordinance prohibiting the running of automobiles on country roads between sunset and sunrise may be not unreasonable under certain conditions. (Am. Rul. Case-law.)

Under sec. 71 (2) which permits the restricting of speed within certain areas, the notification is the fixing, and therefore until the restriction has been notified, the speed limit is not fixed. A notification is therefore a condition precedent to the commission of an offence of exceeding the speed limit and is not merely a method of publishing the speed fixed. 55 L.W. 827 (2)= 1943 M. 217=(1942) 2 M.L.J. 670.

SEC. 71 (2) is mandatory and it is necessary before the imposition of speed limit can be enforced that there should be a prior notification in the Gazette. 56 L.W. 73= 1943 Mad. 391 (1)=(1943) 1 M.L.J. 153.

To sustain a conviction under sec. 71 (1) it must be shown that the speed limit has been "fixed" under sec. 71 (2) and that the accused exceeded it. The fixing of the speed by the proper authority, such as the Road Transport Board is the publication in the Official Gazette. Publication in the District Gazette is not publication in the "Official Gazette" under sec. 71 (2). When there has been no publication or notification in the Gazette of India or in the Gazette of the Province, a notification in the District Gazette does not amount to "fixing" the speed limit and a person exceeding such limit published in the District Gazette is not guilty of exceeding the speed "fixed" and cannot be convicted under sec. 71 (1). 56 L.

Limits of weight and limitations on use.

72. (1) The Provincial Government may prescribe conditions for the issue of permits for heavy transport vehicles by the Provincial or Regional Transport Authorities and may prohibit or restrict the use of such vehicles in any area or route within the province:

Provided that any permit issued before the commencement of this Act may be continued or renewed by the competent authority for a period not exceeding three years under the conditions upon which the permit was originally issued, unless the Provincial Government directs otherwise.

(2) Except as may be otherwise prescribed, no person shall drive or cause or allow to be driven in any public place any motor vehicle which is not fitted with pneumatic tyres.

(3) No person shall drive or cause or allow to be driven in any public place any motor vehicle or trailer—

(*a*) the unladen weight of which exceeds the unladen weight specified in the certificate of registration of the vehicle, or

(*b*) the laden weight of which exceeds the registered laden weight specified in the certificate of registration, or

(*c*) any axle weight of which exceeds the maximum axle weight specified for that axle in the certificate of registration.

(4) Where the driver or person in charge of a motor vehicle or trailer driven in contravention of sub-section (2) or clause (*a*) of sub-section (3) is not the owner, a Court may presume that the offence was committed with the knowledge of or under the orders of the owner of the motor vehicle or trailer.

Power to have vehicle weighed.

73. Any person authorised in this behalf by the Provincial Government may, if he has reason to believe that a goods vehicle or trailer is being used in contravention of section 72, require the driver to convey the vehicle to a weighing device, if any, within a distance of one mile from any point on the forward route or within a distance of five miles from the destination of the vehicle for weigh-

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W. 326=1943 Mad. 491=(1943) 1 M.L.J. 344.

SEC. 72.—"The object is two-fold. Firstly to put a stop to gross overloading by specifying a maximum permissible weight and axle weight which is reasonable for vehicles at present in general use. Secondly, a reasonable limit is imposed which will generally apply but can be varied upwards or downwards by Provincial Governments to suit local conditions." (*Statement of Objects and Reasons.*)

SELECT COMMITTEE REPORT.—"We have omitted sub-cl. (1) which imposed maximum limits on the laden weight and axle weight of motor vehicles, while retaining the prohibition of the driving in public places of vehicles not fitted with pneumatic weight, which we have increased, respectively, from 12,500 and 9,000 pounds to 14,500 and 10,600 will be found included in the definition in cl. 2 (8) of a "heavy transport vehicle". For the prohibition (subject to a power to prescribe otherwise) of the driving of vehicles exceeding these weights, which was contained in sub-clause (1) which we have omitted, we have substituted a provision enabling the Provincial Government to prescribe conditions for the issue by Transport Authorities of permits to drive heavy transport vehicles, and to prohibit or restrict their use in the Province, adding a saving clause to cover any such vehicles which are already plying under permits when the Act comes into force."

SUB-CLAUSE (4).—"We have confined the presumption of knowledge to those cases only in which it seems to us equitable to suppose that the driver would have that knowledge." (*Select Committee Report.*)

Rule 50-A of the C. P. Motor Vehicles Rules, cannot apply to the case of a motor omnibus carrying passengers and luggage, for it applies only to motor vehicles used exclusively for the carriage of goods. R. 63 (3) seems to suggest that it is the duty of the conductor to calculate the number of passengers allowed after extra luggage has been put on the bus, and any way R. 60 makes it clear that in all cases, where the driver is not responsible, the conductor is held responsible, for the fulfilment of the rules. Where both the conductor and driver are charged for carrying luggage in excess of the weight allowed, as the rule requires the conductor to see that the weight of the luggage carried is not in excess of the weight allowed, the conductor alone is liable. 1939 N.L.J. 95.

ment: and if on such weighment the vehicle is found to contravene in any respect the provisions of section 72 regarding weight, he may, by order in writing, direct the driver to convey the vehicle or trailor to the nearest place, to be specified in the notice, where facilities exists for the storage of goods and not to remove the vehicle or trailer from that place until the laden weight or axle weight has been reduced or the vehicle has otherwise been treated so that it complies with section 72.

Power to restrict the use of vehicles.

74. The Provincial Government or any authority authorised in this behalf by the Provincial Government, if satisfied that it is necessary in the interests of public safety or convenience, or because of the nature of any road or bridge, may by notification in the official Gazette prohibit or restrict, subject to such exceptions and conditions as may be specified in the notification, the driving of motor vehicles or of any specified class of motor vehicles or the use of trailers either generally in a specified area or on a specified road.

Power to erect traffic signs.

75. (1) The Provincial Government or any authority authorised in this behalf by the Provincial Government may cause or permit traffic signs to be placed or erected in any public place for the purpose of regulating motor vehicle traffic.

(2) Traffic signs erected under sub-section (1) for any purpose for which provision is made in the Ninth Schedule shall be of the size, colour and type and shall have the meanings set forth in the Ninth Schedule, but the Provincial Government or any authority empowered in this behalf by the Provincial Government may make or authorise the addition to any sign set forth in the said Schedule, of transcriptions of the words, letters or figures thereon in such script as the Provincial Government may think fit, provided that the transcriptions shall be of similar size and colour to the words, letters or figures set forth in the Ninth Schedule.

(3) Except as provided by sub-section (1) no traffic sign shall, after the commencement of this Act, be placed or erected on or near any road; but all traffic signs erected prior to the commencement of this Act by any competent authority shall for the purposes of this Act be deemed to be traffic signs erected under the provisions of sub-section (1).

(4) A Provincial Government may, by notification in the official Gazette empower any District Magistrate or Superintendent of Police [1][or in the Presidency towns), the Chief Presidency Magistrate or the Commissioner of Police,] to remove or cause to be removed any sign or advertisement which is so placed in his opinion as to obscure any traffic sign from view or any sign or advertisement which is in his opinion so similar in appearance to a traffic sign as to be misleading.

LEG. REF.

1 Inserted by Act XX of 1942.

SEC. 73: SELECT COMMITTEE REPORT.—"The first change confines the scope of the clause to goods vehicles, the class of vehicle really concerned. The second change provides agai st the possibility of a vehicle being diverted from its route and thus unreasonably delayed on its journey."

SEC. 75 (2): SELECT COMMITTEE REPORT.—"The alteration of sub-clause (2) is designed to ensure that the use of additional traffic-directions such as glass reflectors or other signs not contained in the Ninth Schedule is still possible, while securing at the same time that the more important signs which are set out in the Ninth Schedule are uniform throughout the road systems of Brit sh India. Should any new signs be subsequently added to these later by an amendment of the Schedule, the wording of the sub-clause, will require them to be adopted uniformly for the purpose for which they are intended."

SECS. 75 AND 78 AND NINTH SCHEDULE.—The signs included in the Ninth Schedule have from time to time been standardised for use in India in consultation with Provincial Governments. (Statement of Objects and Reasons.)

Parking places and halting stations.

76. The Provincial Government or any authority authorised in this behalf by the Provincial Government may, in consultation with the local authority having jurisdiction in the area concerned, determine places at which motor vehicles may stand either indefinitely or for a specified period of time, and may determine the places at which public service vehicles may stop for a longer time than is necessary for the taking up and setting down of passengers.

Main roads.

77. A Provincial Government or any authority authorised in this behalf by the Provincial Government may, by notification in the official Gazette or by the erection at suitable places of the appropriate traffic sign referred to in Part A of the Ninth Schedule designate certain roads as main roads for the purposes of the regulations contained in the Tenth Schedule.

Duty to obey traffic signs.

78. (1) Every driver of a motor vehicle shall drive the vehicle in conformity with any indication given by [1][a mandatory traffic sign] and in conformity with the driving regulations set forth in the tenth Schedule and shall comply with all directions given him by any police officer for the time being engaged in the regulation of traffic in any public place.

[(2) In this section "mandatory traffic sign" means a traffic sign included in Part A of the Ninth Schedule, or any traffic sign of similar form (that is to say, consisting of or including a circular disc displaying a device, word or figure and having a red ground or border) erected for the purpose of regulating motor vehicle traffic under sub-section (1) of section 75.] *(Added by Act XX of* 1942.)

Signals and signalling devices.

79. The driver of a motor vehicle shall on the occasions specified in the Eleventh Schedule make the signals specified therein:

LEG. REF.

1 Inserted by Act XX of 1942.

SECS. 78 AND 79 AND THE TENTH AND ELEVENTH SCHEDULES.—"The substance of these Schedules appears in varying form in provincial rules, but it is desirable that driving regulations and signals should be uniform in respect of motor vehicles. For instance, a driver coming to a strange town should not be liable to commit an offence in passing a tram-car owing to local variations in traffic rules." (Statement of Objects and Reasons.)

SEC. 78.—It is an essential feature of the section imposing a liability on drivers to respond to signals that it is not for them to speculate why the signal was given and to act accordingly. If the applicant disregarded the signals made from a lorry standing at a distance, the fact that a later stage the accident happened in spite of his best efforts is no excuse. 146 I.C. 208=34 Cr.L.J. 1260=1933 Nag. 177. The Act of 1914 requires that a driver should stop in three sets of circumstances, firstly that traffic may be regulated, secondly that a name and address may be obtained with a view to prosecution, and thirdly for the purpose of enforcing any of the provisions of the Act, such as checking the licence and inspecting a bus where it is suspected to be over-loaded and it is not necessary that the police officer stopping the vehicle should be engaged in regulating traffic. 31 Cr.L.J. 639=1930 M. 445=57 M.L.J. 457. Where there is no evidence to the effect that the police officer whose signal was disobeyed was in uniform a conviction under the rules for disobeying the signal cannot be sustained. 43 C.W.N. 278.

SECS. 78 AND 112: BURDEN OF PROOF—CHARGE OF EXCEEDING SPEED LIMIT.—In a prosecution for an offence under sec. 78 read with sec. 112 for exceeding the speed limit laid down under sec. 71 (2) of the Motor Vehicles Act, it is the duty of the prosecution, in order to bring home the offence to the accused to prove (1) that a certain speed has been laid down under the Act as the maximum speed that a vehicle should attain, and (2) that the accused exceeded that speed limit. It is not sufficient to prove merely that there were two posts on the road on which the number "10" was painted to indicate that the speed should not exceed 10 miles an hour. It has further to be proved that the speed had been fixed by some authority empowered to fix a speed under sec. 71 (2). When that is not proved, a conviction is unsustainable. 55 L.W. 722=1943 Mad. 61=(1942) 2 M.L.J. 629.

SEC. 79: SELECT COMMITTEE REPORT.—"As we have omitted clause (115) which made the driving of a vehicle without due care and attention a separate offence, we have deleted the second proviso to this clause as a consequential amendment."

Provided that the signal of an intention to turn to the right or left or to stop may be given by a mechanical or an electrical device of a prescribed nature affixed to the vehicle.

Vehicles with left hand control.

80. No person shall drive or cause or allow to be driven in any public place any motor vehicle with a left hand steering control unless it is equipped with a mechanical or electrical signalling device of a prescribed nature and in working order.

Leaving vehicle in dangerous position.

81. No person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to remain at rest on any road in such a position or in such a condition or in such circumstances as to cause or be likely to cause danger, obstruction or undue inconvenience to other users of the road.

Riding on running board.

82. No person driving or in charge of a motor vehicle shall carry any person or permit any person to be carried on the running board or otherwise than within the body of the vehicle.

Obstruction of driver.

83. No person driving a motor vehicle shall allow any person to stand or sit or any thing to be placed in such a manner or position as to hamper the driver in his control of the vehicle.

Stationary vehicles.

84. No person driving or in charge of a motor vehicle shall cause or allow the vehicle to remain stationary in any public place unless there is in the driver's seat a person duly licensed to drive the vehicle or unless the mechanism has been stopped and a brake or brakes applied or such other measures taken as to ensure that the vehicle cannot accidentally be put in motion in the absence of the driver.

Pillion riding.

85. No driver of a two-wheeled motor cycle shall carry more than one person in addition to himself on the cycle and no such person shall be carried otherwise than sitting on a proper seat securely fixed to the cycle behind the driver's seat.

Duty to produce licence and certificate of registration.

86. (1) The driver of a motor vehicle in any public place shall, on demand by any police officer in uniform, produce his licence for examination.

(2) The owner of a motor vehicle, or in his absence the driver or other person in charge of the vehicle, shall, on demand by a registering authority or any person authorised in this behalf by the Provincial Government, produce the certificate of registration of the vehicle and, where the vehicle is a transport vehicle, the certificate of fitness referred to in section 38.

SECS. 80 TO 83, will standardise similar provisions in provincial rules. (*Statement of Objects and Reasons.*)

SEC. 85: SELECT COMMITTEE REPORT.—"We have omitted the reference to riding astride. It is unnecessary in Indian conditions to require that a pillion passenger shall be seated astride the cycle."

SEC. 86: SELECT COMMITTEE REPORT.—"The addition to sub-clause (2) makes a provision regarding the certificate of fitness which was not adequately provided for in the sub-clause as originally drafted. In sub-clause (3) consequential amendments are made, the necessity for personal appearance is dispensed with, and the period allowed for production of the required documents is extended. The redraft of the proviso to sub-clause (3) expresses more clearly the degree to which the relaxation given by sub-clause (3) may be extended to the drivers who are normally expected to have such documents with them." "Upon demand" means then and there on the spot. 21 Cr.L.J. 724=58 I.C. 148=43 A. 123=1921 A. 277. The term should not be interpreted to mean "within a reasonable time after demand." The word "demand" connotes something imperative, that brooks no delay. I.L.R. 1936 Nag. 164 =164 I.C. 351=37 Cr.L.J. 1012=1936 Nag. 150. Where the driver of a motor vehicle fails to produce his licence immediately on demand having kept it in a not easily accessible part of the car but produces it subsequently after very little delay, the offence committed is of a technical nature and it is a case in which the prosecution might properly have been waived. (*Ibid.*) No person is a driver unless driving. Further it is only a police officer who can demand the licence, and an order requiring the driver to attend a Magistrate's house or Court with

(3) If the licence or certificates, as the case may be, are not at the time in the possession of the person to whom demand is made, it shall be a sufficient compliance with this section if such person produces the licence or certificates within ten days at any police station in British India which he specifies to the police officer or authority making the demand:

Provided that, except to such extent and with such modifications as may be prescribed, the provisions of this sub-section shall not apply to a driver driving as a paid employee, or to the driver of a transport vehicle or to any person required to produce the certificate of registration or the certificate of fitness of a transport vehicle.

Duty of driver to stop in certain cases.

87. (1) The driver of a motor vehicle shall cause the vehicle to stop and remain stationary so long as may reasonably be necessary—

(*a*) when required to do so by any police officer in uniform, or

(*b*) when required to do so by any person in charge of an animal if such person apprehends that the animal is, or being alarmed by the vehicle will become, unmanageable, or

(*c*) when the vehicle is involved in the occurrence of an accident to a person, animal or vehicle or of damage to any property, whether the driving or management of the vehicle was or was not the cause of the accident or damage, and he shall give his name and address and the name and address of the owner of the vehicle to any person affected by any such accident or damage who demands it provided such person also furnishes his name and address.

(2) The driver of a motor vehicle shall, on demand by a person giving his own name and address and alleging that the driver has committed an offence punishable under section 116, give his name and address to that person.

(3) In this section the expression "animal" means any horse, cattle, elephant, camel, ass, mule, sheep or goat.

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his licence is illegal. 101 I.C. 668=49 A. 754=1927 A. 478. But *see also* 1926 P. 446. Under sec. 8 (of the old Act) the failure to produce the driving licence on demand by the police officer is an offence but not the mere non-carrying of it on person. 33 P.L.R. 278=1932 L. 363. Secs. 8 and 9 (old Act) do not apply to permit under R. 24 but to driving licence prescribed by sec. 6 of the Act and R. 22—Failure of a driver of a motor vehicle to produce on demand a permit issued to him under R. 24 is not an offence. 50 A. 876=1928 A. 492. The section does not contemplate that police officer cannot ask a driver of a motor vehicle for his licence in the private grounds of a private person and that he can only do so when a car is actually being driven by the person, whose licence is demanded, whilst on the public road. 97 I.C. 48=7 P.L.T. 542=27 Cr.L.J. 1072=1926 P. 446. Non-production of licence when demanded, by police is a trivial and technical offence under sec. 8 of the Act. There is no prohibition against the driving of a car by a properly licenced person who has not got his licence with him and it is no offence to do so. The order of suspension along with the fine, is appealable. 65 I.C. 425=23 Cr.L.J. 73=1922 N. 71. It is compulsory upon a driver of a motor vehicle to carry his licence with him; he is bound to produce it at once, directly a police constable calls upon him to do so, and failure to produce immediately upon such demand is punishable under the Act. 43 A. 123=1921 A. 277; *see also* I.L.R. 1936 Nag. 164=1936 N. 150. Non production of licence—Technical offence—Order of suspension appealable. 23 Cr.L.J. 73=65 I.C. 425 =1922 N. 71. There is no authority for the proposition that a motor car which carries mails, and also carries passengers, is exempt from the operation of the ordinary rules about licence for drivers and those restricting the number of passengers to be carried under the permit. (1890) Rat. Unrep. Cr. P. Code, 512, (Dist.). 100 I.C. 1053=29 Bom. L.R. 191=28 Cr.L.J. 397=1927 B. 154.

SEC. 87.—This reproduces the existing sec. 4 of the Indian Motor Vehicles Act, 1914, with the additional definition of "animal." (Statement of Objects and Reasons.)

SELECT COMMITTEE REPORT.—"The change in clause (*b*) is designed to secure that the mere alarm of an animal will not justify the person in charge in stopping the driver of a vehicle."

CL. (2).—The redraft makes it clear that the allegation regarding commission of an offence must be one made at the time by the person demanding the driver's name, and that such person must himself be ready to supply his own name and address.

CL. (3).—We consider it advisable to exclude dogs from the denotation of animal, particularly in view of clause (*c*) of sub clause (1). (Select Committee Report.)

88. The owner of a motor vehicle the driver of which is accused of any offence under this Act shall, on the demand of any police officer authorised in this behalf by the Provincial Government, give all information regarding the name and address of and the licence held by the driver which is in his possession or could by reasonable diligence be ascertained by him.

Duty of owner of motor vehicle to give information.

89. When any person is injured as the result of an accident in which a motor vehicle is involved, the driver of the vehicle or other person in charge of the vehicle shall—

Duty of driver in case of accident and injury to a person.

(*a*) take all reasonable steps to secure medical attention for the injured person, and, if necessary, convey him to the nearest hospital, unless the injured person or his guardian, in case he is a minor, desires otherwise;

(*b*) give on demand by a police officer any information required by him, or, if no police officer is present, report the circumstances of the occurrence at the nearest police station as soon as possible, and in any case within twenty-four hours of the occurrence.

90. When any accident occurs in which a motor vehicle is involved, any person authorised in this behalf by the Provincial Government may, on production if so required of his authority, inspect the vehicle and for that purpose may enter at any reasonable time any premises where the vehicle may be and may remove the vehicle for examination:

Inspection of vehicle involved in accident.

Provided that the place to which the vehicle is so removed shall be inti-

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The law provides that the operator of any motor vehicle on any public highway must stop upon signal by a police officer or by the driver of any vehicle drawn by horses, and that upon signal by any one riding or driving a horse which appears frightened, such operator must stop the motor of the machine and all motive power, and remain stationary unless a movement forward shall be deemed necessary to avoid accident or injury, until the horse appears to be under control. Where the statute requires the operator of an automobile to stop upon signal, there must be an actual signal before he will be held responsible for negligence for violating the law. As a matter of common prudence when an automobile approaches or comes up behind a vehicle drawn by horses, the driver must manage and control his machine in such a manner as to exercise every reasonable precaution to prevent the frightening of the horses, and to ensure the safety and protection of any person riding or driving them or even that the driver of a motor vehicle at the indication of a horse becoming alarmed must go to the side of the road and remain stationary until the horse has passed. Where there was no evidence to show that the driver of a motor vehicle knew that an accident had as a matter of fact taken place or had reason to so believe, his failure to stop his vehicle cannot amount to an offence. 173 I.C. 860=39 Cr.L.J. 382=1938 Pat. 268.

SEC. 88.—This already appears in substance in provincial rules. (Statement of Objects and Reasons.)

SEC. 89.—"This is very necessary and it is proposed that the penalty for its breach should include disqualification—*vide* clause 17 (6)." (Statement of Objects and Reasons.)

SELECT COMMITTEE REPORT.—"We have omitted the opening words of clause (*a*) because there might be no police officer present and the injured person might be unconscious. We have also provided that an injured person shall not be taken to hospital against his will."

REPORTING ACCIDENT.—If there is no police officer present, the driver or person in charge of the motor vehicle shall report the accident without delay at the nearest police station. 1929 A.L.J. 1044=30 Cr. L.J. 1085=51 A. 996=1929 A. 750. Offence under the Act—Sec. 562, Cr. P. Code, does not apply. Sec. 562 (1) (*a*) only applies to a certain limited class of cases such as theft and so on under the I.P.C., but does not apply to an offence under a totally different Act such as the Motor Vehicles Act. 28 Bom.L.R. 297=27 Cr.L.J. 528=1926 Bom. 230.

"ACCIDENT," MEANING OF.—The word "accident" is not defined in the Motor Vehicles Act or in any of the rules framed thereunder. Ordinarily it means an event which takes place without one's foresight or expectation. Need for amendment of the wording of R. 27 of the Madras Motor Vehicles Rules pointed out. 51 M. 504=108 I.C. 909=1928 M. 364=29 Cr.L.J. 461=55 M.L.J. 320. Driving without lights—Liability of owner. 27 P.R. (Cr.) 1918=47 I.C. 444. *See also* 16 A.L.J. 623.

SEC. 90.—The proviso supplies a reasonable safeguard against possible abuses. (Select Committee Report.)

mated to the owner of the vehicle, and the vehicle shall be returned without unnecessary delay.

Power to make rules.

91. (1) The Provincial Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

(*a*) the nature of the mechanical or electrical signalling devices which may be used on motor vehicles;

(*b*) the removal and the safe custody of vehicles including their loads which have broken down or which have been left standing or have been abandoned on roads;

(*c*) the installation and use of weighing devices;

(*d*) the exemption from all or any of the provisions of this Chapter of Fire Brigade vehicles, ambulances and other special classes of vehicle, subject to such conditions as may be prescribed;

(*e*) the maintenance and management of parking places and stands and the fees, if any, which may be charged for their use;

(*f*) prohibiting the driving down hill of a motor vehicle with the gear disengaged either generally or in a specified place;

(*g*) prohibiting the taking hold of or mounting of a motor vehicle in motion;

(*h*) prohibiting the use of foot-paths or pavements by motor vehicles;

(*i*) generally, the prevention of danger, injury or annoyance to the public or any person, or of danger or injury to property or of obstruction to traffic; and

(*j*) any other matter which is to be or may be prescribed.

CHAPTER VII.

MOTOR VEHICLES TEMPORARILY LEAVING OR VISITING BRITISH INDIA.

Power of Central Government to make rules.

92. (1) The Central Government may, by notification in the official Gazette, make rules for all or any of the following purposes, namely:—

(*a*) the grant and authentication of travelling passes, certificates or authorisations to persons temporarily taking motor vehicles out of British India to any place outside India or to persons temporarily proceeding out of British India to any place outside India and desiring to drive a motor vehicle during their absence from British India;

(*b*) prescribing the conditions subject to which motor vehicles brought temporarily into British India from outside India by persons intending to make a temporary stay in British India may be possessed and used in British India; and

(*c*) prescribing the conditions subject to which persons entering British India from any place outside India for temporary stay in British India may drive motor vehicles in British India.

(2) No rule made under this section shall operate to confer on any person any immunity in any province from the payment of any tax levied in that province on motor vehicles or their users.

SEC. 91, CL. (2): SELECT COMMITTEE REPORT.—"We have redrafted clause (*d*) without altering the substance. We have added 'stands' for which partial provision is made in sec. 68 to parking-places in clause (*e*). We have added two specific rule-making powers, and a general rule-making power in clause (*i*) which is reproduced from the 1914 Act.

SEC. 92.—"Under this, rules can be made not only to deal with vehicles, covered by an International Convention but also those coming from and going to countries which are not signatories to any Convention." (Statement of Objects and Reasons.)

(3) Rules made under clauses (*b*) and (*c*) of sub-section (1) shall, in case of motor vehicles and persons entering British India from the French and Portuguese Settlements bounded by India, be applicable only to motor traffic to which The International Convention relating to motor traffic concluded at Paris on the 24th day of April, 1926 [1][or any convention modifying the same], applies.

(4) Nothing in this Act or in any rule made thereunder by a Provincial Government relating to—

(*a*) the registration and identification of motor vehicles, or

(*b*) the requirements as to construction, maintenance and equipment of motor vehicles, or

(*c*) the licensing and the qualifications of drivers of motor vehicles shall apply to any motor vehicle to which or to any driver of a motor vehicle to whom any rules made under clause (*b*) or clause (*c*) of sub-section (1) apply.

CHAPTER VIII.

INSURANCE OF MOTOR VEHICLES AGAINST THIRD PARTY RISKS.

Definitions.

93. In this Chapter—

(*a*) "authorised insurer" means an insurer in whose case the requirements of the Insurance Act, 1938, or of the corresponding law of a reciprocating territory with respect to the registration of insurers are complied with, and includes, where the business of insuring motor vehicles against third party risks is carried on by the Central Government on a Provincial Government or the Government of an Indian State which is a reciprocating territory, such Government".] (*Substituted by Act XXVII of* 1947.)

(*b*) "certificate of insurance" means a certificate issued by an authorised insurer in pursuance of sub-section (4) of section 95; and includes [2][a cover note complying with such requirements as may be prescribed, and] where more than one certificate has been issued in connection with a policy, or where a copy of a certificate has been issued, all those certificates or that copy, as the case may be;

[(*c*) 'reciprocating territory' means any such Indian State or such area administered by the Crown Representative as may be notified by the Central Government in the Official Gazette to be a reciprocating territory for the purposes of this Chapter.] (*Clause* (*c*) *of S.* 93 *added by Act XXVII of* 1947.)

Necessity for insurance against third party risk.

94. (1) No person shall use except as a passenger or cause or allow any other person to use a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter.

Explanation.—A person driving a motor vehicle merely as a paid employee, while there is in force in relation to the use of the vehicle no such policy as is required by this sub-section, shall not be deemed to act in contravention of the sub-section unless he knows or has reason to believe that there is no such policy in force.

[(2) Subject to any prescribed conditions, sub-section (1) shall not apply to any vehicle owned by any of the following authorities, namely:—

(*i*) the Central Government;

(*ii*) the Crown Representative;

LEG. REF.

[1] Inserted by Act XX of 1942.

[2] Inserted by Act XXVII of 1947.

SEC. 94: GENERAL.—The provisions relating to compulsory insurance in respect of third party risks follows closely the recommendations of the Motor Vehicles Insurance Committee and are almost wholly adapted from the English law. (Statement of Objects and Reasons.)

(*iii*) any Provincial Government;

(*iv*) the Government of any Indian State;

(*v*) the Government of the French or Portuguese Settlements bounded by India;

(*vi*) any local authority in British India exempted from the operation of sub-section (1) by order of the Central Government or of a Provincial Government;

(*vii*) any local authority established or continued by the authority of the Crown Representative exempted from the operation of sub-section (1) by order of the Central Government;

(*viii*) any local authority in an Indian State wherein policies of insurance are required by provision of law to be taken out in relation to the use of motor vehicles, which has been exempted from the operation of such provision.] (*Substituted by Act XXVII of* 1947.)

Requirements of policies and limits liability.

95. (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—

(*a*) is issued by a person who is an authorised insurer, [1][or by a co-operative society allowed under section 108 to transact the business of an insurer] and

(*b*) insures the person or classes of person specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred by him or them in respect of the death of or bodily injury to any person caused by or arising out of the use of the vehicle in a public place, [1][in British India or in a reciprocating territory]:

Provided that a policy shall not [1][* * *] be required—

(*i*) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment [other than a liability arising under the workmen's compensation Act, 1923, in respect of the death of or bodily injury to, any such employee—

(*a*) engaged in driving the vehicle, or

(*b*) if it be a public service vehicle, engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(*c*) if it be a goods vehicle, being carried in the vehicle.] (*Inserted by Act XXVII of* 1947).

LEG. REF.

[1] Substituted and omitted by Act XXVII of 1947.

REPORT OF SELECT COMMITTEE.—"The change made in the first line confines liability for a contravention of the clause to the owner of the vehicle, who is the person in possession of knowledge whether the vehicle is or is not insured."

SUB-CL. (2)—"We have removed the proviso for the making of deposits instead of insuring. We see little prospect of such a provision being extensively utilised, and none but wealthy corporations could avail themselves of it. We have added local authorities to the bodies exempted under the sub-clause, as these are accorded exemption in the English Act. We have also added State-owned railways in the view that their financial position makes it unnecessary for them to insure against third party risks. (Select Committee Report.)

SEC. 95.—"The limits of cover are those recommended by the Motor Vehicles Insurance Committee. In sub-sec. (3) power is given to Provincial Governments to require, in addition, that the liability of an owner in respect of claims arising under the Workmen's Compensation Act shall also be covered by insurance". (Statement of Objects and Reasons.)

SUB-CL. (1).—"The changes in cl. (*b*) are formal, and clarifying only. Those in the proviso, cl. (*i*), are formal also. In cl. (*ii*) the wording has been altered to agree with that used in sub-cl. (2) (*b*) and a reference has been inserted to cover workmen being conveyed to work. This follows the English Act. The new additional cl. (*iii*) is also taken from the English Act. In sub-cl. (2) we have reduced the limit of liability fixed by the clause in two cases. We have inserted the words "in respect of any one accident" to clarify the intention of the

(*ii*) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises, or

(*iii*) to cover any contractual liability.

(2) Subject to the proviso to sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely:—

[(*a*) where the vehicle is a goods vehicle, a limit of twenty thousand rupees in all, the liabilities, if any, arising under the Workmen's Compensation Act, 1923, in respect of the death of, or bodily injury to, employees other than the driver being carried in the vehicle being limited to six such employees.] (*Substituted by Act XXVII of* 1947.)

(*b*) where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, in respect of persons other than passengers carried for hire or reward, a limit of twenty thousand rupees; and in respect of passengers a limit of twenty thousand rupees in all, and four thousand rupees in respect of an individual passenger, if the vehicle is registered to carry not more than six passengers excluding the driver or two thousand rupees in respect of an individual passenger, if the vehicle is registered to carry more than six passengers excluding the driver;

(*c*) where the vehicle is a vehicle of any other class, the amount of the liability incurred.

[(3) A Provincial Government may prescribe that a policy of insurance shall in order to comply with the requirements of this Chapter cover any liability arising under the provisions of the Workmen's Compensation Act, 1923, in respect of the death of or bodily injury to any paid employee engaged in driving or otherwise in attendance on or being carried in a motor vehicle.] (*N.B.*— Sub-section (3) omitted by Act XXVII of 1947.)

(4) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance [1][* * * *] in the prescribed form and containing the prescribed particulars of any conditions subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(5) Notwithstanding anything elsewhere contained in any law, a person issuing a policy of insurance under this section shall be liable to indemnify the person or classes of person specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of person.

Duty of insurers to satisfy judgments against persons insured in respect of third party risks.

96. (1) If, after a certificate of insurance [1][* * * *] has been issued under sub-section (4) of section 95 in favour of the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under clause (*b*) of sub-section (1) of section 95 (being a liability covered by

LEG. REF.

[1] Omitted by Act XXVII of 1947.

sub-clause The other change in cl. (*b*) is consequential on that made in sub-cl. (1), proviso cl. (*ii*). In sub-cl. (4) we have made a formal amendment, and we have inserted a provision allowing cover-notes to serve in lieu of a certificate of insurance. The changes in sub-cl. (5) are formal only". (Statement of Objects and Reasons.)

SEC. 96.—"Sub-cl. (2) is a variation of sec. 38 of the English Road Traffic Act, 1930, and sec.. 12 of the English Road Traffic Act, 1934. Those sections provide that an insure could not repudiate liability on account of the breach of certain specified conditions that the isurer might have in-

the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment-debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment unless before or after the commencement of the proceedings in which the judgment is given the insurer had notice through the Court of the bringing of the proceedings, or in respect of any judgment so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:—

(*a*) that the policy was cancelled by mutual consent or by virtue of any provision contained therein before the accident giving rise to the liability, and that either the certificate of insurance was surrendered to the insurer or that the person to whom the certificate was issued has made an affidavit stating that the certificate has been lost or destroyed, or that either before or not later than fourteen days after the happening of the accident the insurer has commenced proceedings for cancellation of the certificate after compliance with the provisions of section 105; or

(*b*) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:—

(*i*) a condition excluding the use of the vehicle—

(*a*) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(*b*) for organised racing and speed testing, or

(*c*) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a public service vehicle or a goods vehicle, or

(*d*) without side-car being attached, where the vehicle is a motor cycle; or

(*ii*) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(*iii*) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(*c*) that the policy is void on the ground that it was obtained by the non-

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serted in the policy. The general effect of this provision has been given close attention by the Cassel Committee whose report has recently been published and they have recommended that, instead of specifying conditions for breach of which an insurer would not be able to avoid liability, it would be better to specify those for breach of which liability could be avoided. The draft of sub-cl. (3) follows their recommendations in this respect. It is more satisfactory as it defines the exact position of the insurer in relation to the conditions he may impose." (Statement of Objects and Reasons.)

SELECT COMMITTEE REPORT.—"Sub cls. (2), (3) and (4) of the Bill have been replaced by two new sub-clauses which together with the new sub-clause now numbered sub-cl. (6) have the effect of considerably simplifying legal proceedings in connection with any contested claim. The effect of our provisions is to secure that such proceedings shall be confined to one suit only, in which the insurer shall have a right on receiving notice through the Court to contest his liability on certain of the grounds contained in the Bill as drafted. We have, however, excluded several of the conditions contained in the draft Bill for breach of which an insurer might have a licence declared cancelled. Sub-cls. (1), (6) and (7), now numbered (1), (4) and (5), remain unchanged except for formal and consequential amendments."

disclosure of a material fact or by a representation of fact which was false in some material particular.

[(2-A) Where any such judgment as is referred to in sub-section (1) is obtained from a Court in a reciprocating territory and in the case of a foreign judgment is, by virtue of the provisions of section 13 of the Code of Civil Procedure, 1908, conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938 (V of 1938), and whether or not he is registered under the corresponding law of the reciprocating territory) shall be liable to the person entitled to the benefit of the decree in the manner and to the extent specified in sub-section (1) as if the judgment were given by a Court in British India:

Provided that no sum shall be payable by the insurer in respect of any such judgment unless, before or after the commencement of the proceedings in which the judgment is given, the insurer had notice through the Court in the reciprocating territory of the bringing of the proceedings and the insurer to whom notice is so given is entitled under the corresponding law of the reciprocating territory, to be made a party to the proceedings and to defend the action on grounds similar to those specified in sub-section (2).] (*Inserted by Act XXVII of* 1947.)

(3) Where a certificate of insurance [1][* * *] has been issued under sub-section (4) of section 95 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any conditions other than those in clause (*b*) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (*b*) of sub-section (1) of section 95, be of no effect:

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

(4) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

(5) In this section the expressions "material fact" and "material particular" mean, respectively, a fact or particular of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions, and the expression "liability covered by the terms of the policy" means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy.

(6) No insurer to whom the notice referred to in sub-section (2) [1][or sub-section 2-A] has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment as is referred to in sub-section (1) [1][or sub-section 2-A] otherwise than in the manner provided for in sub-section (2) [1][or in the corresponding law of the reciprocating territory, as the case may be].

Rights of third parties against insurers on insolvency of the insured.

97. (1) Where under any contract of insurance effected in accordance with the provisions of this Chapter a person is insured against liabilities which he may incur to third parties then—

(*a*) in the event of the person becoming insolvent or making a composition or arrangement with his creditors, or

(*b*) where the insured person is a company, in the event of a winding

LEG. REF. 1947.

[1] Omitted and inserted by Act XXVII of

up order being made or a resolution for a voluntary winding up being passed with respect to the company or of a receiver or manager of the company's business or undertaking being duly appointed, or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the charge,

if, either before or after that event, any such liability is incurred by the insured person, his rights against the insurer under the contract in respect of the liability shall notwithstanding anything to the contrary in any provision of law, be transferred to and vest in the third party to whom the liability was so incurred.

(2) Where an order for the administration of the estate of a deceased debtor is made according to the law of insolvency, then, if any debt provable in insolvency is owing by the deceased in respect of a liability to a third party against which he was insured under a contract of insurance in accordance with the provisions of this Chapter, the deceased debtor's rights against the insurer in respect of that liability shall, notwithstanding anything to the contrary in any provision of law, be transferred to and vest in the person to whom the debt is owing.

(3) Any condition in a policy issued for the purposes of this Chapter purporting either directly or indirectly to avoid the policy or to alter the rights of the parties thereunder upon the happening to the insured person of any of the events specified in clause (*a*) or clause (*b*) of sub-section (1) or upon the making of an order for the administration of the estate of a deceased debtor according to the law of insolvency shall be of no effect.

(4) Upon a transfer under sub-section (1) or sub-section (2) the insurer shall be under the same liability to the third party as he would have been to the insured person, but—

(*a*) if the liability of the insurer to the insured person exceeds the liability of the insured person to the third party, nothing in this Chapter shall affect the rights of the insured person against the insurer in respect of the excess, and

(*b*) if the liability of the insurer to the insured person is less than the liability of the insured person to the third party, nothing in this Chapter shall affect the rights of the third party against the insured person in respect of the balance.

Duty to give information as to insurance.

98. (1) No person against whom a claim is made in respect of any liability referred to in clause (*b*) of sub-section (1) of secction 95 shall on demand by or on behalf of the person making the claim refuse to state whether or not he was insured in respect of that liability by any policy issued under the provisions of this Chapter, or would have been so insured if the insurer had not avoided or cancelled the policy, nor shall he refuse, if he was or would have been so insured, to give such particulars with respect to that policy as were specified in the certificate of insurance issued in respect thereof.

(2) In the event of any person becoming insolvent or making a composition or arrangement with his creditors or in the event of an order being made for the administration of the estate of a deceased person according to the law of insolvency, or in the event of a winding up order being made or a resolution for a voluntary winding up being passed with respect to any company or of a receiver or manager of the company's business or undertaking being duly appointed or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge on any property comprised in or subject to the charge, it shall be the duty of the insolvent debtor, personal representative of the deceased debtor or company as the case may be, or the official assignee or receiver in insolvency, trustee, liquidator, receiver or manager, or person in pos-

session of the property to give at the request of any person claiming that the insolvent debtor, deceased debtor or company is under such liability to him as is covered by the provisions of this Chapter, such information as may reasonably be required by him for the purpose of ascertaining whether any rights have been transferred to and vested in him by section 97, and for the purpose of enforcing such rights, if any; and any such contract of insurance as purports whether directly or indirectly to avoid the contract or to alter the rights of the parties thereunder upon the giving of such information in the events aforesaid, or otherwise to prohibit or prevent the giving thereof in the said events, shall be of no effect.

(3) If, from the information given to any person in pursuance of sub-section (2) or otherwise, he has reasonable ground for supposing that there have or may have been transferred to him under this Chapter rights against any particular insurer, that insurer shall be subject to the same duty as is imposed by the said sub-section on the persons therein mentioned.

(4) The duty to give the information imposed by this section shall include a duty to allow all contracts of insurance, receipts for premiums and other relevent documents in the possession or power of the person on whom the duty is so imposed to be inspected and copies thereof to be taken.

Settlement between insurers and insured persons.

99. (1) No settlement made by an insurer in respect of any claim which might be made by a third party in respect of any liability of the nature referred to in clause (*b*) of sub-section (1) of section 95 shall be valid unless such third party is a party to the settlement.

(2) Where a person who is insured under a policy issued for the purposes of this Chapter has become insolvent, or where, if such insured person is a company, a winding up order has been made or a resolution for a voluntary winding up has been passed with respect to the company, no agreement made between the insurer and the insured person after liability has been incurred to a third party and after the commencement of the insolvency or winding up, as the case may be, nor any waiver, assignment or other disposition made by or payment made to the insured person after the commencement aforesaid shall be effective to defeat the rights transferred to the third party under this Chapter, but those rights shall be the same as if no such agreement, waiver, assignment or disposition or payment has been made.

Saving in respect of sections 97, 98 and 99.

100. (1) For the purposes of sections 97, 98 and 99, a reference to "liabilities to third parties" in relation to a person insured under any policy of insurance shall not include a reference to any liability of that person in the capacity of insurer under some other policy of insurance.

(2) The provisions of sections 97, 98 and 99 shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of an amalgamation with another company.

Insolvency of insured persons not to affect liability of insured or claims by third parties.

101. Where a certificate of insurance has been issued to the person by whom a policy has been effected, the happening in relation to any person insured by the policy of any such event as is mentioned in sub-section (1) or sub-section (2) of section 97 shall, notwithstanding anything in this Chapter, not affect any liability of that person of the nature referred to in clause (*b*) of sub-section (1) of section 95; but nothing in this section shall affect any rights against the insurer conferred under the provisions of sections 97, 98 and 99 on the person to whom the liability was incurred.

SECS. 100 (2) TO 103.—"This is as recommended by the Motor Vehicles Insurance Committee". (Statement of Objects and Reasons.)

Effect of death on certain causes of action.

102. Notwithstanding anything contained in section 306 of the Indian Succession Act, 1925, the death of a person in whose favour a certificate of insurance [1][* * * *] had been issued, if it occurs after the happening of an event which has given rise to a claim under the provisions of this Chapter, shall not be a bar to the survival of any cause of action arising out of the said event against his estate or against the insurer.

Effect of certificate of insurance.

103. When an insurer has issued a certificate of insurance in respect of a contract of insurance between the insurer and the insured person then—

(*a*) if and so long as the policy described in the certificate has not been issued by the insurer to the insured, the insurer shall, as between himself and any other person except the insured, be deemed to have issued to the insured person a policy of insurance conforming in all respects with the description and particulars stated in such certificate; and

(*b*) If the insurer has issued to the insured the policy described in the certificate, but the actual terms of the policy are less favourable to persons claiming under or by virtue of the policy against the insurer either directly or through the insured than the particulars of the policy as stated in the certificate, the policy shall, as between the insurer and any other person except the insured, be deemed to be in terms conforming in all respects with the particulars stated in the said certificate.

Duty to surrender certificate on cancellation of policy.

104. (1) Whenever the period of cover under a policy of insurance issued under the provisions of this Chapter is terminated or suspended by any means before its expiration by effluxion of time, the insured person shall within seven days, after such termination or suspension deliver to the insurer by whom the policy was issued the latest certificate of insurance given by the insurer in respect of the said policy, or, if the said certificate has been lost or destroyed make an affidavit to that effect.

(2) Whoever fails to surrender a certificate of insurance or to make an affidavit, as the case may be, in accordance with the provisions of this section shall be punishable with fine which may extend to fifteen rupees for every day that the offence continues subject to a maximum of five hundred rupees.

Duty of insurer to notify registering authority cancellation or suspension of the policy.

105. Whenever a policy of insurance issued under the provisions of this Chapter is cancelled or suspended by the insurer who has issued the policy, the insurer shall within seven days notify such cancellation or suspension to the registering authority in whose records the registration of the vehicle covered by the policy of insurance is recorded or to such other authority as the Provincial Government may prescribe.

Production of certificate of insurance.

106. (1) Any person driving a motor vehicle in any public place shall on being so required by a police officer in uniform [2][authorized in this behalf by the Provincial Government] produce the certificate of insurance relating to the use of the vehicle:

[Provided that if the driver of a motor vehicle within seven days from the date on which the production of the certificate of insurance was so required produces the certificate at such police station as may have been specified by him at the time its production was required, he shall not be liable to conviction under

LEG. REF.

1 Omitted by Act XXVII of 1947.

2 Inserted by Act XXVII of 1947.

SEC. 106, CL. (1): REPORT OF SELECT COMMITTEE.—We have extended the time limit allowed for production of the certificate of insurance. In sub-cl. (2) we have removed the provision enabling a person other than a police officer to demand production of the certificate of insurance. The other changes made are formal or self-explanatory.

this sub-section by reason only of failure to produce the certificate to the police officer.] (*Proviso omitted by Act XXVII of* 1947.)

(2) If, where owing to the presence of a motor vehicle in a public place an accident occurs involving bodily injury to another person, the driver of the vehicle does not at the time produce the certificate of insurance to a police officer, he shall produce the certificate of insurance at the police station at which he makes the report required by section 89:

[Provided that no person shall be liable to conviction under this sub-section by reason only of failure to produce his certificate of insurance if within seven days from the occurrence of the accident he produces the certificate at such police station as may be specified by him to the police officer at the site of the accident or to the officer in charge of the police station at which he reported the accident.] (*Proviso omitted by Act XXVII of* 1947.)

[(2-A) No person shall be liable to conviction under sub-section (1) or sub-section (2) by reason only of the failure to produce the certificate of insurance if, within seven days from the date on which its production was required under sub-section (1) or, as the case may be, from the date of occurrence of the accident, he produces the certificate at such police station as may have been specified by him to the police officer who required its production or, as the case may be, to the police officer at the site of the accident or to the officer in charge of the police station at which he reported the accident:

Provided that, except to such extent, and with such modifications, as may be prescribed, the provisions of this sub-section shall not apply to a driver of a transport vehicle.] (*Inserted by Act XXVII of* 1947.)

(3) The owner of a motor vehicle shall give such information as he may be required by or on behalf of a police officer empowered in this behalf by the Provincial Government to give for the purpose of determining whether the vehicle was or was not being driven in contravention of section 94 and on any occasion when the driver was required under this section to produce his certificate of insurance.

(4) In this section the expression "produce his certificate of insurance" means produce for examination the relevant certificate of insurance or such other evidence as may be prescribed that the vehicle was not being driven in contravention of section 94.

Production of certificates of insurance on application for authority to use vehicle.

107. A Provincial Government may make rules requiring the owner of any motor vehicle when applying whether by payment of a tax or otherwise for authority to use the vehicle in a public place to produce such evidence as may be prescribed by those rules to the effect that either—

(*a*) on the date when the authority to use the vehicle comes into operation there will be in force the necessary policy of insurance in relation to the use of the vehicle by the applicant or by other persons on his order or with his permission, or

(*b*) the vehicle is a vehicle to which section 94 does not apply.

Co-operative insurance.

108. (1) A Provincial Government may, on the application of a co-operative society of [1][transport vehicle] owners registered or deemed to have been registered under the Co-operative Societies Act, 1912, or under an Act of a Provincial Legislature go-

LEG. REF.

[1] Substituted by Act XXVII of 1947.

SEC. 108.—"This is as recommended by the Motor Vehicles Insurance Committee and incorporates the recommendations of the Cassel Committee in respect of mutual indemnity associations." (Statement of Objects and Reasons.)

SELECT COMMITTEE REPORT.—"We have revised and clarified the wording of the sub-clauses without affecting their substances materially".

verning the registration of Co-operative Societies and subject to the control of the Registrar of Co-operative Societies of the province, allow the society to transact the business of an insurer for the purposes of this Chapter [1][* * * * * * *] subject to the following conditions, namely:—

(*a*) the society shall establish and maintain a fund of not less than twenty-five thousand rupees for the first fifty vehicles or fractional part thereof and *pro rata* for every additional vehicle in the possession of members of, [1][and insured with,] the society and the said fund shall be lodged in such custody as the Provincial Government may prescribe and shall not be available for meeting claims or other expenses except in the event of the winding up of the society;

[(*b*) the insurance business of the society shall, except to the extent permitted under clause (*cc*), be limited to transport vehicles owned by its members and its liability shall be limited as specified in sub-section (2) of section 95.] (*Substituted by Act XXVII of* 1947.)

(*c*) the society shall, if required by the Provincial Government, re-insure against claims above [1][such amount as may be specified by the Provincial Government];

[(*cc*) the society may, if permitted by the Provincial Government and subject to such conditions and limitations as may be imposed by it, accept reinsurances from other societies allowed to transact the business of an insurer under this section;] (*Inserted by Act XXVII of* 1947.)

(*d*) the provisions of this Chapter, in so far as they relate to the protection of third parties and to the issue and production of certificates, shall apply in respect of any insurance effected by the society;

(*e*) an independent authority not associated with the society shall be appointed by the Provincial Government to facilitate and assist in the settling of claims against the society;

(*f*) the society shall operate on an insurance basis, that is to say,—

(i) it shall levy its premiums in respect of a period not exceeding twelve months, during which period the insured shall be held covered in respect of all accidents arising, subject to the limits of liability specified in [1][* * * *] sub-section (2) of section 95;

(ii) it shall charge premiums estimated to be sufficient, having regard to the risks, to meet the capitalised value of all claims arising during the period of cover, together with an adequate charge for expenses attaching to the issue of policies and to the settlement of claims arising thereunder;

(*g*) the society shall furnish to the Superintendent of Insurance the returns required to be furnished by insurers under the provisions of the Insurance Act, 1938, and the Superintendent of Insurance may exercise in respect thereof any of the powers exercisable by him in respect of returns made to him under the said Act; and

[(*h*) the society shall, in respect of any business transacted by it of the nature referred to in clause (i) of the proviso to sub-section (1) of section 95, be deemed to be an insurer within the meaning of sub-section (1) of section 10 and sub-section (6) of section 13 of the Insurance Act, 1938 (V of 1938).] (*Substituted by Act XXVII of* 1947).

[(2) The provisions of the Insurance Act, 1938, relating to the winding up of insurance companies shall, to the exclusion of any other law inconsistent therewith and subject to such modifications as may be prescribed, apply to the winding up of a co-operative society allowed to transact the business of an insurer under this section as if it were an insurance company; but save as hereinbefore provided, the Insurance Act, 1938, shall not apply to any such society.] (*Substituted by Act XXVII of* 1947.)

LEG. REF. XXVII of 1947.

1 Substituted, omitted and inserted by Act

Duty to furnish particulars of vehicle involved in accident.

109. A registering authority or the officer in charge of a police station shall, if so required by a person who alleges that he is entitled to claim compensation in respect of an accident arising out of the use of a motor vehicle, or if so required by an insurer against whom a claim has been made in respect of any motor vehicle, furnish to that person or to that insurer, as the case may be, on payment of the prescribed fee any information at the disposal of the said authority or the said police officer relating to the identification marks and other particulars of the vehicle and the name and address of the person who was using the vehicle at the time of the accident or was injured by it.

Power to appoint persons to investigate and report on accidents.

110. A Provincial Government may, by notification in the official Gazette, appoint a person or a body of persons to investigate and report on accidents involving the death of or bodily injury to any person arising out of the use of motor vehicles and the extent to which their claims to compensation have been satisfied and to advise and assist such persons or their representatives in presenting their claims for compensation:

Provided that nothing in this section shall confer on any such person or body of person the right to adjudicate in any way on the liability of the insurer or on the amount of damages to be awarded except at the express desire of the insurer concerned.

Power to make rules.

111. (1) The Central Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

(*a*) the forms to be used for the purposes of this Chapter;

(*b*) the making of applications for and the issue of certificates of insurance;

(*c*) the issue of duplicates to replace certificates of insurance [1][mutilated, defaced] lost or destroyed;

(*d*) the custody, production, cancellation and surrender of certificates of insurance;

(*e*) the records to be maintained by insurers of policies of insurance issued under this Chapter;

(*f*) the identification by certificates or otherwise of persons or vehicles exempted from the provisions of this chapter;

(*g*) the furnishing of information respecting policies of insurance by insurers;

(*h*) the carrying into effect of the provisions of section 108;

(*i*) adapting the provisions of this Chapter to vehicles brought into British India by persons making only a temporary stay therein by applying those provisions with prescribed modifications; and

(*j*) any other matter which is to be or may be prescribed.

LEG. REF.

1 Inserted by Act XXVII of 1947.

SEC. 109.—This is as recommended by the Motor Vehicles Insurance Committee and incorporates sec. 17 of the English Road Traffic Act, 1934. (*Statement of Objects and Reasons.*)

SEC. 110.—"This, as drafted, will enable Provincial Governments to take such action as they deem fit to ascertain that the purposes of this part of the Act are being generally fulfilled. Judicious action under this clause would lead to insurers relying on an authority of this nature for an unbiased verdict as to the liability, and to a decrease in law suits. (*Statement of Objects and Reasons.*)

SELECT COMMITTEE REPORT.—"We have omitted this clause which gave power to set up machinery for assisting third parties in presenting claims. We have, however, inserted in the rule-making clause adequate provision in place of the clause omitted".

CHAPTER IX.

OFFENCES, PENALITIES AND PROCEDURE.

General provision for punishment of offences.

112. Whoever contravenes any provision of this Act or of any rule made thereunder shall, if no other penalty is provided for the offence, be punishable with fine which may extend to twenty rupees, or, if having been previously convicted of any offence under this Act he is again convicted of an offence under this Act, with fine which may extend to one hundred rupees.

SEC. 112: CRIMES INCIDENT TO OPERATION. —Where the legislature has power to prohibit the operation of motor vehicles on the highways, the prohibition is generally enforced by providing for fines or other punishment to be imposed upon a violation of the regulations properly established. Laws regulating the use of automobiles are generally enforced, among other methods, by making it an offence to operate a motor vehicle faster than at designated rates of speed (sec. 115), or without complying with the registration laws, and by providing that whoever operates a motor vehicle while in an intoxicated condition shall be liable to punishment (sec. 117.) So also, if a person knows that an accident has occurred through his operation of an automobile, it shall amount to an offence if he leaves the place of accident without stopping and giving his name, residence, including street and house number, and operator's licence number to the injured party, or for a police officer (*see* sec. 88). As part of the penalty for violating the provisions of the statutes and ordinances regulating the speed and operation of auto- injured party, or to a police officer (*see* suspension of the right to run the machine for a given period (sec. 17). For absence of name-plate on the car only the owner can be convicted, not the person who from time to time may have the use of the car. 7 Pat.L. T. 542=97 I.C. 48=1926 P. 446. Separate sentences cannot be passed under sec. 5 of the Motor Vehicles Act (1914) and sec. 337 of the Indin Penal Code, for they are the same offences. 1931 M.W.N. 397. It is not sufficient to absolve drivers of motor vehicles from the consequences of rash driving merely to show that the person to whom or to whose property they have caused injury was himself negligent. 133 I.C. 601=1931 A.L.J. 770=1931 A. 708. Driver proved to have been under the influence of liquor—Collision as the result of rash driving—Separate offences—Separate conviction valid. 30 Bom.L.R. 636=1928 B. 231=112 I.C. 101. Reckless driving—Endorsement of particulars of conviction on the licence. *See* 5 Cr. R. 247. Sec. 5 of the old Act has not specified the definition of reckless and negligent driving. Where there is nothing to show that at the time complained of, the traffic on the road was such that the speed at which the accused was driving the motor vehicle can be considered to be either negligent or reckless, a conviction under sec. 5 cannot be sustained. 173 I.C. 860=1938 P. 268. An error of judgment alone is not sufficient to convict a man. There must be "criminal negligence" which means "gross or culpable neglect or failure to exercise reasonable and proper care". 59 C. 113=36 C.W.N. 246 (2)=1932 C. 461. The accused was driving on a wrong side of the road at a sharp corner entering into a thoroughfare of considerable traffic with the result that he came into collision with a motor bicycle, the side-car of which was damaged. It was due to the presence of mind of the person who was riding the motor bicycle that no further damage occurred. *Held*, that an offence under sec. 279, Penal Code, was committed. The offence of the accused was more serious than that contemplated by sec. 5 of Act VIII of 1914. That section refers to a person who is driving a car in a manner which would in ordinary circumstances be proper, but owing to the special condition of the road at the time he is riding on it, is improper. 84 I.C. 253=16 S.L.R. 147=26 Cr.L.J. 253=1921 Sind 97. The words in sec. 112 of the Motor Vehicles Act "convicted of any offence under this Act" mean only convicted of an offence under the present Act and does not include convictions under the old Act of 1914 and so the latter cannot be taken into consideration in fixing the fine payable. 16 Luck. 644=1941 O.W.N. 351=1941 Oudh 250. Where the registered owner of a motor lorry for private use suffers his driver to carry goods of another person for hire, he is guilty under R. 138 of the Motor Vehicles Rules which is punishable under sec. 112 of the Motor Vehicles Act. 52 L. W. 948=1941 M. 352=(1941) 1 M.L.J. 470.

SUMMONS UNDER THE ACT IS TO BE IN THE FORM PRESCRIBED UNDER SEC. 68, CR.P. CODE. —The procedure of issuing summonses by the Magisterial Courts purporting to charge motorists, owners or drivers of offences under the Act without giving the slightest particulars of the offence alleged is not justified by law. Sec. 68, Cr. P. Code, incorporates the form of summons, which is a statutory form, contained in Sch. 5 to the Code, which summons is to be issued to accused persons. 108 I.C. 230=26 A.L.J. 331=29 Cr.L.J. 357 =1928 A. 261. The practice of issuing summons under sec. 16 of the Motor Vehicles Act (1914) charging the accused merely with an offence under that section without indicating the nature of the charge against him, should be condemned. Where such a summons was issued to the accused and the case itself was taken up before the date fixed and the accused was not granted time to produce his defence, his conviction is not legal and is liable to be set aside. I.L.R. (1940) Lah. 678=1941 L. 114.

CHARGE, FORM OF.—Whewe the offence with which accused was charged was really one under sec. 5 of the Act of 1914, but the charge mentioned secs. 16 and 17 and fully stated the facts and the offence he was alleged to have committed, *held*, that as the accused knew the charge he had to meet, the mistake in the number of the sections could not be said to have prejudiced the accused, 59 C. 113=36 C.W.N. 246 (2)=1932 C. 461. Prosecutions for motoring offences should be lodged promptly; otherwise the motorist may be unable to recollect as to what happened and to give his own explanation. 1939 A. M.L.J. 94.

EVIDENCE AND PROOF.—*See* (1942) 2 M.L. J. 629 cited under sec. 78. The Courts will take judicial notice of facts which are commonly and generally known with reference to automobi es, such as the fact that their use as vehicles for travelling is comparatively recent, that they make an unusual noise, and can be and usually are made to travel on public highways at a speed many times greater than that of ordinary vehicles drawn by animals, and that many of them can be operated at the rate of at least forty miles an hour. Certain facts concerning automobiles will be presumed in the absence of evidence to the contrary. Thus a person using a public highway with his automobile will be presumed to have registered and to have obtained a licence for his machine. Certain other facts must be directly proved, such as negligence on the part of a person opearting an automobile, and the burden of proof is on the person alleging that he has sustained an injury from such negligence. Sin e it is not negligence *per se* to use an automobile on a public highway, and since damage alone will never support an action for negligence, there is no presumption as to the negligence of a driver of an automobile arising from the mere fact that while it was being operated on a public street it collided with another vehicle or a pedestrian, and proof of such fact alone does not make out a *prima facie* case of negligence. The common law rule in this respect may be chaned by statute, which may expressly provide that where any person suffers loss or damage by reason of a motor vehicle on a highway, the burden of proof shall be on the owner or driver.

BURDEN OF PROOF.—Apart from express statutory provision, a plaintiff claiming damages for personal injury in a running down case wou'd have to prove that he was injured, that h's injury was due to the defendant's fault and the fact and extent of his loss and damage; hence unless he succeeds in establishing all these matters, he must fail. It may be by virtue of a statute, he need only establish the first and the third elements, *i.e.*, that he was injured by the defendant and the extent of his damages. If he establishes those two matters, the onus is removed from him and it is then for the defendant to establish to the reasonable satisfaction of the Court or jury, that the loss, damage or injury did not arise through the negligence or improper conduct of himself or his servants. This the defendant may do in various ways, as for instance by satisfactory proof of a latent defect, or by proof that the plaintiff was the author of his own injury; or by proof that the circumstances were such that neither party was to blame because neither party could avoid the other. But the onus placed on the defendant is not in law a shifting or transitory onus. It remains on the defendant until the very end of the case when the question m st be determined whether or not the defendant has sufficiently shown that he did not in fact cause the accident by his negligence. If, on the whole of the evidence, the defendant establishes this to the satisfaction of the jury, he will be entitled to judgment; if however the issue is left in doubt or the evidence is balanced, even then defendant will be held liable in virtue of the statutory onus, whereas in that event but for the statute the plaintiff would fail, because but for the statute the onus would be on him. A *fortiori* the defendant will be held liable, if the evidence actually establishes his negligence. 1932 A.C. 690=139 I.C. 663= 1932 P.C. 246 (P.C.) (Case under Manitoba Motor Vehicles Act). *See also* (1942) 2 M.L.J. 629=1943 Mad. 61.

SENTENCE.—It is inequitable to exact from a person the enhanced fine under sec. 112 unless he has suffered a first conviction and after that conviction he has again offended. 44 P.L.R. 101=A.I.R. 1942 Lah. 125.

BOMBAY MOTOR VEHICLES RULES (1940), R. 93 (2) AND (4).—Sub-r. (2) of r. 93 of the Bombay Motor Vehicles Rules lays down unconditionally the number of persons that may be carried in a goods vehicle; this provision applies not only when the goods vehicle is loaded with goods but also even when it does not happen to carry any goods. This is clear from sub-r. (4) which contemplates a goods vehicle being used for carrying persons when it is not loaded with goods at all. Where the driver of a motor lorry used as a goods vehicle carries more than six persons in it without a permit though the vehicle is not loaded with goods at the time, he is guilty of a breach of r. 93 (2) of the Bombay Motor Vehicles Rules, and is liable to conviction under sec. 112. 44 Bom.L.R. 225=A.I.R. 1942 Bom. 184.

MADRAS MOTOR VEHICLES RULES, R. 138. —Where the registered owner of a motor lorry for private use suffers his driver to carry goods of another person for hire, he is unquestionably guilty of an offence under r. 138 of the Motor Venhicles Rules which is punishable under sec. 112 of the Act. 52 L.W. 948=A.I.R. 1941 Mad. 352= (1941) 1 M.L.J. 470.

AND U. P. MOTOR VEHICLES RULES (1940), Rr. 2 (*g*) AND 79 (*viii*).—R. 2 (*g*) of the Motor Vehicles Rules merely means that the word 'Magistrate' means a stipendiary Magistrate where this word is used in the rules. The mere fact that a person was

Disobedience of orders, obstruction and refusal of information.

113. Whoever wilfully disobeys any direction lawfully given by any person or authority empowered under this Act to give such direction, or obstructs any person or authority in the discharge of any functions which such person or authority is required or empowered under this Act to discharge, or, being required by or under this Act to supply any information, withholds such information or gives information which he knows to be false or which he does not believe to be true, shall, if no other penalty is provided for the offence, be punishable with fine which may extend to two hundred rupees.

Offences relating to licences.

114. Whoever, being disqualified under this Act for holding or obtaining a licence, drives a motor vehicle in a public place or applies for or obtains a licence or, not being entitled to have a licence issued to him free of endorsement, applies for or obtains a licence without disclosing the endorsements made on a licence previously held by him or, being disqualified under this Act for holding or obtaining a licence, uses in British India a licence such as is referred to in sub-section (2) of section 9, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both, and any licence so obtained by him shall be of no effect.

Driving at excessive speed.

115. (*Cf.* Eng. Act, section 11.) (1) Whoever drives a motor vehicle in contravention of section 71 shall be punishable with fine which may extend to one hundred rupees.

(2) Whoever causes any person who is employed by him or is subject to his control in driving to drive a motor vehicle in contravention of section 71 shall be punishable with fine which may extend to two hundred rupees.

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charged with certain acts made offences by r. 79 (*viii*) is no reason for holding that the Magistrate trying the case must be such a Magistrate as is defined in the rules and that an Honorary Special 'Magistrate' is incompetent to try it. 1941 O.W.N. 193 (1) =A.I.R. 1941 Oudh 266.

SEC. 115: SELECT COMMITTEE REPORT.—(*Old cl.* 115).—We have omitted this clause penalising careless driving. We consider its terms too wide and we regard as misguided the attempt to instil road-courtesy by coercion.

[*See* notes under sec. 71, *supra*.] While a speed of eighteen or twenty miles an hour in a sparsely settled portion of a city may not be negligence, and a motorman may assume that automobiles preceding him and travelling in the same direction will not pass on to the tracks without precautions to ascertain whether a car is approaching, yet similar conduct in a densely populated and busy portion of a city would be indefensible.

HOMICIDE.—One who wilfully or negligently drives automobile on a public street at a prohibited rate of speed or in a manner expressly forbidden by statute, and thereby causes the death of another, may be guilty of homicide; and this is true although the person who is recklessly driving the machine uses, as soon as he sees a pedestrian in danger, every effort to avoid injuring him, provided that the operator's prior recklessness was responsible for his inability to control the car and prevent the accident which resulted in the death of the pedestrian. With reference to the responsibility for a homicide so caused, it may be stated that the owner of an automobile, who is in occupation thereof at the time of a collision, is not responsible criminally where it is operated by a driver over whom he has only general control, and where he could have done nothing to prevent collision. (*Ame. Jul. Case-law*).

EVIDENCE OF SPEED.—An adult person of reasonable intelligence and ordinary experience in life is presumed to be capable, without proof of further qualification, to express an opinion as to how fast an automobile which came under his observation was going at a particular time, and the Courts have liberally admitted as evidence of speed the opinions of witnesses who actually saw the machine in motion at the time in question; and the force of such evidence does not appear materially to be weakened by vague expressions such as that the automobile was "going like an express train" or that it went "very fast" the rate there after being "estimated as being twenty-five or thirty miles an hour". (*Ame. Jul. Case-law.*) When the speed of a motor vehicle is described by such general expressions as that it went a good deal faster than a horse trot", it went "pretty fast",—it has been decided that excessive speed is not proved, especially where the machine in question actually ran but little more than its length after striking a pedestrian. (*Ibid.*)

SEC. 116.—"This is at present only an offence against provincial rules with the penalty specified in sec. 16 of the Indian

(3) No person shall be convicted of an offence punishable under sub-section (1) solely on the evidence of one witness to the effect that in the opinion of the witness such person was driving at a speed which was unlawful, unless that opinion is shown to be based on an estimate obtained by the use of some mechanical timing device.

(4) The publication of a time table under which, or the giving of any direction that, any journey or part of a journey is to be completed within a specified time shall, if in the opinion of the Court it is not practicable in the circumstances of the case for that journey or part of a journey to be completed in the specified time without infringing the provisions of section 71, be *prima facie* evidence that the person who published the time table or gave the direction has committed an offence punishable under sub-section (2).

Driving recklessly or dangerously.

116. (*Cf.* Eng. Act, section 15.) Whoever drives a motor vehicle at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case including the nature, condition and use of the place where the vehicle is driven and the amount of traffic which actually is at the

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Motor Vehicles Act, 1914, and possible suspension of the licence under sec. 18. The offence is one which should be penalised heavily and be accompanied by disqualification (suspension of licence). This has been provided for in sec. 17 (5). It has also been made cognisable, but the proviso has been added to sec. 128 to prevent undue detention of an accused person in custody". (Statement of Objects and Reasons.)

SELECT COMMITTEE REPORT.—"We have extended the scope of the clause by omitting the words 'in a public place'. We consider that dangerous driving anywhere should be punishable. We have also omitted the word 'recklessly', with the intention of confining the clause to the clear case where danger is or is likely to be caused to the public. We have provided here and in other offences where an enhanced penalty is provided for a subsequent conviction that that conviction must be within three years of a previous conviction".

RECKLESS DRIVING—FACTS TO BE PROVED. —Sec. 5 of the old Motor Vehicles Act, 1914, has not specified the definition of reckless and negligent driving. Where there is nothing to show that at the time complained of, the traffic on the road was such that the speed at which the accused was driving the motor vehicle can be considered to be either negligent or reckless, a conviction cannot be sustained. 173 I.C. 860 =39 Cr.L.J. 382=A.I.R. 1938 Pat. 268.

OFFENCE UNDER SEC. 5 OF THE ACT OF 1914 AND OFFENCE UNDER SEC. 279, I. P. CODE—DISTINCTION BETWEEN.—*Per* Baguley, J.—Sec. 5, Motor Vehicles Act (1914), deals with reckless driving dangerous to the public having regard to all the circumstances of the case. Sec. 279, Penal Code, refers to driving in a manner so rash or negligent as to endanger human life or to be likely to cause hurt or injury to any other person. The difference between these two sections seems to be this. A man may drive a motor vehicle in a manner dangerous to the public, even if there is no person actually on the spot to be endangered, the public being regarded as some kind of an all-pervading presence which may reasonably be expected to be at the place at the time. For instance, if a man drives out of a side-road and dashes across a main road into another side-road at sixty miles an hour he may not endanger any person at all because there happened at the moment to be nobody there to be endangered, but he is certainly driving in a manner 'dangerous to the public' having regard to the amount of traffic which may reasonably be expected to be there. Still his offence cannot come under sec. 279, Penal Code, because there is not "any other person" who is likely to be hurt. For an offence under sec. 279, Penal Code, there must definitely be some other person to be endangered. So, if in driving across the main road in this manner some passer-by only saves his life by a wild leap to safety, then the driver of the vehicle is driving in a manner so rash and negligent as at least to be likely to cause hurt to that person who only saved his life by his agility, and an offence under sec. 279, Penal Code, has been committed. 175 I.C. 639=39 Cr.L.J. 642=A.I.R. 1938 Rang. 161.

ARREST OF OFFENDER—LEGALITY.—For the commission of an offence under the Motor Vehicles Act a person cannot be arrested. The power of arrest given under sec. 57, Cr. P. Code, will also be of no avail unless and until such offender fails to give his correct name and address. A. I.R. 1938 Rang. 161.

SECS. 116 AND 117: RECKLESS AND DANGEROUS DRIVING — ILLUSTRATIVE CASES UNDER THE OLD ACT.—Driving an automobile along a thickly populated city at a *speed in excess of that permitted by law* is usually sufficient evidence of negligence when the action is against the operator of an automobile for damages sustained in a collision with the machine. While running at night an automobile *should carry proper lights*, so that others may see it, and to enable its operator, in connection with such

time or which might reasonably be expected to be in the place, shall be punishable on a first conviction for the offence with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, and for a subsequent offence if committed within three years of the commission of a previous similar offence with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

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other means of illumination as may be available, to see far enough ahead to do whatever ordinary care may demand in order to avoid a collision with any other vehicle. The statutes require the display of lights on automobiles. Running at night without proper lights, in violation of the statutory requirements, is evidence of negligence, and such disregard of the safety of others may, independently of the provisions of any statute, amount to negligence at common law. Since it is the duty of the operator of an automobile to give reasonable warning of his approach, his silent approach behind a horse-drawn vehicle and *failure to sound his horn* may amount to negligence, but the blowing of a horn or whistle, or the ringing of a bell or gong without any attempt to moderate the speed, will not be a sufficient compliance with the duty of care imposed upon the operators of automobiles if the circumstances demand that the speed should be slackened or the machine stopped, and if such a course is practicable. Noises which are incident to the normal operation of motor vehicles are not themselves evidence of negligence, and if a horse is *frightened by ordinary noises* such as are usually made when an automobile is propelled at the legal speed, there ordinarily can be no recovery for injuries which may result. Apart from the provisions of any statute it seems to be the duty of the operator of an automobile, when he begins to "crank up" a noisy machine, to keep a *watchful eye on horses standing near by*, and if they manifest symptoms of fright, to stop at once until they can be removed. Automobiles, in the absence of any special statutory directions are governed by the same *rules of the road* as apply to the management of other vehicles using the highway. By these rules, it is the duty of a traveller to avoid collision with those whom he meets and to yield way enough for others to pass in safety. A driver *disregarding the rules of the road* and choosing to go on the wrong side of the street on account of an obstruction on the other side, is bound to exercise greater care to avoid accident than is normally required of one proceeding on the right side of the street. The mere fact of *deviating from the line of traffic* does not necessarily amount to rashly or negligently or recklessly or dangerously driving. 28 Bom L.R. 1066=97 I.C. 973=1926 B. 564. *See also* 173 I.C. 860=1938 P. 268. The law or *usage of the road* is not the criterion of negligence. The test is whether the accident could have been avoided by the accused if he had exercised that care and diligence which ordinarily cautious persons using the road in similar circumstances would have done. 30 N.L.R. 317=148 I.C. 341=35 Cr.L.J. 696=1934 N. 65. The person in charge of the car, though he may not be the owner, to whose orders the driver is in fact submitting at the time of the accident, or immediately thereafter is amenable to this section. 108 I.C. 230=26 A.L.J. 331=29 Cr.L.J. 357=1928 A. 261. Where there was no evidence to show that the driver of a motor vehicle knew that an accident had as a matter of fact taken place or had reason to so believe, his failure to stop his vehicle cannot amount to an offence. 1938 P. 268. Where *two automobiles are travelling in the same direction*, the one ahead has the superior right and may maintain its position in the centre of the highway, if there is sufficient space on its left to enable the machine approaching from its rear safely and conveniently to pass. If there is not room for passage then it must, upon request or equivalent notice, if practicable and safe, turn aside so as to leave sufficient room, and if at the moment this is not possible, it becomes the duty of the rear car to wait until a place is reached where it may be done. Two cars were going under 15 miles per hour along the road from South to North, and while another car came in the opposite direction from North to South, *G's* baby car, passed the two cars going towards the North. *G* was going about 25 miles per hour. The road was at the place 40 to 50 feet wide and would give ample room for 4 cars to pass abreast with any amount of room to spare. There was no traffic of any kind on the road at the time except the 4 cars. *G* was not shown to be over the wrong side of the road. *Held*, that there would be ample room for a very small car like that of *G* to pass without trenching on the right hand side of the road. Even if he did go slightly over the middle line the car coming in the opposite direction had 20 feet in which to swing to its left. *G's* driving could not therefore be assumed to be reckless or negligent; an estimate speed of 25 mile per hour could not be regarded as anything out of the ordinary, on that road. 115 I.C. 900=30 Cr.L.J. 539=1929 R. 14. A motor driver is bound not to drive in a manner which would be dangerous to the public. In determining whether the manner of driving was dangerous to the public or not regard must be had to all the circumstances of the case and the amount of traffic which actually was at the time in the place. 97 I.C. 973=28 Bom L.R. 1066=27 Cr.L.J. 1213=1926 Bom. 564. Where the accused saw another car approaching him on its pro-

117. Whoever while driving or attempting to drive a motor vehicle is under the influence of drink or a drug to such an extent as to be incapable of exercising proper control over the vehicle, shall be punishable for a first offence with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both, and for a subsequent offence if committed within three years of the commission of a previous similar offence with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

Driving while under the influence of drink or drugs.

118. Whoever drives a motor vehicle in any public place when he is to his knowledge suffering from any disease or disability calculated to cause his driving of the vehicle to be a source of danger to the public, shall be punishable for a first offence with fine which may extend to two hundred rupees and for a second or subsequent offence with fine which may extend to five hundred rupees.

Driving when mentally or physically unfit to drive.

119. Whoever abets the commission of an offence under section 116, 117 or 118, shall be punishable with the punishment provided for the offence.

Punishment for abetment of certain offe

120. Whoever without the written consent of the Provincial Government

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per side of the road and where he ought to have drawn in behind the water-cart passing in the same direction as the accused and not have attempted to force his way past it in front of the coming car, *held*, that such conduct on the part of the accused came within the purview of old sec. 5 and that the conviction was proper. 23 A.L.J. 790=26 Cr.L.J. 1254=1925 A. 798. Since an automobile is not inherently a dangerous machine, in the absence of statute the law does not impose on the owner or operator of an automobile the duty of chaining it to a post or otherwise fastening it so as to make it impossible for persons tampering with the machine to start it; but statutes and rules generally provide that every motor vehicle shall be equipped with a lock, key or other device to prevent it from being set in motion by unauthorised persons while standing unattended in any highway, park or other public place. Apart from the requiremet of rules of this character it is not negligence to *leave an automobile unattended* for a reasonable time in the street, after disconnecting the power from the batteries and setting the brakes.

ACTS UNDER STRESS OF SUDDEN DANGER.—The general principles which require one to act in such a manner as to avoid injury to himself or others, and to take those steps to avoid accidents which would be taken by a reasnoably prudent person under like circumstances, are not enforced in all their rigour in situations of sudden danger This is in recognition of the fallibility of human nature in sudden crises and the greater probability of errors of judgment occurring where a danger is imminent, and where a person is compelled instantly, without delaying for deliberation, to adopt some course of conduct to avoid injury. The frequent use of automobiles on public highways continually gives rise to situations which involve sudden danger, where one or more persons, without an instant's delay, must determine on and adopt a mode of proceeding which will minimize the chance of collision and injury to themselves and others. Frequently a pedestrian may be compelled to act quickly when he suddenly sees an automobile approaching, and if he decides that he has sufficient time to escape in a given direction he will not necessarily be held to be guilty of contributory negligence, although his judgment is shown to have been erroneous and in consequence he is run down and injured. But where a pedestrian delibertely attempts to cross in front of an approaching car, knowing that his chances of getting over to the other side in safety are about evenly balanced he may be charged with having assumed the risk of injury and may be guilty of contributory negligence. However, the driver of an automobile may be found to be negligent in turning from side to side, instead of stopping the machine to avoid hitting a pedestrian, who, warned by a signal of the approach of the car, has become confused and is dodging back and forth to avoid being hit, and the pedestrian will not necessarily be charged with contributory negligence (*Ame. Rul. Case-law.*)

SECS. 117 AND 118.—"It is obviously necessary that persons who become temporarily unfit, *e.g.*, through a broken arm, extreme fatigue or illness should be barred from driving, and in case of accident from pleading temporary unfitness as the cause of the accident". (Statement of Objects and Reasons.)

SELECT COMMITTEE REPORT.—"We have omitted the words, 'or likely to suffer', and the reference to 'mental disability'. They are dangerously wide and difficult of reasonable interpretation".

SEC. 120: USE OF HIGHWAY FOR RACES AND SPEED CONTESTS.—Highways are constructed for public travel, and their exclu-

Racing and trials of speed.

permits or takes part in a race or trial of speed between motor vehicles in any public place shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to three hundred rupees, or with both.

Using vehicle in unsafe condition.

121. Any person who drives or causes or allows to be driven in any public place a motor vehicle or trailer while the vehicle or trailer has any defect, which such person knows of or could have discovered by the exercise of ordinary care and which is calculated to render the driving of the vehicle a source of danger to persons and vehicles using such place, shall be punishable with fine which may extend to two hundred and fifty rupees or, if as a result of such defect an accident is caused causing bodily injury or damage to property, with fine which may extend to five hundred rupees.

Sale of vehicle in or alteration of vehicle to a condition contravening this Act.

122. Whoever, being an importer of or dealer in motor vehicles, sells or delivers or offers to sell or deliver a motor vehicle or trailer in such condition, that the use thereof in a public place would be in contravention of Chapter V or any rule made thereunder or alters the motor vehicle or trailer so as to render its condition such that its use in a public place would be in contravention of Chapter V or any rule made thereunder shall be punishable with fine which may extend to two hundred rupees:

Provided that no person shall be convicted under this section if he proves that he had reasonable cause to believe that the vehicle would not be used in a public place until it had been put into a condition in which it might lawfully be so used.

Using vehicle without permit.

123. (*Cf.* Eng. Act, section 49.) (1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be used or lets out a motor vehicle for use in contravention of the provisions of sub-section (1) of section 42 shall be punishable for a first offence with fine which may extend to five hundred rupees, and for a subsequent offence if committed within three years of the commission of a previous similar offence with a fine which shall not be less than one hundred rupees and may extend to one thousand rupees.

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sive use cannot be lawfully granted, even temporarily, by a municipality to any individual or association for the purpose of holding races and speed contests. Such a use of the roads and streets of a community amounts to a nuisance at common law, and the operation on them of motor vehicles travelling at dangerous speeds is illegal, and constitutes gross negligence as to any person who may be injured. Such a use of the public highways cannot be justified by the passage of an ordinance by the local authorities, and where a state law has fixed a maximum rate of speed for motor vehicles which is necessarily exceeded in the races, the ordinance itself is wholly void, and may operate to make the municipality a participator in the violation of the law, so that it may become liable in damages for injuries which persons may sustain during the races. (*Ame. Rul. Case-law.*)

SEC. 121.—This provision usually appears in provincial rules. (Statement of Objects and Reasons.)

SELCT COMMITTEE REPORT.—The penalty has been reduced, but we have added a provision for an enhanced penalty where bodily harm or damage to property actually occurs as a result of the offence.

SEC. 122: SELECT COMMITTEE REPORT.—"We have excluded from the scope of the clause the causal private seller of a vehicle and confined it to importers and dealers only."

SEC. 123: SELECT COMMITTEE REPORT.—"We have reduced the penalty for a first offence, and made a subsequent offence punishable with enhanced penalty only if committed within three years of a previous one. The more definite word 'drives' has been substituted for 'uses' in the first line."

As to what constitutes the use of the car or permitting the use of the car, *see* 55 L.W. 754=1943 Mad. 41=(1942) 2 M. L.J. 577.

If a lorry is owned by two or more persons, each of them is the owner of the lorry and each of them would be liable under the strict wording of sec 123 (1) of the Act for an illegal act. But it is undesirable to ex-

(2) Nothing in this section shall apply to the use of a motor vehicle in an emergency for the conveyance of persons suffering from sickness or injury or for the transport of materials for repair or of food or materials to relieve distress or of medical supplies for a like purpose:

Provided that the person using the vehicle reports such use to the Regional Transport Authority within seven days.

Driving vehicle exceeding permissible weight.

124. (*Cf.* Eng. Act, section 3.) Whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of section 72 or of the conditions of any permit issued thereunder, or in contravention of any prohibition or restriction imposed under section 74 shall be punishable for a first offence with fine which may extend to one hundred rupees, and for a second or subsequent offence with fine which may extend to five hundred rupees.

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act a fine from all the owners separately. 44 P.L.R. 101=1942 Lah. 125.

The driving of a transport vehicle on the public road without a licence or permit authorising the use of that vehicle in that place contravenes sec. 42 (1) of the Act; and whoever drives such a vehicle in a public place without such a permit is punishable under sec. 123 (1) of the Act. That the permit is to be obtained by the owner makes no difference and a driver cannot escape liability for such driving on that ground. 54 L.W. 480=1941 Mad. 845=(1941) 2 M.L.J. 349.

The sanctioned carrying capacity of a vehicle is determined under the rules framed under sec. 68 of the Act and the responsibility of exceeding it exclusively belongs to the conductor; under Rr. 218 and 219, this duty devolves on the driver only in the absence of the conductor. In the case of a driver of a vehicle who holds a permit in Form P. S. P., which contains no express condition for the use of the vehicle that its seating capacity shall not be exceeded, overloading is not a breach of the conditions of the permit punishable under sec. 123 (1) read with sec. 42 (1) of the Act, and the driver cannot therefore be convicted when there is a conductor on the vehicle. 56 L.W. 72=(1943) M.W.N. 60 (2)=1943 Mad. 283 =(1943) 1 M.L.J. 130. *See also* 55 L.W. 216=1942 M.W.N. 223=1941 M. 845=(1941) 2 M.L.J. 349.

Sec. 42 (1) applies only to the owners of transport vehicles but sec. 123 applies to any one who drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of sec. 42 (1). Sec. 123 is clearly much wider than sec. 42 (1) and a person who is responsible for charging increased fares commits an offence under sec. 123 (1), even though he is not the owner of the vehicle in question. I.L.R. (1944) Nag. 173=1944 N.L.J. 29=1944 Nag. 89. *See also* (1945) 2 M.L.J. 68. Using motor car for carrying newspapers from office to Railway station without permit under sec. 42 (1) is offence. 56 L.W. 320=1945 Mad. 440=(1945) 2 M.L.J. 68.

SEC. 124: SELECT COMMITTEE REPORT.—"The alterations made are partly consequential on the changes made by us in sec. 72. A reference to sec 74 has been inserted."

USE OF BRIDGES BY HEAVY MOTOR VEHICLES.—As a general rule, bridges are constructed for ordinary use in an ordinary manner, and not for an unusual or extraordinary use, either by crossing at great speed, or by the passing of vehicles of unusual weight, and the duty imposed on public authorities to keep the local bridges in repair is properly performed by keeping a bridge in a reasonably safe condition for travel by the ordinary methods in vogue in the neighbourhood, and by the people who commonly use the bridge. (*Ame. Rule, Case-law*). A person undertaking to use or travel upon a bridge in an unusual or extraordinary manner, or with a traction engine or a very heavy vehicle not suitable or adapted for the public use in the transaction of usual and ordinary affairs of business, takes every possible risk of loss and damage upon himself; and he can have no remedy for injuries sustained, although they are the direct result of defects and imperfections for which there would be a liability in case of injury to individuals in the lawful and proper use of the highway. (*Ibid.*, 1171.) The proper test is not whether a traction engine or motor vehicle was of greater weight, and more dangerous, than ordinary wagons and teams, but whether the bridge was at the time being put to an unusual use and method of travel involving extraordinary peril, or whether the circumstances were such that a person of ordinary prudence, in the exercise of ordinary care in the situation, would reasonably apprehend and anticipate that it would be dangerous to go in such manner upon the bridge. Surely, no man would be justified in driving a heavily laden motor bus over a temporary crude bridge on a small stream made by villagers for the easy passage of workmen engaged in normal agricultural operations.

RIGHT TO USE STEAM ROLLERS ON HIGHWAYS.—A municipality or a contractor acting under its authority may lawfully use steam rollers or other machines operated by steam, for the purpose of constructing or repairing streets and roads. Certain noises normally accompany the operation of a steam roller, and these do not of themselves constitute a nuisance on negligence, and,

Driving uninsured

125. Whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of section 94 shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Taking vehicle without authority.

126. Whoever takes and drives away any motor vehicle without having either the consent of the owner thereof or other lawful authority shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both:

Provided that no accused person shall be convicted under this section if the Court is satisfied that the accused acted in the reasonable belief that he had lawful authority or in the reasonable belief that the owner would in the circumstances of the case have given his consent if he had been asked therefor.

Unauthorised interference with vehicle.

127. Whoever otherwise than with lawful authority or reasonable excuse enters or mounts any stationary motor vehicle or tampers with the brake or any part of the mechanism of a motor vehicle shall be punishable with fine which may extend to one hundred rupees.

Power of arrest without warrant.

128. (1) A police officer in uniform may arrest without warrant any person who commits in his view an offence punishable under section 116 or section 117 or section 126:

Provided that any person so arrested in connection with an offence punishable under section 117 shall be subjected to a medical examination by a registered medical practitioner within two hours of his arrest or shall then be released from custody.

(2) A police officer in uniform may arrest without warrant—

(*a*) any person who being required under the provisions of this Act to give his name and address refuses to do so, or gives a name or address which the police officer has reason to believe to be false, or

(*b*) any person concerned in an offence under this Act or reasonably suspected to have been so concerned, if the police officer has reason to believe that he will abscond or otherwise avoid the service of a summons.

(3) A police officer arresting without warrant the driver of a motor vehicle shall, if the circumstances so require, take or cause to be taken any steps he may consider proper for the temporary disposal of the vehicle.

129. (1) Any police officer authorised in this behalf or other person

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generally, there can be no recovery against a municipality for frightening a horse to death by negligently starting a roller and suddenly blowing off steam and smoke, since a claim for death from fright is generally considered as being too speculative and too remote to furnish the basis of an action for damages in the absence of any direct injury. (2 *Ame. Rule, Case-law,* 1170). However, if the engineer of a steam roller sees the initial signs of fright and uneasiness in a horse, and, giving no heed to them, continues the blowing of the whistle and the original cause of the fright until the horse breaks entirely away from control, liability for consequential injuries may ensue although the noises were usual and normal. (*Ibid.*)

SEC. 128 (2) has been introduced as much difficulty in encountered in getting offenders to comply with the summons served on them. (Statement of Objects and Reasons.)

SEC. 128 (1): SELECT COMMITTEE REPORT. —"We have confined the power of arrest without warrant given by this sub-clause to cases in which a police officer sees an offence committed. Sub-cl. (2) has been omitted in consequence of the omission of clause 115. In sub-cl. (3) we have removed the power to arrest an offender who gives an address outside British India, and confined the power of arrest to cases in which there is an apprehension that the offender will not be available for trial."

Before sub-sec. (2) of sec. 128 applies, it is the duty of the prosecution to establish that the offending driver was required under the provisions of the Act to give his name and address. 197 I.C. 136=1941 Lah. 422.

Power of police officer to impound document.

authorised in this behalf by the Provincial Government may, if he has reason to believe that any identification mark carried on a motor vehicle or any licence, permit, certificate of registration, certificate of insurance or other document produced to him by the driver or person in charge of a motor vehicle is a false document within the meaning of section 464 of the Indian Penal Code, seize the mark or document and call upon the drriver or owner of the vehicle to account for his possession of or the presence in the vehicle of such mark or document.

(2) Any police officer authorised in this behalf by the Provincial Government may, if he has reason to believe that the driver of a motor vehicle who is charged with any offence under this Act may abscond or otherwise avoid the service of a summons, seize any licence held by such driver and forward it to the Court taking cognizance of the offence.

(3) A police officer seizing a licence under sub-section (2) shall give to the person surrendering the licence a temporary acknowledgment therefor and such acknowledgment shall authorise the holder to drive until the licence has been returned to him or the Court has otherwise ordered.

[1][129-A. Any police officer authorized in this behalf or other person authorized in this behalf by the Provincial Government may, if he has reason to believe that a motor vehicle has been or is being used in contravention of the provisions of sub-section (1) of section 22 or without the permit required by sub-section (1) of section 42 or in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, seize and detain the vehicle, and for this purpose take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicle.]

Power to detain vehicles used without certificate of registration or permit.

130. (1) A Court taking cognizance of an offence under this Act may, unless the offence is an offence specified in Part A of the Fifth Schedule, state upon the summons to be served on the accused person that he—

Summary disposal of cases.

(*a*) may appear by pleader and not in person, or

(*b*) may by a specified date prior to the hearing of the charge plead guilty to the charge by registered letter and remit to the Court such sum not exceeding twenty-five rupees as the Court may specify.

(2) Where the offence dealt with in accordance with sub-section (1) is an offence specified in Part B .the Fifth Schedule, the accused person shall, if he pleads guilty to the charge, forward his licence to the Court with the letter containing his plea in order that the conviction may be endorsed on the licence.

(3) Where an accused person pleads guilty and remits the sum specified and has complied with the provisions of sub-section (2), no further proceedings in respect of the offence shall be taken against him, nor shall he be liable to be disqualified for holding or obtaining a licence by reason of his having pleaded guilty.

Restriction on conviction.

131. No person prosecuted for an offence punishable under section 115 or section 116 shall be convicted unless—

LEG. REF.

[1] Inserted by Act XX of 1942.

SEC. 130.—This provides for speedy action in technical prosecutions. (Statement of Objects and Reasons.)

REPORT OF SELECT COMMITTEE.—"The new sub-clause inserted as sub-clause (2) is intended to secure the presentation of the driving licence to enable the Court to record the endorsement which is required by the Fifth Schedule and cl. 19 (2), althoughgh the convicted person is not himself required to attend Court."

SEC. 131.—"This provision is reasonable in the interest of the motorist, to prevent

(*a*) he was warned at the time the offence was committed that the question of prosecuting him would be taken into consideration, or

(*b*) within fourteen days from the commission of the offence, a notice specifying the nature of the offence and the time and place where it is alleged to have been committed was served on or sent by registered post to him or the person registered as the owner of the vehicle at the time of the commission of the offence, or

(*c*) within twenty-eight days of the commission of the offence, a summons for the offence was served on him:

Provided that nothing in this section shall apply where the Court is satisfied that—

(*a*) the failure to serve the notice or summons referred to in this subsection was due to the fact that neither the name and address of the accused nor the name and address of the registered owner of the vehicle could with reasonable diligence have been ascertained in time, or

(*b*) such failure was brought about by the conduct of the accused.

Jurisdiction of Courts.

132. No Court inferior to that of a Presidency Magistrate or a Magistrate of the second class shall try any offence punishable under this Act or any rule made thereunder.

CHAPTER X.

MISCELLANEOUS.

Publication of and commencement of rules.

133. (1) Every power to make rules given by this Act is subject to the condition of the rules being made after previous publication.

(2) All rules made under this Act shall be published in the official Gazette and shall, unless some later date is appointed, come into force on the date of such publication.

(3) All rules made under this Act by the Central Government or by any Provincial Government shall be laid for not less than fourteen days before the Central or Provincial Legislature, as the case may be, as soon as possible after they are made, and shall be subject to such modifications as the Legislature may make during the session in which they are so laid.

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him from being charged, after an unduly lenghty period, in connection with an alleged offence the circumstances of which may no longer be easily remembered." (Statement of Objects and Reasons.)

REPORT OF SELECT COMMITTEE.—"We have omitted the sub-clause which provided for a presumption that the provisions of the clause had been complied with until the contrary was proved."

SEC. 133 (3): SELECT COMMITTEE REPORT.—"We have added a sub-clause requiring rules made under the Act to be submitted to the Legislature concerned after they are made and have given to the Legislature power to modify them." *See* Notes under sec. 112.

SEC. 133: CASES UNDER THE OLD ACT.—*See* 47 I.C. 444=27 P.R. (Cr.) 1918; 53 I.C. 825=10 L.W. 399. In respect of a motor cycle, if a breach of R. 40 of the rules framed under the Act is alleged, the cycle should, if possible, be examined by a police officer with some knowledge of motor cycles, to see whether the silencer was defective. Irrespective of the fact whether the rider is the owner of the motor cycle or not, it is an offence to ride a motor vehicle without a silencer. 1939 A.M.L.J. 94. Before the new rules under the Motor Vehicles Act, 1939, came into operation, the old rules must be read subject to the provisions of the Act of 1939 after that Act has come into force. Under Rr. 4 (4) and 6 (2) of the Motor Vehicles Rules of 1930 read in the light of ss. 31 and 34 of the Act of 1939, a motor vehicle must be registered afresh when its ownership is transferred, unless the vehicle in question has been destroyed or has become permanently incapable of use. The mere fact that it was not in use at the time when the ownership changed in not enough. 45 C.W.N. 111. Car carrying mails and also passengers is not exempt from rules as to licence and number of passengers to be carried in it. 29 Bom.L.R. 191=1927 Bom. 150. Bombay R. 6 (1) (*b*) and Schedule D —*Ultra vires*—Time limit of the certificate. 46 B. 646=65 I.C. 633=24 Bom.L.R. 50=1922 B. 42. Observations on the vagueness of the rules framed and the necessity for making them clear, and suggestions as to the amendment of the rules. *See* 98 I.C. 847 =1926 Mad. 1084=51 M.L.J. 446. *See also* 51 Mad. 504=1928 M. 364=55 M.L.J. 320. As to evidence necessary in prosecution under the Act and rules, *see* 7 Pat.L.T. 542=97 I.C. 48=1926 Pat. 446. Rule 16

(a)—Non-lighting of car—Absent owner. 26 M.L.T. 331=53 I.C. 825. *See also* 1922 Nag. 71. Sec. 16, Motor Vehicles Act (1914), has not any necessary ingredient of rashness or negligence in it and R. 27, Motor Act Rules, merely lays down the rule of the road, breach of which need not necessarily involve rashness or negligence. Consequently where rashness or negligence enters into the offence, the conviction under sec. 279, I. P. Code, is not only proper but more appropriate. 136 I.C. 571=1932 A. 69. The fact that an unlicensed person was charged with driving a motor car without a licence and pleaded guilty to that charge is not sufficient to justify a Court in convicting the motor driver of having allowed him to drive, where he was not specifically charged with that offence under Motor Vehicles Act. 119 I.C. 536=30 Cr.L.J. 1077=1930 Sind 64. Where the owner of a motor car was sentenced to a fine on his pleader admitting him to be "guilty" for not having given information as to the death of a person by motor accident; *held*, (1) that there was no such offence as that for which the owner was convicted either under sec. 16 (old Act) or under any other provision of the Act; (2) that the summons issued by the Magistrate did not contain the necessary particulars and was invalid in law and consequently need not have been obeyed; (3) that the admission as to guilt by the pleader did not constitute an estoppel or admission preventing the person proceeded against from impugning the validity of the proceedings; (4) that the practice of persons summoned absenting themselves and pleading "guilty" deserved condemnation, and would really go in aggravation of an offence. Essentials of a valid summons pointed out. 26 A.L.J. 331=108 I.C. 230=1928 A. 261. Omission in a summons to specify the sections of the Act, or rules made thereunder for breach of which a person was being prosecuted is a serious defect. 1928 A. 492 =50 A. 876=111 I.C. 127=29 Cr.L.J. 799. (Case-law discussed.) *See also* 13 Luck. 437 =1937 O.W.N. 815=170 I.C. 476=1937 Oudh 444; 1937 O.W.N. 283=13 Luck. 126 =166 I.C. 978. Sec. 16 (old Act) is a penal clause, and it is the duty of a Court issuing a summons to specify in it what particular rules the accused had contravened. The procedure of issuing summonses by Magistrates purporting to charge motorists, owners or drivers of offences under the Act, without giving the slightest particulars of the offence charged, is not justified by law. A summons not in the prescribed form may be disregarded, and proceedings thereon will be invalid. 150 I.C. 941=35 Cr.L.J. 1161 (2) =11 O.W.N. 828=1934 Oudh 370 (2). Where the accused was hauled before the Court on a summons under sec. 16 (old Act) in which he was not given notice of the charge, and was tried, convicted and sentenced in one day without an opportunity being given to him of meeting the prosecution case after the close of the prosecution evidence, the conviction and sentence are liable to be set aside in revision. I.L.R. (1937) All. 130=165 I.C. 716 (1)=1936 A.W.R. 874=1936 A.L.J. 1011=1936 A. 761. The "B" permit granted to the driver is only valid within the district of the Superintendent of Police and if it is driven into another district, it must be countersigned by the Superintendent of the latter district. 151 I.C. 727=35 Cr.L.J. 1400=36 Bom.L. R. 366=1934 B. 201. As to power of municipalities to tax motor vehicles plying for hire, *see* 88 I.C. 1045=41 C.L.J. 566=26 Cr.L.J. 1269=1925 C. 1026. Suspension of a permit for an offence of overloading a motor cannot be permitted. 110 I.C. 803 =29 Cr.L.J. 771=10 P.L.T. 429=1929 P. 64. Taking petrol charges from a person who uses the accused's motor lorry does not amount to hiring. The mere payment to the accused of the cost of petrol used while his lorry is at the disposal of the person so paying such charges is not payment for the use of the lorry. It is equivalent to mere replacement in the petrol tank of the petrol used. The accused therefore cannot be convicted of an offence of plying his lorry for hire, though he had no G Permit. 41 L.W. 498=1935 M. 577=68 M.L.J. 481. *See also* I.L.R. (1939) Kar. 391=A.I.R. 1939 Sind 85; 1938 Mad. 233=46 L.W. 959=1938 M. W.N. 30. "Plying for hire" means the act of soliciting custom. Where a person who owned a motor lorry purchased goods at one place and after transporting them to another place sold the goods there to their customers but it did not appear that he solicited custom at any time, the owner of the lorry was not liable to be convicted for breach of the Punjab Motor Vehicles Plying for Hire Rules. 132 I.C. 702=1931 L. 569. *See also* 1939 Sind 85. The expression "to ply for hire" ordinarily means to exhibit a vehicle in such a way as to invite those who may desire to do so to hire it or to travel in it on payment of the usual fares, and also to offer its use on payment to any member of the public, thereby soliciting custom. The owner of a bus driving it on a private errand cannot therefore be said to have been using it as a motor vehicle plying for hire. 32 Bom.L.R. 337=1930 B. 161; 116 I.C. 885= 30 Cr.L.J. 700=10 L. 505=1929 L. 422. The owner of a lorry plying for hire without a renewal of registration or permit and without any directions painted on the body was charged and convicted under sec. 16, Motor Vehicles Act. The rules alleged to have been contravened were rules 78, 79 and 81, U. P. Motor Rules, and sec. 8 of the Motor Vehicles Act. The judgment did not contain a discussion of the Rules, and it appeared from the judgment that the Magistrate had got confused with R. 16 and sec. 16 of the Act, and that the case proceeded as though the accused was being charged with having contravened R. 16 of the U. P. Motor Rules. The summons merely informed the accused that he had to appear and answer to a charge under sec. 16 of the Act. *Held*, the proceedings were invalid and must be set aside. 150 I.C. 941 =35 Cr.L.J. 1161 (2)=11 O.W.N. 828= 1934 Oudh 370. Driver stopping motor bus

in front of a hotel to pick up pasengers from there, is "loitering" on the road and makes the driver guilty of an offence under R. 220 of the Rules. (1945) 2 M.L.J. 574=1946 M. 175.

BOMBAY RULES.—R. 21 of the Bombay Motor Vehicles Rules framed by the Local Government under sec. 11 of the Motor Vehicles Act (1914) is not *ultra vires* of the Local Government. A notification issued by a District Magistrate under R. 21, prohibiting the driving on certain roads of the District of, *inter alia*, any motor vehicle, public or private, the maximum weight of goods in which exceeds one and a half tons is a valid notification and a breach of it amounts to an offence. I.L.R. (1939) B. 19. 40 Bom.L.R. 1099=1938 Bom. 506.

BURMA RULES.—Burma Motor Vehicles Rules—R. 24 (*b*)—Conductor, if in charge of the bus—Over loading—Who is to be charged. *See* 1942 Rang. 51 (2).

CALCUTTA RULES.—Absent master is not criminally liable for fast driving where he had cautioned the driver not to exceed the regulation speed and to drive with due care and caution. 51 C. 948=28 C.W.N. 854=25 Cr.L.J. 1209=1924 C. 985. *See also* 25 C.W.N. 21=1921 C. 107. Before the new rules under the Motor Vehicles Act, 1939, came into into operation, the old rules must be read subject to the provisions of the Act of 1939 after that Act has come into force. Under Rr. 4 (4) and 6 (2) of the Motor Vehicles Rules of 1930 read in the light of secs. 31 and 34 of the Act of 1939, a Motor Vehicle must be registered afresh when its ownership is transferred, unless the Vehicle in question has been destroyed or has become permanently incapable of use. The mere fact that it was not in use at the time when the ownership changed is not enough. 45 C. W. 111.

C. P. RULES.—The rules framed by the Governor-in-Council, Central Provinces, under the Motor Vehicles Act, do not *pro prio vigore* apply to the subject of any State. They become applicable by virtue of a reciprocity arrangement concluded in 1930 with the Central Provinces States. 1939 N.L.J. 355.

(C. P. AND BERAR, R. 70—STANDARD RATE OF FARES — VARIATION — SANCTION.—A variation in the standard rate of fares originally quoted and accepted by the R.T.A. requiries the sanction of the R.T.A. A variation of the rate is a variation of a condition under R. 70 of the C. P. and Berar Motor Vehicles Rules, 1940. A refusal to sanction an application under R. 70, Motor Vehicles Rules, for a subsequent variation of conditions of a permit does not amount to such imposition of conditions of a permit as would afford grounds for an appeal. 1943 N.L.J. 411.

MADRAS RULES.—Though R. 30 (*a*) may be primarily intended to apply to motor vehicles which are used for the express purpose of letting for hire, yet even if a motor vehicle is used only once for such a purpose, then on that one occasion it is none the less let for hire even though the owner does not ordinarily use his lorry for the purposes of reward. The not taking out of a 'G' permit in such a case constitutes an offence under sec. 16 of the old Act. 46 L.W. 959 =1938 M.W.N. 30=1938 M. 233. *See also* 1939 Sind 85. If a driver of a motor bus stops the bus in front of a hotel so that he may pick up some passengers from the hotel, it would amount to "loitering" on the road, and make the driver guilty of offence under R. 220 of the Motor Vehicles Rules. (1945) 2 M.L.J. 574. In a prosecution of the owner of a motor lorry under sec. 16 of the old Act for overloading the lorry in contravention of R. 15-A, of the Motor Vehicle Rules the burden is on the prosecution to show that the accused knew that the lorry was overloaded. When the lorry in question with the load is shown to be proceeding from a place far away from the place where the owner of the lorry has his business, it cannot be held that the accused knew of the overloading. 48 L.W. 319=1938 M. 998=(1938) 2 M.L.J. 582. *See also* 1938 Mad. 743=(1938) 1 M.L.J. 800.

The word "conductor" in R. 83 of the Motor Vehicles Rules must be taken as used in its ordinary sense and the meaning of Rr. 78 and 83 read together is that no vehicle authorized to carry more than twelve passengers shall be driven unless there is carried on it an attendant, and that such an attendant where the vehicle is a stage carriage, must have a licence according to the provisions of R. 83. Hence where there is no conductor, or attendant with the necessary licence in such a carriage the owner would be guilty of contravention of those rules. 1946 A.L.J. 311=1946 A.L.W. 335=1946 A.W.R. (H.C.) 437.

"LETTING FOR HIRE" in R. 30 (a) (1) (*i*) of the Madras Rules framed under the Motor Vehicles Act of 1914, need not be one definite and localised act. When a motor lorry is engaged for a journey from Calicut in the district of Malabar to Pollachi in the district of Coimbatore for hire, the vehicle must be said to have been let for hire not merely at Calicut, but along the public roads in the Presidency of Madras in the districts of Malabar and Coimbatore, and, therefore, the owner who obtain no special permit in Form G commits an offence under sec. 16 of the Motor Vehicles Act (1914) not only in the District of Malabar but also in the district of Coimbatore if the lorry gets beyond the limits of the district of Malabar on its journey to Pollachi. The framers of the rules must reasonably be held to have intended that permits should be taken out for every area through which vehicles engaged or plied for hire travel. 177 I.C. 314=47 L.W. 774=1938 Mad. 743=(1938) 1 M.L.J. 800. In a prosecution under sec. 16 of the Motor Vehicles Act (1914) for violation of R. 30 (*a*) (1) (*i*) of the Madras Motor Vehicles Rules, it is incumbent on the prosecution to prove by evidence that the vehicle in question was not provided with G permit. Failure to let in evidence of this essential fact is a fatal defect. (1938) 1 M.L.J. 800.

Where the registered owner of a motor lorry for private use suffers his driver to carry goods of another person for hire, he is guilty under R. 138 of the Motor Vehicles rules which is punishable under sec. 112 of the Motor Vehicles Act. 52 L.W. 948=1941 M. 352=(1941) 1 M.L.J. 470.

PATNA RULES.—Conditions of the permit apply to the licensed vehicles for the period of the licence irrespective of whether it was in use at the time as a carriage standing or plying for hire or the use was gratuitous. 9 P. 169=1929 P. 522. The person responsible for having a board fixed upon the vehicle under r. 12 is owner and not the person who, from time to time, may have the use of the car. Where a car is purchased by an estate for the use of its manager the manager cannot be said to be the owner under r. 12. 97 I.C. 48—7 P.L.T. 542=27 Cr.L.J. 1072=1926 P. 446. As to R. 20 (5) regarding reflecting mirrors, *see* 18 Pat.L.T. 62=166 I.C. 741=1937 Pat. 3. In r. 46, a person merely driving his vehicle cannot be said to be 'plying his vehicle. It means that the person driving, stops to take up or put down passengers for reward. 17 Pat.L.T. 378=163 I.C. 399=1936 Pat. 321 (1). In R. 61 'attendant' does not mean a mere cleaner. 17 Pat.L.T. 162=161 I.C. 703 (1)=1936 P. 172.

U. P. RULES.—There is nothing in the wording of the U. P. Rules to show that R. 11 applies to cars registered outside the United Provinces. It is clear from the definition of "Registering Authority" in r. 3 that this expression, as used in R. 11 means the authority who had registered the car under the rules in force in the United Provinces. Where therefore the applicant's car is not registered in the United Provinces but brought there for a short period, r. 11 has no application to his case. 120 I.C. 272=31 Cr.L.J. 40=1930 A.L.J. 527=1930 A. 34. *See also* 150 I.C. 941=1934 Oudh 370; 1927 A. 478. Violation of rules under this section—Rules framed by U. P. Government—R. 12 cl. (*a*)—"Front portion of vehicle"—Meaning of. 46 I.C. 1004=19 Cr.L.J. 860=16 A.L.J. 623. The permit accorded permission to the owner of the lorry to ply within the district and the road on which it was permitted to ply was also specified therein. The permit did not, however, specify the maximum number of passengers. The road on which the lorry was driven was not specified in the charge, and it was also then carrying a greater number of passengers than could be taken in a lorry. The owner was thereupon convicted for violation of Rr. 79 and 81 of the Motor Vehicles Rules *Held,* that (i) as the maximum number of passengers was not specified in the permit, the conviction for violation of R. 81 was bad; (*ii*) the words "within the district" were merely descriptive of the route specifically described and did not justify the lorry being plied in other routes within the district and that the conviction for violation of R. 81 was correct. 143 I.C. 582=34 Cr. L.J. 620=1933 A.L.J. 499=1933 A. 465. R. 22 applies only to a person licensed to drive in another province and not licensed in the United Provinces. 101 I.C. 668=49 A. 754=25 A.L.J. 574=28 Cr.L.J. 492=1927 A. 478. U. P. Government Rule N 22 applies only to a person licensed in United Provinces. 49 A. 754=101 I.C. 668=25 A.L.J. 574=1927 All. 478.

OUDH RULES.—R. 2 (*g*) of the Motor Vehicles Rules merely means that the word 'Magistrate' means a stipendiary Magistrate where this word is used in the rules. The mere fact that a person was charged with certain acts made offences by R. 79 (*viii*) is no reason for holding that the Magistrate trying the case must be such a Magistrate as is defined in the rules and that an Honorary Special Magistrate is incompetent to try it. 1941 O. A. 145=1941 O.W. N. 193 (1)=1941 O. 266.

PUNJAB RULES.—Where the driver of a motor lory does not use the lorry in conformity with the conditions specified in the road certificate, the owner of the lorry is guilty of an offence under sec. 16, read with R. 3, Punjab Motor Vehicles Plying for Hire Rules, 1922, even though he is not present when the breach of the condition takes place. Where, therefore, a driver was found carrying 17 (when only ten could be carried under the road certificate) and one passenger was sitting on mudguard, which was prohibited. *Held,* that there being clear breach of the road certificate, the owner was liable under R. 3, Punjab Motor Vehicles Plying for Hire Rules, 1922, although he was not present. (38 C. 415; 45 C. 430 and 1924 C. 985, Relied on; 27 P.R. 1918; 1928 C. 410 and 1924 R. 63. Dist.) 1930 L. 865. Unless the wording of the rules is beyond doubt, the manufacturers' specifications regarding maximum load which can be carried cannot be read as part of the rules made by the Punjab Government. When the rule making authority has deliberately made a distinction between private lorries and public lorries and has specified that public lorries shall not carry more than a specified amount of weight, it is reasonable to assume that it was not intended that any such limitation should apply to vehicles which are not public motor vehicles. Hence the owner of private lorries cannot be convicted under R. 23 of the Punjab Motor Vehicles Rules read with sec. 16, on the ground that his lorry was carrying a load in excess of its carrying capacity. 1938 Lah. 691=40 P. L.R. 942. R. 23 of Punjab Rules makes the driver as well as owner responsible for breach of rules. Driver cannot escape liability in case of overloading on the ground of the presence of the checker and ticket seller. 17 Lah. 604=38 P.L.R. 1015=1937 L. 132. Rule 49—Superintendent of Police fixing only week for inspection but not date—Inspector fixing particular date within that week—Lorry driver failing to produce his lorry on that date but producing it on subsequent date during that week—Driver not liable to conviction. 39 P.L.R. 130=169 I. C. 426=1936 Lah. 23.

BURMA RULES.—Owner of a Motor car is not criminally liable for negligence of the driver in driving the car without properly

[133-A. (1) The Provincial Government may, for the purpose of carrying into effect the provisions of this Act, establish a Motor Vehicles Department and appoint as officers thereof such persons as it thinks fit.

Appointment of motor vehicles officer.

(2) Every such officer shall be deemed to be a public servant within the meaning of the Indian Penal Code.

(3) The Provincial Government may make rules to regulate the discharge by officers of the Motor Vehicles Department of their functions and in particular and without prejudice to the generality of the foregoing power to prescribe the uniform to be warn by them, the authorities to which they shall be subordinate, the duties to be performed by them, the powers (including the powers exercisble by police officers under this Act) to be exercised by them, and the conditions governing the exercise of such powers.] (*Inserted* by Act XX of 1942.)

134. (1) The Indian Motor Vehicles Act, 1914, is hereby repealed.

Repeal.

[(2) Notwithstanding the repeal of the Indian Motor Vehicles Act, 1914, rules made by any Provincial Government under section 11 of that Act, other than rules prescribing the fees payable in respect of the grant or renewal of licences to drive motor vehicles, shall, whether or not they are consistent with this Act but subject to the provisions of sub-section (3) of this section, continue to be in force for a period of nine months from the commencement of this Act unless before the expiry of that period they are cancelled by the Provincial Government by notification in the Official Gazette:] (Sub-section (2) *omitted* by Act XX of 1942.)

(3) Notwithstanding the repeal of the Indian Motor Vehicles Act, 1914, rules made or purporting to be made by a Provincial Government under sub-section (2) of section 11 of that Act, requiring or relating to the insurance of motor vehicles, being rules in force at the commencement of this Act, shall, until Chapter VIII of this Act takes effect in the province, have effect as if enacted in this Act.

[(4) Nothing contained in this Act shall, until the expiry of a period of nine months from the commencement of this Act, operate to invalidate any provisions relating to the taxation of motor vehicles contained in any Provincial enactment or rules made thereunder in force at the commencement of this Act.

---

illuminated rear light, if the owner has made provision for such illumination. (36 C. 415 and 45 C. 430, Dist.). 76 I.C. 564=I.R. 600=25 Cr.L.J. 196=1924 R. 63. A taxi driver who was convicted was fined Rs. 60 and was suspended for one year *Held*, that the order of suspension of licence was part of the sentence and the conviction was appealable. *Held, further*, that no proceedings by way of revision could be entertained where no appeal was brought. 146 I. C. 545 (2)=1933 Cr. C. 1146=1933 R. 329

Per Baguley, J.—The power to seize a licence given under rules framed by Local Government from its owner and keep it for a certain time cannot in any way help to carry into effect the provisions of the Act It is not even a temporary suspension of the licence because it provides that a temporary substitute is to be given for it, and sec. 18 only provides for a licence to be cancelled or suspended by Local Government or by a Court trying the holder of a licence for a offence. R. 38-B must therefore be held to be *ultra vires*. 175 I.C. 639=39 Cr.L.J. 642=1938 Rang. 161.

THE SCHEDULES: SELECT COMMITTEE REPORT.—"A new form for Drivers' Licence has been substituted in the First Schedule for Form D contained in the Bill. Other forms in that Schedule have been amended either for the purpose of bringing the contents and the wording into harmony with the provisions of the Bill as now amended, or to remove superfluities, or to supply omissions. In the Fifth Schedule, the amendments made by us to cl. 20 abolishing perpetual endorsement have rendered the headings to Parts A and B unnecessary. We have eliminated from the list of offences entailing endorsement that of driving an uninsured vehicle, and we have also removed ten minor offences from Part B. In the Sixth Schedule we have provided for a system of Registration Marks consiting of three letters followed by four figures the first two letters being indicative of the Province, the third possibly indicative of the registering authority. In the Eighth Schedule, we have inserted a speed limit for a class of vehicle not already provided for. In the Tenth Schedule, we have added an additional driving signal".

[1][(5)] While, under the provisions of sub-section (2), any rules made by a Provincial Government under section 11 of the Indian Motor Vehicles Act 1914, continue to be in force—

(*a*) section 112 shall be construed as if after the words "any rule made thereunder" there were inserted the words and figure "or of any rule made under the Indian Motor Vehicles Act, 1914 and continuing in force," and

(*b*) section 113 shall be construed as if after the words "under this Act", wherever they occur, there were inserted the words and figure "or under any rule made under the Indian Motor Vehicles Act, 1914 and continuing in force.] (Sub-sections 4 and 5 *omitted* by Act XX of 1942.)

THE SCHEDULE.

THE FIRST SCHEDULE.

Forms.

FORM A.

[*See* section 7(2).]

Form of application for licence to drive a motor vehicle.

I

Application.

I apply for a licence to enable me to drive

as a paid employee

*otherwise than as a paid employee

*vehicles of the following description :—

(*a*) motor cycles.
(*b*) motor cars.
(*c*) invalid carriages,
(*d*) motor cabs,
(*e*) delivery vans,
(*f*) light transport vehicles *including / excluding public service vehicles,
(g) heavy transport vehicles *including / excluding public service vehicles,
(*h*) tractors,
(*i*) road-rollers,
(*j*) locomotives,
(*k*) a vehicle of special type (description attached) constructed or adapted to be driven by me.

*Strike out whichever inapplicable.

II

Particulars to be furnished by the applicant.

1. Full name and name of father.....
2. Permanent address .....
3. Temperory address .....
4. Age at date of application.....
5. Particulars of any licence previously held by applicant.....
6. Particulars and date of every conviction which has been ordered to be endorsed on any licence held by the applicant.
7. Have you been disqualified for obtaining a licence to drive ? If so, for what reason ?
8. Have you been subjected to a driving test as to your fitness or ability to drive a vehicle in respect of which a licence to drive is applied for ? If so, give date, testing authority and result of test.

III

Declaration as to physical fitness of applicant.

The applicant is required to answer" yes""or" No " in the space provided opposite each question

(*a*) Do you suffer from epilepsy, or from sudden attacks of disabling giddiness or fainting ?
(*b*) Are you able to distinguish with each eye at a distance of 25 yards in good daylight (with glasses, if worn) a motor car number plate containing seven letters and figures ?
(*c*) Have you lost either hand or foot or are you suffereing from any defect in movement, control, or muscular power of either arm or leg ?
[1][(*d*) Can you readily distinguish the pigmentary colours red and green ?
(*e*) Do you suffer from night blindness ?][1]
[1](*f*) Do you suffer from a defect of hearing ?
(*g*) Do you suffer from any other disease or disability likely to cause your driving of a motor vehicle to be a source of danger to the public ?

If so, ive particulars.

LEG. REF.

1 Sub-sec. (5) inserted by Act XL of 1939.

1 For question (*d*) new questions (*d*) and (*e*) substituted, and (*e*) and (*f*) re-lettered (*f*) and (*g*) by Act XL of 1939.

I declare that to the best of my information and belief the particulars given in section II and the declaration made in section III hereof are true.

NOTE.—An applicant who answers "Yes" to questions(b) and (c) in the declaration and "No" to the other questions may claim to be subjected to a test as to his competency to drive vehicles of a specified type or types.

Date.....19 . *Signature or Thumb Impression of applicant.*

Certificate of test of ability to drive.

The applicant has passed / failed in the test specified in the Third Schedule to the Motor Vehicles Act, 1939. The test was conducted on a* on (date)

Signature of Testing Authority.
Duplicate Signature or Thumb Impression of applicant.

*Here enter description of vehicle.

FORM B.

[*See* section 11 (2).]

Form of application for renewal of driving licence.

I hereby apply for a renewal of the licence under the Motor Vehicles Act, 1939, which was issued to me on the.....by.....(state title of licensing authority.)

I hereby declare that I am not subject to any disease or disability likely to cause my driving of a motor vehicle to be a source of danger to the public.

Date 19 . *Signature of applicant.*

FORM C.

[*See* section 7 (3) and section 12.]

Form of medical certificate in respect of an applicant for a licence to drive any transport vehicle or to drive any vehicle as a paid employee.

(To be filled up by a registered medical practitioner.)

1. What is the applicant's apparent age?.....
2. Is the applicant, to the best of your judgment, subject to epilepsy, vertigo or any mental ailment likely to affect his efficiency? .....
3. Does the applicant suffer from any heart or lung disorder which might interfere with the performance of his duties as a driver? .....
4. (*a*) Is there any defect of vision? If so, has it been corrected by suitable spectacles? .....

[1][(*b*) Can the applicant readily distinguish the pigmentary colours red and green? .....

(*c*) Does the applicant suffer from night blindness?] .....

[2](*d*) Does the applicant suffer from a degree of deafness which would prevent his hearing the ordinary sound signals? .....

5. Has the applicant any deformity or loss of members which would interfere with the efficient performance of his duties as a driver? .....
6. Does he show any evidence of being addicted to the execessive use of alcohol, tobacco or drugs? .....

LEG. REF.

[2] Substituted by Act XL of 1939.

[3] Relettered (*d*) by Act XL of 1939.

7. Is he, in your opinion, generally fit as regards (*a*) bodily health, and (*b*) eyesight .....
8. Marks of identification. .....

I certify that to the best of my knowledge and belief the applicant.....
.....is the person hereinabove described, and that the attached photograph is a reasonably correct likeness.

(*Signature*).....

[Space for photograph.]

Name.....
Designation.....

NOTE.—Special attention should be directed to distant vision and to the condition of the arms and hands and the joints of both extremities.

FORM D.

[*See* section 8 (1).]

Driving Licence.

No..... 19.....

(Name) .....
son | daughter of (father's name).....
of (permanent address) .....
.....
(temperorary address) .....
.....

Photograph if necessary.

Signature or thumb impression.

is licensed to drive, throughout British India, vechicles of the following description :—*

*(*a*) Motor cycle.
(*b*) Motor car.
(*c*) Motor cab.
(*d*) Delivery van.
(*e*) Light transport vehicle.
(*f*) Heavy transport vehicle.
(*g*) Locomotive.
(*h*) Tractor.
(*i*) Invalid carriage.
(*j*) Road-roller.
(*k*) A motor vehicle hereunder described :—

.....

He is also authorised to drive as a paid employee*.
This licence is valid from.....to.....
(*To be struck out if inapplicable.)

Signature and designation of Licensing Authority.

Date.....19 .

Authorisation to drive a public service vehicle.

So long as this licence is valid and is renewed from time to time, the holder is authorised to drive a public service vehicle within the province of.....

Signature and designation of prescribed authority.

Date.....19 .

And within the province of.....

Date.....19 .

Signature and designation of prescribed authority.

And within the province of.....

Date.....19 .

Signature and designation of prescribed authority.

This licence is hereby renewed up to

the.....day of.....19 .
the.....day of.....19 .
the.....day of 19 .
the.....day of.....19 .
the.....day of.....19 .

Signature of Licencing authority.
.....
.....
.....

ENDORSEMENTS.

Date.	Section and Rule.	Fine or other punishment.	Signature of Endorsing Authority.

FORM E.

[*See* section 24 (1).]

Form of Application for the Registration of a Motor Vehicle.

1. Full name, name of father, and address of person to be registered as registered owner .....
2. Class of vehicle.....
3. Type of body.....
4. Maker's name.....
5. Year of manufacture.....
6. Number of cylinders.....
7. Horse power.....
8. Maker's classification or, if not known, wheel base.....
9. Chassis number.....
10. Engine number.....
11. Seating capacity (including driver).....
12. Unladen wight.....
13. Particulars of previous registration and registered number (if any).....

Additional particulars to be completed only in the case of transport vehicle other than motor cabs—

14. Number, description and size of tyres—
    (*a*) front axle.....
    (*b*) rear axle.....
    (*c*) any other axle.....
15. Maximum laden wieght.....lbs.
16. Maximum axle wieght—
    (*a*) front axle .....lbs.
    (*b*) rear axle .....lbs.
    (*c*) any other axle..... ..lbs.

The above particulars are to be filled in for a rigid frame motor vehicle of two or three axles, for an articulated vehicle of three axles, or, to the extent-applicable, for a trailer (other than the trailer to be registered as part of an articulated vehicle) as the case may be. Where a second trailer or additional trailers are to be registered with an articulated motor vehicle, the following particulars are to be furnished for each such trailer :—

17. Type of body.....
18. Unladen weight.....
19. Number, description and size of tyres on the axle.....
20. Maximum axle weight.....

Date 19 . *Signature of applicant.*

Explanation.—An articulated vehicle means a tractor to which a trailer is attached in such a manner that part of the trailer is superimposed on and part of the weight of the trailer is borne by the tractor.

NOTE.—The motor vehicle above described is held by the person to be registered as the registered owner, under a hire purchase agreement with.....

Signature of owner.
Signature of Hire Purchase Company.

FORM F.

[*See* section 36 (1).]

Document to be furnished by the maker or authorised assembler in the case of transport vehicles other than motor cabs.

Certified that the.....vehicle.
Chassis No.....and Engine No.....is designed for maximum weights as follows when fitted with the tyre-equipment specified below :—

Maximum laden weight .....lbs.
Maximum weight front axle.....lbs.
Maximum weight rear axle.....lbs.
Maximum weight any other axle.....lbs.
Tyres—
Front wheels..... .....
Rear wheels .....
Other wheels.....
.....
.....

Date..... *Signature of maker or authorised assembler.*

Special certificate to be furnished by an assembler.

Certified that I am authorised by the maker of the vehicle described above to issue this certificate.

Signature of authorised assembler.

FORM G.

[*See* section 24 (2).]

Form of Certificate of Registration.

Registered number.....
Brief description of vehicle,
(*e.g.*, Ford touring car, Chevrolet 22 seater bus, Albion lorry, trailer, etc.)
Name, name of father, and address of Registered Owner.....
.....
Signature of registering authority.

Transferred to

Signature of registering authority.

Transferred to

Signature of registering authority.

Detailed description.

1. Class of vehicle.....
2. Maker's name.....
3. Type of body.....
4. Year of manufacture.....
5. Number of cylinders.....
6. Chassis number.....
7. Engine number.....
8. Horse, power.....
9. Maker's classification or, if not known, wheel-base.....
10. Seating capacity (including driver).....
11. Unladen weight.....

Additional particulars in the case of all transport vehicles other than motor cabs—

12. Registered laden weight.....
13. Number, description and size of tyres—
    (*a*) front axle.....
    (*b*) rear axle.....
    (*c*) any other axle.....
14. Registered axle wieght—
    (*a*) front axle.....lbs.
    (*b*) rear axle.....lbs.
    (*c*) any other axle.....lbs.

Additional particulars of alternative or additional trailer or trailers registered with an articulated vehicle—

15. Type of body.....
16. Unladen weight .....lbs.....
17. Number, description and size of tyres on the axle.....
18. Registered axle weight.....lbs.

Date 19 . *Signature of registering authority.*

NOTE.—The motor vehicle above described is held by the person registered as the registered owner under a hire purchase agreement with.....

Date *Signature of registering authority.*

FORM H.

[*See* sections 38 and 39 (2).]

Certificate of fitness (applicable in the case of transport vehicles only.)

Vehicle No.....is certified as complying with the provisions of Chapter V of the Motor Vehicles Act, 1939, and the rules made thereunder. This certificate will expire on.....

Date .....19 . *Signature and Designation of Inspecting Authority.*

The certificate of fitness is herreby renewed—

up to.....19 . .....

up to.....19 . .....

up to.....19 . .....

Signature of Inspecting Auth§rity.

THE SECOND SCHEDULE.

[*See* section 7 (5).]

I. DISEASES AND DISABILITIES ABSOLUTELY DISQUALIFYING A PERSON FOR OBTAINING A LICENCE TO DRIVE A MOTOR VEHICLE.

1. Epilepsy.
2. Lunacy.
3. Heart disease likely to produce sudden attacks of giddiness or fainting.
4. Inability to distinguish with each eye at a distance of twenty-five yards in good daylight (with the aid of glasses, if worn) a series of seven letters and figures in white on a black ground of the same size and arrangement as those of the registration mark of a motor car.
5. A degree of deafness which prevents the applicant from hearing the ordinary sound signals.
6. [Inability readily to distinguish the pigmentary colours red and green.][1]
7. Night-blindness.

II. DISEASES AND DISABILITIES ABSOLUTELY DISQUALIFYING A PERSON FOR OBTAINING A LICENCE TO DRIVE A PUBLIC SERVICE VEHICLE.

1. Leprosy.

THE THIRD SCHEDULE.

[*See* sections 7 (6) (*a*) and 17 (6).]

TEST OF COMPETENCE TO DRIVE.

PART I.

The candidate shall satisfy the person conducting the test that he is able to—

1. Start the engine of the vehicle.
2. Move away straight ahead or at an angle.
3. Overtake, meet or cover the path of other vehicles and take an appropriate course.
4. Turn right and left corners correctly.
5. Stop the vehicle in an emergency andnormally, and in the latter case bring it to rest at an appropriate part of the road.
6. Drive the vehicle backwards and whilst so doing enter a limited opening either to the right or left.
7. Cause the vehicle to face in the opposite direction by means of forward and reverse gears.
8. Give by hand and by mechinical means (if fitted to the vehicle), or, in the case of a disabled driver for whom it is impracticable or undesirable to give signals by hand, by mechanical means, in a clear and unmistakable manner, appropriate signals at appropriate times to indicate his intended actions.
9. Act correctly and promptly on all signals given by traffic signs and traffic controllers, and take appropriate action on signs given by other road users.

NOTE.—(*i*) Requirements 6 and 7 are not applicable in the case of a motor cycle or tricycle not equipped with means for reversing.

(*ii*) Requirements 6, 7 and 8 are not applicable in the case of invalid carriages.

PART II.

The candidate shall satisfy the person conducting the test that he is congnisant of the provisions of sections 81, 82, 83, 84 and 85 of the Tenth Schedule ; that he knows the meaning of the traffic signs specified in the Ninth Schedule ; and, if he has not been medically examined, that he is not so deaf as to be unable to hear the ordinary sound signals, and is able to distinguish with each eye at a distance of twenty-five yards in good day light (with the aid of glasses, if worn) a registration mark containing seven letters and figures.

THE FOURTH SCHEDULE.

[*See* sections 14 (1) and 39 (1) and (3).]

AUTHORITIES ENTITILED TO GRANT LICENCES TO DRIVE, AND TO REGISTER MOTOR VEHICLES, THE PROPERTY[2] [OR FOR THE TIME BEING UNDER THE EXCLUSIVE CONTROL] OF THE CENTRAL GOVERNMENT, AND REGISTRATION MARKS FOR SUCH VENHICLES.

PART A.

The authorities specified in the second column may grant licences in respect of vehicles, the property [2][or for the time being under the exclusive control] of the Department of the Central Government specified in the first column.

LEG. REF.

1 Item (6) substituted by Act XL of 1939.

2 In the Fourth schedule in the heading and in Parts A and B, after the words "the pro-

Defence Department of the Central Government.	1. District Commanders. 2. Commanders of independent briagades. 3. Officers commanding units having mechanically propelled vehicles in their charge. 4. Commanders, Royal Engineers.

PART B.

The authorities specified in the second column may register motor vehicles, the property [1][or for the time being under the exclusive control] of the Department of the Central Government specified in the first column, and may grant certificates of fitness in respect of such vehicles.

Defence Depatment of the Central Government.	The Master General of the Ordinance in India [or any person authorised by him in his behalf][1].

PART C.

Registration marks for vechicles registered under section 39.

[1][A broad arrow followed by not more than six figures, or a broad arrow followed by a single letter and not more than five figures.]

THE FIFTH SCHEDULE.

[*See* sections 19 (2) and (3) and 130.]

OFFENCES ON CONVICTION OF WHICH AN ENDORSEMENT SHALL BE MADE ON THE LICENCE OF THE PERSON AFFECTED.

PART A.

1. Driving recklessly or dangerously (section 116).
2. Driving while under the infiuence of drink or drugs (section 117).
3. Abetment of an offence under section 116 or 117 (section 119).
4. Taking part in unauthorised race or trial of speed (section 120).
5. Driving when disqualified (section 18).
6. Obtaining or applying for a licence without giving particulars of endorsement (section 114).
7. Failing to stop on the occurence of an accident (section 87).
8. Altering a licence or using an altered licence.
9. Any offence punishable with imprisonment in the commission of which a motor vehicle was used.

PART B.

1. Driving without a licence or without a licence which is effective, or without a licence applicable to the vehicle driven (section 3).
2. Allowing a licence to be used by another person [section 6 (2)].
3. Driving at excessive speed (section 115).
4. Driving when mentally or physically unfit to drive (section 118).
5. Abetment of an offence punishable under section 115 or 118.
6. Refusing or failing within specified time to produce licence (section 86).
7. Failing to stop when required (section 87).
8. Driving an unregistered vehicle (section 22).
9. Driving a transport vehicle not covered by a certificate of fitness (section 38).
10. Driving in contravention of any rule made under section 70 (2) (*g*) relating to speed governors.
11. Driving a vehicle exceeding the permissible limit of weight (section 124).
12. Failure to comply with a requisition made under section 73.
13. Using a vehicle in unsafe condition (section 121).
14. Driving a transport vehicle in contravention of section 42.

THE SIXTH SCHEDULE.

[*See* sections 24 (3) and 29 (2).]

REGISTRATION MARKS.

One of the groups of letters specified in the second column followed by any one other letter shall be used as the registration mark for a vehicle in the province specified in the first column.

Assam	AS.
Bengal	BG, BL.
Bihar	BR.
Bombay	BM, BY.
Central Province and Berar	CP.
Madras	MD, MS.
North-West Frontier Province	FP.
Orissa	OR.

LEG. REF.

perty", wherever they occur, the words "or for the time being under the exclusive control" have been inserted; in Part B, to the entry in the second column the words "or any person authorised by him in this behalf" added; in Part C, the words within square brackets substituted by Act XX of 1942.

1 *Vide* footnote 2, p. 886

Sind	KA.
Punjab	PB, PJ.
United Provinces	UP, US.
Ajmer-Merwara	AJ.
[1][Andaman and Nicobar Islands	AN.]
Coorg	CG.
Delhi	DL.

NOTE.—These letters shall be followed by not more than four figures, and the letters and figures shall be shown—

1.	In the case of transport vehicles	In black on a white ground.
2.	In the case of temporary registrations (section 25)	In red on a yellow ground
3.	In the case of registration marks allotted to dealers [section 41 (2) (*k*]	In white on a red ground.
4.	In other cases	In white on a black ground

THE SEVENTH SCHEDULE.

[*See* section 37 (2).]

MAXIMUM AXLE WEIGHTS PERMISSIBLE FOR TRANSPORT VEHICLES.

TABLE A.

For each low pressure pneumatic tyre, fitted to a wheel on the axle, of a nominal size—	The permissible weight in pounds is—
5.00-17	980
5.25-17	1,060
5.25-18	1,100
5.50-17	1,140
5.50-18	1,195
5.50-20	1,225
6.00-16	1,200
6.00-17	1,350
6.00-18	1,450
6.00-20	1,550
6.25-16	1,300
6.50-16	1,400
6.50-17	1,550
6,50-18	1,700
6.50-20	1,850
7.00-15	1,500
7.00-16	1,675
7.00-17	1,850
7.00-18	2,050
7.00-20	2,200
7.50-15	1,700
7.50-16	2,050
7.50-17	2,150
7.50-18	2,450
7.50-20	2,650
7.50-24	2,650
8.25-18	2,900
8.25-20	3,100
8.25-22	3,100
8.25-24	3,100
9.00-15	2,650
9.00-18	3,300
9.00-20	3,550
9.00-22	3,550
9.00-24	3,650
9.75-15	3,175
9.75-18	3,900
9.75-20	4,200
9.75-22	4,200
9.75-24	4,400
10.50-20	4,850
10.50-22	5,000
10.50-24	5,200
11.25-20	5,450
11.25-22	5,800
11.25-24	6,050

LEG. REF.

1 Inserted by Act XL of 1939.

TABLE B.

For each high pressure pneumatic tyre, fitted to a wheel on the axle, of a nominal size—	The permissible weight in pounds is—
30×5	2,000
33×5	2,000
34×5	2,000
35×5	2,000
32×6	2,650
34×6	2,650
36×6	2,650
32×6½	2,950
32×7	3,000
34×7	3,300
36×7	3,300
38×7	3,300
36×8	4,000
38×8	4,200
40×8	4,400
38×9	4,850
40×9	5,100
42×9	5,300
40×10	5,700
44×10	6,150

Explanation.—The figures "5.00-17" etc., in Table A represent, respectively, the nominal sectional diameter of the tyre and the diameter of the wheel rim; and the figures "30—5" ect., in Table B represent, respectively, the over-all diameter of wheel and tyre and the nominal sectional diameter of the tyre, all figures being in inches. The actual sectional diameter of the tyre when mounted on its appropriate rim and inflated shall in no case be less than the nominal sectional diameter.

Note.—Tyres may be calibrated in so-called metric sizes, for example, "170—120". In that case the first number represents the sectional diameter of the tyre in millimetres and the second number represents the diameter of the rim in inches. The permissible weight in pounds for each such tyre shall be determined by dividing the nominal sectional diameter of the tyre in millimetres by the figure 25-4, the quotient being the nominal sectional diameter in inches. The permissible weight given in Table A for the nearest equivalent nominal sectional diameter in inches and the actual rim diameter shall be the permissible weight for that tyre.

THE EIGHTH SCHEDULE.

[*See* section 71.]

LIMITS OF SPEED FOR MOTOR VEHICLES.

Class of Vehicle.	Maximum speed per hour. Miles.
1. Passenger vehicles, etc. that is to say, vehicles construed solely for the carriage of passengers and their effects :—	
(*a*) if all the wheels are fitted with pneumatic tyres and the vehicle is not drawing a trailer :—	
(*i*) if the vehicle is a motor cycle, motor car or motor cab ..	No limit.
(*ii*) if the vehicle is a public service vehicle other than a motor cab	30
(*b*) if the vehicle, being a motor car or motor cab, is drawing two-wheeled trailer of a laden weight not exceeding 1,700 pounds *avoirdupois*, and if all the wheels of the vehicle and trailer are fitted with pneumatic tyres ..	30
(*c*) any other vehicle, including an invalid carriage ..	20
2. Goods vehicles, that is to say, vehicles constructed or adapted for use or used for the conveyance of goods :— ..	
[1](*a*) if all the wheels are fitted with pneumatic tyres and the vehicle is a delivery van and is not drawing a trailer ..	No limit.
(*b*) if all the wheels are fitted with pneumatic tyres and the vehicle is a light transport vehicle and is not drawing a trailer ..	25
[1][(*c*) if all the wheels are fitted with pneumatic tyres and the registered laden weight of the vehicle does not exceed 17,000 pounds *avoirdupois* and the vehicle is not drawing a trailer ..	20
(*d*) in any other case ..	15
3. Tractors :—	
(*a*) if drawing not more than one trailer and all the wheels of the tractor and trailer are fitted with pneumatic tyres ..	15
(*b*) in any other case ..	6
4. Locomotives, whether drawing a trailer or not ..	6

LEG. REF.

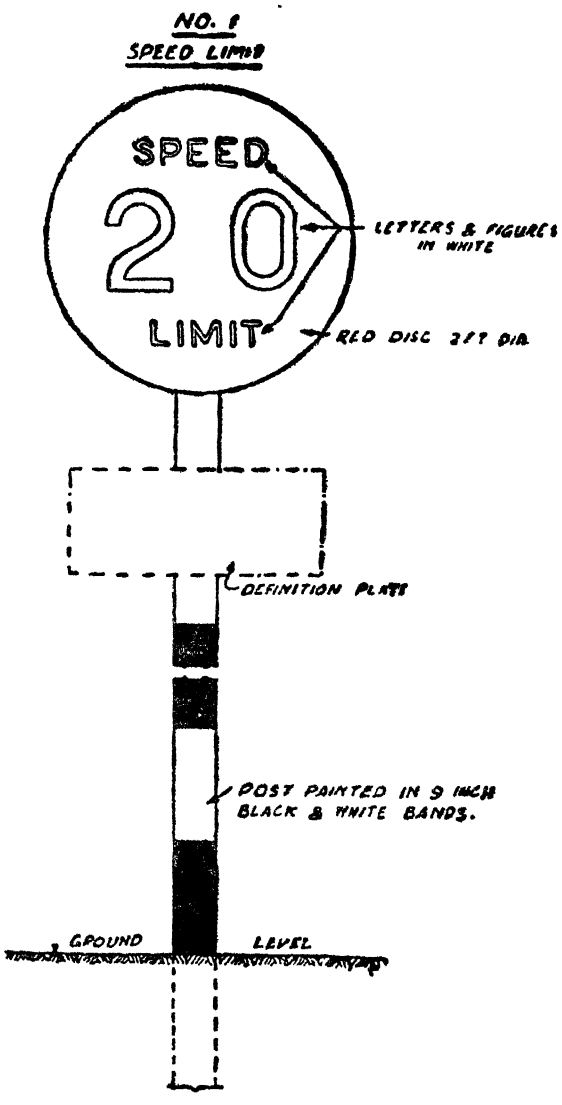
[1] In the Eighth Schedule, in entry No. 2, cls. (*a*) and (*b*) re-lettered as cls. (*b*) and (*d*), respectively, and new cls. (*a*) and (*c*) inserted by Act XX of 1942.

THE NINTH SCHEDULE.

(*See* sections 75, 77 and 78.)

TRAFFIC SIGNS.

PART A.—MANDATORY SIGNS.

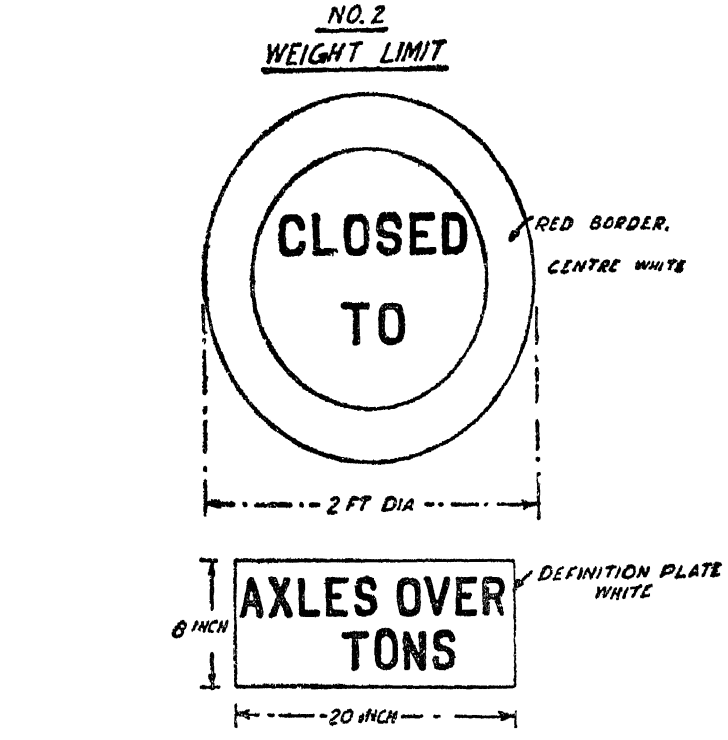


NOTE.—

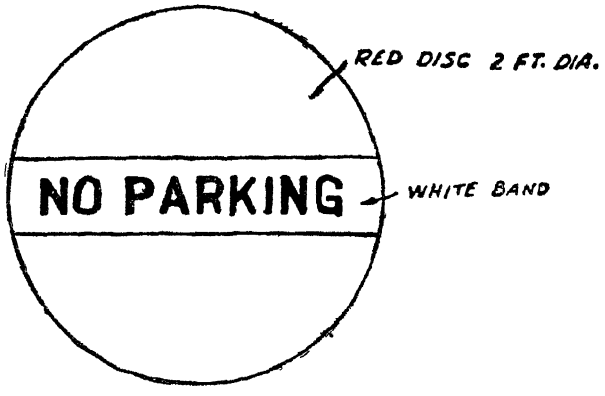
(1) The figures 20 is given merely as an example. The actual figures will be as prescribed in each case where this sign is used.

(2) The general design of the post is given for guidance.

(3) Where the speeed limit is, or is to be, imposed only on a certain class or classes of motor vehicle the class or classes will be specified on the "definition plate." Where in addition to a general speed limit applicable to other motor vehicles a specified speed limit is, or is to be imposed on vehicles of a certain class or classes, the general speed limit will be specified on the disc and the special speed limit together with the class or classes of vehicle to which it applies will be specified on the "definition plate."


NO. 2
WEIGHT LIMIT
CLOSED
TO
RED BORDER.
CENTRE WHITE
2 FT DIA
AXLES OVER
TONS
DEFINITION PLATE
WHITE
8 INCH
20 INCH
NO. 3
TOTAL PROHIBITION
CLOSED
NO. 4
DIRECTION SIGN
ARROW TO
WHITE
WHITE BAND
RED DISC

NO. 5
NO PARKING



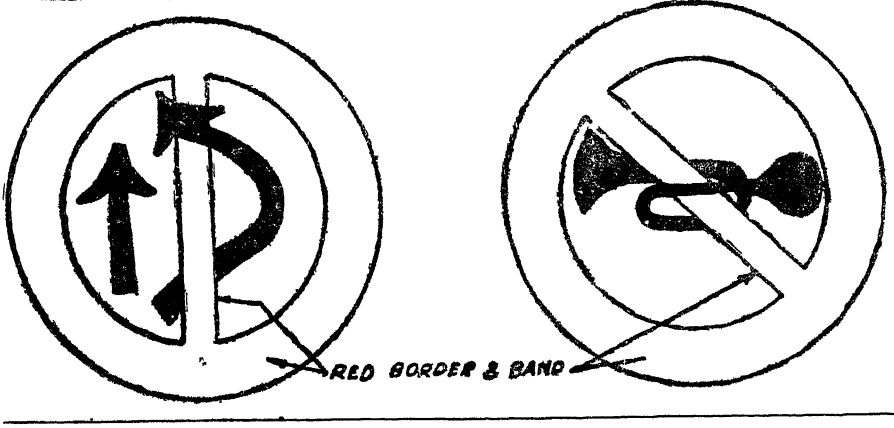
NOTE.—No 5 as here set forth may be amplified by instructions inscribed upon a definition plate placed below it as in the general arrangement set forth in Sign. No. 1 of this Part. Upon the definition plate may be set forth the times during which parking is prohibited. In like manner an arrow-head inscribed on the definition plate will indicate that parking is prohibited on that part of the street or road lying to the side of the sign to which the arrow-head points

[1] [No. 7

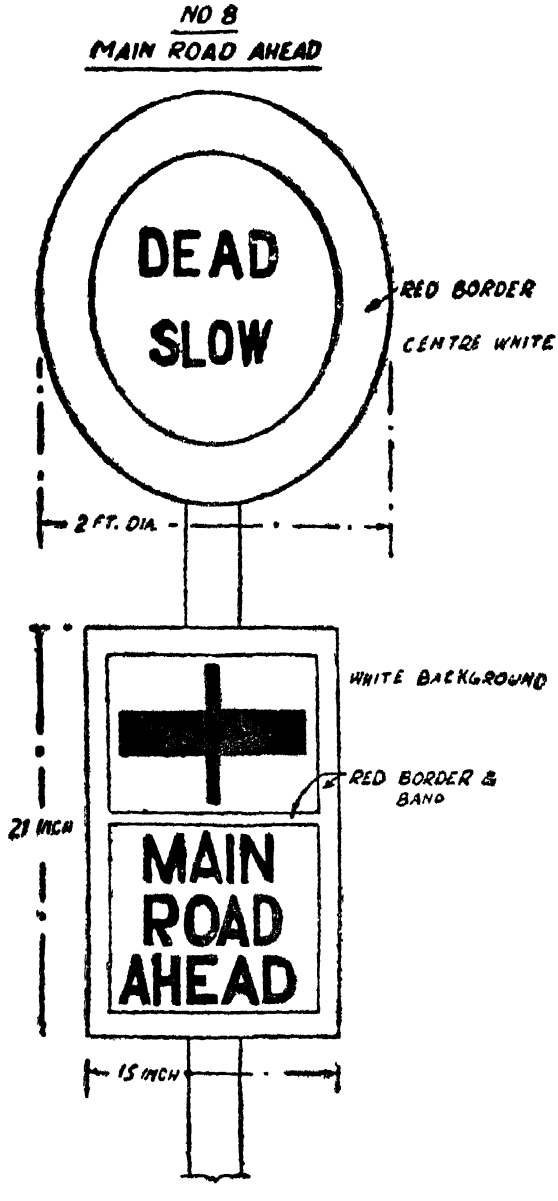
Use of Sound Signals Prohibited.

Cross and broder—Red.
Background—White.
Device—Black.]

NO. 6
OVERTAKING PROHIBITED

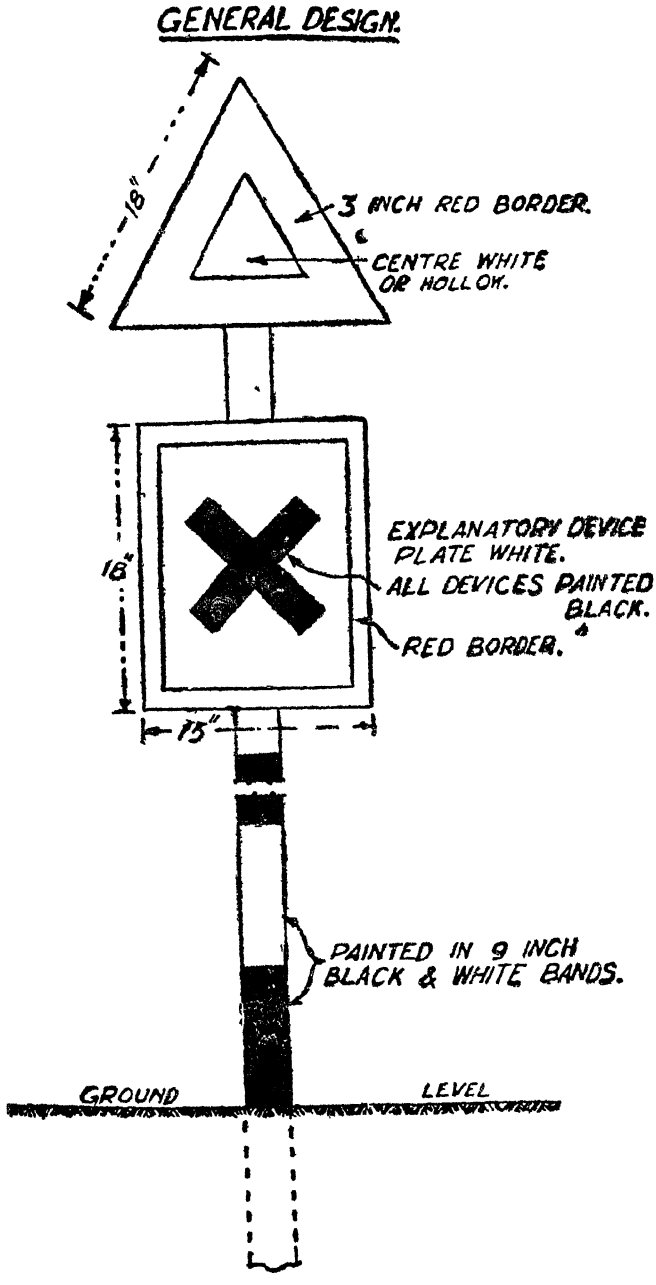


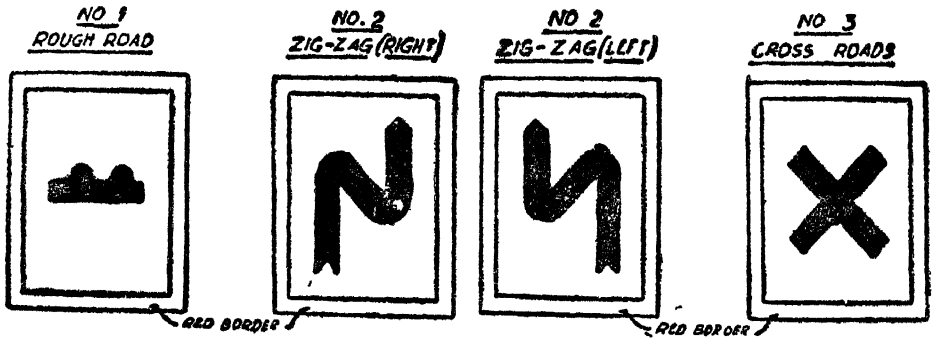
LEG. REF.
[1] Substituted by Act XL of 1939.

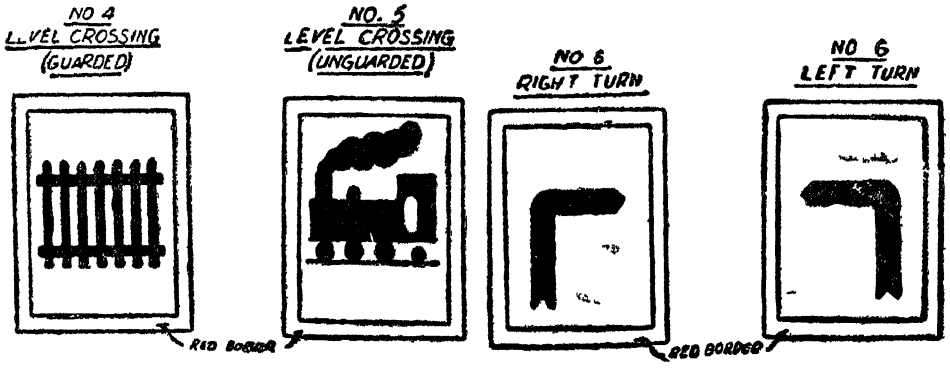

NO 8
MAIN ROAD AHEAD
DEAD
SLOW
RED BORDER
CENTRE WHITE
2 FT. DIA.
WHITE BACKGROUND
RED BORDER & BAND
21 INCH
MAIN
ROAD
AHEAD
15 INCH

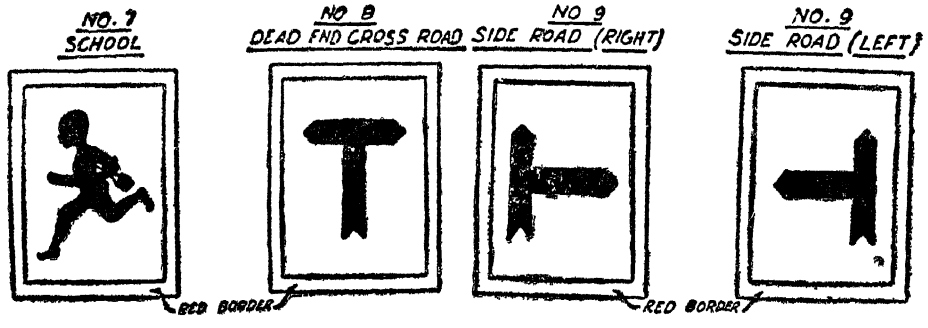
PART B.—CAUTIONARY SIGNS.

The signs of this Part shall be used in conjunction with a red triangular plate, the centre of which shall be either hollow or painted white, in the manner indicated in the general design reproduced below.

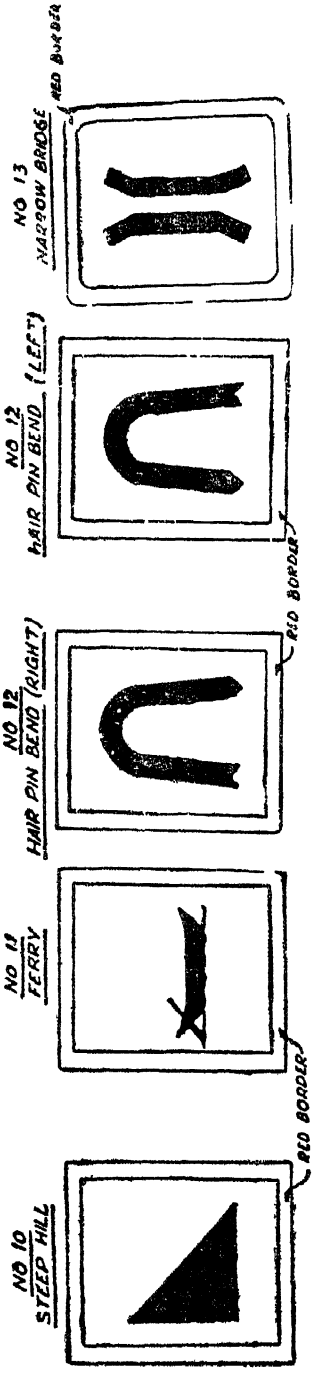


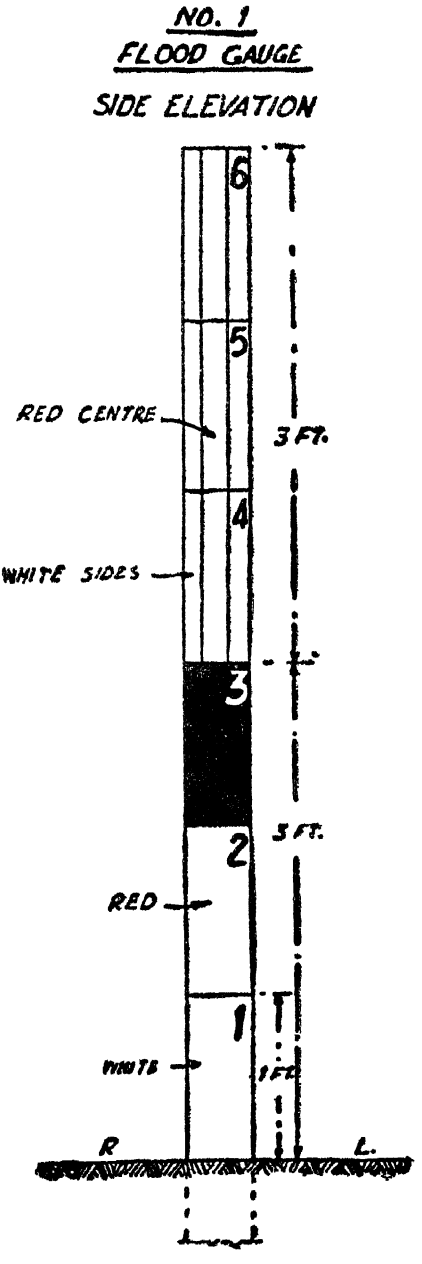

NO 1
ROUGH ROAD
NO. 2
ZIG-ZAG (RIGHT)
NO 2
ZIG-ZAG (LEFT)
NO 3
CROSS ROADS
RED BORDER
RED BORDER


NO 4
LEVEL CROSSING
(GUARDED)
NO. 5
LEVEL CROSSING
(UNGUARDED)
NO 6
RIGHT TURN
NO 6
LEFT TURN
RED BORDER
RED BORDER

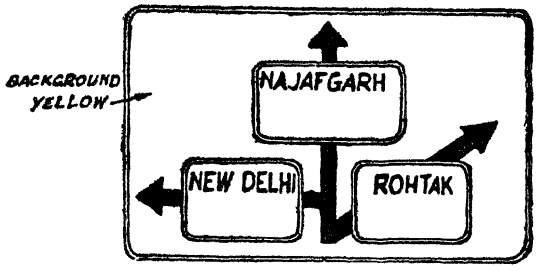

NO. 7
SCHOOL
NO 8
DEAD END CROSS ROAD
NO 9
SIDE ROAD (RIGHT)
NO. 9
SIDE ROAD (LEFT)
RED BORDER
RED BORDER

PART C.—INFORMATORY SIGNS.

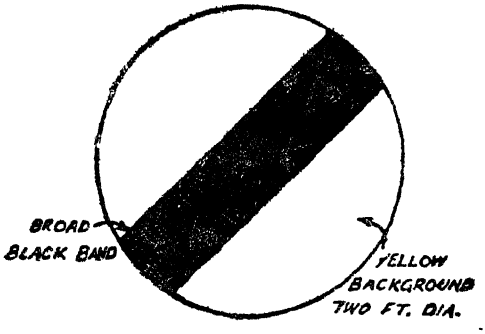




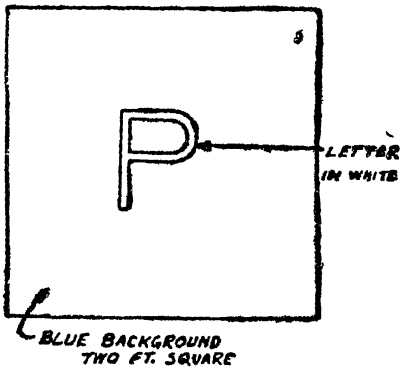
NO. 2
ROAD JUNCTION APPROACH.



NO. 3
END OF SPEED LIMIT.



NO. 4
PARKING SIGN.



THE TENTH SCHEDULE.

(*See* sections 77 and 78.)

DRIVING REGULATIONS.

1. The driver of a motor vehicle shall drive the vehicle as close to the left hand side of the road as may be expedient, and shall allow all traffic which is proceeding in the opposite direction to pass him on his right hand side.

2. Except as provided in regulation 3, the driver of a motor vehicle shall pass to the right of all traffic proceeding in the same direction as himself.

3. The driver of a motor vehicle may pass to the left of a vehicle the driver of which having indicated an intention to turn to the right has drawn to the centre of the road and may pass a tram-car or other vehicle running on fixed rails, whether travelling in the same direction as himself or otherwise, on either side :

Provided that in no case shall he pass a tram-car at a time or in a manner likely to cause danger or inconvenience to other users of the road or pass on the left hand side a tram-car which when in motion would be travelling in the same direction as himself, while the tram-car is at rest for the purpose of setting down or taking up passengers.

4. The driver of a motor vehicle shall not pass a vehicle travelling in the same direction as himself—

(*a*) if his passing is likely to cause inconvenience or danger to other traffic proceeding in any direction, or

(*b*) where a point or corner or a hill or an obstruction of any kind renders the road ahead not clearly visible.

5. The driver of a motor vehicle shall not, when being overtaken or being passed by another vehicle, increase speed or do anything in any way to prevent the other vehicle from passing him.

6. The driver of a motor vehicle shall slow down when approaching a ro ad intersection, a road junction or a road corner, and shall not enter any such intersection or junction until he has become aware that he may do so without endangering the safety of persons thereon.

7. The driver of a motor vehicle shall on entering a road intersection , if the road entered is a main road designated as such, give way to the vehicles proceeding along that road, and in any other case give way to all traffic approaching the intersection on his right hand.

8. The driver of a motor vehicle shall, when passing or meeting a procession or a body of troops or police on the march or when passing workmen engaged on road repair, drive at a speed not greater than fifteen miles anhour.

9. The driver of a motor vehicle shall—

(*a*) when turning to the left, drive as close as may be to the left hand side of the road from which he is making the turn and of the road which he is entering ;

(*b*) when turning to the right, draw as near as may be to the centre of the road along which he is travelling and cause the vehicle to move in such a manner that—

(*i*) as far as may be practicable it passes beyond, and so as to leave on the driver's right hand, a point formed by the intersection of the centre lines of the intersecting roads : and

(*ii*) it arrives as near as may be at the left hand side of the road which the driver is entering.

THE ELEVENTH SCHEDULE.

(*See* section 79.)

SIGNALS.

1. When about to turn to the right or to drive to the right hand side of the road in order to pass another vehicle or for any other purpose, a driver shall extend his right arm in a horizoutal position outside of and to the right of his vehicle with the palm of the hand turned to the front.

2. When about to turn to the left or to drive to the left hand side of the road a driver shall extend his right arm and rotate it in an ante-clockwise direction.

3. When about to slow down, a driver shall extend his right arm with the palm downward and to the right of the vehicle and shall move the arm so extended up and down several times in such a manner that the signal can be seen by the driver of any vehicle which may be behind him.

4. When about to stop a driver shall raise his right forearm vertically outside of and to the right of the vehicle, palm to the front.

5. When a driver wishes to indicate to the driver of a vehicle behind him that he desires that driver to overtake him, he shall extend his right arm and hand horizontally outside of and to the right of the vehicle and shall swing the arm backwards and forwards in a semi-circular motion.

N.B.—The following extract from ordinance of XXIII of 1942 should also be noticed :—

" Cl. 3. (6) The Motor Vehicles Act, 1939, shall have effect subject to the following modifications, namely :—

(*a*) Notwithstanding anything contained in section 62 of that Act a permit under that section may be granted, and shall be granted in any case in which the Provincial Government so directs, to be effective for a period exceeding four months ;

(*b*) Notwithstanding anything contained in Chapter IV of that Act but without prejudice to the provisions of section 60, the transport authority which granted a permit may at any time cancel the permit or may suspend it for such period as it thinks fit, if in the opinion of the transport authority it is no longer in the public interest that the service should continue and the vehicle or vehicles covered by the permit can be more usefully employed elsewhere; and the transport authority shall cancel or suspend a permit issued by it so required by the Provincial Government ;

(*c*) If, in any particular case the Provincial Government thinks fit so to order, the authority empowered to grant a permit under Chapter IV of that Act shall not in deciding to grant or refuse a permit, be bound to take into consideration representations made by any person, authority or association other than the applicant or to follow the procedure laid down in section 57, and may accept an application for a stage carriage permit or a public carrier's permit though made less than six weeks before the date on which it is desired that the permit shall have effect ;

(*d*) The Provincial Government may exempt from all or any of the provisions of Chapter IV of that Act, all or any transport vehicles used or required for use in connexion with work considered by the Provincial Government to be work connected with the defence of British India or the prosecution of war. (Ordinance XXIII of 1942 Cl 3.

THE MULTI-UNIT CO-OPERATIVE SOCIETIES ACT (VI OF 1942.)

[*2nd March*, 1942.

An Act to provide for the incorporation, regulation and winding up of co-operative societies with objects not confined to one province.

WHEREAS it is expedient to provide for the incorporation, regulation and winding up of co-operative societies with objects not confined to one province; It is hereby enacted as follows:—

Short title, extent and application.

1. (1) This Act may be called THE MULTI-UNIT CO-OPERATIVE SOCIETIES ACT, 1942.

(2) It extends to the whole of British India.

(3) It applies to all co-operative societies with objects not confined to one province incorporated before the commencement of this Act under the

Co-operative Societies Act, 1912, or under any Act relating to co-operative societies in force in any province, and to all co-operative societies with objects not confined to one province to be incorporated after the commencement of this Act.

Co-operative societies to which this Act applies registered before commencement of this Act.

2. (1) A co-operative society to which this Act applies which has been registered in any province under the law relating to co-operative societies in force in that province shall be demed to be duly registered in that other province to which its objects ex end to be duly registered in that other province under the law there in force relating to co-operative Societies, but shall, save as provided in sub-sections (2) and (3), be subject for all the purposes of registration, control and dissolution to the law rela ing to co-operative societies in force for the time being in the province in which it is actually registered.

(2) Where any such co-operative society has established before the commencement of this Act or establishes after the commencement of this Act a branch or place of business in a province other than that in which it is actually registered, it shall, within six months from the commencement of this Act or the date of establishment of the branch or place of business, as the case may be, furnish to the Registrar of Co-operative Societies of the province in which such branch or place of business is situated a copy of its registered by-laws, and shall at any time it is required to do so by the said Registrar submit any returns and supply any information which the said Registrar might require to be submitted or supplied to him by a co-operative society actualy registered in that province.

(3) The Registrar of Co-operative Societies of the province in which a branch or place of business such as is referred to in sub-section (2) is situated may exercise in respect of that branch or place of business any powers of audit and of inspection which he might exercise in respect of a co-operative society actually registered in the province.

Co-operative societies to which this Act applies registered after commencement of this Act.

3. (1) A society which might, if its objects were confined to one province, be registered as a co-operative society in any province under the law relating to co-operative societies in force in that province, shall, notwithstanding that its objects are not confined to the province in which its principal place of business is to be situated, be deemed for the purposes of registration as a co-operative society to be situated wholly in that province, and may be registered by the Registrar of Co-operative Societies of that province in accordance with the law relating to co-operative societies for the time being in force in that province, and if so registered shall be deemed in any other province to which its objects extend to be duly registered in that other province under the law there in force relating to co-operative societies but shall, save as provided in sub-sections (2) and (3), be subject for all the purposes of registration, control and dissolution to the law relating to co-operative societies in force for the time being in the province in which it is actually registered.

(2) Where any such co-operative society establishes a branch or place of business in a province other than that in which it is actually registered, it shall within six months from the date of establishment of the branch or place of business furnish to the Registrar of Co-operative Societies of the province in which such branch or place of business is situated a copy of its registered by-laws, and shall at any time it is required to do so by the said Registrar submit any returns and supply any information which the said Registrar might require to be submitted or supplied to him by a co-operative society actually registered in that province.

(3) The Registrar of Co-operative Societies of the province in which a branch or place of business such as is referred to in sub-section (2) is situated may exercise in respect of that branch or place of business any powers of audit and of inspection which he might exercise in respect of a co-operative society actually registered in that province.

Appointment and powers of Central Registrar of Co-operative Societies.

4. (1) The Central Government may, if it thinks fit, appoint a Central Registrar of Co-operative Societies.

(2) The Central Registrar of Co-operative Societies, if appointed, shall exercise in respect of any co-operative society to which this Act applies, to the exclusion of Provincial Registrars, the powers and functions exercisable by the Registrar of Co-operative Societies of the province in which such society is actually registered.

Penalty for failure to furnish information required under this Act.

5. If any co-operative society fails to furnish the information which it is required to furnish by or under sub-section (2) of section 2 or sub-section (2) of section 3, or to submit any return required to be submitted under either of those sub-sections, the society and any officer or member of the society responsible for the failure, shall each liable to fine which may extend to fifty rupees, and the registration of the society may, at the discretion of the Registrar of Co-operative Societies of the province in which the society is actually registered, be cancelled.

Power of Central Government to make rules.

6. The Central Government may, by notification in the Official Gazette, make rules for carrying into effect the provisions of this Act.

THE MUNICIPIAL TAXATION ACT (XI OF 1881).[1]

Year.	No.	Short title.	Amendments.
1881	XI	The Municipal Taxation Act.	Repealed in part X of 1914; X of 1927, Am, XXXV of 1934; sec XIII of 1989, s. 20.

[25*th February*, 1881.

An Act to give power to prohibit the levy of Municipal taxes in certain cases.

Preamble.

WHEREAS it is expedient to empower the Governor-General in Council to prohibit, in certain cases, the levy of municipal taxes payable by the persons in the military [2][naval] [3][or air force] service or by the Secretary of State for India in Council; It is hereby enacted as follows:

Short title.

1. This Act may be called THE MUNICIPAL TAXATION ACT, 1881.

Local extent.

It extends to the whole of British India; [4][* * * *].

LEG. REF.

1 For Statement of Objects and Reasons, *see* Gazette of India, 1880, P. V, p. 193; for Proceedings in Council, see *ibid;* Supplement, pp. 904 and 915 and *ibid.*, 1881: Supplement, p. 250.

2 Inserted by Act XXXV of 1934.

3 Inserted by Act X of 1927.

4 Repealed by Act X of 1914, Sch. II.

SEC. 1.—This Act has no bearing on the city of Bombay Municipal Act. The Act was passed to prevent a Municipality acting waywardly or arbitrarily in respect of Crown properties within the limits of the

2. In this Act "Municipal Committee" includes a Municipal Corporation or a body of Municipal Commissioners constituted by or under the provisions of any enactment for the time being in force.

"Municipal committee", defined.

3. Notwithstanding anything contained in any enactment for the time being in force, the Central Government may, by an order in writing, prohibit the levy by a Municipal Committee of any specified tax—

Power to prohibit levy of tax.

(*a*) payable by any person subject to the [1][Army Act, the Indian Army Act, 1911,] [2][the Naval Discipline Act; or that Act as modified by the Indian Navy (Discipline) Act, 1934] [3][the Air Force Act or the Indian Air Force Act, 1932] who is compelled by the exigencies of military [2][, naval[[4][or air force] duty to reside within the limits of a municipality;

[5][* * * * *].

The Central Government may, by a like order, rescind any such prohibition.

[6][3-A. Notwithstanding anything in any enactment for the time being in force, the Provincial Government may by an order in writing prohibit the levy by a Municipal Committee of any specified tax payable by the Provincial Government and may by a like order rescind any such prohibition.]

Power of Provincial Government to prohibit levy of taxes on it.

4. So long as any order made under section 3, prohibiting the levy of a tax on any person mentioned in [7][* * * *] that section, remains in force, the [8][Central Government] shall be liable to pay to the Municipal Committee mentioned in the order the amount which otherwise would have been payable to such Committee by such person:

[8][Central Government] to pay taxes referred to in section 3.

Provided that the [8][Central Government] shall not be liable to pay any sum in respect of any horse which such person is bound by the regulations of the service to which he belongs, to keep.

5. So long as any order made under [10][section 3-A] prohibiting the levy of

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LEG. REF.

1 Substituted for "Army Discipline and Regulation Act, 1879; or the Indian Articles of War" by Act X of 1927, sec. 2 and Sch. I.

2 Inserted by Act XXXV of 1934.

3 Substituted by Act XIV of 1932.

4 Inserted by Act X of 1927.

5 The words "or (*b*) payable by the Secretary of State for India in Council" omitted by A.O., 1937.

6 Inserted by *ibid.*

7 The words "cl. (*a*) of " omitted by *ibid.*

8 Substituted for "Secretary of State for India in Council" by *ibid.*

9 Substituted for "said Secretary of State in Council" by *ibid.*

10. Substituteh for "sec. 3" by *ibid.*

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particular Municipality. The city of Bombay Municipal Act contains a provision for exempting the Crown properties from general tax under certain circumstances; but it does not govern other Municipalities. The power contained in this Act was assumed to prevent mischief by a wayward Municipality. I.L.R. (1943) Bom. 670=45 Bom.L.R. 914=1944 Bom. 8.

Certain buildings within the Municipality of Ahmedabad consisted of several tenements. Each tenement was given a separate census number. Within the compound of each of the buildings there was a general provision made for the disposal of waste water of each of the tenements, and there was also a water closet or urinal in each of the compounds. But each seperate tenement was not seperately connected with the Municipal drainage system; nor was there a separate water closet or urinal attached to each tenement. The separate tenements were used for shops, godowns and offices, but not for residential purposes. On a claim by the Municipality on the owners of each of the buildings for drainage tax, calculating it on the separate letting value of each of the tenements. *Held*, that since there were water closets or urinals in part of the buildings (the shops and godowns being parts of the buildings) which were connected with the Municipal drainage system, every tenement in the buildings, *i.e.*, all the shops and godowns could be deemed to be connected with the Municipal drainage system and therefore liable to drainage tax separately. 46 Bom.L.R. 733=I.L.R. (1945) Bom. 113 =220 I.C. 50=1945 Bom. 78.

Payments to be made in lieu of taxes referred to in section 3-A.

any tax payable by the [1][Provincial Government], remains in force, the said [1][Provincial Government] shall be liable to pay to the Municipal Committee, in lieu of such tax, such sums (if any) as an officer from time to time appointed in this behalf, by the [Provincial Government] may, having regard to all the circumstances of the case, from time to time determine to be fair and reasonable.

Decision of questions arising under this Act.

6. If any question arises whether any duty is military [2][, naval] [3][or air force] duty within the meaning of this Act, the decision of the Central Government thereon shall be conclusive.

If any question arises whether any person is compelled as aforesaid to reside within the limits of a municipality or is bound as aforesaid to keep any horse, the decision thereon of such authority as the Central Government may from time to time, appoint in this behalf shall be conclusive.

THE MUSLIM MARRIAGES DISSOLUTION ACT (1939)

See UNDER DISSOLUTION OF MUSLIM MARRIAGES ACT (VIII OF 1939).

THE MUSLIM PERSONAL LAW (SHARIAT) APPLICATION ACT (XXVI OF 1937)

[*Am., Act VIII of* 1939 *and XVI of* 1943.]

[*7th October,* 1937.

An Act to make provision for the application of the Muslim Personal Law (Shariat) *to Muslims in British India.*

WHEREAS it is expedient to make provision for the application of the Muslim Personal Law (*Shariat*) to Muslims in British India; It is hereby enacted as follows:—

Short title and extent.

1. (1) This Act may be called THE MUSLIM PERSONAL LAW (SHARIAT) APPLICATION ACT, 1937.

(2) It extends to the whole of British India excluding the North-West Frontier Province.

Application of Personal Law to Muslims.

2. Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land), regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including *talaq, ila, zihar, lian, khula* and *mubaraat,* maintenance, dower, guardianship, gifts, trusts and trust properties, and *wakfs* (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (*Shariat*).

Power to make a declaration.

3. (1) Any person who satisfies the prescribed authority—

(*a*) that he is a Muslim, and

LEG. REF.

1 Substituted by A.O., 1937.

2 Inserted by Act XXXV of 1934, sec. 2 and Sch. I.

3 Inserted by Act X of 1927, sec. 2 and Sch. I.

SEC. 1.—The Muslim Personal Law Application Act, 1937, cancelled the provisions of sec. 4 of the Ajmere Regulation of 1877. This cancellation will however not affect the subject-matter of suits instituted before the date of the enactment of that Act (*i.e.*) in 1937. The result is that suits instituted before 1937 must be decided under the provisions of the Regulation of 1877. 1940 A. M.L.J. 9.

SEC. 2.—The effect of sec. 2 of the Shariat Act is to make the Mussalman Law expressly applicable to subjects which under

(*b*) that he is competent to contract within the meaning of Section 11 of the Indian Contract Act, 1872, and

(*c*) that he is a resident of British India,

may by declaration in the prescribed form and filed before the prescribed authority declare that he desires to obtain the benefit of [1][the provisions of this section] and thereafter the provisions of section 2 shall apply to the declarant and all his minor children and their descendants as if in addition to the matters enumerated therein adoption, wills and legacies were also specified.

(2) Where the prescribed authority refuses to accept a declaration under sub-section (1), the person desiring to make the same may appeal to such officer as the Provincial Government may, by general or special order, appoint in this behalf, and such officer may, if he is satisfied that the appellant is entitled to make the declaration, order the prescribed authority to accept the same.

Rule-making Power.

4. (1) The Provincial Government may make rules to carry into effect the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(*a*) for prescribing the authority before whom and the form in which declarations under this Act shall be made;

(*b*) for prescribing the fees to be paid for the filing of declarations and for the attendance at private residences of any person in the discharge of his duties under this Act; and for prescribing the times at which such fees shall be payable and the manner in which they shall be levied.

(3) Rules made under the provisions of this section shall be published in the Official Gazette and shall thereupon have effect as if enacted in this Act.

Dissolution of marriage by Court in certain circumstances.

5. The District Judge may, on petition made by a Muslim married woman, dissolve a marriage on any ground recognised by Muslim Personal Law (*Shariat*). [Repealed by Act VIII of 1939].

6. [1][The undermentioned provisions] of the Acts and Regulations mention-

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LEG. REF.

[1] Substituted by Act XVI of 1943.

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the terms of previous Acts and Regulations had to be decided on principles of equity and good conscience. That section can have no effect in regard to decisions which expressly interpret Mussalman Law so as to substitute for them the views of Muslim jurists on the same point. I.L.R. (1940) 2 Cal. 464=44 C.W.N. 974=1940 Cal. 501. In matters of succession and inheritance a Khoja is governed by Hindu Law on the ground of custom. In the matter of wills also Khojas were before the Shariat Act of 1937, governed by the Hindu Law and the Courts were therefore bound to construe the wills of Khojas according to Hindu Law. Even after the Shariat Act, so far as testate succession is concerned, the Hindu Law governs Khojas. The Legislature in the Shariat Act did not consider that the law of simple gifts and the law of gifts through the medium of a trust were the same; there is no warrant for qualifying the expression "trust and wakfs" used in sec. 2 of the Act as *inter vivos* trusts and wakfs. Hence although a Khoja, after the passing of the Act, can still will away the whole of his property, in the matter of construction of a will to the extent he has created trusts or wakfs by his will, the validity of those trusts and wakfs must be determined by Mahomedan Law and not by Hindu Law. So also with regard to the making of the will, its form, its revocation or revocation of parts of it, a Khoja (or a Cutchi Memon) is governed by Mahomedan Law, though in matters of construction of a will, he is governed by Hindu Law. 48 Bom.L.R. 642.

SEC. 5.—A petition under sec. 5 (now repealed) which was pending before the District Judge on the date when the repealing Act of 1939 came into force does not automatically lapse, and a final order passed by him on that petition after the repeal of the Act is not, therefore, *ultra vires*. There being no provision in the repealing Act of 1939 affecting proceedings which had been initiated under Act of 1937 when it was in force and were pending at the time of its repeal, the matter is governed by sec. 6 (*e*) of the General Clauses Act. I.L.R. (1941) Lah. 773=43 P.L.R. 103=1941 Lah. 175.

Repeals.

ed below shall be repealed in so far as they are inconsistent with the provisions of this Act, namely:—

(1) S. 26 of the Bombay Regulation IV of 1827;
(2) S. 16 of the Madras Civil Courts Act, 1873;
[(3) S. 37 of the Bengal Agra and Assam Civil Courts Act, 1887;][1]
(4) S. 3 of the Oudh Laws Act, 1876;
(5) S. 5 of the Punjab Laws Act, 1872;
(6) S. 5 of the Central Provinces Laws Act, 1875; and
(7) S. 4 of the Ajmere Laws Regulation, 1877.

THE MUSSALMAN WAKF VALIDATING ACT (VI OF 1913.)[2]

Year	No.	Short title	Amendments.
1913	VI	The Mussalman Wakf Validating Act.	See XXXII of 1930.

PREFATORY NOTE.—The following is the Statement of Objects and Reasons annexed to the Bill:—

The object of this Bill is to remove disabilities and great hardship that has been created by the recent decisions of the Privy Council in *Abdul Fata Mohamed Ishak and others* v. *Russomoy Dhur Chowdhury and others* (L.R. 22 Ind. App. 76) and other cases. The power of a Mussalman to make a settlement for or in favour of his family, children and descendants or what is known as *wakf-alal-aulad* in the Mussalman Law, is paralysed.

In the case above cited it was held that under Mussalman Law, a perpetual family settlement expressly made as wakf is not legal and valid merely because there is an ultimate gift to the poor and it confirmed the decision in *Ashunulla Chowdhury* v. *Amarchand Khundu*, reported in L.R. 17 Ind. App. 37, the principle of which was approved in a subsequent case of *Abdul Gafur* v. *Nizamuddin* (L.R. 19 Ind. App. 170) where it was laid down that a gift is not good as wakf unless there is a substantial dedication of the property to charitable uses at some period of time or other.

The decision does not fix any limit of time, it simply says "some period of time or other". It does not define what is "substantial dedication". Thus it introduces the greatest uncertainty in the law, and is generally opposed to the true principles and correct exposition of the Mussalman jurisprudence. The Bill is intended only to reproduce the Mussalman Law of *Wakf-alal-aulad* in a codified form with certain safeguards for the authenticity of the *wakf-nama* and for prevention of fraud upon creditors or otherwise.

It is not intended to codify or define the general law of Wakf which must be governed by the Mussalman Law. The Bill is a simple one and the important provisions are as follows:—

Clause 3.—Defines the power of a person professing Mussalman faith to create wakf.

Clauses 4 *and* 5.—Are intended to secure authenticity of *Wakf-nama* and prevent fraud upon creditors or otherwise.

Clause 10.—Deals with testamentary wakf.

Clause 11.—Deals with registration of wills and empowers the persons mentioned therein to have the will registered.

(See *Fort St George Gazette*, Pt. III, 28th March, 1911, p. 240.)

[*See* Act XXXII of 1930.]

[*7th March*, 1913.

An Act to declare the rights of Mussalmans to make settlements of property by way of "wakf" in favour of their families, children and descendants.

WHEREAS doubts have arisen regarding the validity of wakfs created by persons professing the Mussalman faith in favour of themselves, their families,

LEG. REF.

1 *N.B.*—"For the purpose of reviving the operation of sec. 37 of the Bengal, Agra and Assam Civil Courts Act, 1887, entry (3) relating to that Act shall be omitted". [*See* Act XVI of 1943, sec. 3 (*b*).]

2 For Statement of Objects and Reasons, *see* Gazette of India, 1911, Pt. V, p. 107; for Report of Select Committee, see *ibid.*, 1913, Pt. V, p. 39; and for Proceedings in Council see *ibid.*, 1911, Pt. VI, p. 402, and *ibid.*, Pt. VI, pp. 29, 65 and 147.

children and descendants and ultimately for the benefit of the poor or for other religious, pious or charitable, purposes; and whereas it is expedient to remove such doubts; It is hereby enacted as follows—

Short title and extent.

1. (1) This Act may be called THE MUSSALMAN WAKF VALIDATING ACT, 1913.

(2) It extends to the whole of British India.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context.—

(1) "Wakf" means the permanent dedication by a person professing the Mussalman faith of any property for any purpose recognized by the Mussalman law as religious, pious or charitable.

(2) "Hanafi Mussalman" means a follower of the Mussalman faith who conforms to the tenets and doctrines of the Hanafi School of Mussalman law.

SEC. 1.—The Mussalman Wakf Validating Act is not retrospective in its effect. 1922 P.C. 107=43 M.L.J 385=49 Cal. 830 =49 I.A. 153 (P.C.); 54 I.A. 372=1927 P. C. 191=53 M.L.J. 166 (P.C.). *See also* 50 I.C. 77=6 O.L.J. 80; 55 C. 448=105 I.C. 647=1928 C. 130; 39 B. 563; 24 C.W.N. 18; 19 C.W.N. 967=32 I.C. 701=43 C. 158; 44 A. 1=1922 All. 314; 27 I.C. 96=19 C. W.N. 76. The Act merely defines what is valid wakf but it does not purport to deal with the validity or otherwise of wakfs, the objects of which are indefinite or uncertain. 130 I.C. 556=1931 S. 75. The Act of 1913 was intended to expand the law relating to the creation of a wakf and not to restrict it and a wakf which would have been considered a good wakf before the Act was passed could not possibly be considered a bad wakf owing to anything contained in the Act. 4 Luck. 101=1929 O. 25. The Mussalman Wakf Validating Act of 1913 had no retrospective effect and it was only by the later Act of 1930 that it was made to apply to wakfs created before 1913 and then only if any right, title, obligation or liability already existing was not affected. A mortgage created before 1930 cannot, therefore, be affected by these Acts. 13 Luck. 723=1938 O.W.N. 67=1938 Oudh 69. If there can be a valid wakf subsequent to the Mussalman Wakf Validating Act apart from the provisions of the Act, where the wakf makes provision for the family of the wakif the test to be applied to ascertain its validity would be the same as that applied to cases decided before Act VI of 1913, namely, that if the effect of the deed was to give the property substantially to charitable uses it would be valid, but if the effect of the deed was to give the property in substance to the settlor's family then it would be invalid under Mahomedan Law. 1940 A.L.J. 504=1940 All. 462. The Wakf Validating Act allows the settlement of properties in perpetuity in favour of the family, children or descendants of a person belonging to the Mussalman faith. 112 I.C. 623 (2)=1929 A. 180. Under the Act, where a dedication is made in favour of one's own descendants, generation after generation, it is not necessary that there should be an immediate or concurrent gift in favour of religious or charitable object. It is enough if there is an ultimate gift in favour of such objects as are considered pious, religious, charitable or meritorious under Mahomedan Law. 112 I.C. 623 (2)=1929 A. 180. The Mussalman Wakf Act, 1923, applies to such wakfs as are defined in sec. 2 (*e*) of that Act and does not apply to such other wakfs as are expressly excluded from the operation of the definition. The exception covers a wakf such as is described in sec. 3 of the Mussalman wakf Validating Act (1913), under which any benefit is for the time being claimable for himself by the person by whom the wakf was created or by any of his family or descendants. 7 O.W.N. 986=1930 O. 509. An illusory charitable gift made before the Act is void. 50 I.C. 77=6 O.L.J. 80. A trust for slaves and dependants is not within the terms of the Wakf Validating Act, VI of 1913 or Act XXXII of 1930 giving retrospective effect to the earlier Act. 59 I.A. 74=34 Bom.L.R. 510=54 A. 93= 1932 P.C. 81=62 M.L.J. 371 (P.C.). The fact that a wakf is made under Act VI of 1913 does not exclude the principles of Muhammadan Law from application. 16 L. 432=1935 L. 626. The ultimate gift to religious or charitable purposes must be implied from the terms of the document and cannot be implied from the mere fact that the testator was purporting to make a wakf. Where a settlor directed that the dwelling-house should be used by himself and his heirs and as regards income from the properties, he directed that a specified fraction should be spent on charity, the remainder being spent on himself and his heirs, but there was no provision as to the destination of the income after the failure of heirs, *held*, that the wakf was invalid both under the Mahomedan Law and under the Mussalman Wakf Validating Act. 60 C. 901=37 C.W.N. 741 =1933 C. 716. Procedure under the Act— Alienation of Wakf Property. *See* I.L.R. (1944) Kar. 69.

SEC. 2.—Mere use of the word "wakf" in a deed after Act VI of 1913 cannot necessarily imply a dedication to the poor and will not make a valid dedication in law. The ultimate object of the wakf should be implied by use of proper words. It must

3. It shall be lawful for any person professing the Mussalman faith to create a wakf which in all other respects is in accordance with the provisions of Mussalman law, for the following among other purposes:—

Power of Mussalmans to create certain wakfs.

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contain an implied reservation that the ultimate benefit from property should go for a religious, pious and charitable purpose of a permanent character. 52 A. 748=1930 A. 837=1930 A.L.J. 978. *See also* 7 Luck. 300=8 O.W.N. 1302=1932 O. 71.

SEC. 3.—As to applicability of section, *see* 1928 N. 10. *See also* 37 C.W.N. 395=60 C. 790=1933 C. 581 [where it was *held*, that the wakf did not come under this section but came within the exception of sec. 2 (*e*) of the Act of 1923.] In order that a beneficiary under a wakf can claim the protection under the Mussalman Wakf Validating Act of 1913, he must establish that he falls in one of the three categories mentioned in the Act, *viz.*, (1) the family of the settlor; (2) the children of the settlor; (3) the descendants of the settlor. "Family" in sec. 3 of the Act would include (1) all those persons residing in the same house as the settlor and dependent upon him for maintenance and (2) all those connected with the settlor through a common progenitor or by ties of common lineage. 44 Bom.L.R. 256=I.L.R. (1942) Bom. 441=1942 Bom. 155. *See also* I.L.R. (1940) 2 C. 464=44 C.W.N. 974=1940 Cal. 501. Where the major portion of the income is dedicated by the deed of wakf to the upkeep of a mosque, and the allowance fixed for the daughter-in-law and her daughter has been given to them not as the wakif's heirs but as Mutawallis of the wakf property, so that the wakf cannot properly be said to be one for the maintenance and support of the wakif's family, the Mussalman Wakf Validating Act has no application, and the deed of wakf in question is not invalid owing to the provisions of that Act. 11 Luck. 735=1936 O.W.N. 165=1936 O. 213 (F.B.). The provisions of Act VI of 1913 though in terms declaratory are not retrospective. 40 M. 116=1916 P.C. 86=32 M.L.J. 101=44 I.A. 21 (P.C.) (Affirming 34 M. 12=6 I.C. 1); 24 C.W.N. 18; 39 B. 563=26 I.C. 906=16 Bom.L.R. 977. *See also* 53 M.L.J. 166 (P.C.). Act validates a trust only when the ultimate benefit is expressly or impliedly reserved for the poor or for any other purpose recognised by the Mussalman Law as a religious, pious or charitable purpose of a permanent character. 105 I.C. 155=1928 N. 10. *See also* 93 I.C. 14=1926 A. 378. A wakf for the maintenance of the wakif's family is invalid, if there is no ultimate gift for a religious, pious or charitable purpose. I.L.R. (1940) 2 Cal. 189=71 C.L.J. 432=44 C.W.N. 718=1940 Cal. 417. If the ultimate gift to the poor or to pious, religious and charitable purposes is postponed till after the extinction of the family, children or descendants of the wakif, the wakf would be valid although the ultimate gift to such purposes is remote. If such an ultimate gift is more remote, that is, if it is to take effect on the extinction of a more extended group of persons as for instance heirs how low so ever of the wakif, the dedication by way of wakf substantially for the maintenance of the wakif's family, children and descendants would not be valid under the Wakf Validating Act. For the body of the heirs would include even the distant kindred, most of whom would not be descendants how low so ever of the wakif and could not be regarded as members of his family. I.L.R. (1940) 2 Cal. 464=44 C.W.N. 974=1940 Cal. 501. *See also* 44 Bom.L.R. 256=1942 Bom. 155. A wakf which is against the Mahomedan Law of Inheritance and which excludes the principal heir is not invalid under sec. 3 of the Act. The words "which in all other respects is in accordance with the provisions of Mussalman Law" in that section do not refer to the Law of Inheritance but the law of wakfs as governed by Mussalman Law. Further sub-cl. (*a*) allows a wakf for the maintenance and support wholly or partially of his family, children or descendants. The expression "family, children and descendants" does not mean the family or children or descendants as a class but may mean only some persons of a particular class. Under Mahomedan Law, a valid wakf can be created in favour only of some members of the family or some of the children or descendants, whether males or females and to the exclusion of others. I.L.R. (1938) Lah. 435=40 P.L.R. 220=1938 Lah. 453. The maintenance and support of the family, children or descendants of the wakif, does not come within the phrase "other purpose recognised by Mussalman Law as pious" used in the proviso to sec. 3 for maintenance of these persons or class of persons is expressly mentioned in the body of that section. I.L.R. (1940) 2 Cal. 464=44 C.W.N. 974=1940 Cal. 501. The Mussalman Wakf Validating Act has not effected any change in the law. The proviso to sec. 3 of the Act does not make valid a wakf which is religious and pious only without being also charitable. The object of the Act was to declare the rights of Mussalmans to make settlements of property by way of wakf in favour of their families, etc 40 L.W 806=58 M 204=1935 M. 29=68 M.L J. 107. A bequest "for charitable and religious purposes" is void for uncertainty. Both these objects are void for uncertainty individually as they are correlated with each other; even if one of them be held to be uncertain the entire wakf must fail and such bequests cannot be enforced by the Courts. 1935 L. 596. The executant of a wakfnama provided that the surplus income of certain properties should be utilized to-

wards certain pious works, towards the maintenance of a certain private tomb. There was a further clause that the settlor could make arrangement regarding the tank, garden, etc., mentioned in the deed. *Held*, that there was an ultimate benefit for a pious or charitable purpose and that the dedication was valid. 59 C. 402 =35 C.W.N. 1159=1932 C. 93. *Held*, also that the reservation clause regarding the tank, gardens, etc., did not affect the dedication (governing principles applicable to the construction of a wakfnama stated). Effect of use of the word 'wakf' indicated. (*Ibid.*) A wakf describing the ultimate object of the benefit as charitable purposes highly commendable according to 'Hanafi school' (*umur-i-kair men jo hamaujib mzyab hanafia zeada munasib hun kharch hore*) is not valid according to Mussalman Wakf Validating Act unless the author specifies a particular object and that particular object is recognised by the Mahomedan Law as religious, pious or charitable and is of a permanent character. 15 Luck. 586=1940 O.W.N. 689=1940 Oudh 324 (F.B.). *See also* 26 I.A. 71. But *see* 46 C.W.N. 561= 1942 Cal. 180=74 C.L.J. 271; I.L.R. (1941) A. 443=1941 All. 235. The mere use of the word "wakf" in a deed after the passing of Act VI of 1913 cannot necessarily imply a dedication to the poor. The ultimate object of the wakf has to be implied by use of other words. 1930 A. 837. The object of the proviso to sec. 3 is that it should appear on the construction of the instrument of wakf that the ultimate benefit is either expressly or impliedly reserved for the poor or for any other purpose recognised by the Mahomedan Law as a religious or charitable purpose of a permanent character. The word "wakf" therefore used in sec. 3 should not only satisfy the definition of that word given in sec. 2 but should also satisfy the limitations of the proviso before a wakf can be adjudged to be lawful within the meaning of the Act. 8 O.W.N. 1302. When a definite rule of Mahomedan Law is laid down by the Legislature it must follow that it overruled certain interpretations which did not find favour with the Legislature. 1930 A. 837 =52 A. 748. Where a person executed a wakfnama and placed the mutawalli in possession of certain properties, but the deed did not contain any direction for an ultimate benefit to religious or charitable purposes, *held*, that a valid wakf was not constituted. 129 I.C. 163=6 Luck. 382=1931 O. 133. Where the annual profits of the wakf properties were Rs. 700 a year and after deducting the expenses which were specified in the wakfnama, the aggregate, of which came to Rs. 225, the balance of Rs. 475 was to be spent by the mutwallis in equal proportions for the maintenance of themselves and their children, *held*, that that wakf was valid by virtue of cls. (*a*) and (*b*) of sec. 3 of the Act provided the requirements of the proviso attached to the section were fulfilled. 8 O.W.N. 1302= 7 Luck. 300=1932 O. 71 Under the Act it is open to a Mussalman to create a wakf of property which would be perfectly valid, even although the income during his own lifetime was devoted entirely to his own support, and, so long as he remained alive; such a wakf would be valid even if he did not spend anything upon religious and charitable purposes, in his lifetime. 1927 O. 162. Where a man has set aside property with the direction that his expenditure upon religious and charitable objects shall be made from a portion of the income of the property and he has expended sums upon religious and charitable objects, the conclusion would be that he utilised a portion of the income at any rate for such objects. Under the Hanafi law this is sufficient. 4 O.W.N. 360=102 I.C. 77=1927 O. 162; 53 I.C 764 =24 C.W.N. 18. A *wakfnama* though not governed by the Act will be valid if the dominating purpose and intention of the grantor was a charitable purpose and the secondary and subsidiary object was to secure for his daughters any surplus that might remain after defraying the expenses. 41 I.C. 684 (2). The expression "family" includes only those persons residing in the house of the dornor for whose maintenance, the donor is responsible, and remote cousins in the fourth and fifth degree do not come within the term. 13 O. & A.L.R. 896. A wakf may be validly created in favour of certain members of the family to the exclusion of others. Considerations of expediency cannot prevail with the Court to introduce words into a section which are not there. The ancient Mussalman text-writers do not discountenance the idea of a settlement in favour of some only of a class, though it may be at variance with the principles of the law of inheritance. 125 I.C. 33=1930 S. 318. A daughter-in-law living in the same house as the settlor and maintained by him is undoubtedly a member of the family of the settlor. 52 A. 368=1930 A.L.J. 109 =1939 A. 169; 51 A. 40=1928 A. 576. Where the executant of a wakfnama provided that "religious and charitable objects should continue to be performed permanently and in perpetuity so that they may benefit my soul," *held*, that the wakf satisfied the requirements of the proviso to sec. 3, even though there was no specification in the deed itself of such religious and charitable objects. 7 Luck. 300. A wakfnama in which provision out of his property is made for the maintenance of his deceased brother's wife and another deceased brother's children, is valid; the deceased brother's son comes within the meaning of the word "family", as used in sec. 3 (*a*) of the Act. 11 Lah.L.J. 404=1929 L. 721. The word "family", in sec. 3 (*a*) was intended to be used in a very large and extensive sense. Technically the word "family" may be taken to mean the collective body of persons who live in one house and under one head or manager. Popularly the term indicates persons descended from one common

(*a*) for the maintenance and support wholly or partially of his family, children or descendants, and

(*b*) where the person creating a wakf is a Hanafi Mussalman, also for his own maintenance and support during his lifetime or for the payment of his debts out of the rents and profits of the property dedicated:

Provided that the ultimate benefit is in such cases expressly or impliedly reserved for the poor or for any other purpose recognised by the Mussalman law as a religious, pious or charitable purpose of a permanent character.

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progenitor and having a common lineage. The nephews of the settlor are in this sense the members of his family. It could never have been the object of the legislature to exclude persons who were related by blood, merely by reason of the fact that they did not reside in the house of the settlor or that the settlor was not normally responsible for their maintenance. 1930 A.L.J. 109=52 A. 368=1930 A. 169; 51 A. 40; 138 I.C. 616 (A.). "Family" as including non-resident relative—Provision in deed for maintenance of such persons—Whether renders deed invalid. *See* 4 Luck. 101=1929 O. 25. Where the author of a wakf does not divest himself of the property, the wakf is not valid. In the absence of an express reservation of any ultimate benefit to the poor in a wakf, no such final reservation can be implied on a failure of heirs of the donor. 10 O. & A.L.R. 896. The word "descendants" in S. 3, cl. (*a*) includes persons descended from the settlor both in the male and in the female line. The descendants in the female line not residing in the house of the settlor and not maintained by him are within the Act and cannot be excluded from its purview. 1930 A.L.J. 109=15 Luck. 586=1930 A. 169. Under S. 3 (*b*) it is lawful for a person to create a wakf for the payment of his debts out of the rents and profits of the property dedicated. 49 C. 477=34 C.L.J. 444=1922 C. 429.

SEC. 3 (*a*): "FAMILY"—ADOPTED SON.—The word "family" in S. 3 (*a*) is used by the Legislature in its broad popular sense so as to include all persons descended from a common progenitor. 1940 A.L.J. 399=1940 All. 383. From the fact that *M* was adopted by *A* who had executed a wakf and resided with him during his lifetime, he (*M*) must be held to be a dependent relation of *A* and therefore comes within the definition of family in S. 3. 1935 L. 414. The word "family" as used in S. 3 (*a*) of the Act includes the brother or the descendants of the brother so as to entitle them to claim to be the subjects of a valid wakf. 16 Lah. 782=1935 L. 251. The fact that a person cannot take benefit under the wakf on the ground that he is not a member of the family of the wakf, is not sufficient to set it aside in its entirety. 1935 L. 414.

SEC. 3, PROVISO: SCOPE.—The proviso to S. 3 does not effect any change in the Muslim conception but simply states what the Muslim law is. The effect of that proviso must, therefore, be judged by the principles propounded by Muslim jurists. According to them there are two distinct principles: One is analogous to the *cypres* doctrine. The other principle is that a wakf will not fail for mere vagueness or uncertainty of the object. For when the object is not specified by the wakf, the usufruct is to be applied to the benefit of the poor. The proviso to S. 3 states that the ultimate benefit in a *wakf-alal-aulad* can also be impliedly reserved for the poor or for any purpose recognised by the Mussalman Law as religious, pious, or charitable purpose of a permanent character. Those purposes need not be expressed in clear terms in the wakfnama. If in the wakfnama the wakf designs the ultimate gift to "proper acts of charity", these words used in the wakfnama will *imply* a gift to the poor, which is an effective gift, and the wakf will comply with the provisions of the Act. Further, if the wakf deed manifests an overriding intention to give to charity in the contingency of the failure of the descendants of the wakf that would call in the application of the *cypres* doctrine. Per *Khundkar, J.*—If the objects of the wakf are indicated with reasonable certainty, it is not necessary that they should be named. A gift for "Kar-i-khair" (works of charity) in a deed of wakf cannot be condemned as vague and indeterminate, as the objects of the donor's bounty are possible of ascertainment by reference to the principles of Mahomedan Law. Even if the expresison "Kar-i-khair" does not indicate the objects of bounty intended by the wakif with sufficient certainty, the doctrine of *cypres* could be invoked. 74 C.L.J. 261 =1942 Cal. 180=46 C.W.N. 561. *See also* 1940 Oudh 324 (F.B.); 1941 All. 235=I. L.R. (1941) All. 443. The proviso to S. 3 of the Mussalman Wakf Validating Act is imperative, and the absence of an express or implied provision for the ultimate reversion of the property to some charity makes the wakf absolutely invalid. 165 I.C. 515. The word "impliedly" in the proviso to S. 3 of Act VI of 1913 has not been defined anywhere; but it must mean that the reservation of the benefit for the poor, etc., can be

indirectly inferred from the recitals in the deed coupled with surrounding circumstances. 1936 A.L.J. 231=1936 A. 404. But where a deed of wakf-alal-aulad contains no such indication and it is impossible to say that the wakif had any such purpose in view even as a remote possibility, and indeed where the wakif does not seem to have contemplated the extinction of the line of his descendants at all, it is difficult to say that any reservation of such benefit is implied. (*Ibid.*) A mere recital in the deed that the wakf-alal-aulad was being made in accordance with law, Act VI of 1913, does not imply that the requirements of that Act were fulfilled. Where among other things a deed of wakf recited that 'if, may God forbid, there be extinction of my descendants, at any time, the amounts allotted above to my heirs, shall be utilised for some charitable purposes according to the scheme to be prepared by Court and the Court shall, in that case, have power to utilise the money only for such *kar-i-khair* as would be correct and valid according to entire Mahomedan religion,' it was held that the words *kar-i-khair* were used in a larger sense so that money may be devoted not only to objects of *khairat* but for objects which might or might not be charitable and that the settlor deliberately used a wider language to give a greater discretion to the Court and to the mutwalli to administer the trust. It was held further that the condition laid down in the proviso to S. 3 of the Mussalman Wakf Validating Act had not been duly complied with and the wakf failed for uncertainty. I. L. R. (1941) All. 443=1941 A.L.J. 269=1941 All. 235. It is clear from the preamble to the Mussalman Wakf Validating Act that the intention in passing the Act was that it should cover private trusts only because there was no doubt regarding the validity of public wakfs. The proviso to S. 3 of the Act would be quite meaningless if the Act applied to public wakfs by which the benefit is reserved immediately and not ultimately for public purposes. 11 B.R. 293.

IMPLIED RESERVATION OF ULTIMATE BENEFIT —"WAKF-FI-SABI-LILLAH" IN PERPETUITY.— The reservation of the ultimate benefit contemplated by the proviso to S. 3 of the Wakf Validating Act can either be made expressly or impliedly. The answer to the question whether the reservation of the ultimate benefit for those purposes has been made by a deed of wakf must depend on the intention of the wakif as disclosed by the deed. In a case where the words "wakf-fi-sabi-lillah" have been used and wakf has been created in perpetuity, and there is provision for the appointment of the mutawallis for all time to come, and a portion of the usufruct of the wakf property has been reserved for pious and charitable purposes, and the wakif had in contemplation the possible extinction of the line of his descendants who were to be the principal recipients of the profits of the wakf property, the conclusion is that the wakif intended by implication to reserve the ultimate benefit for the purposes enumerated in the proviso. 1935 A.L.J. 647=1935 A. 616. The performance of *fateha* ceremonies is a 'religious, pious or charitable purpose' within the meaning of the proviso to S. 3. 1940 A.L.J. 399=1940 A.W.R. (H.C.) 352=1940 All. 383. Where the whole of the trust property is not given to charity as an ultimate bequest, the provisions of the Mussalman Wakf Validating Act cannot be said to be complied with. The wakf cannot be validated under the Act. 48 Bom.L.R. 67. It is open to a settlor under the Hanafi law to reserve for his own maintenance and support during his lifetime the income of the trust property. The Act, however, does not permit a Hanafi Mussalman to reserve the income of the trust property during his life for his own benefit and for such use as he may put it to. 48 Bom.L.R. 67. Under the ordinary law it is not open to a person to tie up his property in perpetuity and give the income of it to his children and his descendants. But the law has made an exception in the case of Mussalmans. The Mussalman Wakf Validating Act makes it lawful for a Mussalman to tie up his property in perpetuity for the maintenance and support of his family, children or descendants provided he makes a provision that the ultimate benefit goes to a charitable object recognised by the Mahomedan law as charitable and the charitable object is of a permanent nature. It is open to him to postpone the benefit being conferred upon charity till the extinction of all his family and his descendants. 48 Bom.L.R. 67. There is nothing in the Mahomedan Law to prevent a Mussalman from creating a trust for charity, by way of a gift to charity *in praesenti*, although there is a provision in the deed of trust or wakf that the trustees should not spend the money gifted on charity so long as he was alive and gave the income to him, provided the charitable object is such as is recognised as good under the Mahomedan Law. 48 Bom.L.R. 67. The kindred of the settlor and their descendants are not the objects of a wakf contemplated by S. 3 of the Wakf Validating Act, as they do not come within the category "of his family, children or descendants." I.L.R. (1946) Lah. 300. The introduction as beneficiaries of a class of persons who are outside the scope of the Mussalman Wakf Validating Act between the settlor's descendants and the ultimate beneficiary, namely, charity, does not render the wakf bad in its inception. Their interest can be cut out as

4. No such wakf shall be deemed to be invalid merely because the benefit reserved therein for the poor or other religious, pious or charitable purpose of a permanent nature is postponed until after the extinction of the family, children or descendants of the person creating the wakf.

Wakfs not to be invalid by reason of remoteness of benefit to poor, etc.

5. Nothing in this Act shall affect any custom or usage whether local or prevalent among Mussalmans of any particular class or sect.

Saving of local sectarian custom.

THE MUSSALMAN WAKF VALIDATING ACT (XXXII OF 1930).

[25*th July*, 1930.

An Act to give retrospective effect to the Mussalman Wakf Validating Act, 1913.

WHEREAS the Mussalman Wakf Validating Act, 1913, does not apply to wakfs created before its enactment;

AND WHEREAS it is expedient to validate such wakfs without infringing any rights contrary thereto which may htve already accrued or been acquired; It is hereby enacted as follows:—

1. This Act may be called THE MUSSALMAN WAKF VALIDATING ACT, 1930.

Short title.

2. The Mussalman Wakf Validating Act, 1913, shall be deemed to apply to wakfs created before its commencement:

Act VI of 1913 to apply retrospectively.

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beneficiaries and the interest of charity thus accelerated. I.L.R. (1946) Lah. 300. Where the bequest is for purposes one of which is charitable and the other merely benevolent and discretion is left to the trustee to spend the income on either object as he pleases, the whole bequest is bad for uncertainty. I.L.R. (1946) Lah. 300. It is a sufficient compliance with the Mussalman Wakf Validating Act if a wakf deed provides that the ultimate benefit is for religious and charitable purposes even though the objects are not specifically stated. Where the words used in a wakf-deed are "*mahabi aur khairati kam*" which freely translated would mean "religious and charitable works" and the overriding intention of the settlor is to leave the ultimate benefit to charity, the wakf is not void for uncertainty and vagueness. I.L.R. (1946) Lah. 300.

SECS. 3 AND 4.—Neither of Ss. 3 and 4 make the Act retrospective in its operation; consequently if a wakf created before the passing of the Act was illusory and therefore invalid in the eye of the Mahomedan Law, it would not be validated by reason of any retrospective operation of that Act. 41 A. 1=48 I.C. 94 (2)=16 A.L.J. 841. On the construction of a wakf created by the will of a cutchi menon; *Held*, (1) that there was no uncertainty with regard to the property dedicated and the dedication was not subject to any contingency, so as to render the dedication invalid on those grounds; the fact that the properties dedicated included part of the residue of the testator's movables did not affect its validity in view of the Mussalman Wakf Validating Act; (2) that all the objects for which the trustees were directed to devote the income in the event of the family becoming extinct were valid objects of wakf; the observance of the anniversaries of the death of the testator and the members of his family, involving feeding of the poor, constituted a valid object of wakf and the reading of the Koran in public and in private houses was not only religious and pious but was also charitable as it was for the benefit of all Mussalmans; and (3) that even if some of the objects were invalid, the wakf would not be rendered invalid as the *Cypres* doctrine could be applied in carrying out the directions of the will. 1944 M.W.N. 505=1944 Mad. 505= (1944) 2 M.L.J. 92=I.L.R. (1945) Mad. 276.

SECS. 3 AND 5.—A wakf does not become void merely because the wakf appointed a minor as the first mutawalli. 26 A.L.J. 748. *See also* 1928 A. 508=50 A. 830=113 I.C. 723.

SEC. 4: WAKF—VALIDITY—PROVISION REGARDING RESIDENCE OF FAMILY.—Where the primary object of the testator was to create a wakf for charitable and religious purposes, **a provision regarding the residence of the** family does not invalidate wakf. 1935 L. 251 =16 L. 782.

S. 6-C (as amended by Bom. Amendment Act XVIII of 1935)—Revision—Order by Dt. Judge. *See* 45 Bom.L.R. 1055.

SEC. 1.—*See* 1938 Oudh 69=13 Luck. 723 cited under Mussalman Wakf Validating Act VI of 1913.

Provided that nothing herein contained shall be deemed in any way to affect any right, title, obligation or liability already acquired, accrued or incurred before the commencement of this Act.

THE MUSSALMAN WAKF ACT (XLII OF 1923).

Year.	No	Short title.	Amendment.
1923	XLII	The Mussalman Wakf Act.	Sections 2 to 13 came into force in the Madras Presidency on 1st July 1931

[*5th August*, 1923.

An Act to make provision for the better management of wakf property and for ensuring the keeping and publication of proper accounts in respect of such properties.

WHEREAS it is expedient to make provision for the better management of wakf property and for ensuring the keeping and publication of proper accounts in respect of such properties; It is hereby enacted as follows:—

Preliminary.

Short-title extent and commencement.

1. (1) This Act may be called THE MUSSALMAN WAKF ACT, 1923;

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas;

(3) This section shall come into force[1] at once; and

LEG. REF.

1 Secs. 2 to 5 and 7 to 13 were brought into force in the Punjab with effect from the 14th May, 1924, *see* Punjab Gazette, 1924. Pt. I, p. 418.

Secs. 2 to 13 were brought into force in the Presidency of Bombay including Sind from the first June, 1925, *see* Bombay Government Gazette, 1925, Pt. I, p. 1414. All provisions of the Act were brought into force in Bihar and Orissa from the 3rd September, 1925, *see* Bihar and Orissa Gazette, 1925, Pt. II, p. 1192.

Secs. 2 to 13 were brought into force in the Presidency of Bengal with certain modifications from the 1st June, 1927, *see* Notification No. 230, T. Mis., dated the 5th May, 1927, Calcutta Gazette. Pt I, p. 1008.

Secs. 2 to 13 were brought into force in Ajmer-Merwara from 1st February, 1928, *see* Gazette of India, 1928, Pt. II-A, p. 20.

Secs. 2 to 5 and 7 to 13 were brought into force in the N.W.F.P. with effect from 24th February, 1928, *see* N.W.F.P. Gazette, 1928, Pt. I-A, 183.

SEC. 1.—If part of the purpose of a wakf is to provide for the wakif himself or any member of his family or his descendants, the provisions of the Act will not come into force till after the death of such persons. 170 I.C. 530=1937 O.W.N. 798=1937 Oudh 454. Where a plea is raised before a District Judge that the Mussalman Wakf Act is inapplicable to a particular wakf, the District Judge may refuse to decide it, but if he finds it convenient and desirable to determine the question on the materials before him, he is within his jurisdiction in doing so. I.L.R. (1941) N. 613=1940 N.L.J. 98=1940 Nag. 161. *See also* 1938 Pat. 127 =19 P.L.T. 617.

As amended by Bombay Act XVIII of 1935—Applicability to Bombay Presidency.

All that Bombay Act XVIII of 1935, amending Act XLII of 1923 did was to amend with the necessary sanction the Act of the Central legislature, and both must be read together and both apply to the Bombay Presidency. 191 I.C. 429=1940 Sind 219.

The absence of any provisions as to appeal only indicates that the results of an inquiry under the Act are not intended to be final and conclusive. But if the requirements of sec. 115, C. P. Code, are fulfilled, a revision from an order under the Act would lie to the High Court under that section. 9 O.W.N. 538=1932 O. 210=7 Luck. 601 (F.B.). Where the plaintiff's case was a valid wakf and that respondents were the mutwallis thereof, but they only denied that the deed of endowment created any trust to which the Charitable and Religious Trusts Act of 1920 could be applicable, it does not deprive the District Judge of his jurisdiction to proceed under Act XLII of 1923.

(4) The [Provincial Government] may by notification in the [Official Gazette], direct that the remaining provisions of this Act, or any of them which it may specify, shall come into force in the Province, or any specified part thereof, on such date as it may appoint in this behalf.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "benefit" does not include any benefit which a mutwalli is entitled to claim solely by reason of his being such mutwalli;

(*b*) "Court" means the Court of the District Judge or, within the limits of the ordinary original civil jurisdiction of a High Court, such Court subordinate to the High Court as the [Provincial Government] may, by notification in the [Official Gazette], designate in this behalf;

(*c*) "mutwalli" means any person apponted either verbally or under any deed or instrument by which a wakf has been created or by a Court of competent jurisdiction to be mutwalli of a wakf, and includes a naib-mutwalli or other person appointed by a mutwalli to perform the duties of the mutwalli, and, save as otherwise provided in this Act, any person who is for the time being administering any wakf property;

(*d*) "prescribed" means prescribed by rules made under this Act; and

(*e*) "wakf" means the permanent dedication by a person professing the Mussalman faith of any property for any purpose recognized by the Mussal-

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SEC. 2 (*b*).—A wakf created originally to **provide facilities for travellers on a road, i.e.**, to subserve a charitable purpose with a provision that any surplus income that might **arise in future should be enjoyed by the** original creater of the wakf and the **members of his family, is not a wakf which is excluded from the purview of the Mussalman Wakf Act of 1923, as such a wakf is** not one falling under sec. 3 of the **Mussalman Wakf Validating Act of 1913.** See 3 of the Act of 1913 cannot apply to wakfs which subserve two purposes partly charitable and partly private but must apply only to wakfs originally designed to serve one purpose only and that is private. 55 L.W. 828=1942 M.W.N. 712=(1942) 2 M.L. J. 672.

An application under sec. 2 of the Mussalman Wakf Act for registration of wakf estate has to be presented in the Court of the District Judge which is the Court competent to entertain the application. The Court of an Additional District Judge is a Court different from that of the District Judge, but under sec. 8 (2) of the Bengal, Agra and Assam Civil Courts Act, it is competent to the District Judge to transfer the application for registration of a wakf estate to the Additional District Judge and on such transfer the Additional District Judge has jurisdiction to deal with the matter. The Additional District Judge has all the powers which the District Judge has and has jurisdiction to pass any order which the District Judge could pass including an order reconsidering or reviewing a prior order, even though such prior order is one passed by the District Judge prior to the transfer to the Additional Judge. The inherent power to review conferred by sec. 151, C. P. Code, can be exercised by the Additional District Judge and he is therefore competent to vacate an order passed by the District Judge before the application was transferred [illegible] to the Additional District Judge. 1942 P.W.N. 94.

SEC. 2 (*c*).—A District Judge has no jurisdiction to pass an order appointing a mutwalli under sec. 2 (*c*) of the Act. 34 P. L.R. 81=1933 L. 27.

SEC. 2 (*e*).—"Wakf" as denfied by sec. 2 (*e*) means the permanent dedication by a person professing the Mussalman faith of any property for any purpose recognised by the Mahomedan Law as religious, pious or charitable. The purpose of benefiting Madressa is a purpose recognised as charitable by the Mahomedan Law. It is not however necessary that the dedication should be by a beneficial owner. There may be a dedication by a trustee as well, though of course he must keep within the terms of the trust. Where certain persons collect monies for the purpose of building a Madressa and then build the same, and the trustees purchase immmovable property out of the funds of the Madressa and execute a declaration of trust admitting the purchase for the support of the Madressa and declaring that they hold the property upon trust, in substance for the Madressa; there is a good dedication for the purpose of a wakf. I L.R. (1941) Bom. 328 =43 Bom.L.R. 152=1941 Bom. 152. Where a testator by his will bequeathed the whole of his property owned by him on the date of the will and also property which he may acquire thereafter in favour of his two sons in equal shares, but no list of the property was attached to the will, and the testator further stated that there was some wakf property attached to the *imambara* of which he was a mutwalli and prescribed a scheme of succession to the office of mutwalli, but the recitals in the will neither fixed with any

man law as religious, pious or charitable, but does not include any wakf, such as is described in section 3 of the Mussalman Wakf Validating Act, 1913, under which any benefit is for the time being claimable for himself by the person by whom the wakf was created or by any of his family or descendants.

Statements of Particulars.

Obligation to furnish particulars relating to wakf.

3. (1) Within six months from the commencement of this Act every mutwalli shall furnish to the Court within the local limits of whose jurisdiction the property of the wakf of which he is the mutwalli is situated, or to any one of two or more such Courts, a statement containing the following particulars, namely:—

(*a*) a description of the wakf property sufficient for the identification thereof;

(*b*) the gross annual income from such property;

(*c*) the gross amount of such income which has been collected during the five years preceding the date on which the statement is furnished, or of the period which has elapsed since the creation of the wakf, whichever period is shorter;

(*d*) the amount of the Government revenue and cesses, and of all rents, annually payable in respect of the wakf property;

(*e*) an estimate of the expenses annually incurred in the realisation of the income of the wakf property, based on such details as are available of any such expenses incurred within the period to which the particulars under clause (*c*) relate;

(*f*) the amount set apart under the wakf for—

(i) the salary of the mutwalli and allowances to individuals;

(ii) purely religious purposes;

(iii) charitable purposes;

(iv) any other purposes; and

(*g*) any other particulars which may be prescribed.

(2) Every such statement shall be accompanied by a copy of the deed or instrument creating the wakf or, if no such deed or instrument has been exe-

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definiteness the property which was the subject matter of the wakf, nor indicated the nature of the wakf, and there was no evidence of any dedication of property or of any purpose for which the wakf was founded. *Held*, that there was no evidence to justify the treatment of any property as wakf property. 7 O W N 986=1930 O. 509. Some of the terms of a wakf were as follows: (1) as long as the founders live, they shall appropriate one-third of the proceeds of the wakf properties themselves and apply two-thirrds to other charities; (2) after their death, two thirds of the wakf properties shall be enjoyed by their children and the remaining one-third should go to meet the charities; and (3) in the event of non-existence of any child begotten by the founder, such a person from among their relatives as may be most nearly related to them shall be appointed mutwalli and shall get Rs. 10 a month as a salary, shall live in their dwelling-house and shall appropriate the balance of the proceeds of the tanks and gardens left after defraying the expenses of persons attached to the Madrasha and Khanka. *Held*, that the wakf did not come under sec. 3 of Act VI of 1913, but came within the exception of sec. 2 (*e*) of the Act of 1923. 37 C.W.N. 395=60 C. 790=1933 C. 581.

SEC. 3.—The provisions of the Mussalman Wakf Act of 1923 are applicable to a united wakf, *i.e.*, one that is partly a public wakf, that is devoted entirely to religious purposes, and partly a private wakf. Where, in the case of such a wakf, it is found that at least half the income is in open ert of any family obligation, such part of the wakf is governed by the Act of 1923, and under sec. 3 of the Act, the mutwalli can be called upon to file a statement of accounts and to pay contribution 212 I. C. 372=45 Bom. L. R. 1055=1944 Bom. 91. Applicability—Kinds of wakf governed by. *See* 1943 M. 234=(1942) 2 M. L. J. 672. If a mutwalli has complied with the provisions of sec. 3, no question as to whether he denies the wakf or admits it can arise, because by his conduct in furnishing particulars of the wakf property, he must be deemed to have admitted the wakf and his own position as mutwalli. 1932 A. 362=54 A. 475.

SEC. 3 (2): INQUIRY UNDER—SCOPE OF.—The inquiry must be summary and will not

cuted or a copy thereof cannot be obtained, shall contain full particulars, as far as they are known to the mutwalli, of the origin, nature and objects of the wakf.

(3) Where—

(*a*) a wakf is created after the commencement of this Act, or

(*b*) in the case of a wakf such as is described in section 3 of the Wakf Validating Act, 1913, the person creating the wakf or any member of his family or any of his descendants is at the commencement of this Act alive and entitled to claim any benefit thereunder,

the statement referred to in sub-section (1) shall be furnished, in the case referred to in clause (*a*), within six months of the date on which the wakf is created or, if it has been created by a written document, of the date on which such document is executed, or, in the case referred to in clause (*b*), within six months of the date of the death of the person entitled to such benefit as aforesaid, or of the last survivor of any such persons, as the case may be.

Publication of particulars and requisition of further particulars.

4. (1) When any statement has been furnished under section 3, the Court shall cause notice of the furnishing thereof to be affixed in some conspicuous place in the Court-house and to be published in such other manner, if any, as may be prescribed, and thereafter any person may apply to the Court by a petition in writing, accompanied by the prescribed fee, for the issue of an order requiring the mutwalli to furnish further particulars or documents.

(2) On such application being made, the Court may, after making such inquiry, if any, as it thinks fit, if it is of opinion that any further particulars or documents are necessary in order that full information may be obtained regarding the origin, nature or objects of the wakf or the condition or management of the wakf property, cause to be served on the mutwalli an order requiring him

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be conclusive between the contending parties in any future controversy as regards the origin nature and objects of the wakf but the Act does not exclude such inquiry altogether. 7 Luck. 601=1932 O. 210 (F.B.) There is no jurisdiction conferred upon a District Judge to call upon the *mutawalli* of a wakf *suo motu* to furnish particulars regarding the finances of the wakf. There is no provision in the Mussalman Wakf Act for any exercise of the powers of the Court of its own accord. 1945 M.W.N. 577=(1945) 2 M.L.J. 269.

ACT (AS AMENDED BY BOMBAY ACT OF 1935), SEC. 3.—Sec. 3 of the Mussalman Wakf Act applies to any property of a wakf within the jurisdiction of the local Court. So that if one finds mutwalli with property within the local limits of the Small Causes Court at Bombay, it is clear that he has to furnish the required particulars, although other properties of the wakf may be situate, and those who benefit from the wakf may be resident outside Bombay or outside British India. I.L.R. (1941) Bom. 328=43 Bom.L.R. 152= 1941 Bom 152

SECS. 3, 4 AND 5.—The Court of District Judge has jurisdiction, to take proceedings under the same Act, when the alleged wakf is not admitted or denied by the alleged mutwalli. 7 Luck. 601=1932 O. 210 (F.B.). Per Young, C. J.—The Mussalman Wakf Act merely confers administrative powers upon the "Court". The object is to have on record full particulars of all wakf property and to enforce that the Mutwalli shall honestly carry out the provisions of the trust imposed upon him, and to have in a convenient place information available to the public, or to any beneficiary of the wakf, in order that they may see whether the wakf property is being properly administered and, if it is not, that any one may file an information against the mutwalli so that the penalty imposed by sec. 10 of the Act may be inflicted upon him. The "Court" is nowhere in the Act said to be acting in its judicial capacity. I.L.R. (1941) Lah. 395= 43 P.L.R. 208=1941 Lah. 145 (F.B.).

SECS. 3, 9 AND 10.—There is no jurisdiction for the District Judge to appoint receiver in a proceeding started on an application for direction on a mutwalli to file particulars and accounts contemplated by Act XLII of 1923. An order therefore appointing a receiver being without jurisdiction is liable to be set aside in revision, though no appeal lies against such an order. 165 I.C. 740=40 C.W.N. 1300=1936 C. 420.

SEC. 4.—Wakf partly public and partly private—Remedy against defaulting mutwalli—Mutwalli's failure to keep accounts and particulars—Effect of. *See* 4 Luck. 429 =6 O.W.N. 316=1929 O. 225 (F.B.).

to furnish such particultrs or documents within such time as the Court may direct in the order.

Statement of Accounts, and Audit.

Statement of accounts.

5. Within three months after the thirty-first day of March next following the date on which the statement referred to in section 3 has been furnished, and thereafter within three months of the thirty-first day of March in every year, every mutwalli shall prepare and furnish to the Court to which such statement was furnished a full and true statement of accounts, in such form and containing such particulars as may be prescribed, of all moneys received or expended by him on behalf of the wakf of which he is the mutwalli during the period of twelve months ending on such thirty-first day of March or, as the case may be during that portion of the said period during which the provisions of this Act have been applicable to the wakf:

Provided that the Court may, if it is satisfied that there is sufficient cause for so doing, extend the time allowed for the furnishing of any statement of accounts under this section.

Audit of accounts.

6. Every statement of accounts shall, before it is furnished to the Court under S. 5, be audited—

(*a*) in the case of a wakf the gross income of which during the year in question, after deduction of the land-revenue and cesses, if any, payable to the Government, exceeds two thousand rupees by a person who is the holder of a certificate granted by the [1][Central Government] under S. 144 of the Indian Companies Act, 1913, or is a member of any institution or association the mem-

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LEG. REF.

[1] Substituted by A.O., 1937, for 'Local Government'.

SEC. 5.—The Mussalman Wakf Act does not apply to a wakf which is a settlement partly for the benefit of poor relations and partly for the benefit of a section of the public belonging to the Shia community. 119 I.C. 365=1930 O. 53. Sec. 5 does not by itself contemplate the intervention of other persons for compelling the mutwalli to file his accounts except possibly as a mere reminder to the judge that the accounts have not been filed with a view to induce the Judge to take proceedings under sec. 10. 52 A. 167=1930 A. 81. On the wording of sec. 5 there cannot be any offence under that section unless a statement has been delivered under sec. 3 of the Act; sec. 5 cannot come into operation unless sec. 3 has been complied with. I.L.R. (1941) Bom. 328=1941 Bom. 152.

District Judge has power to scrutinise the accounts and disallow items and order an amended statement of account to be filed. I.L.R. (1943) Nag. 338=1943 Nag. 238. Mutawalli failing to furnish accounts cannot plead that his predecessor had failed to comply with sec. 3 and that he continued the same practice. 1943 O.W.N. 42=1943 Oudh 212.

SECS. 5 AND 10: LIABILITY TO FURNISH ACCOUNTS—POWER OF DISTRICT JUDGE TO ADJUDICATE.—Apart from proceedings under sec. 10 of the Wakf Act, there is no provision of law by which the District Judge can decide on merits the question as to the nature of the wakf or adjudicate upon the question whether a person is liable to furnish accounts under sec. 5 of the Act. If the case falls under the Act, then sec. 5 lays down a substantive law which makes it incumbent upon the mutawalli to file the statement as required by sec. 5. There is provision in the Act by which he can ask the District Judge to adjudicate upon whether he is liable to furnish accounts under sec. 5 or not. 1940 O. W.N. 598=1940 Oudh 813.

Mussalman Wakf (Bombay Amendment Act XVIII of 1935):-

SEC. 6-A.—A Court has to see that the law is enforced. When there is special order made apparently under sec. 6-A of the Mussalman Wakf Act, as amended by Bombay Amendment Act of 1935, directing certain particulars and accounts to be delivered by a mutwalli of wakf, and that order is disobeyed, the mutwalli disobeying such order is on the face of it guilty of contempt of Court and that is a matter which the Court can deal with under the Contempt of Courts Act, 1926. 44 Bom.L.R. 231=1942 Bom. 152.

SECS. 6-C AND 6-F.—No appeal lies from the decision of a District Judge in an enquiry under sec. 6-C. 44 Bom.L.R 231=1942 Bom. 152=I.L.R. (1942) Bom. 240. An inquiry under sec. 6-C (1) (*i*), is confined to cases where the existence of the wakf is admitted. Where the existence of the wakf is denied, the Court has no jurisdiction to inquire into its existence. I.L.R. (1945) Bom. 257=46 Bom.L.R. 925=1945 Bom. 157.

bers of which have been declared under that section to be entitled to act as auditors of companies throughout British India; or

(*b*) in the case of any other wakf, by any person authorized in this behalf by general or special order of the said Court.

General Provisions.

Mutwalli entitled to pay costs of audit, etc., from wakf funds.

7. Notwithstanding anything contained in the deed or instrument creating any wakf, every mutwalli may pay from the income of the wakf property any expenses properly incurred by him for the purpose of enabling him to furnish any particulars, documents or copies under S. 3 or S. 4 or in respectof the preparation or audit of the annual accounts for the purposes of this Act.

Verification.

8. Every statement of particulars furnished under S. 3 or S. 4, and every statement of accounts furnished under S. 5, shall be written in the language of the Court to which it is furnished, and shall be verified in the manner provided in the Code of Civil Procedure, 1908, for the signing and verification of pleadings.

Inspection and copies.

9. Any person shall, with the permission of the Court and on payment of the prescribed fee, at any time at which the Court is open, be entitled to inspect in the prescribed manner, or to obtain a copy of, any statement of particulars or any document furnished to the Court under S. 3, or S. 4, or any statement of accounts furnished to it under S. 5, or any audit report made on an audit under S. 6.

Penalty.

Penalties.

10. Any person who is required by or under S. 3 or S. 4 to furnish a statement of particulars or any document relating to a wakf, or who is required by S. 5 to furnish a statement of accounts, shall, if he, without reasonable cause the burden of proving

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SECS. 6-C AND 6-M.—The question whether certain property is wakf property is one of the matters which the Court can inquire into under sec. 6-C of the Mussalman Wakf Act as amended by Bombay Amendment Act of 1935, but is not a matter which can be referred to the Wakf Committee under sec. 6-M. The Court has therefore no jurisdiction to refer to the Wakf Committee for investigation and report the question whether a property is wakf property and if so for what purpose. 44 Bom.L.R. 231=I.L.R. (1942) Bom. 240=1942 Bom. 152.

SEC. 6-D.—In the case of a wakf whose property is situate beyond the local limits of the jurisdiction of a District Court, the mutwalli cannot be called upon by that Court to contribute to the Wakf Administration Fund under the Mussalman Wakf (Bombay Amendment) Act of 1935. The only wakfs which can be called upon to make a contribution to that Fund are the wakfs to which under the principal Act (Mussalman Wakf Act of 1923) the Court directing a contribution to be made has jurisdiction. There is nothing in the Act which extends the jurisdiction of the Court to cases in which the mutwallis reside within the district or in which they apply the income within the district. The jurisdiction of the Court is confined entirely to cases in which the wakf property is situate within the limits of its jurisdiction. I.L.R. (1939) Bom. 611=41 Bom.L.R. 934=1939 Bom. 447.

SEC. 6-F.—Where a notice issued to an accused person under sec. 10-B and R. 26 of the Mussalman Wakf Act as amended by the Bombay Amendment Act of 1935, does not specify that an inquiry under sec. 6-C of the Act is being held, it is open to the accused to say that he had no idea that an inquiry under sec. 6-C was being held, and the findings recorded by the Judge in respect of the matter cannot be considered to be final within the meaning of sec. 6-F of the Act. 44 Bom.L.R. 231=I.L.R. (1942) Bom. 240=1942 Bom. 152.

SEC. 6-M.—Where the Wakf Committee to which a matter has been referred by the Court under sec. 6-M of the Mussalman Wakf Act, as amended by the Bombay Amendment Act of 1935 makes a report to the Court after making an inquiry, and the matter again comes before the Court, it is not competent to the Judge to accept evidence which had been filed before the committee or documents which have not been proved. Evidence given before the committee is not made evidence in proceedings before the Court and the Judge should therefore hear the accused and take evidence himself. I.L.R. (1942) B. 240=44 Bom.L.R. 231=1942 B. 152.

SEC. 10.—*See also* 52 A. 167, cited under

which shall be upon him, fails to furnish such statement or document, as the case may be, in due time, or furnishes a statement which he knows or has reason to believe to be false, misleading or untrue in any material particular, or, in the case of a statement of accounts, furnishes a statement which has not been audited in the manner required by S. 6, be punishable with fine which may extend to five hundred rupees, or, in the case of a second or subsequent offence, with fine which may extend to two thousand rupees.

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sec. 5, *supra*. There is nothing in the Mussalman Wakf Act to indicate that it was the intention of the legislature that the Court designated to receive the particulars referred to in the Act is to enter into an elaborate inquiry as to the existence of the wakf or to determine the right to mutwalliship between rival claimants. By leaving the right to mutwalliship undecided, the object of the Act is not frustrated because secs. 5 and 10 act as preventive against applications under sec. 3 being made by persons who are not actually mutwallis. 19 Pat.L.T. 617=1938 Pat. 137. *See also* 1940 Nag. 161 Interpretation of the Statute. 9 O.W.N. 538=1938 O. 210=7 Luck. 601 (F.B.). It is necessary for a Court to decide whether the person who is alleged to be in default is or is not the mutwalli of a 'wakf' within the meaning of the Act. The mere fact that the party denies that he is mutwalli is immaterial if there is other evidence to show that he occupies that position. 1932 A.L.J. 266=1932 A 389. An offence under the section is an offence within the meaning of sec. 4 (*o*) of the Cr. P. Code, and consequently triable by a Magistrate and not by the District Judge. 22 S. L. R. 141=1928 S. 43. All that is needed to bring home an offence under sec. 10 read with sec. 3 to a defaulting mutwalli is to establish by evidence that he is a mutwalli in respect of property which is wakf within the meaning of the Act. Whether the character of the property as wakf and his own position as mutawalli are admitted or are established by evidence, if denied. Sec. 10 is equally applicable. 54 A. 475=1932 A.L.J. 262=1932 A. 262. Under sec. 10 the District Judge has the power to punish a mutwalli if, without any reasonable cause, the burden of proving which shall lie upon him, he fails to furnish statement of particulars of documents or statement of accounts. That is purely a penal proceeding in the course of which the judge may enquire as to whether a wakf is one to which the Act is applicable. But, till that stage arises, the judge cannot hold any such enquiry and compel a mutwalli, who is not admitting the applicability of the Act to file accounts. 52 A. 167=1930 A. 81. In case of prosecution under sec. 10, the Magistrate has jurisdiction to proceed with the inquiry as to whether the property is wakf or not. On a prosecution under sec. 10 it is clearly necessary in the first place for the prosecution to show that the person charged is a mutwalli of the wakf. If that fact is denied, the Magistrate may hear evidence on the point and determine it in the usual way. If he finds that the person charged is a mutwalli, then the next question is whether there has been default under the Act. If the default is proved or admitted and the person charged says that he had reasonable cause for making default, then the burden of proof of that is upon him. (52 All. 167, Foll.) 58 B. 302=36 Bom.L.R. 311=1934 Bom. 169. Where the existence of the wakf is denied by the defendants, the District Judge has no jurisdiction to proceed with an application asking for action under sec. 10. The District Court cannot go into the question as to whether the properties, are wakf properties. The only order that can be passed is that the applicant should get the matter settled by insituting a regular suit. 57 A. 754=1935 A.L.J. 307=1925 A. 254; I.L.R. (1941) Lah. 395=1941 Lah. 145. *See also* I.L.R. (1939) Nag. 564=1939 N.L.J. 249=1939 Nag. 205; 1940 Nag. 161; 1938 Pat. 137. Under sec. 10 the District Judge can impose fine but not a sentence of imprisonment in default of payment of the fine. 1932 A. 389. The District Judge and not the Criminal Court is the proper authority to enforce the provision contained in sec. 10. 54 A. 475=1932 A. 362. The District Judge is the proper Court to decide whether fine should be imposed under sec. 10 of the Act. He has to decide whether statements of accounts furnished are true or not and whether they had been furnished within due time. It cannot have been intended that, after he has decided that statements are untrue or are not furnished within due time and that a fine ought to be imposed, he must send the case to a Magistrate to try what was intended to be decided in Civil Courts. I.L.R. (1937) Nag. 532=1937 Nag. 135. It is not correct to hold that the District Court is the Court which can impose the fine provided in sec. 10. Sec. 10 of the Act creates an offence and says in so many words that the omission described in the section is an offence. Since there is no Court mentioned in the Act as the Court which shall try offences under sec. 10, it follows that the Court which can try those offences is the ordinary Criminal Court, *i.e.*, the Court indicated in the Cr. P. Code, which can try such offences, in view of sec. 29 (2); Cr. P. Code. It would be contry to all principle that the Court of the District Judge should have power to punish offences under sec. 10, for in such case the Court of the District Judge would be virtually in the position of prosecutor and Judge at the same time. 1941 Lah. 145. *Quaere*: whether in proceedings under sec. 10, the District Judge has jurisdiction to hold an enquiry into the nature of the property where

Rules.

Power to make rules.

11. (1) The [Provincial Government] may, after previous publication, by notification in the [Official Gazette], make rules to carry into effect the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) the additional particulars to be furnished by mutwallis under clause (*g*) of sub-section (1) of S. 3;

(*b*) the fees to be charged upon applications made to a Court under sub-section (1) of S. 4;

(*c*) the form in which the statement of accounts referred to in S. 5 shall be furnished, and the particulars which shall be contained therein;

(*d*) the powers which may be exercised by auditors for the purpose of any audit referred to in S. 6, and the particulars to be contained in the reports of such auditors;

(*e*) the fees respectively chargeable on account of the allowing of inspections and of the supply of copies under S. 9;

(*f*) the safe custody of statements, audit reports and copies of deeds or instruments furnished to Courts under this Act; and

(*g*) any other matter which is to be or may be prescribed.

Savings.

12. Nothing in this Act shall—

(*a*) affect any other enactment for the time being in force in British India providing for the control or supervision of religious or charitable endowments; or

(*b*) apply in the case of any wakf the property of which—

(i) is being administered by the treasurer of Charitable Endowments, the Administrator-General or the Official Trustee; or

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the alleged mutwalli denies the existence of the wakf. I.L.R. (1942) M. 143=54 L.W. 377=1941 Mad. 897=(1941) 2 M.L.J. 541. I.L.R. (1941) Lah. 395=1941 Lah. 145 (F. B.). Act (as amended by Pombay Act XVIII of 1935), sec. 10—Scope—The effect of the Mussalman Wakf Act. 1923 and the Mussalman Wakf (Bombay Amendment) Act of 1935, as they now stand is that any prosecution under sec. 10 of the principal Act must be with the sanction of the District Court and must be tried by a Criminal Court not inferior to that of a Presidency Magistrate or of a Magistrate of the first class. The District Court has no jurisdiction to try the offence itself. I. L.R. (1939) Bom. 336=41 Bom.L.R. 180= 1939 Bom. 146.

Act (as amended by Bombay Act XVII of 1935), secs. 10 and 10-B—Jurisdiction to try offences under—If confined to District Court.

After the Bombay Amending Act of 1935, so far as Bombay Presidency and presumably Sind is concerned, it is not now the scheme of the Act that offences under the Act should be punished only by the District Court as the only Court contemplated by the Act, for the Amending Act has now created other offences besides the offence under sec. 10 and added sec. 10-B which applies genrally to offences committed under the Act as a whole. The scheme of the Act is that offences under the Act are ordinary criminal proceedings to be tried by the ordinary Criminal Courts with the proviso that sanction for prosecutions must be given by a Court in the manner prescribed and that no Criminal Court of the Second or Third Class Magistrate shall be competent to try an offence under that Act. 39 Cr.L.J. 805 =1938 Sind 149.

Act (as amended by Bombay Act XVIII of 1935), sec. 10-B and R. 26. Where a person is called upon to deliver accounts under sec. 3 of the Mussalman Wakf Act and fails to do so, and the Court, holding that the person fell within the terms of Act, directs that the papers be sent to the Public Prosecutor of Bombay in order that he might take the appropriate action against that person, that sufficiently complies with R.. 26 of the Rules under the Act which prescribes the manner of giving sanction under sec. 10-B of the Act as amended by the Bombay Act of 1935, though it would be better to give formal sanction independently of the judgment in the case under sec. 3. I.L.R. (1941) Bom. 328=43 Bom.L. R. 152=1941 Bom. 152.

(ii) is being administered either by a receiver appointed by any Court of competent jurisdiction, or under a scheme for the administration of the wakf which has been settled or approved by any Court of competent jurisdiction or by any other authority acting under the provisions of any enactment.

Exemption.

13. The [Provincial Government] may, by notification in the [Official Gazette,] exempt from the operation of this Act or of any specified provision thereof any wakf or wakfs created or administered for the benefit of any specified section of the Mussalman community.

THE NATIVE COINAGE ACT (IX OF 1876).

Year.	No.	Short title.	Amendment.
1876	IX	Native Coinge Act.	Repealed in part, Act X of 1914.

[*N.B.*—Throughout this Act for 'Native State' and 'Native States,' the words 'Indian State' and 'Indian States' have been substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

[*28th March*, 1876.

An Act to enable the Government of India to declare certain coins of [Indian States] to be legal tender in British India.

Preamble.

WHEREAS it is expedient to enable the Governor-General in Council to declare that a tender of payment of money, if made in certain coins made for or issued by [Indian States], shall be a legal tender in British India; It is hereby enacted as follows:—

Short title.

1. This Act may be called THE NATIVE COINAGE ACT, 1876.

Local extent.

It extends to the whole of British India;

[2][* * * *]

2. [*Interpretation clause*]. *Rep. by A.O.*, 1937.

Power to declare that the coins of an Indian State shall be legal tender.

3. Subject to the provisions of section 4, the Central Government may, from time to time, by notification in the Official Gazette, declare that a tender of payment of money, if made in the coins, or the coins of any specified metal, made under this Act, for any [Indian State], shall be a legal tender in British India;[3]

and the provisions of the Indian Coinage Act, 1870,[4] shall apply apply to the coins to which such notification refers, so far as such provisions are applicable thereto, and save as expressly provided by such notification.

LEG. REF.

[1] For the Statement of Objects and Reasons, *see* Gazette of India, 1876, Pt. V, p. 36; for Proceedings in Council, *see ibid.*, (Supplement), pp. 178, 192 and 495.

[2] The words "and it shall come into force at once" were repealed by Act X of 1914, Sch. II.

[3] For notifications issued under this section in respect of certain coins of—

(1) the Alwar State, *see* Gazette of India, 1877, Pt. I, p. 644;

(2) the Bikanir State, *see* Gazette of India, 1893, Pt. I, pp. 213, 428 and 517 and *ibid.*, 1894, Pt. I, p. 187;

(3) the Dhar State, *see* Gazette of India, 1888, Pt. I, p. 18.

As to Bhopal Coinage, *see* the Bhopal Coinage Act, (XI of 1897).

[4] *See* now the Indian Coinae Act (III of 1906).

When such power may be exercised.

4. The power conferred by the first clause of section 3 shall be exercisable only when the coins referred to in such notification comply with the following conditions (that is to say)—

in the case of coins of gold, silver or bronze,

(*a*) their fineness is identical with that for the time being prescribed by law for coins of the Central Government of the same metal;

in the case of coins whether of gold, silver, bronze or copper,

(*b*) they are identical in weight with some coins of the Central Government of the same metal, which may for the time being be legally coined at any Mint of the Central Government, or bear such relation thereto as is approved by the Central Government;

(*c*) the devices upon their obverse and reverse differ from the devices on coins now made or issued by any such [Indian State], and have been approved by the Central Government;

(*d*) upon each of such coins its value in money of the Central Government is inscribed in the English language;

(*e*) the [Indian State] for which they are coined has undertaken to abstain during a term of not less than thirty years from the date of the notification, from coining in its own Mint gold, silver, bronze, or copper, as the case may be, and has also undertaken that no coins resembling coins for the time being a legal tender in British India, shall, after the expiration of the said term, be struck under its authority or with its permission at any place within or without its jurisdiction;

(*f*) such State has formerly declared that a tender of payment of money, if made in coins of the Central Government of the same metal, shall, in the territories subject to such State, be a legal tender in the cases in which payment made in such coins would, under the law for the time being in force, be a legal tender in British India;

(*g*) such State has also agreed that the law and rules for the time being in force respecting the cutting and breaking of coin of the Central Government reduced in weight by reasonable wearing or otherwise, or counterfeit, or called in by proclamation, shall apply to the coins made for such State under this Act, and that it will defray the cost of cutting and breaking them; and

(*h*) such State has also agreed not to issue the same coins below their nominal value, and not to allow any discount or other advantage to any person in order to bring them into circulation.

[Indian] States authorized to send metal to British India Mint for coinage

5. It shall be lawful for any such State to send to any Mint in British India metal to be made into coin under this Act; and, subject to the Mint Rules for the time being in force, and to the provisions hereinafter contained, the Mint-master shall receive such metal and convert it into coin, provided that it be fit for coinage.

Nothing herein contained shall be deemed to entitle any such State to have coins made under this Act at any Mint of the Central Government of any metal which is not for the time being legally coined at such Mint.

Power to impose a charge for coinage.

6. The Central Government may impose on any metal sent to a Mint for coinage under this Act the duty (if any) leviable on the same metal under the Indian Coinage Act, 1870[1], and also a charge sufficient to defray the expenses of coinage over and above the expenses of assay and refining; and the Mint-master shall coin such metal at the charge so imposed.

LEG. REF.

1 *See* now the Indian Coinage Act (III of 1906).

7. The Central Government may, from time to time, with reference to the reasonable requirements of the population of any [Indian State], fix the maximum number of any coins of any particular metal that shall be coined under this Act.

Power to limit number of coins to be made under this Act for any Indian State.

THE NATIVE CONVERTS' MARRIAGE DISSOLUTION ACT (XXI OF 1866).[1]

Year.	No.	Short title.	Amendments.
1866	XXI	The Native Converts' Marriage Dissolution Act.	Repealed in Part, VII of 1870; XV of 1874; XII of 1891, X of 1914.

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LEG REF

[1] For Statement of Objects and Reasons to the Bill which was passed into law as Act XXI of 1866, *see* Gazette of India, 1865, p. 59; for the Report of the Select Committee, *see ibid.*, 1866, p. 163, and for discussions on the Bill, *see ibid*, 1865, Supplement, p. 5 and 1866, Supplement, p. 201.

This Act has been declared to be in force in the whole of British India except as regards the Scheduled Districts, by the Laws Local Extent, Act (XV of 1874), sec. 3.

It has been declared in force in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation (III of 1872), Ben. Code, Vol. I, and in the Arakan Hill District except so much as relates to a stamp, by the Arakan Hill District Laws Regulation (IX of 1874), Bur. Code.

[*2nd April*, 1866.

An Act to legalize, under certain circumstances, the dissolution of marriages of Native Converts to Christianity.

WHEREAS it is expedient to legalize, under certain circumstances, the dissolution of marriages of Native Converts to Christianity deserted or repudiated on religious grounds by their wives or husbands: It is entcted as follows:—

Preamble.

Short title.

1. This Act may be cited as THE NATIVE CONVERTS' MARRIAGE DISSOLUTION ACT, 1866.

2. [*Commencement of Act.*] *Repealed by the Repealing Act* (*XVI of* 1874).

Interpretation clause.

3. In this Act—

"Native husband" shall mean a married man domiciled in British India, who shall have completed the age of sixteen years, and shall not be a Christian, a Muhammadan nor a Jew;

"Native husband."

"Native wife" shall mean a married woman domiciled in British India, who shall have completed the age of thirteen years, and shall not be a Christian, a Muhammadan nor a Jewess:

"Native wife."

"Native law" shall mean any law, or custom having the force of law, of any persons domiciled in British India other than Christians, Muhammadans and Jews:

"Native law."

"Month" and "year."

"month" and "year" shall respectively mean month and year according to the British calendar;

[1][* * * * * *]

When convert deserted by his wife may sue for conjugal society.

4. If a Native husband change his religion for Christianity, and if in consequence of such change his Native wife for the space of six continuous months, desert or repudiate him, he may sue her for conjugal society.

When convert deserted by her husband may sue.

5. If a Native wife change her religion for Christianity, and if in consequence of such change her Native husband for the space of six continuous months, desert or repudiate her, she may sue him for conjugal society.

Court in which suit shall be brought.

6. If the respondent, at the time of commencement of such suit, reside within the local limits of the ordinary original civil jurisdiction of any of the High Courts of Judicature the suit shall be commenced in such Court; otherwise it shall be commenced in the principal Civil Court of original jurisdiction of the district in which the defendant shall reside at the commencement of the suit.

Suit to be commenced by vertified petition.

7. The suit shall be commenced by a petition in the form in the first schedule to this Act, or as near thereto as the circumstances of the case will allow.

The statements made in the petition shall be verified by the petitioner in

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LEG. REF.

[1] The paragraph relating to number was repealed by Act X of 1914 and the definition of High Court by A.O., 1937.

SEC. 1.—*See* 18 C. 252; 20 I.C. 557=9 N.L.R. 102.

SEC. 3.—*See* 44 P.R. 1871.

SEC. 4.—*See* 46 M. 839=45 M.L.J. 208 =1924 M. 18 (F.B.).

the manner required by law for the verification of plaints; and the petition [1][* * *] may be amended by permission of the Court.

On service of petition, citation to respondent.

8. A copy of the petition shall be served upon the respondent, and the Court shall thereupon issue a citation under the seal of the Court and signed by the Judge.

Form of citation

9. In ordinary cases the citations shall be in the form in the second schedule to this Act, or as near thereto as the circumstances of the case will allow.

But where the respondent is exempt by law from personal appearance in Court, or where the Judge shall so direct, the citation shall be in the form in the third schedule to this Act, or as near thereto as the circumstances of the case will allow.

Service of citation.

10. A copy of the citation sealed with the seal of the Court shall be served on the respondent; and the provisions of the Code of Civil Procedure, as to the service and endorsement of summonses shall apply, *mutatis mutandis*, to citations under this Act.

Penalty on respondent not obeying citation

11. If the respondent shall not obey such citation and comply with every other requirement made upon her or him under the provisions of this Act, she or he shall be liable to punishment under section 174 of the Indian Penal Code.

Points to be proved on appearance of petitioner.

12. On the day fixed in the citation the petitioner shall appear in Court, and the following points shall be proved—

(1) the identity of the parties;

(2) the marriage between the petitioner and the respondent;

(3) that the male party to the suit has completed the age of sixteen years, and that the female party to the suit has completed the age of thirteen years;

(4) the desertion or repudiation of the petitioner by the respondent;

(5) that such desertion or repudiation was in consequence of the petitioner's change of religion;

(6) and that such desertion or repudiation had continued for the six months immediately before the commencement of the suit.

First interrogation of respondent.

13. The respondent, if such points be proved to the satisfaction of the Judge, shall thereupon be asked whether she or he refuses to cohabit with the petitioner, and, if so, what is the ground of such refusal.

In ordinary cases such interrogation and every other interrogation prescribed by this Act shall be made by the Judge, but when the respondent is exempt by law from personal appearance in Court, or when the Judge shall in his discretion excuse the respondent from such appearance, the interrogation shall be made by commissioners acting under such commission as hereinafter mentioned.

LEG. REF.

[1] The words "shall bear a stamp of two rupees, and," were repealed by the Court-Fees Act (VII of 1870), Sch. III.

SEC. 6.—*See* 44 P.R. 1871.

Interrogations by Judge may be public or private.

14. Every interrogation mentioned in this Act and made by the Judge may, at the discretion of the Judge, take place in open Court or in his private room.

If any such interrogation take place in open Court, the Judge may, so long as it shall continue, exclude from the Court all such persons as he shall think fit to exclude.

Procedure when female respondent refuses to cohabit with petitioner.

15. If the respondent be a female and in answer to the interrogatories of the Judge or commissioners, as case may be, shall refuse to cohabit with the petitioner, the Judge, if upon consideration of the respondent's answers and of the facts which may have been proved by the petitioner he shall be of opinion that the ground for such refusal is the petitioner's change of religion, shall make an order adjourning the case for a year, and directing that,

Adjournment for a year.

in the interim the parties shall, at such place and time as he shall deem convenient, have an interview of such length as the Judge shall direct, and in the presence of such person or persons

Interview.

(who may be a female or females) as the Judge shall select with the view of ascertaining whether or not the respondent freely and voluntarily persists in such refusal.

Procedure on expiration of adjournment.

16. At the expiration of such adjournment the petitioner shall again appear in Court and shall prove that the said desertion or repudiation had continued up to the time last hereinbefore referred to, and if the points mentioned in section 12 and this section of this Act shall be proved to the satisfaction of the

Interrogation of respondent.

Judge, and if the respondent on being interrogated by the Judge or commissioners, as the case may be, again refuse to cohabit with the petitioner, the respondent shall be taken to have finally deserted or repudiated the petitioner;

Decree.

and the Judge shall, by a decree under his hand and sealed with the seal of his Court, declare that the marriage between the parties is dissolved.

Decree in case of male respondent refusing to cohabit on grounds of petitioner's change of religion.

17. If the respondent be a male and in answer to the interrogatories of the Judge or commissioners, as the case may be, shall refuse to cohabit with the petitioner the Judge, if upon consideration of the respondent's answers and of the facts which may have been proved by the petitioner he shall be of opinion that the ground for such refusal is the petitioner's change of religion, shall adjourn the case for a year.

At the expiration of such adjournment, the petitioner shall again appear in Court; and if the respondent on being interrogated by the Judge or commissioners as the case may be, again refuse to cohabit with the petitioner, the Judge shall thereupon pass such a decree as last aforesaid;

Proviso.

Provided that if the petitioner shall so desire (but not otherwise), the proceedings in the suit shall, *mutatis mutandis*, be the same as in the case of a female respondent.

SEC. 16.—Except as provided by this Act no Civil Court in British India has any matrimonial jurisdiction over Hindus and a decree for dissolution of marriage between a Hindu husband and wife passed by any such Court is *ultra vires* and a mere nullity. 20 I.C. 55=9 N.L.R. 102.

18. Notwithstanding anything hereinbefore contained, if it shall appear at any stage of the suit that both or either of the parties had not attained puberty at the date of their marriage, and that such marriage has not been consummated, and if, in answer to the interrogatories made pursuant to section 13 of this Act, the respondent shall refuse to cohabit with the petitioner, and allege, as the ground for such refusal, that the petitioner has changed his or her religion, the Judge shall thereupon pass such a decree as last aforesaid.

Decree if respondent so refuse in case of unconsummated marriage, either party being impubes at time of marriage.

19. When any decree dissolving a marriage shall have been passed under the provisions of this Act, it shall be as lawful for the respective parties thereto to marry again as if the prior marriage had been dissolved by death, and the issue of any such re-marriage shall be legitimate, any Native law to the contrary notwithstanding:

Liberty to parties to marry again.

Provided always that no minister of religion shall be compelled to solemnize the marriage of any person whose former marriage may have been dissolved under this Act, or shall be liable to any suit or penalty for refusing to solemnize the marriage of any such person.

20. In suits instituted under this Act, the Judge shall order a commission to issue to such persons whether males or females, or both, as he shall think fit, for the examination on interrogatories or otherwise of any persons so exempt as aforesaid.

Judge to order commission to issue for examination of exempted persons.

The provisions of the Code of Civil Procedure shall, so far as practicable, apply to commissions issued under this section.

21. At any stage of a suit instituted under this Act, cohabitation as man and wife shall be sufficient presumptive evidence of the marriage of the parties, and proof of the respondent's refusal or voluntary neglect to cohabit with the petitioner after his or her change of religion and after knowledge thereof by the respondent, shall be sufficient evidence of the respondent's desertion or repudiation of the petitioner and shall also be sufficient evidence that such desertion or repudiation was in consequence of the petitioner's change of religion, unless some other sufficient cause for such desertion or repudiation be proved by the respondent.

Proof of marriage and desertion or repudiation of petitioner in consequence of conversion.

22. The provisions of the Code of Civil Procedure as to the summoning and examination of witnesses shall apply in suits instituted under this Act.

Civil Procedure Code applied.

23. If at any stage of the suit it be proved that the male party to the suit is or was at the institution thereof under the age of sixteen years, or that the female party to the suit is or was at the same time under the age of thirteen years, or that the petitioner and the respondent are cohabiting as man and wife, or the Court is satisfied by the evidence adduced that the respondent is ready and willing so to cohabit with the petitioner, the Court shall pass a decree dismissing the suit and stating the ground of such dismissal.

Dismissal of suit if either party under age required by Act, or if parties cohabiting, or, respondent willing to cohabit.

24. If, at any time within twelve months after a decree dismissing the suit upon any of the grounds mentioned in the last preceding section, the respondent again desert or repudiate the petitioner upon the ground of his or her change of religion, the suit may be revived by summoning the respondent; and,

Revival of suit after such dismissal.

upon proof of the former decree and of such renewed repudiation or desertion, the suit shall re-commence at the stage at which it had arrived immediately before the passing of such decree; and after the proofs, interrogations, interview and adjournment which may then be requisite under the provisions hereinbefore contained, the Judge shall pass a decree of the nature mentioned in section 16 of this Act.

Petitioner's cruely or adulery to bar suit.

25. If at any stage of the suit it be proved that the respondent has deserted or repudiated the petitioner solely or partly in consequence of the petitioner's cruelty or adultery, the Court shall pass a decree dismissing the suit and stating the ground of such dismissal.

A suit dismissed under this section shall not be revived.

Male petitioner's cohabitation with one of several wives to bar suit.

26. If the petitioner, being a male, has at the time of the institution of the suit two or more wives, he shall make them all respondents; and if at any stage of the suit it be proved that he is cohabiting with one of such wives as man and wife, or that any one of such wives is ready and willing so to cohabit with him, the Court shall pass a decree dismissing the suit and stating the ground of such dismissal.

The provisions as to revival contained in section 24 of this Act shall apply, *mutatis mutandis,* to a suit dismissed under this section.

Dissolution of marriage not to affect status or right of children.

27. A dissolution of marriage under the provisions of this Act shall not operate to deprive the respondent's children (if any) by the petitioner of their status as legitimate children or of any right or interest which they would have had, according to the Native law applicable to them, by way of maintenance, inheritance or otherwise, in case the marriage had not been so dissolved as aforesaid.

Power to Court to award alimony.

28. If a suit be commenced under the provisions of this Act, and it appear to the Court that the wife has not sufficient separate property to enable her to maintain herself suitably to her station in life and to prosecute or defend the suit, the Court may, pending the suit, order the husband to furnish the wife with sufficient funds to enable her to prosecute or defend the suit and also for her maintenance pending the suit.

If the suit be brought by a husband against a wife, the Court may by the decree order the husband to make such allowance to his wife for her maintenance during the remainder of her life as the Court shall think just, and having regard to the condition and station in life of the parties.

Any allowance so ordered shall cease from the time of any subsequent marriage of the wife.

No appeal under Act, but Judge may state case raising question whether conversion has dissolved marriage.

29. No appeal shall lie against any order or decree made or passed by any Court in any suit instituted under this Act; but if, at any stage of the suit, the respondent shall allege by way of defence that the marriage between the parties has been dissolved by the conversion of the petitioner, and that consequently the petitioner is not a Native husband or a Native wife (as the case may be) within the meaning of this Act, the Judge, if he shall entertain any doubt as to the validity of such defence, shall either of his own motion or on the application of the respondent, state the case and submit it with his own opinion thereon for the decision of the High Court.

30. Every such case shall concisely set forth such facts and documents as may be necessary to enable the High Court to decide the questions raised thereby, and the suit shall be stayed until the judgment of such Court shall have been received as hereinafter provided.

Case to state necessary facts and documents, and suit to be stayed.

31. Every such case shall be decided by at least three Judges of the High Court, if such Court be the High Court at any of the presidency-towns; and the petitioner and respondent may appear and be heard in the High Court in person or by advocate or vakil.

Case to be decided by three Judges.

32. If the High Court shall not be satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the High Court may refer the case back to the Judge by whom it was stated, to make such additions thereto or alterations therein as the High Court may direct in that behalf.

High Court may refer case to Judge for additions or alterations.

33. It shall be lawful for the High Court, upon the hearing of any such case, to decide the questions raised thereby, and to deliver its judgment thereon containing the grounds on which such decision is founded;

High Court may decide questions raised, and Judge shall dispose of case accordingly.

and it shall send to the Judge by whom the case was stated a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Judge shall, on receiving the same, dispose of the case conformably to such judgment.

34. Nothing contained in this Act [1][* * * *] shall be taken to render invalid any marriage of a Native convert to Roman Catholicism if celebrated in accordance with the rules, rites, ceremonies and customs of the Roman Catholic Church [1][* * *].

Saving of Roman Catholic marriages.

35. This Act shall extend to all the territories that are or shall become vested in Her Majesty or Her Successors by the [2]Statute 21 and 22 Vict., chap. 106, entitled "An Act for the better Gofernment of India," [3][* * * * *].

Extent of Act.

THE FIRST SCHEDULE.

[*See section* 7.]

FORM OF PETIGN.

Stamp. [4][* *]

To the Judge of the Civil Court of
The
The petition of *A. B.* day of 18
Sheweth :—

LEG. REF.

[1] The words and figures, "or in Acts Nos. XXV of 1864 and V of 1865" and the words "and no Clergyman of such Church shall be liable to any suit or penalty under the provisions of either of the two Acts last hereinbefore mentioned, for solemnizing any such marriage", were repealed by the Repealing Act (XVI of 1874).

[2] The Government of India Act, 1858 (21 and 22 Vic., c. 106), is now repealed except sec. 4, *see* Coll. Stats. Ind., Vol. II. *See* now the Government of India Act, 1935.

[3] The remainder of this section, dealing with the power of the Governor-General in Council to extend the Act, etc., was repealed by the Repealing Act (XVI of 1874) and Act XII of 1891.

[4] The words "Rs. two" printed below the word "stamp" were repealed by the Amending Act (XII of 1891).

1. That your petitioner was born on or about the day of 18 .
2. That your petitioner was on the day of in the year 18 lawfully married to *C. D.* at .
3. That the said *C. D.* is now of the age of years or thereabouts.
4. That after his said marriage, your petitioner lived and cohabited with his said wife at aforesaid until the day of 18 .
5. That previous to the day of 18 your petitoiner changed his religion for Christianity, and that on such day he was baptised and became member of the Church of .
6. That on the day of 18 [*at least months prior to the date of of the petition*], the said *C. D.* deserted your petitioner and has not since resumed cohabitation with him.
7. That such desertion was in consequence of your petitioner's said change of religion.
8. That there is no collusion nor connivance between your petitioner and the said *C. D.*

Your petitioner therefore prays that Your Honour will order the said *C. D.* to live and cohabit with your petitioner, or declare that your petitioner's marriage is dissolved.

A. B.

Form of verification.

I, *A, B.*, the petitioner named in the above petion, do declare that what is stated therein is true to the best of my information and belief.

THE SECOND SCHEDULE.

[*See section* 9.]

FORM OF CITATION IN ORDINARY CASES

To *C. D.*, of

WHEREAS *A. B.* of claiming to have been lawfully married to you, the said *C. D.*, has filed his [*or* her] petition against you in the Civil Court of that you, the said *C. D.*, have deserted him [*or* her] for six months in consequence of his [*or* her] having changed his [*or* her] religion for Christianity and praying that, unless you consent to live and cohabit with him [*or* her], it may be declared that his [*or* her] marriage is dissolved Now this is to command you that, at the expiration of days [*at least one months*] from the date of the service of this on you, you appear in the said Court, then to make answer to the said petition a copy whereof sealed with the seal of the said Court is herewith served upon you.

And take notice that, in default of your so appearing, yow will be liable to punishment under section 174 of the Indian Penal Code.

Dated the day of 18 .

(Sd.) *E. F.*,

Judge of the Civil Court of

(*Indorsement to be made after service.*)

This citation was duly served by *G. H.* on the within-named *C. D.* of at on the day of 18

(Sd.) *G. H.*

THE THIRD SCHEDULE.

[*See section* 9.]

FORM OF CITATION IN CASES OF RESPONDENT EXEMPT FROM APPEARANCE IN COURT.

To *C. D.*, of

WHERRAS *A. B.*, of. claiming to have been lawfully married to you, the said *C. D.* has filed his [*or* her] petition against you in the Civil Court of alleging that you, the said *C. D.*, have deserted him [*or* her] for six months in consequence of his [*or* her] having changed his [*or* her] religion for Christanity and praying that unless you consent to cohabit with him [*or* her], it may be declared that his [*or* her] marriage is dissolved : Now this is to command you that, at the expiration of days [*at least one month*] from the service of this on you, you do hold yourself in readiness to answer and do answer such interrogatories as may be put to you by commissioners duly authorised in that behalf under a commission issued by this Court in reference to the said petition, a copy whereof, sealed with the seal of the said Court, is herewith served upon you.

And take notice that, in default of your so holding yourself in readiness and answering with interrogatories, you will be liable to punishment under section 174 of the Indian Penal Code.

Dated the day of 18 .

(Sd.) *E. F.*,

Judge of the Civil Court of

(*Indorsement to be made after service.*)

This citation was duly served by *G. H.* on the within-named *C. D.* of at on the day of 18

(Sd.) *G. H.*

THE NATURALIZATION ACT (VII OF 1926).

N.B.—Throughout this Act, save as otherwise provided, for "a Local Government", or "the Local Government," or "such Local Government" the words "the Central Government" have been substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

Year.	No.	Short title.	Amendments.
1926	VII	The Indian Naturalization Act, 1926	Repealed in part, XII of 1927. Amended, I of 1935.

[*26th February*, 1926.

An Act to consolidate and amend the law relating to the naturalization in British India of aliens resident therein.

WHEREAS it is expedient to consolidate and amend the law relating to the naturalization in British India of aliens resident therein; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Act may be called THE INDIAN NATURALIZATION ACT, 1926.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

SEC. 1.—It cannot be held that the Naturalization Act of 1870 applies to the Punjab, and even if it does, the Maharaja of Faridkot cannot be said to be an alien. 10 L. 447=1929 L. 1.

SEC. 2 (a).—The expressions "British subject" and "natural-born British subject" are defined in secs. 27 and 1, respectively, of the British Nationality and Status of Aliens Act, 1914 (4 and 5, Geo. 5. Ch. 17), as follows:

"27. * * * The expression 'British subject' means a person who is a natural-born British subject or a person to whom a certificate of naturlization has been granted or a person who has become a subject of His Majesty by reason of any annexation of territory."

"1. (1) The following persons shall be deemed to be natural-born British subjects, namely:—

(*a*) any person born within His Majesty's dominions and allegiance; and (*b*) any person born out of his dominions whose father was, at the time of that person's birth, a British subject, and who fulfills any of the following conditions, that is to say, if either—

(i) his father was born within His Majesty's allegiance; or

(ii) his father was a person to whom a certificate of naturalization had been granted; or

(iii) his father had become a British subject by reason of any annxation of territory;

(iv) his father was at the time of that person's birth in the service of the Crown; or

(v) his birth was registered at a British consulate within one year or in special circumstances, with the consent of the Secretary of State, two years after its occurrence, or in the case of a person born on or after the first day of January, nineteen hundred and fifteen, who would have been a British subject if born before that date, within twelve months after the first day of August, nineteen hundred and twenty-two; and

(*c*) any person born on board a British ship whether in foreign territorial waters or not;

Provided that the child of a British subject, whether that child was born before or after the passing of this Act, shall be deemed to have been born within His Majesty's allegiance if born in a place where by treaty, capitulation, grant, usage, sufferance, or other lawful means, His Majesty exercises jurisdiction over British subjects:

Provided also that any person whose British nationality is conditional upon registration at a British consulate shall cease to be a British subject, unless within one year after he attains the age of twenty-one, or within such extended period as may be authorised in special cases by regulations made under this Act—

(i) he asserts his British nationality by a declaration of retention of British nationality, registered in such manner as may be prescribed by regulations made under this Act; and

(ii) if he is a subject or citizen of a foreign county under the law of which he

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,

(*a*) "British subject" means a British subject as defined in section 27 of the British Nationality and Status of Aliens Act, 1914.

(*b*) "certificate of naturalization" means a certificate of naturalization granted under this Act; and

(*c*) "minor" means any person subject to the Indian Majority Act, 1875, who has not attained his majority within the meaning of that Act, or any other person who has not attained the age of eighteen years.

Grant of certificate of naturalization.

3. (1) The Central Government may grant a certificate of naturalization to any person who makes an application in this behalf and satisfies the Central Government—

(*a*) that he is not a minor;

(*b*) that he is neither a British subject nor a subject of any state in Europe or America or of any state of which an Indian British subject is prevented by or under any law from becoming a subject by naturalization;

(*c*) that he has, during a period of not less than five years immediately preceding the date of the application, either resided in British India or been in the service of the Crown [1][in India];

(*d*) that he is of good character;

(*e*) that he has an adequate knowledge of a language which has been declared by the Central Government, by notification in the Official Gazette, to be [2][one of the principal vernaculars of British India]; and

(*f*) that he intends, if the application is granted, to reside in British India or to enter or continue in the service of the Crown [1][In India];

Provided that nothing in clause (*c*) or clause (*f*) shall apply in the case of a woman who was a British subject previously to her marriage to a person not a British subject and whose husband has died or whose marriage has been dissolved.

(2) Nothing in this section shall be deemed to prevent the grant of a certificate of naturalization to any person to whom a certificate of naturalization has been issued under the Indian Naturalization Act, 1852.

Contents and form of application.

4. (1) Every application for a certificate of naturalization shall be in writing and shall state, to the best of the knowledge and belief of the applicant,—

(*a*) his age;

(*b*) his place of birth;

(*c*) his place of residence;

(*d*) his profession, trade or occupation;

(*e*) full particulars regarding his qualifications in respect of the matters referred to in clauses (*a*) to (*f*) of sub-section (1) of section 3;

LEG. REF.

1 Substituted by A.O., 1937, for 'under the Government.'

2 Substituted for 'a principal vernacular of the province' by A.O., 1937.

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can, at the time of asserting his British nationality, divest himself of the nationality of that foreign country by making a declaration of alienage or otherwise he divests himself of such nationanlity accordingly.

(2) A person born on board a foreign ship shall not be deemed to be a British subject by reason only that the ship was in British territorial waters at the time of birth.

(3) Nothing in this section shall, except as otherwise expressly provided, affect the status of any person born before the commencement of this Act.

(4) The certificate of a Secretary of State that a person was at any date in the service of the Crown, shall for the purposes of this section, be conclusive."

(*f*) whether he has at any time previously applied for the grant of a certificate of naturalization under the British Nationality and Status of Aliens Act, 1914, or the Indian Naturalization Act, 1852, or this Act;

(*g*) whether any such application has been rejected:

(*h*) whether any such certificate has been granted to him; and

(*i*) whether any such certificate granted to him has been revoked.

(2) Every such application shall be signed by the applicant and shall be accompanied by an affidavit sworn by him verifying that the statements contained therein are true to the best of his knowledge and belief.

(3) The Central Government shall satisfy itself as to the truth of the statements contained in the application, and for this purpose may cause to be made such further inquiry, if any, and may require such further evidence, if any, either by affidavit or otherwise, as it thinks necessary.

Grant of certificate.

5. (1) If the Central Government is satisfied that the applicant is qualified under section 3 for the grant of a certificate of naturalization and is otherwise a fit person for the grant of such certificate, it may grant a certificate reciting the qualifications of the applicant for such grant and conferring upon him all the rights, privileges and capacities of naturalization under this Act, except such rights, privileges, or capacities, if any, as may specifically be withheld by the certificate.

(2) Any such certificate may, if the applicant so requests, include the name of any minor child of the applicant, not being by birth a British subject, who was born before the date of the certificate and is for the time being resident in British India and under the control of the applicant; and shall grant to any child so included all the rights, privileges and capacities of naturalization under this Act, except such rights, privileges or capacities, if any, as may specifically be withheld by the certificate.

(3) The grant of a certificate of naturalization shall be in the absolute discretion of the Central Government, and no appeal shall lie from any refusal to grant any such certificate or to include in any such grant any particular right, privilege or capacity.

Oath of allegiance.

6. Every person to whom a certificate of naturalization has been granted shall, within thirty days from the date of the grant thereof, take and subscribe the following oath, namely:—

"I, *A. B.*, of

do hereby swear (*or* affirm) that I will be faithful and bear true allegiance to His Majesty the King, Emperor of India, His heirs and Successors":

Provided that the Central Government may extend the time allowed under this section in any case in which it is satisfied that failure to take and subscribe the oath within that time was due to sufficient cause.

Effect of grant of certificate and taking of oath.

7. (1) No certificate of naturalization shall have effect until the person to whom it is granted has taken and subscribed the oath prescribed by section 6, but upon the taking and subscribing of such oath such person, [1][* * *], and any child of any such person who has been included in the certificate under subsection (2) of section 5, shall, when in British India, be deemed to be British subjects and be entitled to all the rights, privileges and capacities of a British subject born within British India, except such rights, privileges or capacities, if any, as may have been withheld from them respectively by the certificate, and

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LEG. REF.

[1]The words "the wife of any such person" omitted by Act I of 1935.

shall within British India be subject to all the obligations, duties and liabilities of a British subject; [1][and the wife of any such person to whom a certificate of naturalization is granted after the commencement of the Indian Naturalization (Amendment) Act 1935, shall, if not already a British subject, in like manner be so deemed and be so entitled and so subject, if within one year, or such longer period as the Central Government may in special circumstances, allow from the date of the taking and subscribing of such oath by her husband, she makes to the Central Government a declaration that she desires to be deemed to be a British subject].

(2) When the person to whom a certificate of naturalization has been granted has taken and subscribed the oath prescribed by section 6, any wife thereafter married by, and any child thereafter born to, such person shall, if she or he is not a British subject and if such person aforesaid at the date of the marriage or birth, as the case may be, retains any rights, privileges or capacities of a British subject under this Act, be entitled to the same rights, privileges and capacities, and be subject to the same obligations, duties and liabilities, to which such person aforesaid was at that date entitled and subject.

Revocation of certificate.

8. (1) [2][Where the Central Government is satisfied that a certificate of naturalization granted under this Act, or the Indian Naturalization Act, 1852], was obtained by false representation or fraud or by concealment of material circumstances, or that the person to whom the certificate has been granted has shown himself by act or speech to be disaffected or disloyal to His Majesty, the Central Government shall, by order in writing, revoke the certificate.

(2) Without prejudice to the foregoing provisions, the Central Government shall, by order in writing, revoke such a certificate of naturalization as aforesaid in any case in which it is satisfied that the person to whom the certificate was granted—

(*a*) has, during any war in which His Majesty is engaged unlawfully traded or communicated with the enemy or with a subject of an enemy state, or been engaged in, or associated with, any business which is to his knowledge carried on in such a manner as to assist the enemy in such war; or

(*b*) has, within five years of the date of the grant of the certificate, been sentenced by any Court in His Majesty's dominions to transportation or to penal servitude, or to imprisonment for a term of not less than twelve months, or to pay a fine of not less than one thousand rupees: or

(*c*) was not of good character at the date of the grant of the certificate; or

(*d*) has since the date of the grant of the certificate been, for a period of not less than seven years, ordinarily resident out of His Majesty's dominions otherwise than as a representative of a British subject, firm or company carrying on business, or of an institution established, in His Majesty's dominions, or in the service of the Crown, and has not maintained substantial connection with His Majesty's dominions; or

(*e*) remains, according to the law of a state at war with His Majesty, a subject of that state;

and that the continuance of the certificate is not conducive to the public good.

[3][* * * *]

(4) The Central Government may, if it thinks fit, before making an order under this section, refer the case for such inquiry as is hereinafter specified, and, in any case to which sub-section (1) or clause (*a*), clause (*c*) or clause (*e*) of sub-section (2) applies, the Central Government shall, by notice given to, or sent

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LEG. REF.

1 Added by Act I of 1935.

2 Substituted by A.O., 1937.

3 Sub-sec. (3) omitted by A.O., 1937.

by post to the last known address of, the holder of the certificate, give him an opportunity of claiming that the case be referred for such inquiry, and, if the holder so claims in accordance with the notice, the Central Government shall refer the case for inquiry accordingly.

(5) An inquiry under this section shall be held by such person or persons and in such manner as the Central Government may direct in each case.

(6) Where a certificate is revoked under this section, the revocation shall have effect from such date as may be directed by the Central Government, and thereupon the certificate shall be given up and cancelled; and any person who, without reasonable cause the burden of proving which shall lie upon him, fails to give up his certificate within one month from the aforesaid date, shall be punishable with fine, which may extend to one thousand rupees.

(7) For the purposes of this section, any person who has acquired any of the rights, privileges or capacities of naturalization under sub-section (2) of section 5 or sub-section (2) of section 7 by reason of the grant to his parent of a certificate of naturalization, may, after he has attained majority, be deemed to be a person to whom a certificate of naturalization has been granted.

Effect of revocation of certificate.

9. (1) Where a certificate is revoked under section 8, the former holder thereof shall cease to be deemed to be a British subject.

(2) On such revocation, the Central Government may, by order in writing, direct that the wife and minor children (or any of them) of the person whose certificate is revoked shall cease to be deemed to be British subjects; but where no such direction is made, the status of the wife and minor children of the person whose certificate is revoked shall not be affected by the revocation:

[1][Provided that no such order shall be made in the case of a wife unless by reason of the acquisition by her husband of a new nationality she has also acquired that nationality]:

Provided [1][further] that, in the case of a wife who was at birth a British subject, no such order as aforesaid shall be made, unless the Central Government is satisfied that, if she had held a certificate of naturalization in her own right, the certificate could properly have been revoked under section 8, and the provisions of that section as to referring cases for inquiry shall apply to the making of any such order as they apply to the revocaton of a certificate.

Declaration of alienage.

10. (1) A declaration of alienage in such manner as may be prescribed by rules made under this Act may be made,—

(*a*) within one year of his attaining majority, by any child who has acquired any of the rights, privileges or capacities of naturalization under sub-section (2) of section 5, or sub-secction (2) of section 7; or

(*b*) within six months from the date of the revocation of a certificate under section 8, or of the death of, or of the dissolution of her marriage with, the holder of any such certificate as is therein referred to, by the wife of the person whose certificate has been revoked, or who has died, or whose marriage to her has been dissolved, as the case may be.

(2) Where a declaration of alienage has been made in the manner aforesaid, the person making the same, and the wife of any such person, and any children of any such person who are minors and are not by birth British subjects, shall cease to be deemed to be British subjects:

[1][Provided that the wife of any such person shall not cease to be deemed

LEG. REF.

1 Added by Act I of 1935.

to be a British Subject under this sub-section, unless by reason of the acquisition by her husband of a new nationality she has also acquired that nationality.]

Inquiries.

11. Every person making an inquiry under the orders of the Central Government under sub-section (3) of section 4, and every person appointed to hold an inquiry under sub-section (5) of section 8, shall be deemed to be a public servant within the meaning of the Indian Penal Code, and shall for the purposes of such inquiry have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters:—

(*i*) enforcing the attendance of any person and examining him on oath;

(*ii*) compelling the production of documents and material objects; and

(*iii*) issuing commissions for the examination of witnesses;

and every such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code.

Oaths and affidavits.

12. (1) All oaths and affidavits for the purposes of this Act shall be sworn before a Magistrate or such other person as may be appointed in this behalf by the Central Government.

(2) The Magistrate or other person by whom an oath of alleigance is administered under section 6 shall grant to the person making the same a certificate in writing of his having taken and subscribed such oath and of the date of his taking and subscribing the same, and shall forward to the Central Government the oath so taken and subscribed, together with a copy of such certificate.

Power to make rules.

13. (1) The Central Government may [1][* * * *] by notification in the Officitl Gazette, make rules to give effect to the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(*a*) the form or forms in which certificates of naturalization shall be granted, and the manner in which they shall be recorded;

(*b*) the manner in which declarations of alienage shall be made and recorded;

(*c*) the recording of oaths of allegiance; and

(*d*) the fees which may be imposed for the issue of any certificate, whether of naturalization or otherwise, granted under this Act.

Limitation to the grant of naturalization under this Act.

14. Nothing contained in this Act shall be deemed to entitle to any of the rights, privileges or capacities of a British subject the child of any person who is himself so entitled by reason only of the inclusion of his name in a certificate of naturalization under sub-section (2) of section 5 or of the grant of a certificate of naturalization to his parent.

Application to certificates granted before separation of Burma and Aden.

[2][14-A. The provisions of this Act shall, after the separation[3] of Burma and Aden from India continue to apply, as respects British India, to certificates granted under this Act, or the Indian Naturalization Act, 1852, before the said separation by the Local Governments of Burma and Aden and any such certificates may after the said separation be revoked as respects British India accordingly.]

15. [*Repeals.—Rep. by the Repealing Act (XII of* 1927), *S.* 2 *and Sch.*]

THE SCHEDULE.

[ENACTMENTS REPEALED.]

Repealed by the Repealing Act (XII of 1927), *S.* 2 *and Sch.*

LEG. REF.

1 Words "with the previous sanction of the Governor-General in Council" omitted by A.O., 1937.

2 Inserted by A.O., 1937.

3 *I.e.*, the 1st April, 1937.

THE NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881.)

N.B.—Throughout this Act for 'Local Government' the words 'Central Government' have been substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

Year	No.	Short title.	Amendment.
1881	XXVI	The Negotiable Instruments Act.	Repealed in part, XII of 1891. Repealed in part and amended, II of of 1885. Amended, VI of 1897; IV and V of 1914; see XIV of 1916; VIII of 1919; XXV of 1920; XII of 1921; XVIII of 1922; XXX of 1926; XXV of 1930; XVII of 1934; XXXIII of 1937.

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THE NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881).[1]

[*9th December,* 1881.

An Act to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.

Preamble.

WHEREAS it is expedient to define and amend the law relating to promissory notes, bills of exchange and cheques; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called THE NEGOTIABLE INSTRUMENTS ACT, 1881.

LEG. REF.

[1] For summary procedure on negotiable instruments, *see* the Code of Civil Procedure, 1908 (Act V of 1908), Sch. I, Order XXXVII.

SECS. 1 AND 2: SCOPE OF THE ACT.—49 I. C. 388=21 Bom.L.R. 1. *See also* 18 C.W.N. 494=22 I.C. 500; 58 I.C. 313. The Contract Act is a general statute dealing with contracts. The Negotiable Instruments Act is a statute dealing with a particular form of contract, and the law laid down for special cases must always overrule the provisions of a general character. 1933 R. 131=144 I. C. 866. Act is based on the principles of English Law, and Courts can construe conformably to the provisions of the English Law. 52 I.C. 370=10 L.W. 39. There must be no reasonable possibility of ambiguity in the construction of a negotiable security which is meant to pass from hand to hand; its meaning should be instantly recognisable and not after an elaborate analysis. 1936 N. 252. The Act does not apply to hundis. 1932 L. 582=13 L. 300. Hundi drawn payable to bearer on demand is illegal, even though drawn in an oriental language. 58 I.C. 508=12 L.W. 12. Mercantile usage, however extensive, should not be recognized if contrary to the provisions of statute. 49 I.C. 388=21 Bom.L.R. 1. *See also* 15 W.R. 501; 23 I.C. 29; 144 I.C. 914=1933 N. 389;; 16 Bom.L.

Local extent. Saving of usages relating to hundis, etc.

It extends to the whole of British India; but nothing herein contained affects the Indian Paper Currency Act, 1871, section 21, or affects any local usage relating to any instrument in an Oriental language: Provided that such usages may be excluded by any words in the body of the instrument which indicate an intention that the legal relations of the parties thereto shall be governed by this Act; and it shall come into force on the first day of March, 1882.

Commencement.

2. [*Repeal of enactments.*] *Repealed by the Amending Act* 1891 (*XII of* 1891).

R. 434; 12 L.W. 12. Where any local usage is relied on, it should be alleged and established by the party who relies on it. 26 M 526=13 M.L.J. 252 (F.B.). Where a purchaser of a hundi by payment of cash fails to discharge his obligations under the contract represented by the hundi and loses hsi right to enforce the hundi, he cannot fall back upon his original consideration. 1936 N. 260. If a buyer of goods gives a cheque for the price to the seller who endorses it for value to a third party, the original debt cannot be said to be still outstanding and unpaid wihle the cheque is outstanding in the hands of that third party. Therefore, an action for the price by the seller, or if he has since been adjudicated insolvent, by the transferee of his assets from the Official Assignee, will not lie even after dishonour of the cheque, if at the date of the commencement of the action the cheque is still outstanding in the hands of the third party. 1942 C. 45=I.L.R. (1941) 2 Cal. 103. An endorsement on a hundi 'for collection only' is in the nature of a restrictive endorsement, giving the endorsee the right to receive payment of the Hundi and if necessary, to sue the acceptor for the amount but not to transfer his rights as endorsee to anybody else. 1942 M.L.R. 100 Civ.); 1942 Mad. 742 (1)=(1942) 2 M.L.J. 168; 1944 M. 500=(1944) 2 M.L.J. 82. In a suit on a negotiable instrument, it is open to the plaintiff to frame his case in an alternative and to sue both on the instrument and alternatively on the consideration. 46 C. 663=36 M.L.J. 429 (P.C.). *See also* 51 I.C. 945=29 C.L.J. 508; 1936 Pesh. 143. But where the suit is based wholly on a contract consisting of an inadmissible promissory note or hundi, it must fail because the note cannot be produced and the claim cannot be proved *aliunde*. 1936 Pesh. 143. If a person frames his suit alternatively on the promissory note executed by a Hindu father or on the consideration, he can obtain a decree against the father and sons, but not if the suit is only on the promissory note. In the latter case, he can only obtain a personal decree against the father and a decree against the sons to the extent of their interest in the joint family properties. 138 I.C. 168=15 N. L.J. 5. *See also* (1942) 2 M.L.J. 668=1943 M. 246. A contract of simple money debt is not required by law to be in writing. It may offer better evidence, but it is not necessary for the validity of the contract. It is on this principle that, when the promissory notes or other negotiable instruments are found unenforceable for defective stamp and other reasons, the creditor is permitted to fall back on his contract of loan, and oral evidence is admitted to prove the contract independently of the promissory notes. 26 N.L.R. 320=1930 N. 298. A suit on the original consideration after the dismissal of the suit on the note on account of material alteration is maintainable. 18 C.W.N. 617=41 I.A. 142 (P.C.). Decree on original consideration was given in 29 C.L.J. 508; 1924 L. 144=4 L. 198; 60 I.C. 107=1921 L. 217. In cases of negotiable ianstruments all equities which have to be pleaded should generally arise out of the very transaction itself and must not arise out of the transactions which are either collateral or independent in character. 1938 Mad. 897. A principal can sue on a pro-note executed in favour of his agent without obtaining an assignment from him. 1925 M. 130=21 L.W. 696=90 I.C. 1047. A common manager under sec. 301 of Succession Act is entitled to file a suit on a promissory note on behalf of the estate. 22 Pat.L.T. 569=1941 Pat. 403. *See also* 1941 Nag. 207; 7 Cut.L.T. 77. A plea of *benami* is only a plea in the nature of a resulting trust and there is nothing in the Act which justifies a payee, who is in the position of a trustee, insisting that the beneficiary should be precluded from proving that he is only a trustee. No rule precludes evidence to show that the payee was only a *benamidar* for another. 1935 M. 181=53 M. 693=68 M.L.J. 81 (F.B.). *See also* 1939 Pat. 347; 1940 Pat. 377=19 Pat. 404; 1936 Pesh. 143; 41 C.W.N. 1283=1937 C. 753; 44 A. 290=1922 A. 70=123 I.C. 395=1930 P. 313=27 N.L.R. 327=1932 N. 23. It is not correct to say that no person who is not named in the note can ever sue. There is no reason why the real owner should not be entitled to sue provided he is in a position to obtain a good discharge for the defendant. A person not a holder cannot of course claim the privileges of a 'holder' but that does not disentitle him from suing. 1941 N. L.J. 263=1941 Nag. 207. Where in a suit

on a pro-note, the note is not admissible in evidence, the plaintiff may prove his case by other evidence. 1921 P. 318=60 I.C. 652= 2 P.L.T. 184. *See also* 9 R. 56=134 I.C. 737 =1931 R. 139=1931 N. 113=27 N.L.R. 56; 29 N.L.R. 131=1931 N. 57; 9 Mys.L.J. 476; 9 Mys.L.J. 438; 1931 A. 560; 134 I.C. 254= 131 A.L.J. 522; 9 O.W.N. 585=1932 O. 235 =7 Luck. 666; 9 O.W.N. 961=1933 O. 18; 1933 A. 280=144 I.C. 150. But *see* 34 Bom. L.R. 643=1932 B. 394; 1933 R. 161; 1933 N. 57 (2)=29 N.L.R. 131. Where the debt and the execution of the promissory note are contemporaneous, the debt can be proved only by the note and where it is sufficiently stamped, the plaintiff cannot apply by amendment to convert the suit into one on the original consideration. 139 I.C. 361=36 L.W. 432=1932 M. 687. *See also* 40 C.W.N. 696; 40 C.W.N. 473; 41 C.W.N. 537=1937 C. 241. In a suit on a promissory note the defendant admitted execution and pleaded discharge but raised the objection that the note was inadmissible in evidence. *Held*, that having regard to sec. 58 of the Evidence Act, the plaintiff was entitled to sue, and that having regard to sec. 36 of the Stamp Act, the admissibility of the document could not be reopened. 1932 M. 693=63 M.L.J. 303. *See also* 64 M.L.J. 79 =1933 M. 117. There is no bar under any law preventing the Court from using a promissory note which is stamped with an one anna stamp instead of two annas stamp as a piece of evidence supporting the plintiff's case as to loan. Where such a document has been received in evidence in the trial Court without objection on the part of the defendant, the appellate Court will not interfere. 134 I.C. 575=53 C.L.J. 254=1931 C. 480. A promissory note stamped with quarter anna postage stamps is a document bearing stamps of improper description and can be validated by the Collector under R. 18 of the Government of India Stamp Rules. 55 M. 627=1932 M. 390=62 M.L.J. 538 (F.B.). Hundi substituted for hundi on unstamped paper—Liability under former not put an end to. 1923 L. 396=4 L. 151=5 L.L.J. 361. Once the execution of a bond was admitted, the onus of proving total or partial failure of consideration lies on the defendant. 1921 L. 199=4 L.L.J. 199; 187 I.C. 225. The words *'payable on demand'* have a legal meaning which convey that the amount is payable on the date of execution and no demand is necessary prior to suit. If, however, the words were *"after demand"* then a demand is necessary before a suit is instituted. 2 P.L.J. 451=40 I.C. 350. *See also* 1931 A.L.J. 230=1931 A. 302. I.L.R. (1942) Nag. 126. Where a hundi is silent as to interest, but there is a custof allowing interest if the hundi is not met within a certain time, the drawer is liable to pay interest. 62 I.C. 315. No doubt when a suit is based wholly on a contract consisting of an inadmissible promissory note or Hundi, it must fail because the note cannot be produced and the claim cannot be proved *aliunde*. tor a cause of action apart from the inadBut where it is possible to find for a credimissible security, it would be contrary to the elementary principles of justice to deprive the creditor of his money. 1936 Pesh. 143. A hundi is a Bill of Exchange drawn by one person who is called a drawer, on another person who is called a drawee, who is ordered to pay the amount thereof to a third person who is the holder. Thus three persons are parties to it and due to this very nature it is negotiable. A document which is only bilateral cannot be called a hundi. If, therefore, a hundi is drawn by a person on his own firm ordering the amount thereof to be paid to a creditor after certain days, the transaction virtually is that one person borrows money and passes a hundi drawn on himself as security for the debt to the creditor. It is thus a clear case of an execution of a promissory note pure and simple. 187 I.C. 225. Where a purchaser of a hundi by payment of cash fails to discharge his obligations under the contract represented by the hundi and loses his right to enforce the hundi, he cannot fall back upon his original consideration. 167 I.C. 907=9 R.N. 230= 1936 Nag. 260. A document recited that the executant had a certain sum of money belonging to another and the former agreed to pay interest at a certain rate, *held*, it was not a promissory note, though there was an acknowledgment of a debt. 1924 L. 684. A promissory note given for reducing a liability only operates as a conditional discharge of the liability. (21 M.L.J. 432; 26 M. 526, Ref. to.)=53 M. 826=1930 M. 874=59 M. L.J. 513. In the case of a promissory note executed in favour of two persons (who are partners of an unregistered firm) but not in favour of the firm of which they are partners, a suit by those two persons in their personal capacity is maintainable as they are the only persons who can sue on that instrument. The Court in construing the note is not entitled to look beyond what is found in it and to hold that the suit is not maintainable on the ground that the firm of which the payees are partners is unregistered. 56 L.W. 382=1943 M.W.N. 43 (2)=1943 Mad. 279= (1943) 1 M.L.J. 61. Where two brothers of a Hindu family were carrying on business in partnership but the contracts were in the name of one of them only and he alone borrowed funds in his own name and applied them for the business in a suit against both the brothers on a promissory note executed by him alone. *Held*, that both were liable. Though the note was executed only by one, he executed it on behalf of both and it must be deemed to be so executed. I.L.R. (1945) All. 387=1945 A.L.J. 113=1945 A.L.W. 161 =1945 All. 221. The drawee of a *Shahjog hundi* who pays the amount to a *Shah* is not absolved from liability to the owner, if the Shah has no title to the hundi (*i.e.*), when the endorsement is forged. 36 Bom.L.R. 929 =59 B. 97=1934 B. 400 (F.B.). *See also* 1942 M.L.R. 100 (*circ.*). 36 Bom.L.R. 941 =1934 B. 402=59 B. 252.

FORGED PROMISSORY NOTE.—Where a promissory note purporting to be executed by

Interpretation clause.

"Banker."

"Notary public."

3. In this Act—

"banker" includes also persons or a corporation or company acting as bankers; and

"notary public" includes also any person appointed by the [1][Central Government] to perform the functions of a notary public under this Act.

CHAPTER II.

OF NOTES, BILLS AND CHEQUES.

"Promissory note."

4. A "promissory note" is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

LEG. REF.

[1] Substituted by A.O., 1937, for "Local Government" which had been substituted for "Governor-General in Council" by Act IV of 1914, sec. 2 and Sch., Pt. I.

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two persons was in fact executed by one who forged the signature of the other but the original payee who had endorsed the note to the plaintiff was not a party to the fraud it was *held* that the pronote was not invalid, and that the executant who signed it and committed the forgery would be liable because he could not be permitted to take advantage of his own fraud. 1943 A.L.W. 509. *See also* 57 L.W. 390=1944 Mad. 471=(1944) 2 M.L.J. 5; (1943) 1 M.L.J. 380=1943 Mad. 511.

SEC. 3.—For case-law, *see* 29 A. 773; 13 B. 388; 31 C. 519; 18 M. 390=5 M.L.J. 203.

SEC. 4.—One of the most essential characteristics of a promissory note is certainty—certainty both as regards the person by whom and to whom payment is to be made. Any uncertainty in such matters would tend to restrict credit and to hamper commerce. 35 C.W.N. 53=1931 C. 387; 118 I.C. 673=1929 N. 274. There must be no reasonable possibility of ambiguity in the construction of a negotiable security which is meant to pass from hand to hand; its meaning should be instantly recognisable. 1936 Nag. 252. Where a document merely acknowledges that certain items of money mentioned therein have been borrowed and that the executant has to repay them on demand, it is not a promissory note because it does not contain an unconditional undertaking to pay. There is no promise to pay but only an admission of liability to pay, and, hence it is only an acknowledgment. 1938 A.L.J. 907=1938 A. 619. A document which acknowledges the receipt of a certain amount by cheque and contains a promise to pay that amount with interest at a certain rate after a certain specified time, is not a promissory note, as it is clearly not intended to be a negotiable instrument. 40 Bom.L.R. 1053=42 C.W.N. 989=1938 P.C. 121 (P.C.). *See also* I.L.R. (1939) Kar. 632=1939 Sind 281. There is an essential antithesis between the legal position of a surety and that of the executant of a promissory note and so a person who executes a promissory note cannot be held in law to have the position of a surety. 27 A. L.J. 1137=1929 A. 664. A promissory note does not cease to be such merely because the words "security for overdraft" are found printed upon it; it is still a promissory note. 55 L.W. 664=1942 M.W.N. 623=(1942) 2 M.L.J. 532=1943 Mad. 216. Promissory note—Instrument providing for place of payment does not cease to be promissory note. 46 Bom.L.R. 411=A.I.R. 1944 Bom. 235 (1). A document which is brought into existence for the purpose of recording an agreement to pay, and which is not a receipt for money and which has been described as a promissory note and duly stamped as such and contains an unconditional promise to pay, is a promissory note. 1945 N.L.J. 458. One *C* paid money to *A* whom *B* wished to be accommodate[1]. *A* passed promissory note to *B* who endorsed it to *C*. *Held*, that *B* was in the position of surety and the endorsement was for consideration as *A* was accommodated. 191 I.C. 56=1940 Sind 146. Where there is no mention in a document of the person to whom the money is payable on demand, it is not a negotiable instrument. 116 I.C. 111 (1)=1929 S. 164 (1); 177 I.C. 889=1938 Nag. 464; 1941 Nag. 1=192 I.C. 513. An instrument which contains the words "I am liable to pay" without any undertaking to pay is not a promissory note. 1934 M. 220=66 M.L.J. 315. A document alleged to be a promissory note contained the following terms. This (one) receipt is hereby executed by *H* and *A*, residents of Hoti, for Rs. 43,900 half of which amount comes to Rs. 21,950, received from the firm of *L*, for and on behalf of *M* of Hoti. This amount to be payable after two years. Interest at the rate of Rs. 5-4-0 per cent. per year to be charged. Dated 1st April, 1917. Stamp has been duly affixed.

(Sd.) *H*.
(Sd.) *A*.

The document was not drawn on a paper with an impressed stamp, and a stamp which was sufficient, if the document was a receipt, was affixed. *Held*, that the document was not a promissory note but was merely

a receipt containing the terms on which the amount was to be refunded. Being primarily a receipt, even if coupled with the promise to pay, it was not a promissory note. As the document did not record or purport to record all the terms of the contract between the parties and as there was nothing in the document explaining how the money came to be received, the parties were not prevented from showing that it was paid by way of loan or deposit or for some other purpose. (8 C. 645, Overr.) 63 I.A. 279 =17 L. 557=40 C.W.N. 997=71 M.L.J 712 (P.C.). The nature of a document must be determined by its contents, and the description given in the plaint cannot change its character. A person wrote to another that he would be liable for payment of principal amount with interest due on promissory notes executed by his brother to the latter that he would pay the whole amount on demand after certain period and that his brother should not be asked for the amount. *Held*, that the letter was only a proposal and not a promissory note. 148 I.C. 964=1934 L. 93. The mere fact that a pro-note is addressed to a person of a particular place does not show that it is implied that payment is to be made at the place. I.L.R. (1940) 1 Cal. 323=44 C.W. N. 609=1940 Cal. 443. Where an instrument clearly indicates the promisor and the promisee, and contains a definite promise to pay, it amounts to a promissory note. There is no rule laying down in which part of the document the payee is to be named or by what kind of language. A signed letter which is in the following terms, namely, "30th, Panguni Siddhatri-Kallal A. T. N. A. T. credit, the same place R. M. M. R. M. debt for two hundis taken by me and sent for Penang Firm on the 13th idem of Rs. 9,500 at Rs. 55 (exchange rate) 3 months Thavanai 11 annas interest, rings 10,000, for these 10,000 rings adding from Thavanai, Thavanai interest and principal will be paid and this letter taken back by me" is a promissory note. 58 M. 261=1935 M. 23 =67 M.L.J. 595. Attestation by witnesses does not make a pronote a bond. 14 Luck. 438=1939 O.W.N. 168=1939 Oudh 107. *Unconditional undertaking* or unconditional personal liability means that the liability mentioned in the note should not be made contingent on some event. But a pro-note is not the less unconditional, simply because when the matter goes to a Court of law and the defendant raises some defence, the plaintiff has got to establish certain facts, and in the case of a note by a guardian, the transaction is for the benefit of the minor, before he can succeed against the minor. That fact does not make the liability a conditional liability. 58 M. 735=41 L.W. 514=68 M.L.J. 540 (F.B.). Under sec. 4, a promissory note payable to the manager of a Bank is payable to a "certain person". 5 Pat.L.J. 536=58 I.C. 265. Promissory note payable through another is good. 54 I.C. 976=148 P.R. 1919. **Whether a promissory note or negotiable instrument can be executed in the name of a community**, *see* 44 M.L.J. 240=1923 M. 434. Pro-note executed prior to 1914 payable in the alternative to one of several payees is not a promissory note within sec. 4. 59 I. C. 943=1921 M. 122=39 M.L.J. 273. A suit is maintainable on a promissory note by a real promisee, even though a wrong name is mentioned on the note, if he is able to show that the wrong name was entered by mistake. 13 I.C. 95=22 M.L.J. 121. A man may sign a promissory note by getting some one to write his name for him. 9 R. 92=132 I.C. 707=1931 R. 131. A promissory note executed by a person under the authority of a marksman is valid, even though the marksman has not affixed his mark thereto. 44 I.C. 813=40 M. 1171. Distinction between promissory note and bill of exchange—Hundi. 58 I.C. 313. *Shahjog hundi* is not a bill of exchange, nor a promissory note. 22 C.L.J. 209=33 I.C. 250 (2). *See also* 59 B. 91=36 Bom.L.R. 929=1934 B. 400 (F.B.); 36 Bom.L.R. 941 =1934 B. 402=59 B. 252. Promissory note —Request to pay—Effect of. 1924 P. 96 =4 Pat.L.T. 577. An indorsee of a promissory note for collection must be held to be an agent for collecting the money due on the note. He is not authorised to negotiate the note to any other person. Any indorsement and negotiation by him would be beyond his power and would confer no right on the indorsee to maintain a suit on the instrument. 1939 M.W.N. 1017=50 L. W. 606=1940 Mad. 27. Where a promissory note executed by the manager of a joint Hindu family is endorsed over by the payee, stating *inter alia*: "I have assigned this promissory note in your favour", the endorsement is no more than an endorsement of the note. There is no assignment of the debt in such a case to the endorsee. In a suit by the endorsee on the note, he is entitled to succeed only against the executant of the note and not against the other members of the same family of which the executant is the manager. 189 I.C. 775= 50 L.W. 797=1939 M.W.N. 1243=1940 Mad. 174. Promissory note purporting to be executed jointly by two persons *A* and *B*—Execution only by one (*A* alone)—Suit on—Liability of person actually executing —Test—*Held*, (1) that as there was no execution by *B* or by a person authorised to execute on his behalf, *B* was not liable; (2) that in the absence of evidence as to whether or not *A* executed only on the faith that *B* would also execute. *A* was liable on the instrument; (3) that the question whether the instrument was signed by *A* on the faith that *B* would also sign is a question of fact, which must be proved not by the plaintiff who sought to impose liability upon the actual executant, but by the executant who has signed the instrument, who has the burden on him to establish it as a ground of defence. 52 L.W. 360=1940 Mad. 874=(1940) 2 M.L.J. 384.

SEC. 4, ILL. (*b*).—A pro-note payable to

Illustrations.

A signs instruments in the following terms;

(*a*) "I promise to pay *B* or order Rs. 500."

(*b*) "I acknowledge myself to be indebted to *B* in Rs. 1,000, to be paid on demand, for value received.

(*c*) "Mr. *B*, I O U Rs. 1,000."

(*d*) "I promise to pay *B* Rs. 500 and all other sums which shall be due to him."

(*e*) "I promise to pay *B* Rs. 500, first deducting thereout any money which he may owe me."

(*f*) "I promise to pay *B* Rs. 500 seven days after my marriage with *C*."

(*g*) "I promise to pay *B*. Rs. 500 on *D's* death, provided *D* leaves me enough to pay that sum."

(*h*) "I promise to pay *B* Rs. 500 and to deliver to him my black horse on 1st January next."

The instruments respectively marked (*a*) and (*b*) are promissory notes. The instruments respectively marked (*c*), (*d*), (*e*), (*f*), (*g*) and (*h*) are not promissory notes.

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a particular person, not containing words prohibiting transfer, is an instrument payable to order. 27 N.L.R. 327=1932 N. 23.

PROMISSORY NOTE—ASSIGNMENT OF.—Although the proper mode of assignment is by endorsement only, yet in Punjab there can be an oral assignment of promissory note. (1932 Lah. 30 and 29 P.R. 1919, Rel. on.) 1936 Lah. 547. An assignment of a promissory note is possible without an endorsement of transfer on the note. A written assignment of a promissory note is valid and under the general law, such assignment gives to the assignee the right of suit upon the note. 13 Luck. 373=1937 O. W.N. 820=1937 Oudh 405.

CONSIDERATION FOR PRO-NOTE.—A promissory note having been given, consideration is to be presumed. The question then is not whether the plaintiff has formally and sufficiently proved that there was a stipulation for a fresh advance, but whether it is sufficiently shown by the other side that there was no consideration for the promissory note. I.L.R. (1938) Mad. 646 =42 C.W.N. 565=1938 P.C. 123=(1938) 1 M.L.J. 597 (P.C.). It cannot be said that the consideration for a promissory note is always the amount stated to be payable in the note. 189 I.C. 384=1940 Rang. 152. Where it is proved that the executant of promissory note did not receive any consideration for it, the instrument does not create any obligation between the holder and the executant. 167 I.C. 301=1936 Cal. 315. Where in a suit on a promissory note it appears that the note was executed for the amount of rent due by the defendant to the plaintiff, there is good consideration for the transaction and the suit should be decreed. The mere circumstance that in the body of the promissory note it was stated that the amount was advanced in cash is insufficient to justify a dismissal of the suit. 41 P.L.R. 49.

PROMISSORY NOTE—STAMP ACT.—A document which contains a promise to pay on a contingency will not be treated as a promissory not for the purposes of the Negotiable Instruments Act, but it may be regarded as such for the purposes of the Stamp Act. To determine whether a document is a promissory note or not the main question to be considered is not whether the instrument is negotiable or not though ordinarily negotiability of an instrument is a good test for that purpose, but to consider whether in substance and in primary intention of the parties the document was or was not a promissory note and whether it was intended to record a different kind of transaction altogether. A reference in the promissory note to a pre-existing account between the parties, made with a view to state the consideration for the note, neither makes the liability under the note a contingent one, nor the instrument any the less a promissory note. I.L.R. (1941) All. 264=1941 A.L.J. 36= 1941 All. 158. Promissory note executed abroad—Suit in British India—Need for affixing and cancellation of stamp. *See* (1941) 2 M.L.J. 301.

PROMISSORY NOTE INSUFFICIENTLY OR IMPROPERLY STAMPED.—Though a promissory note is not sufficiently stamped and hence inadmissible in evidence, a suit could be instituted on the original loan, which is always the cause of action, the promissory note being at the best evidence of the loan. 1939 A.M.L.J. 123. *See also* 43 LW.. 48 =1935 M. 206=67 M.L.J. 912; 1936 Cal. 170=40 C.W.N. 473; 1936 Nag. 225. If a promissory note is not admissible in evidence on account of its being insufficiently stamped, the plaintiff is entitled to sue on a cause of action which is independent of promissory note. It is not necessary that there should be an independent express contract prior to the execution of such a promissory note. The fact that the money has been lent implies a promise to repay it, and the plaintiff in such a case has a cause of action on the implied promise, which is independent of the promissory note. (39 C.W.N. 1235, Foll.) 40 C.W.N. 696= 1936 Cal. 127. Although a promissory note is inadmissible in evidence being insufficiently stamped, the creditor is entitled to sue on the basis of a separate contemporaneous agreement to pay. 1940 N.L.J. 658 =1940 Nag. 215. *See also* I.L.R. (1942) N. 126=1940 N.L.J. 601=1941 Nag. 1. A promissory note which is insufficiently stamped cannot be used as an acknowledg-

ment or for any other purpose. 1940 N.L. J. 658=1940 Nag. 215. A decree cannot be passed on the basis of a pronote which is inadmissible in evidence for want of cancellation of the stamps even if the defendant admitted liability on it. 41 P.L.R. 356=1939 Lah. 31. A promissory note executed on 28th March, 1934, was affixed with revenue stamps, the use of which was made compulsory by the Government only from 1st April, 1934. *Held,* that these stamps must have been available before 1st April, 1934, and that a suit on the promissory note should not be dismissed merely on this ground especially when the defendant had admitted his liability. 1937 P.W.N. 663=1937 Pat. 560.

ORIGINAL CAUSE OF ACTION—HAND NOTE NOT DULY STAMPED.—Where in a suit on a hand note, the hand note is found to be inadmissible in evidence as not being duly stamped, oral evidence can be given of the original loan and the suit can be converted into a suit on the original loan. 172 I.C. 744=1937 Pat. 656=62 C.L.J. 289=40 C. W.N. 473=1936 Cal. 170. *See also* I.L.R. (1938) A. 741=1938 A.L.J. 773=1938 All. 504; 56 M. 268=1936 Mad. 179=70 M.L. J. 267 (F.B.); 1939 Lah. 31. Where the loan is independent of the hand note and the taking of the loan is completed before the execution of the hand note, a suit can lie on the original consideration when the hand note which evidences the loan is found to be inadmissible by reason of certain provisions of the statute. 41 C.W.N. 537=65 C.L.J. 151=1937 Cal. 241. *See also* 1940 Lah. 329. It is open to a creditor, in spite of the fact that the promissory note is not admissible in evidence, to recover his money by proving orally the advance of that loan. It would not, however, be open to him having regard to sec. 91 of the Evidence Act to prove the terms or the date or interest entered in the promissory note. 1940 O.W.N. 581=1940 Oudh 308. Where a promissory note is taken in the name of a benamidar, a suit by the true owner based, not on the note but on the original consideration namely, the loan, is not maintainable, inasmuch as the liability of the maker under the note to the holder thereof is kept in tact. I.L.R. (1938) 1 Cal. 450=41 C.W. N. 1283=1937 Cal. 753.

PLACE OF PAYMENT—PRESUMPTION—PRONOTE NOT SPECIFYING ANY PLACE.—If a pronote does not specify any place where payment is to be made, the presumption is that payment should be made at the place of residence or business of the creditor. 181 I.C. 396=40 P.L.R. 975=1939 Lah. 18. *See also* 44 C.W.N. 609=I.L.R. (1940) 1 C. 323.

RIGHT TO SUE—ONE OF SEVERAL PROMISEES—IF CAN SUE ALONE.—One of several promisees under a promissory note is not entitled to sue alone without joining the other promisees, either as plaintiffs or defendants. 1938 O.W.N. 148=1938 Oudh 61. *See also* 1936 Pat. 274. Where in the case of a jointly executed promissory note one of the executants makes certain payment and the promisee agrees to discharge him from his liability only reserving his right to sue the co-executant for the balance, the co-executant is liable for the balance subject of course to his right to sue his other co-executant for contribution. 171 I.C. 622= 1937 Rang. 137. In cases where the plaintiff sues the *legal representative of a deceased person* upon a promissory note and there is no proof of any independent acknowledgment by the deceased of the existence of the debt, the Court should scrutinize the claim with the greatest care. In particular, where the plaintiff is not called and the Court has to depend on other evidence the onus of proof on the plaintiff is not lightly discharged, and the validity and due execution of the promissory note must be proved with strictness. 1936 Rang. 399.

SECS. 4 AND 5.—As to distinction between promissory note and bill of exchange or hundi, *see* 1936 N. 260. A document containing a promise to pay a certain sum of money to a certain person after a certain date was executed on a paper on which was engraved the form of a stamp. The upper part of the stamp bore the word "hundi". The executant wrote the word "accepted" across the document over his signature. *Held,* that the document was a promissory note and not a bill of exchange, and that the words "hundi" and "accepted" in the document did not determine its character, which must be determined by looking to the provisions of the document itself. I. L.R. (1941) 2 Cal. 107=45 C.W.N. 609 =1941 Cal. 40 (F.B.). A document called a hundi and accepted by the maker is in fact a promissory note if it contains a promise and not an order to pay. 47 C.W.N. 658. A pro-note promising to pay on demand a certain sum with interest at 10 per cent. per annum *with quarterly rests* is for a *"sum certain"* and is therefore a negotiable instrument. 7 P. 41=1935 A.L.J. 651=1935 All. 410. Promissory note expressing promise to pay on demand a certain sum with interest with quarterly rests—Whether negotiable instrument. 1929 P. 136=7 P. 41. A promissory note executed in favour of the "Mohathameem Sahib Garu of Gadwal Samasthanam" is one in favour of a "certain person" within the meaning of sec. 4, read with the last part of sec. 5 of the Negotiable Instruments Act. 53 M. 968=1930 M. 1004=59 M.L.J. 548. The mere fact that a person chooses to give a certain title to a document by no means makes it that document, if the document described as promissory note does not amount to it. 1931 A.L.J. 230=1931 A. 302.

SECS. 4, 9 AND 13.—Debentures of the City of Bombay Improvement Trust, belonging to the appellants were entrusted by them to one *F* for collection of interest. By means of forged endorsements in his own favour, *F* pledged the debentures with

"Bill of exchange."

5. A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

A promise or order to pay is not "conditional." within the meaning of this section and section 4, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

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the Alliance Bank, endorsing them over to that Bank as security for debts owing by him to the Bank. Subsequently, the Alliance Bank surrendered the debentures to the improvement Trustees, who issued fresh debentures in the name of the Alliance Bank, the transaction being described in the present proceedings as a 'renewal' of the old debentures. Thereafter, the Alliance Bank, acting on *F's* instructions, endorsed over the new debentures in favour of the present respondents, the Mercantile Bank, to whom *F* had transferred his Loan Account. In a suit by the appellants, claiming as owners of these new debentures, delivery and transfer to them of these instruments by the respondents, the Mercantile Bank debentures were held to be promissory notes as defined in sec. 4 and so negotiable instruments under sec. 13 of the Negotiable Instruments Act; it was also held that the new debentures issued by the Trustees in exchange for the old ones though called "renewals", were in form and substance new and independent obligations and constituted in effect new contracts; that the respondents, the Mercantile Bank, having no reason to believe that there was any defect in the title of the transferors, the Alliance Bank, were holders in due course against whom the appellants had no right of action. (24 B. 65, Overr.) 58 I.A. 433=56 B. 1=54 C.L.J. 419=1932 P.C. 22=61 M.L.J. 837 (P.C.).

SECS. 4, 20 AND 78.—There is nothing in sec. 4 of the Act which in any way curtails the general authority conferred by sec. 20 on the person to whom a stamped and signed paper is delivered to convert it into a negotiable instrument payable to any specified person; where the promissory note contains a promise to pay unconditionally the sum mentioned to a certain person signing a bill or a hand note in blank without the name of the payee is an authority to a *bona fide* holder to insert a name, the name of a third person and it is not open to the executant (defendant) in a suit on it by the payee to plead that the person to whom he handed it describing it as a hand note had no authority to insert the name of the payee mentioned in it. In view of sec. 78, defendant cannot plead that payments have been made to some one else, *i.e.*, the person to whom he handed the signed paper. 19 Pat. 404=21 Pat.L.T. 845=1940 P. 377. *See also* 1932 Pat. 524.

SEC. 5.—An instrument is not taken out of the definition for the reason that the drawer and the drawee are the same persons. 9 P. 717=127 I.C. 575=1930 P. 239. Although under sec. 5, where the drawer and the drawee are the same person, that person is not entitled to treat the instrument as a bill of exchange, still the holder of the bill may treat it as a bill of exchange. 9 P. 717. Where a document written on hundi paper was treated by the parties as hundi but it contained no promise to pay to the order of any person or to bearer, and the drawer and the drawee were the same person, *held*, that the document was a bond and fell within the purview of sec. 2 (5) (*b*) of the Stamp Act. 32 P.L.R. 753=1932 L. 22. A hundi payable to bearer but not on demand does not contravene the provisions of sec. 25 of the Paper Currency Act. 1927 A. 463=49 A. 457. Hundi insufficiently stamped is not admissible in evidence. 49 All. 457; 40 C.W.N. 696=1936 C. 127. A hundi may be written in more papers than one; but the aggregate value of the stamp papers used should represent the correct value of the stamp to which such hundi is liable. 23 C.W.N. 534 =51 I.C. 88; 58 I.C. 313. A bill of exchange may include a hundi, but not *vice versa*. 23 C.W.N. 534. *See also* 57 C. 695 =1930 C. 697.

WHETHER FOLLOWING ARE BILLS OF EXCHANGE.—*Shahjog Hundi*—Nature of. *See* 33 I.C. 247=22 C.L.J. 22; 19 C.W.N. 1326 =33 I.C. 250; 50 B. 765 28 Bom.L.R. 897 =1926 B. 471; 1932 L. 312. It is not a bill of exchange. 1936 A.L.J. 246=58 A. 858 =1936 A. 396. But it is a negotiable instrument independently of the provisions of this Act. (*Ibid.*) Mate's receipt, see 41 C. 670 (P.C.). Bank deposit receipt, 38 B. 618; Railway receipt, 38 B. 659. Delivery order, 38 C. 127; 40 I.C. 86. Although there is no provision in the Negotiable Instruments Act specifically allowing post-dated cheques, there is nothing forbidding them, and the second paragraph of sec. 5 contemplates (as indeed it must) the making of a bill of exchange payable at a future date. A post-dated cheque is therefore a cheque in proper form and therefore a bill of exchange within the meaning of the Act on the day on which it is drawn. It becomes on the date it bears a bill of exchange payable on demand and so a cheque. 46 C.W.N. 645=1942 Cal. 562= 203 I.C. 207.

SECS. 5 AND 17.—An instrument, called a "hundi" but in the form of a promissory

The sum payable may be "certain" within the meaning of this section and section 4, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given or that payment is to be made may be a "certain person", within the meaning of this section and section 4, although he is misnamed or designated by description only.

"Cheque". 6. A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

"Drawer," "Drawee." 7. The maker of a bill of exchange or cheque is called the "drawer;" the person thereby directed pay is called the "drawee."

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note, becomes a bill of exchange, on the acceptance of a third party, though the bill is not addressed to him and he is not named as drawee, provided his acceptance is not inconsistent with the address. No party can be made liable as acceptor of a bill addressed to another but where no party is named in the address, the acceptor may be deemed, by his endorsement of acceptance, to have admitted himself to be the party addressed. 57 C. 695=1930 C. 697.

SEC 6: POST-DATED CHEQUES are cheques and after the due dates may be sued upon as cheques. 52 C. 677=90 I.C. 59=1925 C. 1007. Both under the Indian and English law, a post-dated cheque is not invalid by reason only that it is post-dated, but the certification of such a cheque before it is due is invalid. 71 I.A. 124=48 C.W.N. 810=57 L.W. 571=A.I.R. 1944 P.C. 58=(1944) 2 M.L.J. 275 (P.C.). A cheque is a bill of exchange and as such it is negotiable. The mere fact that the date of payment of a cheque is postponed to a future date does not make the cheque payable "otherwise than on demand." It is payable on demand after the due date. Therefore, a person who is holder in due course of a cheque without notice of any defect, is entitled to payment from the drawer. 1934 A.L.J. 892=1934 A. 695 (1).

SECS. 6 AND 7: CHEQUE—ACCEPTANCE—PRACTICE.—In practice cheques are not accepted. Acceptance is not necessary to create a liability to pay as between the drawer and the drawee bank. The liability depends on the contractual relationship between the bank and the drawer, its customer. It would certainly require strong and unmistakeable words to amount to an acceptance of a cheque. 71 I.A. 124=48 C.W.N. 810=57 L.W. 571=A.I.R. 1944 P.C. 58=(1944) 2 M.L.J. 275 (P.C.).

The certification or marking of a cheque by the drawee bank as good for payment does not constitute acceptance within the meaning of the Neg. Inst. Act, or the English Bills of Exchange Act or the Common Law. In England and India, the making of a cheque has so far been only judicially recognised to import a promise or undertaking to pay as between banker and banker for the purpose of clearance. A cheque presented for clearance after clearing hours may be marked by the drawee bank as good for payment and then be paid on the next day when clearing business is resumed. A party seeking to make the certifying bank liable as acceptor may put forward an alternative claim based on usage, or contract or estoppel. If a claim based on contract is set up, the question arising for consideration is whether the words used in the certification import a promise by the certifying bank to pay the amount of the cheque whether or not there are funds to meet it and if they do, whether there is any privity of contract between the parties, and if there is, whether there is consideration for the promise as between them. 71 I.A. 124=48 C.W.N. 810=57 L.W. 571=A.I.R. 1944 P.C. 58=(1944) 2 M.L.J. 275 (P.C.).

SEC. 7.—The definition of "drawer" in sec. The maker of a promissory note cannot missory note can also be called a drawer. 152 I.C. 1006=36 Cr.L.J. 217=1935 L. 153. The makers of a promissory note cannot raise the plea that no consideration passed for the transfer of the note to third party. Where the transferee sues on the note, he is entitled to recover what is payable to the original promisee. 138 I.C. 876=1932 A. 648. Oral acceptance of *hundi* is not sufficient. 1924 A. 129. *See also* 51 I.C. 250=29 P.R. 1919. It does not make the so-called acceptor liable to the holder of the bill. 1930 L. 471. Mere writing of figures on the hundi cannot amount to the signing of assent by the drawee unless it can be proved that it amounted to acceptance according to the mercantile usage of the locality. 1930 L. 471. Although in the normal course a cheque is not accepted by the drawee banker, there is nothing in the law that forbids him to accept it in which case he becomes liable to a holder in due course in the same way as any other acceptor. The certification of a cheque by the drawee bank is acceptance of the cheque within the meaning of the Act. The signature of a certifying banker is an acceptance. 1941 Cal. 372 =199 I.C. 802. The certification or marking of a cheque as "good" by the drawee bank is equivalent to acceptance and the bank will be liable to the holder of the cheque accor-

"Drawee in case of need."

When in the bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a "drawee in case of need."

"Acceptor."

After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor."

"Acceptor for honour."

[1][When a bill of exchange has been noted or protested for non-acceptance or for better security,] and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour."

"Payee."

The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee".

"Holder."

8. The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.

Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

LEG. REF.

[1] Substituted for "When acceptance is refused and the bill is protested for non acceptance," by Act II of 1885, sec. 2.

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dingly, provided the nature of the making or certifying and the accompanying circumstances warrant it. 46 C.W.N. 645=1942 Cal. 562. As to what constitutes acceptance of hundi, *see* 13 L. 31=1932 L. 274.

SEC. 8: SCOPE AND EFFECT OF SECTION.—This section prevents a person suing on a negotiable instrument, who is not named as a payee nor entitled as endorsee or assignee. 56 I.C. 259=1 L. 169=19 I.C. 88.

ILLUSTATIVE CASES.—An alleged *beneficial* owner of a promissory note, whose name does not appear on the face of the instrument cannot sue on it. 29 I.C. 988=13 A. L.J. 695; nor in a suit on the instrument to beneficial owner a good defence. 49 A. 457=25 A.L.J. 402=1927 A. 463; 44 A. 290=20 A.L.J. 126=1922 A. 70. *See also* 153 I.C. 944=1935 M. 181=68 M.L.J. 81 (F.B.); 27 N.L.R. 327=1932 N. 23: 12 L. W 532; 123 I.C. 395=1930 P. 318 As to principal suing on pronote in favour of agent, *see* 21 L.W. 696=90 I.C.1047=1925 M. 1130. It is not open to the defendant to plead that the payee is only a benamidar and therefore is not entitled to recover the amount due under it. 28 I.C. 501=1915 M. W.N. 227. A suit on a negotiable instrument by one of the heirs of the promisee alone is not maintainable. 12 L.W. 532. *See also* 44 A. 290=1922 A. 70; 1930 R. 243. No one can maintain a suit on a promissory note except the holder thereof. The fact that the holder has been made a party and has admitted that he is only the plaintiff's benamidar makes no difference. 1939 Pat. 347; 1939 S. 144; 12 L.W. 532. *See also* 123 I.C. 395=1930 P. 313. It may be that the suit can be proceeded with, if it had been based on the consideration and not on the note. 35 C.W.N. 53=58 C. 752=1931 C. 387. Benamidar is a holder within the meaning of sec. 8 and is entitled to sue on promissory note. 1930 R. 243. In India benami transactions are recognised. The real owner can institute a suit on a promissory note executed in the name of his benamidar, if the benamidar, admits that he is the benamidar for the real owner. 1930 P. 313. On a pronote executed in the name of one of the partners, a suit can be maintained by the partnership itself. 105 I.C. 549=55 C. 551=1928 C. 148. An insolvent can sue on a pronote in his favour, if the Official Assignee does not interfere and object. 19 I.C. 88. A receiver appointed in a partition suit is entitled, when permitted by the Court, to maintain a suit on a promissory note which forms part of the assets of the joint family. The receiver can be said to be the holder of the promissory note under sec. 8. 41 C.W.N. 697.

JOINT HINDU FAMILY.—A member of a Hindu family, to whose share, on a partition a promissory note is allotted is entitled to sue on it without either an endorsement of the note or an assignment under sec. 130 of the T. P. Act. A suit by that member must be regarded as a suit on the original debt irrespective of the promissory note. 1937 M.W.N. 134. Where a promissory note executed in favour of a Hindu joint family firm is allotted at a subsequent partition to some of them, the latter can sue on the note impleading the other members of the family also as plaintiffs. The plaintiffs who constituted the firm are competent to sue on the note as holders of the instrument. The fact that there is no endorsement of the note in favour of the plaintiffs does not make the

9. "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer,

"Holder in due course."

suit incompetent. 41 Bom.L.R. 219=1939 Bom. 147. In the case of a promissory note executed in the name of the manager of a Hindu joint family, the other coparceners are not "holders" of the instrument as defined by sec. 8 of the Act, and they cannot therefore sue on the note *qua* coparceners. The right of the holder to sue on the note is personal to him, and no other person can be said to have an interest in it merely by birth or by being a member of the coparcenary though the coparceners might sue to recover the debt apart from the promissory note. If the holder dies, a succession certificate may be granted to his heirs, and they may then recover upon the promissory note as his legal representatives. 40 Bom.L.R. 964=1938 Bom. 451. Hindu coparceners governed by the Mitakshara law, carrying on a joint family business, can institute in their individual names a suit to recover a debt on a promissory note obtained in the name of the family firm. The coparcenary can be described as the holder of a promissory note made in its collective name or business name, and such an instrument is made in its own name within the meaning of sec. 8. A suit on the note brought by all the adult coparceners who are capable in law of giving a satisfactory discharge, to recover the debt on the promissory note executed in their trade name is maintainable. I.L.R. (1940) Bom. 153=42 Bom.L.R. 248=1940 Bom. 164.

SECS. 8 AND 78: PROMISSORY NOTE—ASSIGNMENT—ASSIGNEE'S RIGHT TO SUE IN HIS OWN NAME, WITHOUT ENDORSEMENT.—A promissory note is a written acknowledgment of debt with a promise to repay. It is also a memorandum of contract and evidence of a chose in action. Thus, it may be transferred by assignment. A promissory note is also a negotiable instrument transferable merely by endorsement and delivery. As such, it is clothed with certain incidents intended to facilitate the business of merchants. The Negotiable Instruments Act has not affected the transferability of a promissory note by assignment as a chose in action, apart from endorsement. 61 C. 425=38 C.W.N. 465=1934 C. 549. *See also* 1935 O.W.N. 295=10 Luck. 732=1935 O. 264. Reading secs. 8 and 78 together it is clear that the person to whom payment should be made in order to discharge the maker or acceptor from all liability under the instrument is the "holder" of the instrument or his accredited agent, such as a banker acting as an agent for collection. The term "holder" does not include a person who though in possession of the instrument has not the right to recover the amount due thereon from the parties thereto. The property or ownership of a promissory note including the right to recover the amount due thereon therefore appears to be vested by statute only on the "holder" of the note. A plaintiff in a suit on a pro-note who though not the holder of the note can maintain the suit when the holder is a party to the suit and the plaintiff is able to give the drawer through the holder a valid discharge. But where the holder is not a party and the plaintiff is not in a position to secure the discharge of the defendants from all liability under the pro note, the suit would not be maintainable. 1946 A.W.R. (H.C.) 529=226 I.C. 358=1946 A.L.J. 297. A payee named in a promissory note is the only person who can institute a suit upon it, and it is not open to a defendant in that suit to plead that the payee is a mere benamidar. 1939 P.W.N. 178=1939 Pat. 347. *See also* 19 Pat. 404=1940 Pat. 377. A person who is not the holder or endorsee of a promissory note but who only claims to be the surviving coparcener of the holder of the note is not entitled to sue on it. It would, however, be different if the suit is based on the debt itself. I.L.R. (1939) Kar. 405=1939 Sind 144.

SEC. 9.—Whether a promissory note payable on demand does not become payable until a demand is actually made. 1923 L. 638. *See also* 47 C. 861. But *see* 2 P.L.J. 451=40 I.C. 350. When a negotiable instrument of any sort is handed over by a debtor to his creditor in discharge of a pre-existing debt the creditor becomes a holder in due course. 19 I.C. 789 (2)=15 Bom.L.R. 333.

"HOLDER IN DUE COURSE".—Where in a partition a promissory note is simply alotted to a person, but which note never comes into his possession, and the note is payable to a third person and not a bearer, the former person cannot be a holder in due course; that being so, he cannot make his assignees by a release deed holders in due course. 122 I.C. 345=1930 M. 197. The right of the real owner is not affected by the Act, if his name be disclosed to the maker of the instrument and if the maker does not make any payment to the holder and get a discharge from him. 1930 S. 4. No one can sue on a negotiable instrument as holder, unless he is named therein as the payee, or unless he becomes entitled to it as endorsee or bearer. 122 I.C. 345=1930 M. 197. Unless a person proves that he is a holder in due course within the meaning of sec. 9, he cannot have any higher or superior rights against the drawer than the intermediate holders themselves would have, and the fact that the person knows of the defect of title of the intermediate holders is enough to disentitle that person to the benefits of a holder in due course. 123 I.C. 596=1930 M. 141. *See* also 1938 Mad. 599=(1938) 1 M.L.J. 757. Where the defendant in a suit on a promis-

or the payee or indorsee thereof, if [1][payable to order,] before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

"Payment in due course."

10. "Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

LEG. REF.

[1] Substituted for "payable to or, to the order of a payee" by Act VIII of 1919.

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sory note admits that something is still due on the pro-note the plaintiff is entitled to recover the same whether he sues as "holder in due course" or on the footing that he is a holder. 1940 Rang. 170. Holder in due course—Indorsee from payee of pro-note prohibited from collecting by Court's order, effect of. 46 M. 415=1923 M. 317 (2)=44 M.L.J. 206. As to who is holder in due course, *see also* 14 I.C. 813; 1923 L. 638. A promissory note payable on demand cannot be regarded as having matured on the date on which it comes into existence. The date of maturity would depend on the circumstances of each case. The test is to ascertain if a demand has been made and refused. 48 L.W. 480=1938 M. 911=(1938) 2 M.L.J. 523. *See also* 1940 Rang. 170. If the payee of a promissory note executed by two persons agrees to hold one of them alone liable and relinquishes his claim as against the other executant, and assigns the note to another who takes the assignment with knowledge of this arrangement, the assignee has no better title than his assignor and he can therefore enforce the instrument only against one of the executants and not against both. The assignee is not a holder in due course. 47 L.W. 663=1938 M. 599=(1938) 1 M.L.J. 757. *Holder of a stale cheque,* whether holder in due course. *See* 50 A. 309=1928 A. 68. Where no consideration exists either for the pro-note or for the transfer, the endorsee is not a holder in due course. 9 I.C. 79=8 M.L.T. 463; 1940 Rang. 170. A person cannot sue upon a promissory note which has not been endorsed to him. 32 I.C. 821=3 L.W. 171. A person holding a bill for collection with a lien on the bill is a holder of the bill for consideration. 49 B. 270=87 I.C. 982=1925 B. 369. Cheque—Indorsee—Suit by — Presumption of consideration—Holder in due course. 80 I.C. 572=1924 P. 521. *See also* 1940 Rang. 170. Promissory note—Minor payee—Endorsement by guardian not purporting to be by guardian on minor's behalf—Right of endorsee to sue. 19 L.W. 580=80 I.C. 567=1924 M. 617. Payments entered on back of pro-note, effect of. 4 L.W. 34=35 I.C. 591. As to the effect of forged endorsements, *see* 30 Bom.L.R. 1210=1928 B. 407; 30 Bom.L.R. 1222=52 B. 807=1928 B. 434; 30 Bom.L.R. 1225=52 B. 810=1928 B. 436.

SECS. 9 AND 13.—Improvement Trust—Debentures as negotiable instruments—Forged endorsement—Effect — Subsequent endorsee obtaining substituted debentures—Holder in due course—Owner's suit to recover substituted debentures—Maintainability. *See* 52 B. 792=114 I.C. 383=1928 B. 407. On appeal, *see also* 61 M.L.J. 857 (P.C.); 52 B. 810=112 I.C. 824; 52 B. 807. In the case of a promissory note which is payable on demand it does not become payable until demand is made. Where the maker of a promissory note payable on demand pays the amount of the note to the payee before the latter makes any demand, and leaves the instrument in the hands of the payee without insisting on its return or without obtaining from the payee a guarantee he acts at his own risk If the payee subsequently indorses the instrument over to a third person who pays value and has no knowledge of the payment by the maker, the indorsee, as a holder in due course, is entitled to a decree for the amount in a suit against the maker I.L.R. (1940) Mad. 382=51 L.W. 69=1940 Mad. 631.

SECS. 9, 50 AND 59.—Scope—Promissory note payable on demand—Date of maturity—Test to decide—Notice of demand by holder giving time for payment—Transfer to another before expiry of time—Transferee is holder in due course. 48 L.W. 480=1938 M. 911=(1938) 2 M.L.J. 523. The endorsee of an overdue bill or promissory note does not take it subject to claims arising out of collateral matters such as a set-off, and the endorsement of an overdue bill in order to defeat a prospective claim on a set-off would not amount to a fraud. The only circumstance in which the transferee of an overdue bill would be fixed with liability to allow a set-off in respect of a claim due from the transferor is the circumstance which would justify an inference of an agreement to set off by both parties of which the transferee has notice. 54 L.W. 716=1941 M.W.N. 775=1942 M 30.

SECS. 9 AND 118 (*g*).—Where an endorsee of a promissory note payable on demand is not aware that the note has been discharged or that any demand was made for pay-

11. A promissory note, bill of exchange or cheque drawn or made in British India, and made payable in, or drawn upon any person resident in, British India, shall be deemed to be an inland instrument.

Inland instrument.

12. Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument.

Foreign instrument.

13. [1][(1) A 'negotiable instrument' means a promissory note, bill of exchange or cheque payable either to order or to bearer.

Negotiable Instrument.

LEG. REF.

[1] Substituted by Act VIII of 1919, sec. 3 for original sub-section.

ment of the debt due thereunder, he must be deemed to be a "holder in due course", even if, as a matter of fact, the endorsement in his favour was made after such discharge or demand. He must be presumed to have had no knowledge of the discharge or demand, where there is no evidence as to his having had such knowledge. 44 L.W. 456=1936 M. 879=71 M.L.J. 473. *See also* 1940 Rang. 170.

SECS. 11 AND 12.—A bill drawn upon a resident in British India is an inland bill as defined in sec. 13 of the Act, wherever it may have been drawn, in or out of British India. 57 C. 730=1930 C. 692.

SEC. 13.—The Act does not purport to deal with all kinds of negotiable instruments. Whenever a question arises as to whether or not a document in an oriental language is a negotiable instrument, the point will have to be decided, not by looking to its definition in the Act, but independently of its provisions. The Courts will find out how such an instrument has been treated in the past, and if it appears that, according to usage or custom, such instruments have been treated as negotiable instruments, then they will be treated as such. 58 A. 856=1936 A.L.J. 246=1936 A. 396. The amendment of the Negotiable Instruments Act contained in Expl. (*i*) to sec. 13 (1) of the Act cannot be read into the definition of the bond as contained in sec. 2 (5) (*b*), Stamp Act, so as to make an instrument, which on the face of it is not payable to order, one payable to order by virtue of the said explanation and thus to take it out of the said definition. 168 I.C. 349=1937 N. 61=I.L.R. 1937 N. 510.

NEGOTIABLE INSTRUMENT.—Negotiable instrument—Test of—Transferable by delivery—Right of holder to sue *pro-tempore*. 46 C. 331=48 I.C. 966; 1923 L. 388.

GOVERNMENT PROMISSORY NOTE.—Whether negotiable instrument. *See* 8 I.C. 796=12 C.L.J. 470. *Shah jog Hundi*—Incidents of. 58 I.C. 982=1 L. 429. *See also* 1923 M. 44=43 M.L.J. 480.

WHAT ARE NEGOTIABLE INSTRUMENTS.—An instrument, in order to be negotiable must fulfil the following conditions:—(1) it must be in a form capable of being sued on by the holder thereof *pro-tempore* in his own name; (2) it must by the custom of trade be transferable like cash by delivery. A 'pahaunch' is a writing merely chronicling the fact that a certain amount is received by the person signing it from another person. It is an ordinary receipt. Neither expressly nor impliedly does it create any obligation on the part of any one to pay the amount mentioned therein. It is neither a Bill of Exchange as defined by the Negotiable Instruments Act, nor a hundi, and is not negotiable. 32 S.L.R. 640=1938 Sind 24. A promissory note payable to a specified person or order is a negotiable instrument and the transfer must be by an endorsement and delivery. A verbal assignment of such a note is not recognised by law. 55 I.C. 718=10 L.B.R. 96. But in Punjab, where the T. P. Act is not in force, an oral assignment of the note is valid. 134 I.C. 121=1932 L. 30 (2). *Shah Jog Hundis* are negotiable instruments payable alternatively to one of several payees. 43 M.L.J. 480=16 L.W. 608=1923 M. 44. *See also* 58 I.C. 982=1 L. 429. A cheque from which the word 'bearer' is struck out without substitution of the word 'order' is not negotiable. 49 I.C. 388=21 Bom.L.R. 1. *Share certificate* with blank transfer deed enclosed is not negotiable instrument. 46 C. 331=48 I.C. 966. Where a hundi drawn in favour of payee or bearer is endorsed by the payee to a named person, it ceases to be a bearer hundi and it can be paid only to the endorsee named. 27 Bom.L.R. 34=80 I.C. 118=1921 S. 177.

DHANIJOGE HUNDIES payable to bearer are negotiable instruments. 1928 A. 549. They come under sec. 13—Holder, therefore, is entitled to benefit of sec. 22. 9 P. 717=127 I.C. 575=1930 P. 239.

ENDORSEMENT.—A promissory note payable to a particular person, is, in the absence of words prohibiting transfer or indicating an intention that it shall not be transferable, a negotiable instrument. Where such an instrument is not signed on the back either by the maker or by the holder, there is no endorsement. 76 I.C. 282=1925 S. 9. As to the *effect of forged endorsement*, *see* 52 B. 792=30 Bom.L.R. 1210=1928 B. 407; 30 Bom.L.R. 1222=52 B. 807=1928 B. 434; 30 Bom.L.R. 1225=52 B. 810=1928 B. 438; 36 Bom.L.R. 929=1934 B. 440. *See also* 1925 B. 173.

Explanation (*i*).—A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable.

Explanation (*ii*).—A promisosry note, bill of exchange or cheque is payable to bearer which is expressed to be so payable or on which the only or last indorsement is an indorsement in blank.

Explanation (*iii*).—Where a promissory note, bill of exchange or cheque, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.]

[1][(2) A negotiable instrument may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees.]

Negotiation.

14. When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.

Indorsement.

15. When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser."

LEG. REF.

1 Inserted by Act V of 1914, sec. 2.

SEC. 13 (1).—A bill payable to a particular person and not to bearer or order is nonetheless a negotiable instrument by virtue of Expl. 1 to sec. 13. 9 P. 717=1930 P. 239.

SECS. 13 (1), EXPL. AND 48: PROMISSORY NOTE—RIGHT OF SUIT ON—ALLOTMENT OF NOTE IN PARTITION—RIGHT OF ALLOTTEE TO SUE ON.—The payee of a promissory note is the only person who can sue on it; a person claiming to be owner thereof cannot sue on it in the absence of an indorsement in his favour by the holder. A person to whose share a promissory note in another's name is allotted on a partition cannot sue on it in the absence of an endorsement in his favour by the person in whose name it is executed. The partition does not operate as an assignment by operation of law. 36 Bom.L.R. 807=1934 B. 356.

SEC. 14.—A document is negotiable, if, by the custom of the money market, it is transferable like cash and the *bona fide* transferee obtains a good title although his transferor might have stolen it. A *delivery order* may or may not be negotiable; the question depends upon the conditions attached to it and the usage of trade under which it issued. 40 I.C. 86. *See also* 38 C. 127.

SEC. 15.—For an exception to sec. 15 in the case of Government securities, *see* the Indian Securities Act, 1886 (XIII of 1886), sec. 6. Where an endorser gets another person to write his name for him, it is validly 'signed' within the meaning of this section. 161 I.C. 528=1936 R. 27 (40 M. 1171, Rel. on.) A negotiable instrument may be *transferred otherwise than by endorsement* alone. It may be otherwise assigned, and the assignee may sue in his own name, the only difference being that the assignee will have only the right, title and interest of the assignor while the indorsee will have all the rights of a holder in due course. 51 I.C. 250. A promissory note can be transferred like any other chose in action. It can be effected by a deed without endorsement. 138 I.C. 262=35 L.W. 755=1933 M. 133 (1). A mere written acknowledgment of the receipt of money due under a pro-note signed by the payee, does not by itself amount to an indorsement within sec. 15. Nor does it amount to a transfer of an actionable claim under sec. 130 of the T. P. Act in the absence of words of transfer. 59 I.C. 943=1921 M. 122=39 M.L.J. 273. Whether a suit can be filed on an endorsement made by a stranger on the back of a note, who does not satisfy the definition of an indorser *see* 45 I.C. 186.

PROMISSORY NOTE IN FAVOUR OF PERSON AS AGENT—ENDORSEMENT BY PRINCIPAL.—Where upon a true construction of a promissory note itself, it is plain that the payee's name is mentioned therein as a payee in his capacity as agent of his firm and not in his personal capacity, the proprietor of that firm is really the true payee and can therefore endorse the promissory note under the provisions of sec. 15 of the Act. 1934 R. 289. *See also* 68 C.L.J. 405=1939 Cal. 256 (Pro-note in favour of managing agents of a bank).

16. [1][(1)] If the indorser signs his name only, the indorsement is said to be "in blank", and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be "in full", and the person so specified is called the "indorsee" of the instrument.

Indorsement "in blank" and "in full." "Indorsee."

[1][(2) The provisions of this Act relating to a payee shall apply with the necessary modifications to an indorsee.]

17. Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shal be thenceforward treated accordingly.

Ambiguous instruments.

18. If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.

Where amount is stated differently in figures and words.

19. A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand.

Instruments payable on demand.

20. Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in British India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *prima facie* authority to the holder

Incohate stamped instruments.

LEG. REF.

[1] Inserted by Act V of 1914.

SEC. 16.—If an endorsement contains a direction to pay, though it may not contain actual words of direction, it contains a direction to pay within the meaning of the section. 19 I.C. 410=24 M.L.J. 296. The words on the back of a promissory note which were relied on as an indorsement were "Received the amount from T. K. A. (Sd.) K.A., Proprietor, A.N. Brothers". *Held*, that these words did not constitute an indorsement within the meaning of sec. 16 of the Negotiable Instruments Act, as there was no direction to pay the amount of the note to a specified person and as the alleged indorsement did not consist only of the signature of the indorsee's name. Nor did the words constitute an assignment, because there were no words of assignment nor did they convey an expression of intention to transfer. 43 L.W. 371=1936 M. 417=70 M.L.J. 467. As to endorsement, before pro-note becomes due, *see* 33 M. 34=3 I.C. 428=19 M.L.J. 509. An endorsement while it transfers the property in the note to the endorsee as the new holder, does not operate as an assignment to the endorsee of the debt due by the maker to the original payee. 1934 M. 350=67 M.L.J. 393. Where a person in whose favour a promissory note is executed makes an endorsement to the effect that he has sold the promissory note for a certain amount to the person named by him and that he has no further interest left in it, the endorsement is a perfectly good one, although it does not bear the words that the person named will be entitled to realise the amount by bringing a suit against the maker. Sec. 16 of the Act does not lay down any specific form or words which are necessary for an endorsement. 10 Luck. 732=1935 O.W.N. 295=1935 O. 264.

SEC. 16 (2).—*See* 50 B. 118=1926 B. 262=28 Bom.L.R. 226.

SEC. 17.—A hundi is sometimes a pro-note and sometimes a bill of exchange. 58 I.C. 313. The right of election given by sec. 17 of the Negotiable Instruments Act to the holder of an instrument to treat it a promissory not or as a bill of exchange is a promissory note or as a bill of exchange advantage of and that benefit should not be taken away by anything contained in the Stamp Act. Sec. 17 should in effect be read as a proviso to sec. 6 of the Stamp Act. 1932 M. 765=63 M.L.J. 548. Transfer of pro-note for collection—Burden of proof. *See* 39 L.W. 486=1934 M. 292.

SEC. 18.—*See* 1943 Nag. 99 I.L.R. 1943 N. 149.

SEC. 19.—A bill of exchange is payable on demand though the demand cannot be made on the day when the bill is drawn. 45 I.C. 22=8 L.W. 501. A note which does not fix any date for payment is payable on demand. (*Ibid.*)

SEC. 20.—Sec. 20 gives general authority to a person to whom a stamped and signed paper is delivered to convert it into a negotiable instrument payable to any specified person; it is open to a person who receives a blank incohate instrument to complete it

thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount: provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

"At sight," "On presentment," "After sight."

21. In a promissory note or bill of exchange the expressions "at sight" and "on presentment" mean on demand. The expression "after sight" means, in a promissory note, after presentment for sight, and, in a bill of exchange, after acceptance, or noting for non-acceptance or protest for non-acceptance.

"Maturity"..

22. The maturity of a promissory note or bill of exchange is the date at which it falls due.

Days of grace.

Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight or on presentment is at maturity on the third day after the day on which it is expressed to be payable.

Calculating maturity of bill or note payables so many months after date or sight.

23. In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated, or presented for acceptance or sight, or noted

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in favour of any person besides himself. A hand note is a negotiable instrument, but if it is found as a fact that it was never negotiated, that would alter the position. 1941 P.W.N. 563=1941 P. 504. *See also* 1936 Nag. 260. Sec. 20 does not apply to cheques as a cheque does not require any stamp. Where therefore a blank cheque drawn by a person is dishonoured by the Bank, the "holder in due course" of such cheque cannot hold the drawer thereof liable for the amount stated therein on the dishonour of such a cheque, inasmuch as the cheque is not an instrument stamped instrument. 40 P.L.R. 77=1937 Lah. 816. The document, whose stamp has not been crossed by the signature, might still come under sec. 20 if the stamp had been cancelled in accordance with sec. 12 of the Stamp Act. 34 I.C. 315=38 A. 430. The delivery of a hundi paper signed, but left blank, cannot be taken to give *prima facie* authority to make thereon a negotiable instrument outside the maximum value covered by the stamp by attaching thereto other stamps. 54 I.C. 3. So long as the amount of a pro-note can be found out from the instrument itself without extraneous aid, the omission to state it in the body of the pro-note does not vitiate its character as such. 1923 R. 97. Though a payee can fill in a blank in an incohate instrument and sue on it himself or endorse it to some one else, no decree can be passed on such a blank instrument if it does not contain the name of the payee. Such an instrument is not negotiable. 17 I.C. 915. *See also* 13 Pat.L.T. 506 =1932 P. 324; 19 Pat. 404=21 P.L.T. 845 =1940 Pat. 377 cited under sec. 4 *supra*.

SECS. 20 AND 118.—If the plaintiff sues on a promissory note, and the defendant admits, or has had proved against him conclusively his signature and/or his thumb impression on the promissory note, but the defendant asserts that he did not sign the promissory note in the condition in which it is filed, the burden of proof lies on the defendant to show that the promissory note was not in its existing form at the time that he executed it. 1939 Rang.L.R. 397 =1939 Rang. 334 (F.B.).

SEC. 22.—The term "maturity" used in this section can have no application to a promissory note payable on demand. 1930 M.W.N. 1232. Time of presenting hundi for payment. 39 A. 86=37 I.C. 656. Hundi —Contract dispensing with days of grace—Whether permissible. 23 I.C. 437=26 M. L.J. 494. The provision in sec. 22 giving three days of grace affects only instruments which are not written in an oriental language. The instruments written in oriental languages will be governed by any local usage which may be proved in the case. Where it is admitted in the plaint that the hundi in question fell due on a certain date in accordance with the local usage or custom, the operation of sec. 22 is excluded, the three days of grace cannot be added. 186 I.C. 693=1940 Lah. 14.

SEC. 23.—*See* 49 I.C. 191.

for non-acceptance, or protested for non-acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

Illustrations.

(*a*) A negotiable instrument, dated 29th January, 1878, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February, 1878.

(*b*) A negotiable instrument, dated 30th August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.

(*c*) A promissory note or bill of exchange, dated 31st August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.

Caliulating **maturity of** bill or note payable so many days after date or **sight.**

24. In calculating the date at which a promissory note or bill of exchange made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.

When day of **maturity is** a **holiday.**

25. When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.

[1][*Explanation.*—The expression "public holiday" includes Sundays, New Year's Day, Christmas Day: if either of such days falls on a Sunday, the next following Monday; Good Friday; and any other day declared by the [2][Central Government] by notification in the Official Gazette, to be a public holiday.

CHAPTER III.

PARTIES TO NOTES, BILLS AND CHEQUES.

Capacity to make, etc., promissory notes etc.

26. Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

LEG. REF.

[1] **The powers of a Local Government under this explanation have been delegated to the Commissioner in Sind by the Government of Bombay under sec. 2 of Act V of 1868, *see* Bombay Gazette, 1903, Pt. I, p. 449.**

[2] Substituted by A.O., 1937, for "Local Government".

SECS. 26 AND 27.—Hundi signed by managing proprietor of firm—Personal liability. *See* 30 Bom.L.R. 1300=52 B. 640=1928 B. 516. Promissory Note executed by two out of three partners—Executants merely signing their names—Liability of the firm otherwise disclosed in the note—Partners not joining in the execution are also liable. 1928 M. 1196=55 M.L.J. 574. A negotiable instrument drawn by a manager of a Hindu joint family is binding on other members provided it was made for family purposes. 44 A. 393=1922 A. 116. Promissory note executed by karta of a joint Hindu family and signed by him alone—Liability of other family members on the note and on the original debt. 88 I.C. 1025=41 C.L.J. 535.=1925 C. 1135. When the manager of a joint Hindu family incurs a debt and gives a promissory note therefor, the creditor may sue him upon the note and make him personally liable, but he cannot make the other members of the family liable by suing on the note. 32 Bom.L.R. 1035 =1930 B. 424. *See also* 52 B. 640=1928 B. 516. A *minor* can draw a bill or issue a cheque on the banker. A *minor* is not incompetent to be a payee. 40 M. 308=31 M.L.J. 575 (F.B.); 41 M. 815=35 M.L.J. 90. A person is not precluded under S. 120 of the Act from denying the validity of the note on the ground that he was a minor on the date of the note, as the specific provision in S. 120 is subject to the general rule enacted in S. 26. 117 I.C. 133 (M.).

SECS. 26, 27 AND 28: ACTION ON PROMISSORY NOTE—LIABILITY OF UNDISCLOSED PRINCIPALS.—In an action on a promissory note

Minor.

A minor may draw, indorse, deliver and negotiate such instrument so as to bind all parties except himself.

Nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered.

Agency.

27. Every person capable of binding himself or of being bound, as mentioned in section 26, may so bind himself or be bound by a duly authorized agent acting in his name

A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.

An authority to draw bills of exchange does not of itself import an authority to indorse.

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against a person whose name properly appears as party to the instrument, it is not open either by way of claim or defence to show that the signatory was in reality acting for an undisclosed principal. The sections of the Contract Act relating to the liability of an undisclosed principal do not override Ss. 26 to 28 of the Negotiable Instruments Act. 32 L.W. 551=1934 M. 327=66 M.L.J. 671. An objection by an endorser of a negotiable instrument that the signature of the endorser does not appear on face of the negotiable instrument, as it is signed by his agent without any mention being made that he is acting on behalf of his principal, cannot be upheld, when on a fair interpretation of the document, the name of the person liable is disclosed and the evidence shows that the agent signed the negotiable instrument under the implied directions and with the explicit knowledge of his principal. 187 I.C. 650=1939 Lah. 225. Promissory note by guardian of minor—Note not disclosing borrowing on behalf of minor—Debt incurred for purposes binding on minor—Liability of latter's estate. *See* 50 L.W. 374.

SEC. 27.—Where a partner of a firm executes a promissory note in his individual capacity and not on behalf of the firm, the executant alone is liable under the note. 142 I.C. 837=35 Bom.L.R. 68=1933 B. 101. Under S. 27, a promissory note executed by a partner of a firm can bind the firm only if it is executed by the partner in the name of the firm. It is sufficient that it is done in any other manner expressing or implying an intention to bind the firm, which, under the Partnership Act, would otherwise be sufficient to bind the firm. S. 22 of the Partnership Act must yield to the special provisions of the Negotiable Instruments Act. Though it is not necessary that the note should be signed by the partner in the name of the firm, the name of the firm as the party liable on the note should be sufficiently disclosed. Neither a recital that the borrowing is for the purpose of the firm nor the description of the executant in the preamble as a partner of the firm can be regarded as sufficient to make the firm liable. 56 L.W. 366=1945 M.W.N. 449=A.I.R. 1945 Mad. 439=(1945) 2 M.L.J. 113. The name of a person or firm to be charged upon a negotiable instrument must be clearly stated on the face or the back of the instrument, so that the responsibility is made plain and can be instantly recognised. The mere fact that the name is disclosed in "some way" is not sufficient. Consequently, the mere fact that a person executes a promissory note describing himself as the proprietor of a firm or writes on a newspaper with the name and description of a firm printed on it, cannot be held to be sufficient to hold the firm liable on the promissory note 15 Lah. 901=35 P.L.R. 590=1934 L. 815. Where the intention is to make a firm liable it is not necessary that the name of the firm should be written immediately above the signature of the person signing instrument. A hundi purported to come from a firm; on the instrument were words purporting to show the drawer as the firm. After giving compliments of the firm it proceeded "further we have drawn on you one receipt for Rs. 1,000." The signature of the partner of the firm who signed the hundi was preceded by the word "dustkhat". *Held*, that the prefixing of "dustkhat" to the signature denoted that the person incurred no personal liability on the instrument. It was the firm which was to be liable on the instrument and not the partner. 1930 S. 4. The effect of S. 27 is that the principal can only be made liable through his agent on a negotiable instrument, when the agent acts in his principal's name, that is, when he signs as agent and that an undisclosed principal cannot be sued on a negotiable instrument 118 I C. 673=1929 N. 274. *See also* 144 I.C. 866=1933 R. 131. Promissory note signed by managing agent of company—Articles of Association not permitting agent to sign—Company whether liable. *See* 1930 A.L.J. 1052. *See also* 171 I C. 412=1938 Lah. 41 (general authority to

transact business of a firm does not include power to execute promissory note on behalf of firm). Suit based on a promissory note executed by manager of joint Hindu family, if maintainable against other members of the joint family. *See* 144 I.C. 411=29 N L. R. 312=1933 N. 160; 1933 Lah. 494. *See also* 1925 C. 1153=41 C.L.J. 535; 1928 Lah. 722; 46 C. 663=36 M.L.J. 429 (P. C.). An indorsee of a promissory note executed by the managing member of a Hindu joint family is limited to his remedy on the note, unless the indorsement is so worded as to transfer the debt as well and the stamp law is complied with, and, therefore, in the case of an ordinary indorsement the indorsee cannot sue the non-executant coparceners on the ground of their liability under the Hindu Law. I.L.R. (1938) Mad. 568=47 L.W. 309=1938 Mad. 377=(1938) 1 M.L.J. 378 (F.B.). *See also* 20 Pat.L.T. 321=1939 P.W.N. 305=1939 Pat. 490. Where the original debt was borrowed by the defendant for the benefit of the family and a pronote executed for it and it is renewed by the execution of a fresh pronote by the elder brother of the defendant and a suit is brought on it against the defendant after the death of the executant, S. 27 of the Act can have no application and the defendant would be liable on the new pronote. 1941 O.W.N. 1112 =1941 O.A. 827=17 Luck. 226=1942 Oudh 161.

SECS. 27 AND 28: APPLICATION OF.—S. 28 applies both to instruments in English as well as in vernacular. 14 M.L T. 502=21 I C. 650. The principle of S. 28 applies also to the case of a payee. 40 I.C. 347=5 L W. 721. S. 28 does not apply where the suit is brought not on the pronote but on the consideration. In such a case the suit can be maintained against the principal as well. 27 N.L.R. 324;; 1936 O. W.N. 1008=165 I.C. 578 (2)=1937 O. 65 (Case of execution by servant). When deciding whether the maker of a promissory note has executed it as the agent or the representative of another, the Court cannot look beyond the instrument. In India, where a person executing an instrument in an Indian language, after giving his own description, adds that he is the agent of another, it means that he is acting as the other's agent in the matter of the execution of the document, and it is sufficient to exclude his personal responsibility. I.L.R. (1941) Mad. 513=1941 Mad. 417=(1941) 1 M. L.J. 441 (F.B.).

ILLUSTRATIVE CASES.—"Agent" in Ss. 27 and 28 means the agent of a person capable of contracting within the meaning of S. 26;.and where the agent is not liable the principal is. 41 Mad. 815=35 M.L.J. 90; 40 M. 1171. Liability of partners executing promissory note as principals. *See* 4 R. 551. In a promissory note, the name of a person or firm to be charged should be clearly stated so that the responsibility is made plain and the name can be instantly recognised. [46 C. 663 (P.C), Rel. on.] 138 I.C. 168=15 N.L.J. 5; 1933 R. 131. A promissory note ran as follows: "On demand I the undersigned promise to pay *B* or order the sum of Rupees.....with interest." The note was signed by the executant and thereafter he was described as agent and attorney of another. *Held,* that the executant was personally liable and the words as agent and attorney were merely descriptive. 37 C.W.N. 296. So also in the case of "a common manager" under the Bengal Tenancy Act. 40 C.W.N. 92= 164 I.C. 728. Hundi signed by the *managing proprietor* of firm—Personal liability. *See* 52 Bom. 640=1928 Bom. 516=30 Bom. L.R. 1300. *See also* 70 C.L.J. 307=1940 Cal. 177 (Executant signing himself as director of company; 43 C.W.N. 399 (undisclosed principal—Suit on original consideration). In order to make a person liable as principal on a hundi executed by his agent, it is not sufficient that the name is disclosed in such a way that on any fair interpretation of the instrument his name is the name of the person really liable. 46 C. 663=36 M.L.J. 429 (P.C.). *See also* 92 I.C. 94=1926 O. 248. In an action on a bill of exchange or promissory note against a person whose name properly appears as party to the instrument, it is not open by way of claim or defence to show that the signatory was in reality acting for an undisclosed principal. 46 Cal. 663. Agent of Natukottai Chetty—Signature with vilasam of principal—Liability of agent excluded. 51 I.C. 386=8 L.W. 622; 43 C.W.N. 399 (undisclosed principal). *See also* 1933 A. 407. Where the body of a promissory note executed by a trustee of a temple binds the executant and not the temple, the mere fact that the executant is described at the beginning of the note and after the signature as "adalthedar" or trustee, would not be a sufficient ground for excluding the liability of the maker on the note. It is clearly impossible to go outside the note to find out whether the maker intended to pledge his credit or intended to find the temple. 55 L.W. 258=1942 M. 468=(1942 1 M.L J. 535. Temple manager—Promissory note by —Suit on—Liability of temple. *See* (1941) 2 M.L.J. 568. Where a promissory note is executed by the mahant of a Math, describing himself as mahant but not as a shebait or any kind of agent of the deity of the Math, and there is nothing on the face of the note to suggest that he is contracting in such a way as to bind the deity, the deity cannot be made liable in a suit on the promissory note and only the exe-

28. An agent who signs his name to a promissory note, bill of exchange or cheque without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

Liability of agent signing.

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cutant can be held liable. 8 Cut.L.T. 10 =1942 Pat. 337 (2). Hundi—Effect of signing as *munim*. *See* 75 I.C. 609=1923 All. 407. In a suit on primossory note executed by a trustee or an executor, who does not however sign as trustee or executor, there can only be a personal decree against the executant, or, if the executatnt is dead, against his or her legal heirs and there cannot be a decree against the trust estate or the testator's heirs. 33 M.L.J. 631=43 I.C. 760. *See also* 41 Mad. 815=35 M. L.J. 90. Promissory note executed and signed by the guardian—Money spent for purposes binding on minor—Minor's estate, if liable 39 Mad. 915=30 I.C. 574; 1926 Mad. 390=92 I.C. 805=50 M.L.J. 125. *See also* 64 I.C. 742. Where the maker of a note describes himself as agent in the body of the pronote, but his promise to pay as well as his signature were unqualified by any reference to his alleged principal he could not evade his personal liability. 38 Mad. 482=25 M.L.J. 425; 28 I.C. 92; 2 L.W. 188; 39 Mad. 915=30 I.C. 574. Pronote by *manager of Hindu joint family*—Suit against other members—Maintainability. 1933 L. 494; 1933 P. 263; 1933 N. 160; 1939 Pat. 490; I.L.R. (1928) Mad. 568=(1938) 1 M.L.J. 378= 1938 Mad. 377 (F.B.); 1937 Mad. 437 (Karnavan of Malabar Tarwad); (1937) 1 M.L.J. 224. Pronote—Description in the body and signature of executant as chairman of Co-operative Society—No exclusion of personal liability. 34 Bom.L.R. 1327 =1932 Bom. 607. Pronote by guardian *de facto*—Test to find whether this same was executed in his personal capacity or only as guardian. 1927 M. 1018=53 M.L.J. 814; 1926 M. 390=50 M.L.J. 125. Note-signed by member of joint family firm—Liability of firm. *See* 10 R. 257=139 I.C. 460= 1932 R. 97; 1936 N. 252.

SECS. 27, 28 AND 50.—An endorsee of a promissory note executed by the manager of a Hindu joint family cannot sue the other members of the family on the debt and recover the debt from their shares in the family properties. But if the promissory note is got back by a re-endorsement from the third party to whom it was endorsed, the creditor can file a suit on the original cause of action and there can be no objection to his filing a suit against the other members of the family seeking to make their shares of the family property liable for the debt. There is no distinction between a case where the promissory note itself is re-endorsed to the original creditor and a case where, after decree in a suit by the endorsee, the decree is transferred to the original creditor. (1945) M.W.N. 7=1945 Mad. 129=(1945) 1 M.L.J. 165.

SEC. 28: SCOPE OF.—This section is an exception to S. 230 of the Contract Act as regards the liability of agent. 18 Pat.L. T. 337=1937 P.W.N. 344=1937 Pat. 428. Where a person executing a promissory note alleges that he executed it on behalf of a firm of which he is a partner, unless the responsibility of the firm is made plain and can instantly be recognised as the instrument passes from hand to hand, ordinarily the person signing alone will be liable. 1936 N. 252. Where a promissory note is executed by a servant for a loan advanced to his master, and the name of the master does not apear as a party on the face of the promissory note, the master cannot be held liable under the instrument. 12 Luck. 472=1936 O.W.N. 1008=1937 O. 65. The essence of a tripartite arrangement between a third person, promisor not an agent of the third person, and promisee, was to conceal third person's indebtedness from the promisee and to make him believe that the promisor was the debtor. The promisor lent himself to the scheme fully understanding that its object was the deception of the promisee. *Held*, that the promisor was not induced by the promisee to believe that he would not be held liable upon his promissory note within the meaning of S. 28. 57 I.A. 1=34 C.W.N. 145=1929 P.C. 297.

PROMISSORY NOTE BY MAHANT.—Where a promissory note is executed by the mahant of a Math, describing himself as mahant but not as a shebait or any kind of agent of the deity of the Math, and there is nothing on the face of the note to suggest that he is contracting in such a way as to bind the deity, the deity cannot be made liable. In a suit on the promissory note only the executant can be held liable. 23 Pat.L.T. 665=1942 Pat. 337 (2). Where trustees or managers of temples or other charities borrow money on promissory notes under personal liability, neither S. 28 nor the principle underlying it can have any application. Hence a person making a note as trustee of a temple or other charity cannot claim the benefit of S. 28 as he cannot be said to be acting on behalf of a person capable of being bound by the undertaking or promise to pay. (1942) M.W.N 68= =55 L.W. 819=(1942) 2 M.L J. 742=

29. A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such.

Liability of legal representative signing.

30. The drawer of a bill or exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

Liability of drawer.

31. The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

Liability of drawee of cheque.

1943 Mad. 247. Where a promissory note is signed by a person and under it is written 'managing partner' of a particular firm the latter words are merely descriptive of the signatory and are not indicative of the fact that he was acting on behalf of the firm 1944 A.W.R. (C.C.) 182=1944 O.W.N. 269=1944 O.A. (C.C.) 182=1944 Oudh 273=20 Luck. 1.

HINDU MINORS—PRONOTE BY MOTHER AS GUARDIAN—NO DESCRIPTION AS GUARDIAN IN SIGNATURE.—Plaintiff instituted a suit on a promissory note executed to him by the mother and guardian of two Hindu minors. The note which was in renewal of a prior note by her (which itself was in renewal of an earlier one executed by the father of the minors) described the minors in the body of the note "as represented by their mother and guardian" but she signed the note without any such description attached to her name. *Held*, that the intention of the maker, the debt being one incurred by the father originally, was to exclude her own personal liability and to make the wards liable; that the liability of the minors under the Hindu Law was not affected by the mere fact that the promissory note evidencing the debt was by a guardian; and the palintiff was entitled to a decree against the minors. 58 Mad. 735=1935 Mad. 447=68 M.L.J. 540 (F.B.).

PROMISSORY NOTE—EXECUTANT SIGNING HIS OWN NAME AND ALSO SIGNING AS GUARDIAN—PERSONAL LIABILITY.—The material part of the promissory note was as follows: "The balance is Rs. four hundred. This sum of rupees four hundred we have agreed to pay you and so we owe you. On demand we promise to pay you or your order this sum with interest thereon at one anna per mensem and get this returned. To this effect is the promissory note executed with our consent and in the handwriting of T.V.S. the guardian." Then defendant 2 (T.V.S.) signed his name alone across the stamp and again below the stamp as guardian for minors. *Held*, that the guardian also made himself personally liable. 154 I.C. 582=1935 M. 160. *See also* 1936 M. 417=70 M.L.J. 467 (case of principal and agent). *See also* 18 Pat.L.T. 337; 1936 M. 984—71 M.L.J. 738 (case of partnership).

SECS. 28 AND 29.—Difference between Ss. 28 and 29. *See* 1926 M. 390=50 M L.J 125.

SEC. 29.—Executor—Guardian—Pronote by —Personal liability under it when excluded—Note for debt binding on estate or minor's estate if decisive. 85 I.C 457—1925 M. 371=47 M.L.J. 765. As to what constitutes "express limitation of liability," *see* 146 I.C. 979=35 Bom.L.R. 969=1933 Bom. 444 *See also* 47 M.L.J. 765.

SEC. 30.—11 Lah. 34. *See* 116 I.C. 887 =1929 Lah. 577; 18 M.L.J. 216. (*See also* note under S. 64 *infra*.) The drawer of the bill of exchange is liable as surety till the acceptor pays the balance after his set off. 35 I.C. 628=18 Bom.L.R. 689. The drawer of a hundi is not liable if due notice of dishonour is not given. 13 I C 255. The drawer of a bill of exchange or cheque cannot set up a collateral agreement as a defence to a claim under S. 30. *See* 30 I.C. 35=9 S.L.R. 32. Liability of a drawer of a bill of exchange to reimburse holder for value on dishonour by acceptor. 54 I.A. 317=1927 P.C. 195=53 M.L.J. 42 (P.C.). Effect of D-A draft (documents against acceptance). 53 M.L.J. 42 (P.C.).

SECS. 30, 37 AND 38.—The drawer of hundi is not a surety for acceptance, because the drawee does not become liable until he accepts. It follows that there is no principal for whom the drawer can stand surety. Therefore when there is no acceptance the liability of the drawer is as principal debtor under an implied contract of indemnity. His undertaking is conditional only and his liability does not arise unless the instrument is dishonoured, either by non-acceptance or by non-payment. 182 I.C. 842=1938 Nag. 262.

SEC. 31: LIABILITY OF DRAWEE.—A drawee is not liable as such on a hundi till he has

Liability of maker of note and acceptor of bill.

32. In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default.

Only drawee can be acceptor except in need or for honour.

33. No person except the drawee of a bill of exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

Acceptance by several drawees not partners.

34. Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

Liability of indorser.

35. In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity, without, in such indorsement expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder in case of dishonour by the drawee, acceptor or maker to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by, such indorser as hereinafter provided.

Every indorser after dishonour is liable upon an instrument payable on demand.

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accepted the same. The burden of proof is therefore on the holder to show that drawee had accepted the liability to pay the hundis on behalf of his firm. 122 I.C. 406=1930 A. 106.

SEC. 32.—Liability of maker and acceptor —Burden of proof. 36 I.C. 996. Pronote executed in the absence and without the knowledge of the payee to help a friend of the maker to raise money on it—money is subsequently advanced on such instrument to a third party: it must be deemed to have been executed for consideration. 36 I.C. 996. Bills of exchange—Acceptance before war—Government proclamation allowing British subject to obtain goods in enemy steamer in neutral port—Effect of. 41 B. 566=37 I.C. 258. *See also* 34 P.L.R. 645. The fact that the maker of a pronote is a partner of the payee is no defence to a suit on the note unless the instrument is treated as an escrow or a nullity. 49 I. C. 191. Seller and buyer—Endorsement of bills through bank—Right as endorsee superseding right as seller. *See* 1932 A.L.J. 1055=1933 All. 74.

SEC. 33.—Where a person against whom a bill of exchange is drawn by name accepts the bill for or on behalf of a *corporation*, of which he is a member, there is no valid acceptance of the bill. 27 Bom.L.R. 283 =87 I.C. 485=1925 B. 252. On this section, *see also* 16 I.C. 769. Endorser is liable as a surety for the maker, but he is also, in the absence of a contract to the contrary, liable as principal to his endorsee. 17 I.C. 951. The fact of the bill of exchange having been dishonoured and of its intimation to the endorser must be proved before the endorser is made liable. 18 A.L. J. 981=59 I.C. 675.

SEC. 35.—The section does not apply to a promissory note payable on demand. The last paragraph does not mean that the indorser is liable even without a notice of dishonour since that would conflict with S. 93. It only means that after dishonour. the indorser is liable as upon an instrument payable on demand, that liability is akin to that of the maker but the liablity is subject to the condition fixed in the proviso embodied in the first part of the section. 1930 M. W.N. 1232=1931 M. 113. The rule is subject to any 'contract to the contrary, by which although the indorsement is *ex facie* unrestricted, the indorser as between himself and the indorsee, by agreement either express or to be inferred from the nature of the transaction, excluded his personal liability. 1933 M. 61=36 L.W. 777=63 M.L. J. 880. Where a person who is entrusted with moneys by another for being invested

Liability of prior parties to holder in due course.

36. Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

Maker, drawer and acceptor principals.

37. The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

Prior party a principal in respect of each subsequent party.

38. As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

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on the security of immovable property, lends it out to others on promissory notes taken in his own name without any security, and endorses the notes to the owner of the moneys and also assures him that the moneys are safe and that he would go to the owner with the executatants of the notes and clear the loan, he is liable to the indorsee as indorser under S. 35 of the Act. It cannot be said that the endorsements are without consideration within the meaning of S. 43 of the Act. Since the endorsements are part and parcel of the same transaction, the consideration for the same is the money received by him from the owner of the money. Further, the fact that he has taken the instruments in his own name shows his intention to share the liability and his undertaking to go with the makers to the endorsee and clear the loan makes him a guarantor and liable as such. 1939 M.W.N. 496=1939 Mad. 848=(1939) 1 M.L.J. 897. Where at a partition of family properties a promissory note executed by a third party in favour of the father was indorsed by him in favour of his adult son as part of the assets allotted to the latter, *held*, that the lower Court was justified in drawing an inference that the father intended to exclude his personal liability as endorser and that the son had no right of recourse against the father on default by the maker. 63 M.L.J. 880. A *transferee* by delivery of a negotiable instrument is not liable on the instrument to a subsequent holder under S. 35, nor is he entitled, in the event of dishonour, to enforce liability on the instrument against a prior party to it. 1932 M. 323=62 M.L.J. 239. Promissory note signed by *executor*—Promisee suing executant as executor—Personal relief claimed at subsequent stage—Sustainability. *See* 112 I.C. 740=1928 B. 539.

LOST OR STOLEN HUNDI.—Genuineness—*Liability of indorser*—English Law. 39 B. 513=26 I.C. 896. *See also* 1940 Bom. 82. Suit by endorsee on a hundi against the drawee and endorser—Presentment to drawee not proved—Endorser's liability when arises. 21 L.W. 210=86 I.C. 576=1925 M. 444. Applicability of section to an endorser of pronote payable on demand—Liability of endorser when begins—Presentation for payment—Notice of dishonour—Cause of action—Limitation. 1925 M. 132=47 M.L.J. 475. Payment by maker of a note of a portion—Effect—Unreasonable delay in presenting for payment will discharge endorser—Notice within reasonable time of dishonour is also necessary. 47 M.L.J. 475.

SEC. 37.—The maker of a promissory note is liable to its purchaser, who is a holder within the meaningof S. 8 of the Act. A holder who has paid consideration for the note can recover the amount due on it even if it was originally made without consideration. 10 Luck. 732=1935 O.W.N. 295=1935 Oudh 264; 11 A.L.J. 481=19 I.C. 637.

ACCOMMODATION NOTE.—If the holder of an accommodation note has no notice of its true character at the time of his taking the note but after notice thereof gives indulgence to the payee (the party accommodated), he does not thereby discharge the maker (the accommodation party). Mere knowledge on the part of the endorsee of the fact that the bill or note is one for accommodation whether the knowledge is at the time of the endorsement or afterwards, appears to be absolutely irrelevant under S. 37 unless there is "a contract to the contrary". 57 M. 482=1934 M. 75=66 M. L.J. 180. On this section, *see also* 41 Bom.L.R. 1237=1940 Bom. 82.

SECS. 37 AND 38.—The maker of a promissory note is liable to the holder of it who pays consideration for it, even if the instrument was originally made without consideration. 19 I.C. 637=11 A.L.J. 481. The drawer of a bill of exchange is entitled to claim set-off from the payee for the amount due to the acceptor of the bill from the payee. 35 I.C. 628=18 Bom.L.R. 689. S. 37 regards as principal debtors those who execute a pronote when there is no other mutual understanding to the contrary. It is not open to one of the exe-

Illustration.

A draws a bill payable to his own order on *B* who accepts. *A* afterwards indorses the bill to *C*, *C* to *D*, and *D* to *E*. As between *E* and *B*, *B* is the principal debtor, and *A*, *C* and *D* are his sureties. As between *E* and *B*, *A* is the principal debtor, *A* and *C* and *D* are his sureties. As between *E* and *C*, *C* is the principal debtor and *D* is his surety.

Suretyship.

39. When the holder of an accepted bill of exchange enters into any contract with the acceptor which, under section 134 or 135 of the Indian Contract Act, 1872, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case, they are not discharged.

Discharge of indorser's liability.

40. When the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

Illustration.

A is the holder of a bill of exchange made payable to the order of *B*, which contains the following indorsements in bank:—

First indorsement, "*B*"

Second indorsement, "Peter Williams".

Third indorsement, 'Wright & Co".

Fourth indorsement, "John Rozario".

This bill *A* puts in suit against John Rozario and strikes out, without John Rozario's consent, the indorsements by Peter Williams and Wright & Co. *A* is not entitled to recover anything from John Rozario

Acceptor bound although indorsement forged.

41. An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.

Acceptance of bill drawn in fictitious name.

42. An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

Negotiable instrument made, etc., without consideration.

43. A negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without indorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

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cutants to prove by oral evidence that he was a surety. 29 I.C. 760. Where the cheque is payable to the bearer, the person to whom the payment is made is a holder and thus a surety under Ss. 37 and 38. He can therefore be made a party with the principal person. 148 I.C. 851 (1)=1934 Pesh. 10.

SEC. 39: ACCOMMODATION NOTE—INDULGENCE GRANTED TO MAKER—SURETY NOT DISCHARGED.—Entering into an agreement with the prinicpal debtor granting him time will not discharge the surety if the right against the surety is reserved. The mere fact that S. 39 provides in respect of a bill of exchange for such reservation does not show that the main principle recognised as part of the law of contracts does not apply to other Negotiable Instruments. S. 39 would appear to be a provision inserted *ex abundanti cautela*. In the case of a promissory note for accommodation, the endorsee does not lose his rights against the maker-surety by reason of an indulgence to the payee (principal debtor) if the rights of the endorsee have been expressly reserved as against the surety. 57 M. 482=66 M.L.J. 180.

SEC. 43.—S. 43 must be read subject to S. 59 in all cases in which the latter applies. Where the instrument is acquired by the holder after maturity, S. 59 applies and

Exception I.—No party for whose accommodation a negotiable instrument has been made, drawn, accepted or indorsed can, if he have paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

Exception II.—No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

Partial absence or failure of money consideration.

44. When the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Explanation.—The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee, and the indorser with his indorsee. Other signers may by agreement stand in immediate relation with a holder.

Illustration.

A draws a bill on *B* for Rs. 500 payable to the order of *A*. *B* accepts the bill, but subsequently dishonours it by non-payment. *A* sues *B* on the bill. *B* proves that it was accepted for value as to Rs. 400, and as an accommodation to the plaintiff as to the residue. *A* can only recover Rs. 400.

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the holder has, as against other parties, only the rights thereon of his transferor. I.L.R. (1937) Nag. 159=165 I.C. 926=1937 Nag. 267. Where a promissory note is given in renewal of a former note and where the maker dispenses with the delivery of the former note or where it is made clear that the parties understand that the claim in the former note is extinguished, the renewed note is not without consideration. 40 C.W.N. 130. *See also* (1939) 1 M.L.J. 897=1939 Mad. 848. Failure of consideration—No obligation created. 1923 R. 127 (2); 27 I.C. 362=16 Bom.L.R. 743; 5 I.C. 757=20 M.L.J. 144; 41 B. 566. A transferee under a sale-deed of a promissory note, without any endorsement on the note itself, is not a holder thereof within the meaning of S. 8 of the Act and as such cannot enforce the rights conferred on the holder by S. 43 of the Act. I.L.R. (1939) All. 419=1939 A.L.J. 206=1939 All. 279

SS. 43 AND 44.—'Parties to the transaction' in S. 43, denote persons standing in immediate relation to each other within the meaning of S. 44. The maker and payee of a cheque must come under parties to the transaction and if it is so they are certainly under the Act, in immediate relation to each other. When the consideration for a cheque fails, according to S. 43, there is no obligation of payment between the drawer and payee. 1941 A.M.L.J. 44. *Hire purchase agreement*—Vendor cancelling contract—*Liability of hirer* for stopping payment of cheque. 1933 L. 470=144 I.C. 484.

SEC. 44.—*See* 36 I.C. 996. Where the original hand note in which only simple interest was reserved, was renewed for the amount of the principal and interest calculated on the basis of compound interest, and the same method was adopted in respect of two later renewals, on a plea that the consideration for each renewal had failed to the extent of the difference between simple and compound interest: *Held*, that the plea was unsustainable. The consideration for the renewals was the forbearance to sue and in return compound interest was agreed to be paid. 174 I.C. 197=1938 Pat. 324. A suit on a pronote having been instituted, the defendant executed a fresh note to the plaintiff for the amount due and full costs of the suit, and the suit was withdrawn. In a suit on the renewed note, it was found, that the defendant had paid plaintiff Rs. 1,000 which was not given credit to in the settlement of the figure arrived at when the fresh note was executed, and defendant calimed that his liability under the renewed note should be proportionately reduced. *Held*, that the case fell under S. 44 and though the payment could not be pleaded in "discharge" of the renewed note, the plea of partial failure of consideration was well founded and that the defendant's liability under the renewed note should be reduced *pro tanto*. 40 L.W. 706=1935 M. 252=67 M.L.J. 650.

SECS. 44 AND 45.—Where a person pleads that he has signed a promise to pay a large

Partial failure of consideration not consisting of money.

45. Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Holder's right to duplicate of lost bill.

[1][**45-A.** Where a bill of exchange has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.]

CHAPTER IV.

OF NEGOTIATION.

Delivery.

46. The making, acceptance or endorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.

As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting or indorsing the instrument or by a person authorized by him in that behalf.

LEG. REF.

[1] Inserted by the Act II of 1885, S. 3.

amount by reason of getting two benefits, one a small cash payment and the other the cancellation of an old promisosry note, S. 44 does not apply to such case. Nor does S. 45 apply because the consideration is not "ascertainable in money without collateral enuiry." 189 I.C. 384=1940 Rang. 152.

SEC. 45.—S. 45 is based on the English law which is stated by Chalmers in his book on Bills of Exchange as follows:—"Partial failure of consideration is a defence *pro tanto* against an immediate party when the failure is an ascertained and liquidated amount but not otherwise," that is, when a collateral enquiry becomes necessary for the purpose. 22 L.W. 265=1925 M. 1168 =49 M.L.J. 530.

SEC. 46.—It is open to the executant of a promissory note to show that there was no presently operative contract between the parties as is embodies in the note, that it was delivered only conditionally or for a special purpose only and not for the purpose of transferring aboslutely property therein. 1939 P.W.N. 200=20 Pat.L.T. 514=1939 Pat. 495. Delivery under S. 46 need not be to the person whose name is given in the instrument as payee or to any agent authorised by him in that behalf. There must no doubt be a delivery by the maker, or by some one authorised in that behalf. So long as there is a delivery with the intention of completing the transaction to the person who actually advanced the money under the instrument, that is sufficient to complete the transaction. The maker cannot, in a suit by an indorsee from the payee, question the title of the indorsee or the payee on the ground that the payee was only a benamidar, or on the ground that there was no delivery to the person whose name appears as payee. 50 L.W. 357=1939 Mad. 858=(1930) 2 M.L.J. 501.

SEC. 46—Scope—If affects, S. 92, Evidence Act. *See* I.L.R. (1942) Kar. 516= 1943 S. 67.

SEC. 46, PARA. (3).—The words *"as between such parties and any holder of the instrument other than a holder in due course"* mean "as between the maker and the payee or the endorser and the endorsee or the endorsee and any holder other than a holder in due course or as between any one of such parties and any other." 50 A. 754 =26 A.L.J. 696=1928 A. 289.

SECS. 46 AND 50.—Endorsement alone is not sufficient to transfer the property in a negotiable instrument to the indorsee but the indorsement must be followed by delivery. 6 L.L.J. 230=79 I.C. 461=1924 L. 640. But if the instrument is delivered conditionally or for a specific purpose only, and not for the purpose of transferring property therein, the property does not pass to the endorsee. The endorser may limit the right of the endorsee by express words Where the endorsement contains no explicit words limiting the rights of the endorsee or is a blank endorsement, it is open to the endorser to lead evidence to show that it

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

Effect of indorsement.

47. Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

Exception.—A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

Illustration.

(*a*) *A*, the holder of a negotioble instrument payable to bearer, delivers it to *C's* agent to keep for *B*, The instrument has been negotiated,

(*b*) *A*, the holder of a negotiable instrumeut payable to bearer, which is in the hands of *A's* banker, who is at the time the banker of *B*, directs the banker to transfer the instrument to *B's* credit in the banker's account with *B*. The banker does so, and accordingly now possesses the instrument as *B's* agent. The instrument has been negotiated and *B* has become the holder of it.

Negotiation by indorsement.

48. Subject to the provisions of section 58, a promissory note, bill of exchange or cheque [1][payable to order] is negotiable by the holder by indorsement and delivery thereof.

LEG. REF.

[1] The words "payable to order" were substituted for the words "payable to the order of a specified person, or to a specified person, or order" by Act VIII of 1919.

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was really a conditional endorsement for a specific purpose only, namely, that of collection. 38 P.L.R. 918=164 I.C. 833=1936 Pesh. 181 (1924 L. 640 and 5 I.C. 435 Foll.; 30 M. 441 and 1930 L. 248, Expl.) Hundi—Indorsement by holder—Hundi sent by post to indorsee—Hundi taken by stranger —Payment to forged endorsement—Rights of plaintiff. 25 Bom.L.R. 604=87 I.C. 226=1924 B. 205. *See also* 36 C. 239= 1 I.C. 929; 28 Bom.L.R. 226=50 B. 118 =1926 B. 262. As to endorsement for collection and the *effect of death of endorser*, see 8 I.C. 967. As to transfer otherwise than by endorsement, *see* 14 I.C. 720=16 C.W.N. 666. On this section, *see also* 10 M.L.T. 79.

SEC. 47.—A transferee by delivery of a negotiable instrument is not liable on the instrument to a subsequent holder under S. 35 of the Act, nor is he entitled, in the event of dishonour, to enforce liability on the instrument against a prior party to it. 35 L.W. 269=1932 M. 323=62 M.L.J. 239.

SEC. 48.—S. 48 does not restrict the transfer of a negotiable instrument to the operation of endorsement. 16 P. 74=1937 P. 100 (F.B.). Where a promissory note is transferred or assigned by means of a registered instrument, such a transfer is valid and is not prohibited by S. 137 of the Transfer of Property Act. 1937 Pat. 100. It cannot be said that because it is possible to transfer a promissory note by endorsement and delivery, such a transfer if made under a formal sale deed is without effect. The transfer could be made in either manner. 1943 A.L.W. 537. Transfer of rights under promissory note—Essentials—Book entries—Sufficiency. *See* I.L.R. (1942) Kar. 516=1943 S. 67. Promissory note payable to order—Delivery without endorsement— Transfer not effected. 18 C.W.N. 494= 22 I.C. 500. *See also* 14 I.C. 720=16 C. W.N. 666. A written assignment of a promissory note in the shape of a separate document confers on the assignee a title to sue on the note. 66 I.C. 501=1921 L.R. 92. There can be an oral assignment of a pro-note in the Punjab at least as a chose in action. 1932 L. 30 (2).

SECS. 48 AND 13 (1) EXPL.: PRO-NOTE,— RIGHT OF SUIT ON.—A suit on a pro-note can only be maintained by the person named as the payee; and none claiming to be the owner thereof can sue on it without an endorsement by the payee. Therefore, a person to whose share a pro-note in another's name is allotted on partition cannot sue on it without an endorsement by the original payee, as the partition does not transfer the pro-note to the allottee by operation of law. 36 Bom.L.R. 807=1934 B. 356.

Conversion of indorsement in blank into indorsement in full.

49. The holder of a negotiable instrument indorsed in blank may, without signing his own name, by writing above the indorser's signature a direction to pay to any other person as indorsee, convert the indorsement in blank into an indorsement in full; and the holder does not thereby incur the responsibility of an indorser.

Effect of indorsement

50. The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation; but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument or to receive its contents for the indorser, or for some other specified person.

Illustrations.

B signs the following indorsements on different negotiable instruments payable to bearer;—

SEC. 50.—The endorsee of a pro-note stands in the shoes of the endorser unless his rights are specifically restricted. 32 M. L.J. 354=38 I.C. 339. *See also* 41 L.W. 177=1935 M. 240. Indorsee cannot sue on original consideration. 66 I.C. 584. *See also* 41 L.W. 177=1935 M. 240=69 M.L. J. 30. S. 50 is not limited to negotiable instruments payable to order. It applies to any negotiable instrument whether it is payable in the first instance to order or to bearer. 27 Bom.L.R. 34=86 I.C. 118= 1925 B. 173. Where one of three endorsees of a pro-note for collection endorsed it in blank and handed it over to the other two for collection and the other two later indorsed the note also in blank and delivered it to the plaintiff, the plaintiff gets a good title to the note. 1922 M.W.N. 263=1922 M. 210. Where *A* issues a cheque in favour of *B* who endorses it in favour of *C* who again, endorses in favour of *D* by an unrestricted endorsement, a suit brought by *C* against *A* to recover the amount on the cheque being dishonoured is liable to be dismissed. 122 I.C. 101=1930 L. 248. A transferee of a hundi for no consideration has got the rights of the transferor and can sue the maker but he cannot have rights of a holder in due course. 35 P.L.R. 884 (2)=1933 L. 1014.

In a suit by an indorsee of a promissory note based upon the promissory note, which has been executed by a Hindu coparcener, neither the son nor the father of the executant can be made liable directly on the instrument in which neither of them is mentioned when the indorsement is not so worded as to transfer the debt itself and when no stamp duty has been paid on the indorsement. When what is transferred by the indorsement is only the property in the promissory note and nothing else, S. 8 of the Transfer of Property Act cannot apply and is of no avail to the indorsee. 50 L.W. 336=1939 Mad. 846=(1939) 2 M.L.J. 531 An ordinary endorsee of a promissory note obtains no other right under the endorsement apart from the property in the note, and cannot ask for relief against a person other than the maker on the basis of the debt evidenced by the note. Where, however, the endorsement itself purports to assign the note expressly for the purpose of the collection of the amount due on the note, the endorsee for collection is not restricted only to the remedy on the note, and relief may be given not merely against the executant personally but against the joint family properties in the hands of his sons as well, when the maker is a Hindu father. 1942 Mad. 742 (1)=(1942) 2 M.L.J. 468. Indorsee for collection—Promissory note by Hindu—No right to relief against non-executing sons or coparceners of maker—If sons of maker are impleaded as legal representatives on death of latter in suit a decree against him can be passed. 57 L.W. 444=1944 M.W.N. 489=1944 Mad. 500= (1944) 2 M.L.J. 82. Re-endorsement of promissory note—Effect—Promissory note by manager of Hindu joint family—Decree in suit by endorsee—Subsequent transfer of decree to original holder—Right of latter to proceed against shares of other members of family than manager. *See* 1945 M. 129= (1945) 1 M.L.J. 165. Promissory note— Contemporaneous agreement for payment in instalment—Provision for recovery of all instalments in case of default—Endorsement of instrument—right of indorsee to benefit of agreement—Acknowledgment. 56 L.W. 633 =1944 M. 57=(1943) 2 M.L.J. 456.

SECS. 50 AND 117.—Scope—Promissory note by manager of Hindu joint family for money borrowed for family business—Endorsement of note without transfer of debt also—Remedy of endorsee—Decree against maker alone in suit based on note—Executability against other members of family. *See* I.L.R. (1942) M. 1204=1942 M. 161 =(1941) 2 M.L.J. 816.

(*a*) "Pay the contents to *C* only."
(*b*) "Pay *C* for my use."
(*c*) "Pay *C* or order for the account of *B*."
(*d*) "The within must be credited to *C*."
These indorsements exclude the right of further negotiation by *C*.
(*e*) "Pay *C*."
(*f*) "Pay *C* value in account with the Oriental Bank."
(*g*) "Pay the contents to *C*, being part of the consideration in a certain deed of assignment executed by *C* to the indorser and others."
These indorsements do not exclude the right of further negotiation by *C*.

Who may negotiate

51. Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or indorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded as mentioned in section 50, indorse and negotiate the same.

Explanation.—Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof; or enables a payee or indorsee to indorse or negotiate an instrument unless he is holder thereof.

Illustration.

A bill is drawn payable to *A* or order. *A* indorses it to *B*, the indorsement not containing the words "or order" or any equivalent words. *B* may negotiate the instrument.

Indorser who excludes his own liability or makes it conditional.

52. The indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon depend upon the happening of a specified event although such event may never happen.

Where an indorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

Illustrations.

(*a*) The indorser of a negotiable instrument signs his name adding the words—"Without recourse."
Upon this indorsement he incurs no liability.
(*b*) *A* is the payee and holder of a negotiable instrument. Excluding personal liability by an indorsement "without recourse," he transfers the instrument to *B*, and *B* indorses it to *C*, who indorses it to *A*. *A* is not only reinstated in his former rights, but has the rights of an indorsee against *B* and *C*.

Holder deriving title from holder in due course.

53. *A* holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course.

Instrument indorsed in blank.

54. Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.

Conversion of indorsement in blank into indorsement in full.

55. If a negotiable instrument, after having been indorsed in blank, is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person.

Indorsement for part of sum due.

56. No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument, but, where such amount has been partly

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SEC. 56.—S. 56 does not prohibit the transfer of the balance due under a promissory note. It only prohibits a transfer of a portion only of the sum due upon it. 44 I.C. 264.

paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance.

Legal representative cannot by delivery only negotiate instrument indorsed by deceased.

57. The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered.

Instrument obtained by unlawful means or for unlawful consideration.

58. When a negotiable instrument has been lost or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.

Instrument acquired after dishonour or when overdue.

59. The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor:

Accommodation note or bill.

Provided that any person who, in good faith and for consideration becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

Illustration.

The acceptor of a bill of a exchange, when he accepted it. deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds but indorsed the bill to *A*. *A*'s title is subject to the same objection as the drawer's title.

60. A negotiable instrument may be negotiated (except by the maker,

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SEC. 57.—Promissory note in favour of executor—Suit by legatee without indorsement—Not maintainable. 1923 M. 593=44 M. L.J. 510=17 L.W. 676. Succeeding trustee can sue on pro-note to predecessor without assignment of endorsement. 41 M. 353=33 M.L.J. 627.

SEC. 58.—S. 58 which protects a holder in due course where a negotiable instrument has been obtained by means of an offence does not apply to a case of forgery. 1924 B. 205. *See also* 39 B. 513=26 I.C. 896. Antedating endorsement by holder does not amount to obtaining a pro-note by means of an offence or fraud within the meaning of this section. *See* 98 I.C. 308=1926 M. 1154. A person forging a name in a hundi and getting payment is guilty of a conversion of the hundi and the proceeds of the hundi received by him are the moneys of the true owner. 25 Bom.L.S. 604= 1924 B. 205. A plaintiff who comes to Court with tampered hand-notes is not entitled to any decree. 11 P. 782=1932 P. 352. Where the endorsement on the back of the note is a forgery being made with the fraudulent intention of causing loss to the executant by making him liable for an amount exceeding that which the law permitted, though S. 58 does not directly apply, the principle that a forged document is a nullity did apply, and the indorsee has no right to sue on the basis of an endorsement which had no legal effect. 1944 M.W.N. 426=57 L.W. 390=1944 Mad. 471=(1944) 2 M.L.J. 5. *See also* 1943 A.L.W. 509.

SEC. 59.—Where an endorsee of a promissory note is not proved to be a holder in due course, he is entitled only to such rights as the endorser of the note had. 173 I.C. 147=1937 Mad. 438. Transferee of tainted pro-note—Holder in due course—Burden of proof. 1928 M.W.N. 680. If a surety pays the amount of a dishonoured hundi, he can recover the amount from the drawer. 39 M. 965=30 M.L.J 369. Cheque payable on demand—Holder of a stale cheque whether can sue drawer. *See* 50 A. 309= 108 I.C. 144=1928 A. 68. The proviso to the section applies only to cases of accommodation bills. I.L.R. 1937 Nag. 159= 165 I.C. 926=1937 Nag. 267.

SEC. 60.—On payment or satisfaction of a promissory note at or after maturity by the

Instrument negotiable till payment or satisfaction.

drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.

CHAPTER V.

OF PRESENTMENT.

Presentment for acceptance.

61. A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to the drawee at a particular place, it must be presented at that place; and if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.

[1][Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.]

Presentment of promissory note for sight.

62. A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can, after reasonable search, be found) by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

Drawee's time for deliberation.

63. The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee [2][forty-eight] hours (exclusive of public holidays) to consider whether he will accept it.

64. Promissory notes, bills of exchange and cheques must be presented

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LEG. REF.

[1] This paragraph was added by the Negotiable Instruments Act (II of 1885), S. 4.

[2] The words "forty-eight" were substituted for the words "twenty-four" by Act XII of 1921.

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maker of the promissory note, it ceases to be negotiable. If it subsequently comes into the hands of a holder in due course, he acquires no right of action on the instrument. 1933 M. 300=64 M.L.J. 241. Where in spite of satisfaction of the promissory note at maturity, the note was not returned to the maker and was wrongfully retained by the wife of the payee who, after the payee's death, endorsed it to another person, the holder in whose favour "the waste paper" was endorsed was not entitled to succeed on the basis of the ruling in *Lickbarrow* v. *Mason* (*viz.*, of two innocent persons, he who occasioned the third party's fraud must suffer), because the payee could not be said to have facilitated his wife's wrong doing. 1933 M. 300=64 M.L.J. 241. The liability of the acceptor, maker or drawee of a hundi is not affected by the fact that the hundi was not presented for payment on the due date. 1933 L. 176=34 P.L.R. 505.

SEC. 63.—Secs. 63 and 83 of the Act regulate the condition under which a presentment for acceptance is valid and consequences of complying with these conditions, and have no application to hundis payable on demand. 1923 A. 345. Even bankruptcy or death of the party or the loss of the bill or the note does not excuse non-presentment. Power to obtain duplicate in case of loss is a part of the mercantile laws of countries and ample scope is given to it by Courts of Equity in England both on bills lost before and after maturity and on notes as well. *See* 1924 L. 198.

SEC. 64.—S. 64 should be given its plain meaning and the exception to it must be read as more or less an independent rule of law. The result of non-presentment of hundis for payment is not the exemption of the acceptor from liability but the exemption of other parties to the hundis. 52 A. 696=1930 A. L.J. 818=1930 A. 648. Presentment for payment is necessary to make the indorser

Presentment for payment.

for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable to such holder.

[1][Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.]

Exception.—Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necesary in order to charge the maker thereof.

LEG. REF.

[1] This paragraph was added by the Negotiable Instruments Act (II of 1885), S. 4.

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of a promissory note payable on demand liable to the indorsee. 1930 M.W.N. 1232 =1931 M. 113. S. 64 absolves from liability all parties except the maker of a promissory note, acceptor of a bill of exchange and drawee of a cheque. One of the parties so absolved is the drawer of the bill of exchange. The principle on which this distinction is based is merely that "the maker, accepter or drawee" are the principal debtors, whereas the others are only sureties. On default in presentment, the holder of a hundi is bound to lose his remedy against the drawer as well as the endorser. The holder therefore cannot urge the loss as any excuse for non-presentment of the duplicate of the hundi and still claim his remedy against the drawer. 167 I.C. 907=1936 Nag. 260. A discharge of the principal is a discharge of the surety. When as a result of non-presentment of a Hundi to the drawee, the principal debtor is relieved of his obligation, so will the surety, the drawer of the liability. 167 I.C. 907=1936 Nag. 260. "*Other parties*" in S. 64 mean parties other than the holder. 59 I.C. 604. In the case of a promissory note the words "the other parties thereto" do not mean parties other than the maker of the promissory note, for in S. 69, Negotiable Instruments Act, it is specifically laid down that a promissory note made payable at a specified place must, in order to charge the maker thereof, be presented for payment at that place. 1935 Pesh. 132. Under the exception to S. 64, where the promissory note is payable on demand and at a specified place presentment is necessary in order to charge the promisor, but where the promisor makes a part-payment on account of the amount due such presentment is not necessary. 1933 L. 133=34 P.L.R. 804; 1935 Pesh. 132. In a case where the drawee and drawer of a hundi are the same, presentation for payment is not necessary, for no question of damage can arise as the facts are all known to the person drawing it. 44 A. 554=20 A.L.J. 437=1922 A. 379. (*See also* 8 Lah.L.J. 604, cited, under S. 76.) A mere demand for the money does not amount to presentment of the note; the holder must exhibit the note and offer to hand it over on receiving payment. 1935 Pesh 132. No dishonour can possibly occur unless the instrument is presented for payment by the holder to the drawee as required by the first part of S. 64 which is mandatory The second part of the section provides the penalty for non-presentment by stating in unequivocal terms that in default of such presentment the other parties thereto are not liable thereon to such holder. 28 N.L.R 134=1932 N.55. Where the holder of a hundi sues the drawer and the other parties to it without however having made any presentment of the hundi the *onus* is on him to prove that the drawer could not suffer damage by such non-presentation. 39 A. 364=39 I.C. 649. *See also* 1935 L. 623; 48 I.C. 364=41 A. 40.

"SPECIFIED PLACE".—A small town which is sufficient to indicate the address of the maker of a promissory note is a "specified place". 1936 Pesh. 202. Where a promissory note is made payable at a place which is the residential site of a revenue estate where the lender lives, the note is payable at a specified place. 38 P.L.R. 498=164 I C 1033=1936 L. 799.

SECS. 64 AND 66.—Though the parties to a promissory note (payable three months after date) other than the maker are discharged from their liability by reason of default in making presentment for payment, the maker is nevertheless liable except when the note is payable at a specified place. 30 L. 755 =1929 L. 240. *See also* 1931 L. 758; 1936 Nag. 260.

SECS. 64 AND 69.—In view of the provisions of Ss. 64 and 69, presentment is necessary to charge the maker of a promissory note payable on demand, only if the note is payable at a specified place. 1937 L. 259 =39 P.L.R. 958=18 Lah. 580.

SECS. 64 AND 76 (d): BILL OF EXCHANGE —DRAWER AND DRAWEE SAME PERSON—NO PRESENTATION NECESSARY.—By reason of the word "respectively" used in S. 64 of the Act, the word "maker" has reference to promissory notes and the word "drawee" to cheques. If this view is correct, no presentation is necessary in the case of a bill of exchange if there is no acceptor of the bill. Even assuming that S. 64 applies to the case of a drawee of a bill of exchange, where the same person is the drawer as well

Hours for presentment.

65. Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours.

Presentment for payment of instrument payable after date or sight.

66. A promissory note or bill of exchange made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

Presentment for payment of promissory note payable by instalments.

67. A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment on such presentment has the same effect as non-payment of a note at maturity.

Presentment for payment of instrument payable at specified place and not elsewhere.

68. A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place.

Instrument payable at specified place.

69. A promissory note or bill of exchange made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place.

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as the drawee, S. 76 (*d*) can be invoked to dispense with the necessity of presentment for payment as against the drawer, as, from the nature of the case, the drawer could not suffer damage from the want of such presentment. 148 I.C. 1167=11 O.W.N. 660 =1934 O. 254. *See also* 1935 L. 623; 44 All. 554.

SEC. 66.—Under this section, a bill of exchange made payable at a specified period after date must be presented for payment at maturity, and the want of presentment exempts the endorser. 122 I.C. 406=1930 A. 106. *See also* 10 L. 755=1929 L. 240. Where a hundi which is not made payable at a specified period after date or sight thereof but purports to have been drawn on a certain day and is made payable on the same day, the hundi is not governed by S. 66 and must be presented to the drawee within reasonable time. 40 P.L.R. 578 =1938 Lah. 183. Where the drawer of a hundi is also the drawee, presentment for payment is unnecessary. This rule however does not apply in the case of the indorser of a hundi. 1932 N. 55. *See also* 7 L. 113. =1926 L. 328; 99 I.C. 875=1927 L. 72.

SEC. 67.—Promissory note—Plea of *material alteration*. 25 I.C. 590=1914 M.W.N. 705.

SEC. 68.—No presentment is valid unless it is made after the bill had matured. 87 I.C. 488=47 A. 572=1925 A. 442.

SECS. 68 AND 69.—S. 6 discharges the maker of a pro-note, if a proper presentment is not made to him at the place specified in the pro-note, unless S. 76 (*d*) comes in to relieve the holder against the effect of S 69, and if no damage could have occurred by the non-presentment. It is open, however, to the maker to prove that damage had been caused to him by the non-presentment and that consequently the holder is not entitled to take advantage of the provisions of S. 76 (*d*) (1935 Pesh. 132, Foll.) 1936 Pesh. 202=195 I.C. 185=1941 Pesh. 45. "Specified place" in S. 69 of the Negotiable Instruments Act means a place so particularised that the promisee can know where he must present the instrument for payment. A promissory note which provides for the money under it being paid "at Poona, Bombay or elsewhere" is not a note falling under S. 69; it is not one payable at a "specified place", and so no presentment for payment is necessary. 60 B. 796=38 Bom.L.R. 395=1936 B. 218. But *see* 1937 L. 259. A city, town or village at large may be taken to be a specified place within the meaning of Ss. 64 and 69, but its presentment is only necessary, or indeed reasonably possible, if the maker has his residence or place of business there. In the absence of such residence or place of business the mere possession of the promissory note by the promisee in the city, town or village mentioned would be sufficient. 18 Lah. 580=39 P.L.R. 958=1937 Lah. 259. *See also* 39 P.L.R. 765=1937 Lah. 892. "Place" includes "places"—Absence of presentment, effect of—Jurisdiction to sue, if determined by place for presentment. 94 I.C. 384=1926 M. 792=50 M. L.J. 242. (*See also* notes under S. 86, *supra*).

SEC. 69.—Presentment—Mode of. When the holder of a promissory note is able to produce and show it to the maker of such instrument and deliver the same to him after receiving payment, he is deemed to have com-

Presentment where no exclusive place specified.

70. A promissory note or bill of exchange not made payable as mentioned in sections 68 and 69, must be presented for payment at the place of business (if any), or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be.

Presentment when maker, etc., has no known place of business or residence.

71. If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed residence, and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

Presentment of cheque to charge drawer.

72. [1][Subject to the provisions of section 84], a cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

Presentment of cheque to charge any other person.

73. A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

Presentment of instrument payable on demand.

74. Subject to the provisions of section 31, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

Presentment by or to agent, representative of deceased or assignee of insolvent.

75. Presentment for acceptance or payment may be made to the duly authorised agent of the drawee, maker or acceptor, as the case may be, or, where the drawee, maker or acceptor has died, to his legal representative, or, where he has been declared an insolvent, to his assignee.

Excuse for delay in presentment for acceptance or payment.

[2][**75-A.** Delay in presentment [2][for acceptance or payment] is excused if the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made within a reasonable time]

LEG. REF.

[1] These words and figures were inserted by the Negotiable Instruments (Amendment) Act (VI of 1897), S. 2.

[2] S. 75-A inserted by Act XXV of 1920 and the words "for acceptance or payment" were substituted for the words "for payment" by Act XII of 1921.

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plied with the provisions of S. 69 for the purposes of presentment. It is not necessary that he should exhibit the instrument and then demand payment. 50 C.W.N. 773.

SECS. 60 AND 70.—Scope—If affected by Contract Act, S. 49—Promissory note payable on demand—Place of payment. *See* 44 Bom.L.R. 495=I.L.R. (1942) B. 626 =1942 B. 621. If the maker of a note does not reside at the place specified in the note itself for presentation, and the note is in the possession of the person in whose favour it has been executed, the provisions of S. 69 are held in abeyance and no presentment is necessary. 45 P.L.R. 133=1943 Lah. 121.

SEC. 70.—The general principle that a debtor must find out the creditor and make the payment due to him at the latter's place of business or residence is not applicable to the case of a negotiable instrument. The place where the maker of a promissory note resides or carries on business is the only place where a suit on the note can be instituted. 155 I.C. 953=1935 N. 144.

SECS. 70 AND 64.—No presentment is necessary in the case of a promissory note which is not payable at a specified place, when the suit is against the maker of the promissory note. 40 P.L.R. 975=1939 Lah. 18.

SEC. 74.—S. 74 should not be applied with extreme stringency with respect to an instrument intended to be a continuing security. 39 I.C. 205=2 C.W.N. 479. Where, in a suit on a promissory note, the executant pleads that payment has been

When presentment unnecessary.

76. No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases:—

(*a*) if the maker drawee or acceptor intentionally prevents the presentment of the instrument, or

if the instrument being payable at his place of business, he closes such place on a business during the usual business hours, or

if the instrument being payable at some other specified place, neither he nor any person authorised to pay it attends at such place during the usual business hours, or

if the instrument not being payable at any specified place, he cannot after due search be found;

(*b*) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment;

(*c*) as against any party if, after maturity, with knowledge that the instrument has not been presented—

he makes a part-payment on account of the amount due on the instrument, or promises to pay the amount due thereon in whole or in part;

or otherwise waives his right to take advantage of any default in presentment for payment;

(*d*) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

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made, the drawer cannot suffer damage from want of presentation of the note as required by S. 74, and therefore no presentation for payment is necessary under S. 76 (*d*). 39 P.L.R. 138=1937 L. 58.

SEC. 76.—[*See also* cases under S. 64, *supra*.] Presentment of hundi is not necessary, where the drawee has no residence or place of business or a known address at the place at which the hundi is due and on the date on which the hundi is due, nor is he to be found personally present there on that date. So also, presentment is not necessary under S. 76 (*b*) as against the party sought to be charged therewith, if he has engaged to pay notwithtsanding non-presentment. 187 I.C. 650=1939 Lah. 225. A defendant in a suit on a promissory note who does not contest the suit on the ground that no presentment has been made, waives his right to take advantage of the default in presentment, and the suit cannot therefore be dismissed on that ground. 45 P.L.R. 133=1943 Lah. 121. The acceptor of a bill of exchange is entitled to set off on the due date against the payee and pay only the balance. 35 I.C. 628=18 Bom.L.R. 689. A mere demand of money does not amount to a presentment for payment. In order to comply with the law the holder must exhibit the bill to the person from whom he demands payment and offer to deliver it on payment. 55 I.C. 610 (2)=1 L. 262. Even parol promise on the part of the endorser to pay the note is sufficient to constitute an engagement to pay notwithstanding non-presentment: 87 I.C. 488=47 A. 572=1925 A. 442. A defendant in a suit on a pro-note who pleads part-payment cannot urge non-presentment of the note as a bar to the suit. 210 I.C. 91=1943 Lah. 121.

SEC. 76 (b).—A promise to pay within the meaning of S. 76 (*b*) need not be expressed so long as it is clearly deducible from the language employed by the parties or their conduct. 187 I.C. 650=1939 Lah. 225. An endorsement by the notary public on a negotiable instrument to the effect that "Endorsers state if drawer does not pay the will pay at the request of the manager" imports a promise to pay by the endorses within the meaning of S 76 (*b*). 187 I.C. 650=1939 Lah. 225.

SEC. 76 (c).—*See* 35 P.L.R. 804=1933 L. 133.

SEC. 76 (d).—Throughout the Act, a clear distinction has been made between the words "maker" and "drawer", the former word being used in a more general sense as applying to promissory notes, negotiable instruments and cheques, while the word "drawer" is restricted to bills of exchange or cheques only, and is nowhere used in connection with promissory notes. Therefore the operation of cl. (*d*) of S. 76 is limited to bills of exchange and cheques only and does not extend to promissory notes. 39 P.L.R. 765 =1937 L 259=I.L.R. 1937 L. 580; 1937 L. 892; 1936 Pesh. 202; 1941 Pesh. 45=47 C W.N. 658. Though the plaintiff in a suit on a hundi fails to prove presentation as alleged by him, he could nevertheless show that the case was one in which no pre-

77. When a bill of exchange accepted payable at a specified bank has been duly presented there for payment and dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

Liability of banker for negligently dealing with bill presented for payment.

CHAPTER VI.

OF PAYMENT AND INTEREST.

78. Subject to the provisions of section 82, clause (*c*), payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

To whom payment should be made.

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sentation was necessary. 1922 A. 422. *See also* 1922 A. 279=44 A. 554; 145 I.C. 208=1933 L. 97. S. 76 (*d*) applies to a case where the drawer has no funds with the drawee at the time the bill is being drawn or when it should have been presented, as also to a case where the drawer has no reasonable expectation that the drawee will accept for his accommodation. 1935 L. 413. Presentation on the exact date of the maturity of the hundi is not necessary when the drawer and the drawee are one and the same person. In such a case, no question of damage arises on account of the non-presentation on the due date. 1927 L. 72=8 Lah.L.J. 604=28 Punj.L.R. 24; 7 L. 43=27 Punj.L.R. 75=1926 L. 328. *See also* 1932 N. 55. Where the drawer and drawee are the same person no presentment on due date is necessary, because the drawer cannot suffer damage for want of presentation. No presentment is therefore necessary in the case of a hundi drawn on self in a shahjog form and payable to a respectable person at a particular place. 187 I.C. 650=1939 Lah. 225. *See also* 1941 Pesh. 45. Where no hardship is shown in the case of a note which has not passed into other hands but is still in the hands of the drawee, it is not open to the drawer to contend that he would suffer damage for want of presentation, especially when drawer admits execution of the note, and acknowledges that the money has passed. 1936 C. 489=166 I.C. 747. *See also* 1939 Lah. 225. The word "drawer" in S. 7 (*d*) includes the maker of a promissory note and the definition of "drawer" in S. 7 is not exhaustive. 37 P.L.R. 31=1935 Lah. 153; 1936 Pesh. 202. But *see* 1937 L. 892, *infra*. The word 'drawer' as used in Cl (*d*) of sec. 76, does not include the 'maker' of a pronote. 39 P.L.R. 765=1937 L. 892.

SECS. 76 (c) AND 64, EXCEP.—Under the exception to S. 64, where the promissory note is payable on demand and at a specified place, presentment is necessary in order to charge the promisor, but where the promisor makes a part-payment on account of the amount due, such presentment is not necessary. 1933 L. 133. *See also* 148 I.C. 1167=11 O.W.N. 660=1934 O. 254 (noted under S. 64 and 76, *supra*).

SEC. 78: RIGHT TO SUE ON PROMISSORY NOTE.—No one can maintain a suit on a promissory note except the holder thereof. 1931 Cal. 351=35 C.W.N. 53=58 C. 752. *See also* 15 N.L.J. 45. It may be that the suit can be maintained by the real payee if it had been based on the consideration and not on the note. 35 C.W.N. 53. *See also* 1930 P. 313=123 I.C. 395. Where promissory note is executed in favour of one person in lieu of consideration advanced by another, the promisor cannot pay money to the latter and be rid of his liability. 53 A. 5=1931 A. 108=1930 A.L.J. 1509; 1935 O.W.N. 269=1935 O. 278; 149 I.C. 1210=39 L.W. 520=1934 M. 591. Holder of promissory note though benamidar is alone entitled sue. I.L.R. (1944) Nag. 645=1944 N.L.J. 448=1944 Nag. 325. S. 78 of the Negotiable Instruments Act should be strictly construed, and a valid discharge of a promissory note can be given only by the payee thereof or the holder of the note. There is no such thing for this purpose as a *benami* promissory note taken in the name of one person but really meant for the benefit of another. No decree on a promissory note can be passed in favour of a person on the ground that he is the beneficial owner of the amount due under a promissory note, when he is neither the payee nor the holder of the promissory note in question. 50 L.W. 917 =1940 M. 90=(1939) 2 M.L.J. 812 The object of S. 78 of the Act is to secure a valid discharge to the maker of the note If the person who is ostensibly the holder of the promissory note is made a party to the suit and in his presence it is alleged that the plaintiff is the real beneficiary and that the ostensible holder was not the real holder of the instrument and he can prove his allegation by evidence or by the admission of the ostensible holder of the instrument, there is no reason why such a suit should not be maintained. 11 Pat.L.T.

79. When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified, on the principal money due thereon, from the date of the instrument, until tender or realizatoin of such amount, or until such date after the institution of a suit to recover such amount as the Court directs.

Interest when rate specified.

225=1930 P. 313; 147 I.C. 726=15 Pat. L.T. 102=1934 P. 85. *See also* 8 Cut.L. T. 107=1943 Pat. 79=201 I.C. 382; 140 I.C. 572=11 P. 616=1932 P. 346. But *see contra* 35 C.W.N. 53; 41 L.W. 281= 1935 M. 312=68 M.L.J. 713. *See also* 1930 A.L.J. 1509. When an indorsement bears out no accountability, it is not an indorsement for collection merely and the holder alone can sue on the note. 23 I.C. 545. Each payee of a promissory note is not entitled to bring a separate suit for the recovery of his own share. But one or more payee or payees can give a discharge without the concurrence of the others. 56 M. 544=24 M.L.J. 333 (F.B.). The holder in the section must be taken to mean all the payees jointly and not one or more of them. 36 M. 544. *See also* 1937 Rang. L.R. 1=1937 Rang. 227 (F.B.). Although under S. 78 payment must be made to the holder of the promissory note, yet if the holder who is the manager of a firm elects to treat the payment to his firm as the payment to himself, the payment is payment to the holder within the meaning of S. 78 and the debtor is discharged from the liability under the promissory note. 1936 C. 315. Where a promissory note was executed in the name of one of the partners of a partnership, a suit on the promissory note is maintainable by the partnership itself. 105 I.C. 549=1928 C. 148. The holder of a pronote is entitled to realise the debt, although the consideration had really come from a firm of which the holder was a member, for the consideration need not come from the promisee. 1932 L. 620 (2)=14 L. 19. A promissory note can only be discharged by payment to the holder of the note. The Court should not allow evidence to show that the promissory note was not really executed in the plaintiff's favour or evidence that the note has ben discharged by payment to the person really interested. 49 A. 457=100 I.C. 703=1927 A. 463. But *see* 105 I.C. 549=1928 C. 148=55 C. 551.

PROMISSORY NOTE EXECUTED IN FAVOUR OF ONE PARTNER—RIGHT OF ANOTHER PARTNER TO SUE.—The holder of a promisory note is the only man who can give a valid discharge within the meaning of S. 78 of the Act. Therefore, one partner cannot sue on a promissory note which was executed in favour of another partner. 152 I.C. 410=1934 R. 280.

PROMISSORY NOTE ALLOTTED TO SHARE OF PERSON BY AWARD—RIGHT OF SUCH PERSON TO SUE ON NOTE WITHOUT ENDORSEMENT.—A promissory note was allotted to the share of a person in a partition by an award. There was a further provision that the promisee was to endorse and hand over the note to the person. *Held*, that the award operated as a transfer, *inter alia*, of the promissory note and as such he was entitled to maintain a suit on it, even though it was not endorsed. The further provision did not operate so as to make the transfer conditional on such endorsement or postpone the effect of the transfer till such endorsement was actually made. 156 I.C. 335= 1935 M. 473.

SECS. 78 AND 80: PROMISSORY NOTE—ASSIGNMENT—ASSIGNEE'S RIGHT TO SUE IN HIS OWN NAME, WITHOUT ENDORSEMENT.—*See* 61 C. 425=38 C.W.N. 465=1934 C. 549 (noted under S. 8, *supra*).

SECS. 78 AND 32: BENAMI ASSIGNMENT OF PRONOTE—RELEASE OF MAKER BY REAL OWNER—ASSIGNEE NOT ENTITLED TO SUE ON NOTE.—Negotiable instruments can be enforced by an assignee only when the assignment has been effected in accordance with the provisions of the Act, and transfer of the rights of a party under a note to order to some one else, unless effected by operation of law, must be effected by indorsement and delivery and not otherwise. Where, therefore, a pronote is assigned by the real owner and the benamidar executes an acknowledgment admitting that he was merely a benamidar and the assignor was the real beneficiary, the assignee is not entitled to sue on the pronote, specially when the payee of the note has expressly released the maker. No consideration is required for such a release and the fact that it was collusive is immaterial. 13 P. 655=15 Pat. L.T. 576=1934 Pat. 382.

SEC. 79: SCOPE.—In a suit on a promissory note, which expressly specifies the rate of interest payable, the Court cannot reduce such rate to be paid up to a date fixed by it after the institution of the suit, unless it is exorbitant or penal or otherwise offends against the law. At the same time, it is not necessary that the Court should allow the stipulated rate up to the date of realisation. The requirements of S. 79 of the Negotiable Instruments Act are sufficiently complied with, if interest at the rate specified is allowed up to the date of decree

Interest when no rate specified.

80. When no rate of interest is specified in the instrument, interest on the amount due thereon shall, [1][notwithstanding any agreement relating to interest between any parties to the instrument], be calculated at the rate of six per centum per annum from the date at which the same ought to have been paid by the party charged until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

Explanation.—When the party charged is the indorser of an instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.

LEG. REF.

[1] Substituted for "except in cases provided for by the Code of Civil Procedure, S. 352" by Act XXX of 1926, S. 2.

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of the trial Court and thereafter at 6 per cent. per annum up to the date of realisation. 1934 L. 32=154 I.C. 470. Where a promissory note mentions specific rate of interest evidence is not admissible to prove an agreement to pay a different rate of interest. S. 79 provides that when a rate is provided, interest should be calculated at the rate specified. No question of awarding interest by way of damages can arise. I. L.R. (1942) Nag. 498=1941 N.L.J. 338 =1941 Nag. 271. S. 79, if overridden by Bihar Money Lenders Act. *See* 23 Pat. 618=(1944) P.W.N. 223 (F.B.).

SECS. 79 AND 80.—This Act must be read with other enactments passed subsequent thereto. If under the Usurious Loans Act which was passed after this Act but before the suit promissory note was executed, the Court has a discretion to reduce interest in a proper case, there is nothing in S. 79 of this Act which excludes such a discretion. 1931 A. 662=1931 A.L.J. 645=53 A. 776. The operation of S. 80 of the Act is not excluded by O. 37, R. 2 of the C.P. Code. On the other hand, O. 37, R. 2 makes S. 79 or 80, as the case may be, specifically applicable to a case filed under O. 37 of the C. P. Code. 56 M. 398=64 M.L.J. 117 =1933 Mad. 299. Plaintiff is entitled to interest at the stipulated rate from the date of the institution of the suit till the date fixed for payment. 17 I.C. 309. *See also* 11 I.C. 891. A contract to pay interest made simultaneously with the execution of a promissory note, but not embodied therein is valid, and will be enforced between the parties to such contract. 32 I.C. 238. (29 A. 33, Foll.; 6 A.L.J. 233, Diss.) S. 80 does not bar the recovery of the interest which the debtor subsequent to the execution of the promissory note agrees to pay in consideration of the creditor not pressing his demand immediately. 5 Pat.L.J. 536= 58 I.C. 265. *See also* 35 I.C. 431=1 Pat. L.J. 71. Where no rate of interest is mentioned in the hundi sued upon, the plaintiff is entitled to interest at 6 per cent. per annum. 35 I.C. 431 (2)=1 Pat.L.J. 71. *See also* 2 Pat.L.J. 451=40 I.C. 350; 63 I.C. 296. Where a person claimed in the plaint 33½ per cent. interest on instruments of debt which contained no agreement as to the exact rate of interest. *Held*, interest should be awarded at the rate of 6 per cent. from the date of hundis to the date of decree and subsequent interest also at the same rate thereafter. 56 M. 398=1933 M. 299= 64 M.L.J. 117.

SEC. 80.—Once it is held that a document is not a promissory note the provisions of S. 80 cease to be applicable. 13 L. 516= 1932 L. 616. Where a pronote payable on demand is silent as to interest, interest is claimable at 6 per cent. from date of the pronote. 1928 L. 665=107 I.C. 753; 52 B. 88=1928 B. 35 (F.B.); 154 I.C. 523= 1935 A.L.J. 333=1935 A. 451. *See also* 50 B. 266=94 I.C. 21=1926 B. 241; 54 I.C. 121 (L.); 1932 L. 30 (2)=33 P.L. R. 120; 56 M. 398=1933 M. 299=64 M. L.J. 117; 1936 O.W.N. 876=1937 Oudh 9; 1935 O. 518=1935 O.W.N. 971. The Act does not apply to hundis and it is therefore permissible to the plaintiff to set up and prove a usage for the payment of interest at a rate exceeding 6 per cent. per annum, notwithstanding the provisions of S. 80. 1932 L. 582. Interest on those instruments to which S. 80 applies is payable from the date of execution, or from maturity or from presentation or from demand or from service of summons according to the circumstances of each case. Where the promissory note contained no stipulation for interest and no demand was made prior to suit, *held*, that interest at 6 per cent. should be calculated from the date of service of summons. 58 C. 290=1931 C. 140. Shah Jog hundis though unquestionably negotiable instruments are not negotiable instruments within the narrow meaning of the Negotiable Instruments Act. They are not ordinary hundis to which the Act applies. Many of the incidents which applies to these hundis are no doubt the same as those which apply to instruments governed by the Act but that is because of mercantile usage and custom

Delivery of instrument on payment or indemnity in case of loss.

81. Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange or cheque is before payment entitled to have it shown, and is on payment entitled to have it delivered up, to him, or, if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him.

CHAPTER VII.

OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES.

Discharge from liability.

82. The maker acceptor or indorser respectively of a negotiable instrument is discharged from liability thereon—

by cancellation;

(*a*) to a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him and to all parties claiming under such holder;

by release;

(*b*) to a holder thereof who otherwise discharges such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge;

by payment;

(*c*) to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon.

Discharge by allowing drawee more than forty-eight hours to accept.

83. If the holder of a bill of exchange allows the drawee more than [1][forty-eight] hours, exclusive of public holidays to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

When cheque not duly presented and drawer damaged thereby.

[2][84. (1) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or person on whose account it is drawn had the right, at the time when presentment ought to have been made, as between himself and the banker, to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of the banker to a larger amount than he would have been if such cheque had been paid.

LEG. REF.

[1] Substituted for "twenty-four" by Act XII of 1921, S. 2.

[2] Substituted for the original section by Act VI of 1897, S. 3.

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and not because of the Act. As the Act does not apply, the provison for interest made in S. 80 of the Act also cannot apply and cannot be invoked. I.L.R. (1943) Nag. 149=1943 N.L.J. 76=1943 Nag. 99. Hundi not mentioning interest—Payee under it selling it with endorsement undertaking to pay interest—Presentation of Hundi—Right of vendee to interest. 1937 P. 319.

SEC. 82.—*See* 51 I.C. 577; 35 I.C. 591 =4 L.W. 34; 1937 Rang. 521. *Prima facie* the giving of a new instrument in place of an existing one has the effect not of discharging the instrument then existing, but of being a conditional satisfaction of it, so that if the new instrument is duly paid at maturity, the first instrument is discharged; but if not, then the dormant rights on the first instrument are revived. 49 A. 257= 1927 A. 236. Extension of time by consent of parties, whether discharges bill. *See* 1927 B. 13=50 B. 656.

SEC. 82 (c): PAYMENT MADE TO THE ENDORSEE'S AGENT and received by him in his capacity as an agent is good discharge of the hundis. 119 I.C. 759=1929 L. 634.

SEC. 83.—The words "all previous parties" in S. 83 includes the drawer. 10 I.C. 133. Ordinary hundi does not require presentation for acceptance. 10 I.C. 133. S. 83 does not apply to cases of hundis payable at sight for they are presented not for acceptance, but for payment. 47 I.C. 683. *See also* 48 I.C. 423; 10 I.C. 133.

SECS. 83 AND 86.—Ss. 83 and 86, only deal with cases of documents which have to

(2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

(3) The holder of the cheque as to which such drawer or person is so discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge and entitled to recover the amount from him.]

Illustrations.

(*a*) *A* draws a cheque for Rs 1,000, and, when the cheque ought to be presented, has funds at the bank to meet it. The bank fails before the cheque is presented. The drawer is discharged, but the holder can prove against the bank for the amount of the cheque.

(*b*) *A* draws a cheque at Umballa on a bank in Calcutta The bank fails before the cheque could be presented in ordinary course. *A* is not discharged, for he has not suffered actual damage through any delay in presenting the cheque.

Cheque payable to order.

85. [1][(1)] Where a cheque payable to order purports to be endorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

[1][(2) Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding any endorsement whether in full or in blank appearing thereon, and notwithstanding that any such endorsement purports to restrict or exclude further negotiation].

Drafts drawn by one branch of a bank on another payable to order.

[2][85-A. Where any draft, that is, an order to pay money, drawn by one office of a bank upon another office of the same bank for a sum of money payable to order on demand, purports to be endorsed by or on behalf of the payee, the bank is discharged by payment in due course.]

LEG. REF.

[1] Original S. 85 was numbered as sub-S. (1) and sub-S. (2) inserted by Act XVII of 1934, S. 2.

The original section was as follows:—"When the holder of a cheque fails to present it for payment within a reasonable time and the drawer thereof sustains loss or damage from such failure, he is discharged from liability to the holder."

[2] Inserted by Act XXV of 1930, S. 2.

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be presented for acceptance, that is to say documents payable after sight. There is no such provision with regard to the hundis payable on presentment. 172 I.C. 598=1937 Pesh. 103.

SEC. 85.—*See* 50 B. 118=28 Bom.L.R. 226=1926 B. 262. The duty and authority of a Bank to pay a cheque drawn on it by its customer are determined by countermand of payment. If the Bank negligently pays the amount of the cheque thereafter, it is not a payment made in due course, so as to discharge the Bank. The Bank is not protected by its current account rule which states that "the Bank will register instructions from the drawer regarding cheques lost, stolen, etc., but cannot guarantee constituents against loss in such cases in event of a cheque being paid." I.L.R. (1940) 2 Cal. 578=1941 Cal. 110. Where owing to the negligence of the employees of a Bank payment was made in respect of a forged cheque, the Bank cannot escape the liability to make good the amount, by relying on the circumstance that the customer was negligent in leaving his cheque book at a place to which others had access. It was the duty of the Bank to verify the signature of its customers. I.L.R. (1938) All. 634=1938 A.L.J. 504=1938 All. 374.

SEC. 85.—Applicability—"In due course"—Good faith and absence of negligence. *See* I.L.R. (1945) M. 328=1945 M. 30=57 L. W. 533=(1944) 2 M.L.J. 295.

SEC. 85-A: STOPPING PAYMENT OF DRAFT—POWERS OF BANK AND PURCHASER.—The issue of the draft is regarded in banking practice as a matter of purchase, the person at whose instance the draft is issued, being regarded as the purchaser. Ordinarily, a bank cannot stop payment of a draft unless there is some doubt as to the identity of the person presenting it as being or properly representing the person in whose favour it is drawn. The position of a bank in regard to its own drafts is not quite the same as its position in regard to cheques drawn on it, since it has taken on commitments of its own in favour of a third person at the instance of the purchaser. S. 85-A indicates that the question with regard to which a bank has to satisfy itself is that of the title of the person presenting the draft. If a draft is lost, for example, a risk may arise that it

86. If the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill or which substitutes a different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance.

Parties not consenting discharged by qualified or limited acceptance.

Explanation.—An acceptance is qualified—

(*a*) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated;

(*b*) where it undertakes the payment of part only of the sum ordered to be paid;

(*c*) where, no place of payment being specified on the order, it undertakes the payment at a specified place, and not otherwise or elsewhere; or where, a place of payment being specified in the order, it undertakes the payment at some other place and not otherwise or elsewhere;

(*d*) where it undertakes the payment at a time other than that at which under the order it would be legally due.

87. Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

Effect of material alteration.

and any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

Alteration by indorsee.

The provisions of this section are subject to those of sections 20, 49, 86 and 125.

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will be presented by some one who is not entitled to be the holder and there may be a forged endorsement. In such cases, the purchaser may reasonably ask the Bank to be on its guard against presentation by the wrong person; and if the bank does not exercise the necessary precautions, the purchaser may sue the bank for neligence. On the other hand, it does not appear that the purchaser is entitled to ask the issuing bank to stop payment on other grounds, such as matters relating to the consideration in respect of which the draft has been issued at his instance. 47 P.L.R. 196=1945 Lah. 213.

SECS. 85-A, 10 AND 16: PAYMENT IN DUE COURSE—WHAT AMOUNTS TO.—Under S. 16 if the endorser signs his name only, the endorsement is said to be in blank and such an endorsement makes the negotiable instrument payable to the bearer. The endorsement must however be a genuine and valid endorsement. A bank issued a draft drawn on its branch for payment of certain sum to *H* and *G*. *H* alone appeared at the branch of the bank for the first time and presented the draft for payment. At that time the draft purported to be endorsed in blank on reverse by both *H* and *G*. The manager of the branch at first refused to cash the draft as he did not know *H*. Subsequently however he paid the amount when one *L* who had an account with the bank identified *H* and *H* guaranteed the signature of *G*. The manager took no steps to have the signature of *G* confirmed or identified by any one. *Held*, that in these circumstances the payment of the draft could not be said to have been made in good faith and without negligence. The payment therefore was not in due course within the meaning of Ss. 85-A and 10 and the bank was liable for the payment. 40 P.L.R. 863=1938 Lah. 520.

SEC. 86 (b).—*See* 35 I.C. 628.

SEC. 87: MATERIAL ALTERARION.—The question whether the alteration is a material one depends on whether it changes in any way the rights and liabilities of the parties thereto. It is immaterial whether the change is prejudicial or beneficial. And an endorsement postponing the payment which was payable on demand and altering the rate of interest constitutes material alteration. In such cases the actual position of the words written is immaterial. 162 I.C. 358 =1936 R. 136. Where the instrument appears to be altered, it is incumbent upon the person suing on the instrument to show that the alteration was not improperly made. 41 P.L.R. 356=1939 Lah. 31. Where it was the common intention of parties that interest was to be paid, but owing to an accidental omission the *Sarkhat* did not con-

tain any such provision, an alteration to that effect made without reference to the debtors does not make the instrument void; oral evidence to prove the existence of agreement to pay interest is admissible, for proviso (2) to S. 92 of the Evidence Act makes any separate oral agreement as to any matter on which the document is silent, capable of proof and there is no prohibition in that respect. Further S. 87 itself postulates the possibility of such an agreement being proved by oral evidence. 1939 A.L.J. 46= 1939 All. 248. The alteration referred to in S. 87 refers to a deliberate alteration by a party to the instrument or by one on whom his interest had devolved and not by a stranger, particularly when no conduct can be imputed to the party in whose favour the alteration has been effected or from which either his complicity, laches or neligence may be inferred. A subsequent alteration by a stranger would not deprive the person who had advanced the money or to whom the money had become payable subsequently on account of the promisee's death, of his remedy to bring a suit for the money advanced to the maker by way of loan. S. 87 would not therefore stand in the way of a minor plaintiff, who was a minor on the date of the alteration in question, getting relief on the original cause of action. 50 L.W. 746=1940 Mad. 62=(1939) 2 M.L.J. 686. It is unnecessary that a material alteration, in order to render an instrument void under S. 87, should be one which is prejudicial to the person who pleads it. Even if it were beneficial, it still remains a material alteration. Where at the instance of the payee of a promissory note a party is sought fraudulently to be made liable on the note, *e.g.*, by getting his signature forged on the note, even a party who has admittedly executed such a note can, in a suit by an endorsee of the note, escape liability by virtue of S. 87, as the forgery renders the whole note void. 1943 Mad. 511=(1943) 1 M.L.J. 380. The fact that an alteration does not ultimately involve any change in the rights and liabilities of the parties is not very germane to the consideration of the question whether it amounts to a material alteration within the meaning of S. 87. Whether the change be prejudicial or beneficial to the maker does not in the least matter. Where in a promissory note, subsequent to its execution, the words "the proprietor of the Karthika Stores," were inserted above the signature of the maker and below the date: *Held*, that the alteration was a material alteration rendering the instrument unenforceable though the plaintiff might ultimately make up his mind to sue the maker in his individual capacity only and had accepted the maker's case that he had nothing to do with the said stores at any time either as proprietor or in any other capacity. 55 L.W. 554=1942 Mad. 709 (2)=(1942) 2 M.L.J. 303. S. 87 would only apply to cases of fraudulent alteration by a party and to cases where due to his negligence it becomes possible for a stranger to make the alteration. The holder of a promissory note is not affected by a material alteration in the instrument when it has been made by a meddlesome or maliciously minded stranger and there has been no fraud or laches on the part of the holder. I.L.R. 1941) Mad. 295=1941 Mad. 383=(1941) 1 M.L.J. 153. When the plaintiff in a suit upon a promissory note is proved to have materially altered it, the Court would not grant him a decree even for the amount admitted by the defendant to be due. 25 I.C. 667; 50 B. 656=1927 B. 13. *See also* 55 I.C. 610= 1 L. 262. Under S. 87, a negotiable instrument is void if there is any material alteration, without the consent of the party against whom it is sought to be enforced, unless the alteration was made to carry out the common intention of the original parties. 21 L.W. 532=87 I.C. 48=1925 M. 99. *See also* 44 C. 154=35 I.C. 182; 160 I.C. 996 =1936 M. 154. Any alteration in the bill which changes the identity of the contract therein must be regarded as a material alteration. 55 I.C. 610=1 L. 262. The rule has now been well established that any alteration or change in an instrument which "causes it to speak a different language in legal effect from that which it originally spoke, which changes the legal identity or the character of the instrument either in its terms or the relation of the parties to it," is a material alteration or change. An alteration in the date of the instrument is a material alteration within the meaning of S. 87. Where the date of execution of a promissory note and the date of endorsement of a payment made by the maker are altered, the alteration of the dates is a material alteration. 50 L.W. 746=1940 Mad. 62= (1939) 2 M.L.J. 686. *Addition of two attesting witnesses* made subsequent to the execution of an improperly stamped promissory note in order to convert it into a bond and thereby opening up the possibility of suing upon it on payment of penalty is tantamount to material alteration which invalidates the instrument and destroys the right of action on it. 1930 L. 959. *Pronote torn in a material portion* affecting its validity in the place of origin, amounts to a material alteration. 38 M. 746=25 M.L.J. 572. An alteration of the name of the payee is a material alteration. 20 A.L.J. 987 (2)= 1923 A. 123. Adding "*with interest*" when the date was already specified is not material alteration. 86 I.C. 552=1925 P. C. 80=49 M.L.J. 132 (P.C.). A forged endorsement on a promissory note purport-

Acceptor or indorser bound notwithstanding previous alteration.

88. An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

Payment of instrument on which alteration is not apparent.

89. Where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered,

or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated,

payment thereof by a person, or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon; and such payment shall not be questioned by reason of the instrument having been altered or the cheque crossed.

Extinguishment of rights of action on bill in acceptor's hands.

90. If a bill of exchange which has been negotiated is at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished.

CHAPTER VIII.

OF NOTICE OF DISHONOUR.

Dishonour by non-acceptance.

91. A bill of exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not accepted.

Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured.

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ing to be a receipt of the amount due under the note, which is outside the body of the note and the signature, *prima facie* does not form part of the note and is not a material alteration. 163 I.C. 803=1936 M.W.N. 451=43 L.W. 665=1936 M. 616. *Interpolation of interest in a note*, when amounts to material alteration. 23 A.L.J. 253=87 I.C. 796. Alteration of rate of interest from Re. 0-8-0 to Rs. 1-8-0 is material alteration. 1937 A.W.R. 232=1937 A.L.J. 235=1937 All. 439. *Alteration of due date of payment*, effect of. 99 I.C. 489=1927 B. 13=50 B. 656. Suit on a pronote executed by two persons—One alone executing, the mark of the other having been affixed to the note without her permission—Enforceability against the real executant alone. 21 L.W. 532=87 I C. 48=1925 M. 929, doubted in 1928 M.W.N. 591=1928 M. 1092. *See* 1914 M.W.N. 250. As to *burden of proof in cases of material alteration* in pronote, *see* 98 I.C. 721=28 Bom.L.R. 944=1926 B. 491; 1939 Lah. 31. *See also* 14 Rang. 29. Where a party sues on an instrument which, on the face of it, appears to have been altered, it is for him to show that the alteration has not been improperly made. 1935 R. 131. Where below the signatures of the executants of a promissory note, the *name of another person is forged by or at the instance of the payee* without the consent of the real executants, and the addition of the new name is not made in order to carry out the common intention of the original parties, the promissory note is void even as against the real executants who are not consenting parties to the material alteration made in the promissory note. 156 I.C. 17=1935 O.W.N. 661=1935 O. 434=(1943) 1 M.L.J. 380=1943 Mad. 511. *See also* 1936 Mad. 154. The law requires a fresh stamp when a material alteration is made, as the alteration makes the instrument a new one. 162 I.C. 358=1936 R. 136. Where it is found that a hand note sued on had been fraudulently altered, the plaintiff should not be granted any relief. A person who has altered an instrument is not entitled to succeed on the basis of the original consideration and to rely upon the altered instrument as embodying an acknowledgment or admission. 1939 Pat. 255. *See also* 16 Pat. 527=18 Pat.L.T. 640=1937 Pat. 572.

SEC. 89.—*See* 52 A. 883=128 I.C. 758=1930 A. 778.

SEC. 91.—Where there is no allegation that the presentment was excused, the plaintiff must prove that the drawee was required to accept the bill and that he dishonoured it by non-acceptance. 21 L.W.

Dishonour by non-payment.

92. A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.

By and to whom notice should be given.

93. When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note or the drawee or acceptor of the dishonoured bill of exchange or cheque.

Mode in which notice may be given.

94. Notice of dishonour may be given to a duly authorized agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended.

If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

Party receiving notice must transmit notice of dishonour.

95. Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives due notice as provided by section 93.

Agent for presentment.

96. When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of

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210=86 I.C. 576=1925 M. 444. *See also* 86 I.C. 357.

SEC. 92.—The provisions of Ss. 91, 92 and 93 dealing with dishonour by non payment are applicable to bills of exchange payable at sight or on demand. 10 L.W. 39 =52 I.C. 370. In absence of notice of dishonour, the endorsee of a promissory note is not liable unless a special contract to the contrary is proved. 152 I.C. 129=40 L. W. 666=1935 M. 22 (2).

SEC. 93.—Notice of dishonour should be given to the indorser of a promissory note payable on demand in order to make him liable on the instrument. 1930 M.W.N. 1232=1931 M. 113. Where a cheque is dishonoured, it is incumbent on the endorsee to serve the endorser with notice of such dishonour and the failure to do so discharges the endorser from all liability, and the endorsee could not sue even on the original consideration. 38 P.L.R. 240=1936 L 796. There is no provision in the Negotiable Instruments Act making the notice of dishonour compulsory where a hundi payable at sight has been dishonoured. 1937 Pesh. 103.

SECS. 93 AND 98.—The rule as to notice of dishonour does not admit of any departure except in the cases enumerated in S. 98. 1 L. 262=55 I.C. 610.

SECS. 93 AND 95.—Where the payee of a promissory note practises fraud in endorsing it over to another after it has become barred by limitation, fabricating an endorsement of payment so as to make it appear that it is not barred, he is not entitled to plead in defence to a suit against him that he is entitled to notice of dishonour. There is no necessity for notice of dishonour in such a case. 50 L.W. 649=1940 Mad. 85=(1939) 2 M.L.J. 760.

dishonour, and the principal is entitled to a further like period to give notice of dishonour.

When party to whom notice given is dead.

97. When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

When notice of dishonour is unnecessary.

98. No notice of dishonour is necessary—

(*a*) when it is dispensed with by the party entitled thereto;

(*b*) in order to charge the drawer when he has countermanded payment;

(*c*) when the party charged could not suffer damage for want of notice;

(*d*) when the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it;

(*e*) to charge the drawers when the acceptor is also a drawer;

(*f*) in the case of a promissory note which is not negotiable;

(*g*) when the party entitled to notice, knowing the facts, promises unconditionaly to pay the amount due on the instrument.

CHAPTER IX.

OF NOTING AND PROTEST.

Noting.

99. When a promissory note or bill of exchange has ben dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any, assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

Protest.

100. When the promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

Protest for better security.

When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, within a reasonable

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SEC. 98.—This section contains the exceptions to the general rule requiring notice of dishonour and the person relying upon any such exception must establish all the requirements thereof. 1 L. 262=55 I.C. 610. Undue omission to give due notice of dishonour discharges the persons entitled to such a notice. 11 L. 34=116 I.C. 887=1929 L. 577. Notice of dishonour—Failure to give—No damage—*Onus* of proof. 1932 N. 55.

SEC. 98 (b).—It is not necessary that the actual words "countermanding payment" should be used; it is sufficient if the words used clearly show that the drawer does not want payment to be made in accordance with the tenor of the hundi. The question of countermanding payment is a question of fact. **163 I.C. 743=1936 M. 506.**

SEC. 98 (e).—The use of the singular, "drawer" followed by the plural "drawers" in S. 98 shows that if the acceptor is one of the drawers, both the drawers would be liable, even though no notice of dishonour has been given. 51 A. 530=1929 A. 254.

SEC. 98 (g).—The "unconditional promise to pay" contemplated by Cl. (*g*) of S. 98, need not be express. Where an endorsement is made on a promissory note that a certain amount was paid towards the satisfaction of the interest of the note, the acknowledgment contained in such endorsement is, by implication, a clear promise to pay which under the section renders notice of dishonour unnecessary. 47 Bom.L.R. 336=1945 Bom. 359.

time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

Contents of protest.

101. A protest under section 100 must contain—

(*a*) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon;

(*b*) the name of the person for whom and against whom the instrument has been protested;

(*c*) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public; the terms of his answer, if any, or a statement that he gave no answer or that he could not be found;

(*d*) when the note or bill has been dishonoured, the place and time of dishonour, and, when better security has been refused, the place and time of refusal;

(*e*) the subscription of the notary public making the protest;

(*f*) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.

[1][A notary public may make the demand mentioned in clause (*c*) of this section either in person or by his clerk or, where authorized by agreement or usage, by registered letter.]

Notice of protest.

102. When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the notary public who makes the protest.

Protest for non-payment after dishonour by non-acceptance.

103. All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance may, without further presentment to the drawee, be protested for non-payment in the place specified for payment, unless paid before or at maturity.

Protest of foreign bills.

104. Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

[2][104-A. For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting.]

When noting equivalent to protest.

CHAPTER X.

OF REASONABLE TIME.

Reasonable time.

105. In determining what is a reasonable time for presentment for acceptance or payment, for giving notice of dishonour and for noting, regard shall be had to the nature of the

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LEG. REF.

[1] Last paragraph of S. 101 was added by the Negotiable Instruments Act (II of 1885), S. 5.

[2] S. 104-A was inserted by the Negotiable Instruments Act (II of 1885), S. 6

SEC. 104.—A bill drawn upon a resident in British India is an inland bill for which no protest is necessary. The fact that the bill was drawn out of British India (in England) does not make it a foreign bill. 57 C. 730=129 I.C. 190=1930 C. 692.

SEC. 105.—In considering the question of

instrument and the usual course of dealing with respect to similar instruments; and, in calculating such time, public holidays shall be excluded.

Reasonable time of giving notice of dishonour.

106. If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour.

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour.

Reasonable time for transmitting such notice.

107. A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

CHAPTER XI.

OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED.

Acceptance for honour.

108. When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto. [1][* * *]

How acceptance for honour must be made.

109. A person desiring to accept for honour must [2][by writing on the bill under his hand], declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour. [3][* * *]

Acceptance not specifying for whose honour it is made.

110. Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer.

Liability of acceptor for honour.

111. An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee do not: and such party and all prior parties are liable in their respective

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LEG. REF.

[1] Portion repealed by the Negotiable Instruments Act (II of 1885), S. 7, was as follows:—

"Unless the person who intends to accept *supra protest* first declares, in the presence of a notary, that he does it for honour and has such declaration duly recorded in the notarial register at the time, his acceptance shall be a nullity."

[2] These words were substituted for the words "in the presence of a notary public subscribe the bill with his own hand and" by the Negotiable Instruments Act (II of 1885), C. 8.

[3] The words "and such declaration must be recorded by the notary in his register" were repealed by the Negotiable Instruments Act (II of 1885), S. 8.

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reasonable time, facts such as the distance at which persons live from each other, the course of dealings with respect to similar instruments, the nature of the instrument and all such other circumstances applicable to the case ought to be considered. But when these facts have been ascertained, the reasonableness of the time becomes a mixed question of law and fact 116 I.C. 887=1929 L 577=11 L. 34.

SEC. 106.—Notice of dishonour should be given as soon as the bill is dishonoured. It is the duty of the holder to prove that the notice was given, and if not given, he was excused from doing so for any of the reasons specified in S. 98. The omission to give notice discharges the persons who are entitled to such notice. 11 L. 34=116 I C 887=1929 L. 577. A delay of 27 days in giving notice of dishonour is unreasonable delay which has the effect of absolving the drawers from liability. 1929 Lah 577.

capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.

But an acceptor for honour is not liable to the holder of the bill unless it is presented (or in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable), forwarded for presentment, not later than the day next after the day of its maturity.

When acceptor for honour may be charged.

112. An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment, and has been dishonoured by him, and noted or protested for such dishonour.

Payment for honour.

113. When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same: provided that the person so paying [1][or his agent in that behalf] has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public.

Right of payer for honour.

114. Any person so paying is entitled to all the rights, in respect of the bill, of the holder at the time of such payment, and may recover from the party for whose honour he pays all sums so paid with interest thereon and with all expenses properly incurred in making such payment.

Drawee in case of need.

115. Where a drawee in case of need is named in a bill of exchange, or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

Acceptance and payment without protest.

116. A drawee in case of need may accept and pay the bill of exchange without previous protest.

CHAPTER XII.

OF COMPENSATION.

Rules as to compensation.

117. The compensation payable in case of dishonour of a promissory note, bill of exchange or cheque, by any party liable to the holder or any indorsee, shall [2][* * *] be determined by the following rules:—

LEG. REF.

[1] These words were inserted by the Negotiable Instruments Act (II of 1885), S. 9.

[2] The words and brackets "(except in cases provided for by the Code of Civil Procedure, S. 532)" have been omitted by Act XXX of 1926, S. 3.

SECS. 113 AND 115.—S. 113 does not apply to a "drawee in case of need" in a bill of exchange. Where the vendor takes a bill of exchange to his own order, the property in the goods cannot pass to the purchaser until he accepts the *bill* and meets it on presentation. But when the purchaser accepts the bill and dishonours it on presentation the contract between him and the vendor comes to an end and thereafter when the bill is accepted and met on presentation by the "drawee in case of need" the property in the goods passes to the "drawee in case of need" unless the purchaser can show some new contract between him and the vendor. 1941 Rang. 270.

SEC 115.—S. 115 makes the presentment to the drawee in case of need obligatory on the holder, and the non-presentment of the bill to him absolves the drawer from liability. 116 I.C. 887=1929 L. 577.

SECS. 115 AND 116.—The drawee in case of need of a bill of exchange cannot be made liable upon a bill which has never been accepted by him. When a bil lof exchange has been duly accepted by the drawee in the first instance but is dishonoured by him when presented for payment at maturity, the holder cannot make the drawee in case of need liable upon the bill, unless he has previously presented the bill for acceptance to the drawee in case of need. 177 I C. 8484=40 Bom.L.R. 473=1938 Bom. 364.

SEC. 118 SPECIAL RULES OF EVIDENCE—SCOPE AND EFFECT OF—GENERAL LAW—HOW FAR MODIFIED.—The Act lays down certain special rules of evidence and certain presumptions and precludes certain pleas being raised in particular cases; but it cannot be said that beyond the scope of such rules or necessary implications therefrom, the applicability of the general principles of law or

(*a*) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it;

(*b*) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;

(*c*) an indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at per centum per annum from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment;

(*d*) when the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places;

(*e*) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

CHAPTER XIII.

SPECIAL RULES OF EVIDENCE.

Presumptions as to negotiable instruments.

118. Until the contrary is proved, the following presumptions shall be made:—

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the ordinary rules of evidence is excluded. 58 M. 693=1935 M. 181=68 M.L.J. 81 (F.B.).

SEC. 118: GENERAL.—The special rules of evidence laid down in S. 118 are intended to apply as between the parties to the instrument or those claiming under them. In other cases, the presumption can only be in terms enacted in S. 114 of the Evidence Act, ill. (*e*) which leaves it to the Court to apply the presumption or not according to circumstances. A suit against the undivided sons of a Hindu promisor governed by the Mitakshara law, on a promissory note executed by him, cannot be regarded as one against the *heirs* or representatives of the promisor, because it only seeks to enforce the Hindu Law theory of pious obligation in respect of property which the sons have taken by survivorship; since the pious obligation can arise only on the assumption of the existence of a *debt* due by the father, the onus of proving the existence of the debt is on the creditor. He must therefore prove that the promissory note was supported by consideration; and he cannot invoke S. 118 to throw the onus on the sons. I.L.R. (1937) M. 299=1937 M. 182=(1937) 1 M.L.J. 543. Even the onus under S. 118 of the Negotiable Instruments Act need not always be discharged by direct evidence. (1937) 1 M.L.J. 543. The provisions of S. 118 do not affect the question with regard to the admissibility in evidence of a document which depends entirely upon the document as it stands. 90 I.C. 685=27 Bom.L.R. 1122=1925 B. 527. On this section, *see* 9 I.C. 79; 8 I.C. 796=12 C. L.J. 470; 5 I.C. 891; 20 B. 367; 2 I.C. 539; 1938 Pat. 612 The presumption as to receipt of full consideration arising from a debtor's signature on a promissory note can only be available against the debtor *personally* and cannot be invoked against the *official receiver* or a creditor in insolvency proceedings. 108 I.C. 147=1928 A. 380. Where the promissory note sued upon is not a negotiable instrument, there is no presumption under S. 118 that it was made for consideration. 84 I.C. 866=1925 L. 272; 13 P.L.T. 506=1932 P. 224. *See also* 146 I.C. 709=10 O.W.N. 839=1933 O. 394. It is true that under S. 118 there is a presumption of consideration for a promissory note, while in a suit to recover a debt it is for the plaintiff to prove the consideration. But in a suit on the debt, if a promissory note is evidence of the debt, the presumption would still arise. I.L.R. (1940) Kar. 342=1940 Sind 217. Holder—Consideration—Presumption—Transferee from payee 80 I.C. 741=1924 L. 462. *Transferee of a tainted pro-note,* if holder in due course—Burden of proof. 1928 M. 1238. In a suit on a promissory note, the defendants contended that they had affixed their signature to a blank paper, that there was no cash consideration and that they had induced plaintiff to give evidence in a case by affixing their signature to the note. The Court thereupon cast the burden of proving consideration on the plaintiff. *Held,* that the

(*a*) that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, endorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

of consideration.

Court erred in not taking into account the **presumption nuder S. 118, Negotiable Instruments Act** and in casting the onus on the plaintiff. 54 A. 375=1932 A. 164. A mere admission that the actual consideration was different from that described in the contract does not shift the burden of introducing evidence on to the payee. (1924 A. 256 and 15 C.P.L.R. 24, Foll.) I.L.R. 1936 N. 142=1936 N. 130.

SEC. 118, CL. (a): PRESUMPTION AS TO CONSIDERATION—SCOPE AND EXTENT.—The ordinary rule is that every negotiable instrument is to be presumed to be for consideration and the burden of proof rests on the defendant admitting execution to prove that it was not for consideration, but in a case where the parties go to trial on the question of want of consideration and the trial Court which hears the evidence and notes the demeanour of the witnesses forms an opinion against the plaintiff, the question as to any presumption of consideration passing under the instrument does not arise. Further, if the defence is minority at the time of the execution of the instrument and there are other suspicious circumstances, *viz.*, the fact that the plaintiff has failed to produce his account books, although he admits that he keeps regular accounts, the presumption cannot be availed of. 10 Luck. 423=11 O.W. N. 1589=1935 O. 41. *See also* 1925 A. 154. S. 118 is imperative and the Court is bound to draw the initial presumption that every negotiable instrument was made for consideration, when its execution is admitted. Where the plaintiff has led evidence in the first instance to prove the consideration for a promissory note and has failed to establish the passing of consideration, he can fall back on the initial presumption in his favour. But when the Court has after a consideration of the entire evidence recorded a clear finding one way or the other, then the finding is based not on a mere presumption but on the evidence, and has to be accepted in second appeal. 57 A. 895=1935 A. 509; 3 A.L.J. 322=28 I.C. 390. Under S. 118 the only presumption that can be raised is that a promissory note has been executed for consideration, *i.e.*, that the amount for which it is executed was advanced. But the section does not raise the further presumption that the amount was advanced for legal necessity. The burden of proving legal necessity for the loan is on the payee. 155 I.C. 607=1935 N. 127. S. 118 (*a*) does not limit the presumption as to the passing of consideration only to cases of consideration as stated in the negotiable instrument. Where the instrument itself mentions cash payment as the consideration for it and that is also the case of the plaintiff at the hearing, it must not be taken to be without consideration within the meaning of S. 43 of the Act simply because the defendant has succeeded in demolishing the plaintiff's case, when it appears from the evidence on record that there was consideration in a different form. 46 C.W.N. 340 =75 C.L.J. 404=1943 Cal. 22. In suits on simple loans it is open to a Court to determine in every case whether person who denies consideration has succeeded in supporting his denial by such direct or circumstantial evidence which may be sufficient in itself to rebut the presumption laid down in S. 118 of the Act. Merely because the debtor is a profligate young man and the creditor is a money-lender, the presumption under S. 118 is not rebutted so as to shift the burden of proof on to the creditor. 17 L. 107=1935 L. 599. Sec. 118 and Evidence Act, S. 114 Ill. (*c*) Explanation—Scope and effect of—Presumption as to consideration. *See* 1935 L. 599. The presumption that a pro-note was for consideration will not necessarily apply in a criminal trial. 59 I.C. 198=18 A.L. J. 1151. The initial presumption of consideration arising under S. 118, can be rebutted even by circumstantial evidence. 124 I.C. 717=1930 A. 568. Under S. 118 (*a*) if a pro-note is genuine, there is a presumption that there has been consideration and **the onus of proving want of consideration** is on the party who pleads want of consideration. 1934 M. 702=67 M.L.J. 658. The mere existence of an antecedent debt is consideration within the meaning of S 118. 19 I.C. 789=15 Bom.L.R. 333. The burden on the maker is not shifted by the mere fact that part of the consideration is shown not to have been paid in cash as represented in the promissory note. 122 I.C. 383=1930 N 187. The *onus* of proving want of consideration for a hundi is on the drawer, for there is a statutory presumption in favour of the passing of consideration of hundi. 58 I.C. 982=1 L. 429. Where the executant of a pro-note appeared to be a boy just emerged from minority without any ready money but with large expectation, the payee of the note should show that consideration passed. 31 I.C. 739 (20 B. 367; 29 M.L.J. 23, Foll.). Where a promissory note is executed by one who had recently become a major and who is living with his father in the joint family and who has been initiated into the mysteries of wine and women by the creditor who himself is involved and is unable to pay his debts, apart

as to date. (*b*) that every negotiable instrument bearing a date was made or drawn on such date;

as to time of acceptance. (*c*) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

as to time of transfer: (*d*) that every transfer of a negotiable instrument was made before its maturity;

as to order of indorsements. (*e*) that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

as to stamp: (*f*) that a lost promissory note, bill of exchange or cheque was duly stamped;

(*g*) that the holder of a negotiable instrument is a holder in due course.

that holder is a holder in due course. Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

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from the technical rule laid down in SS 118, the ordinary presumption that a negotiable instrument has been executed for consideration is so much weakened that a clear denial by the executant as to the receipt of the consideration would be sufficient to shift the burden of proof and throw upon the creditor the obligation of satisfying the Court that he has in fact paid the consideration in full. I.L.R. (1943) All. 163=1942 A.L.J. 674=1943 All. 90. The circumstances showing that the plaintiff did not pay the whole of consideration money of the promissory note shifts on to him the burden of proving that the consideration money was paid in full. 30 I.C. 971=29 M.L.J. 236. *See also* 1933 L. 1029. Notwithstanding S. 118 of the Act, the burden of proving consideration for a promissory note executed by the insolvent is on the creditor and not the Official Assignee. 26 S.L.R. 279=1932 S. 197. A debtor who desires to show that there is nothing due on a promissory note executed by him, which is in the creditor's possession with no mark on it showing that it has been discharged, has a very heavy burden of proof. Even if there are a series of transactions between the same parties, if one of them sues upon a promissory note, as a rule it is no answer for the defendant to say that the claim is a matter of account. 151 I.C. 582=1934 R. 358. If a hand-note mentions one kind of consideration, but it is found that there is a consideration of a different nature, the suit is not liable to be dismissed for this reason. 165 I.C. 809=1936 P. 498. It cannot be said that when there is a denial of execution of a promissory note, the plaintiff is bound to prove not only execution but also the consideration. Once the document is proved the presumption provided by S. 118 applies. 193 I.C. 863=1941 O.W.N. 613. Where a defendant to a suit on promissory note admits the thumb-impression on the note but sets up fraud which he does not substantiate and there is no evidence for the defence, the Court is bound under S. 118, to draw a presumption that the note was for consideration. It is wrong to place the burden of proving the passing of consideration on the plaintiff in such a case and he is not bound to produce any such evidence. 1941 O.W.N. 1161.

SEC. 118, CL. (*b*).—If a promissory note is shown to be ante-dated, no presumption arises that it was executed on the date it bears on its face. 34 I.C. 617.

CL. (*d*).—Assignment of pro-note—Presumption as to consideration. 1927 L. 864.

CL. (*e*).—When there is no satisfactory evidence as to the order of indorsements, the statutory presumption that they were made in the order in which they appear thereon will prevail. 45 I.C. 186.

CL. (*f*).—Where a hundi has been lost, a presumption arises under S. 118 (*f*) that the hundi was duly stamped and the stamp was duly cancelled. 1930 S. 4.

CL. (*g*).—An endorsee from the payee of a hundi is presumed until the contrary is proved to be a holder in due course and is unaffected by the absence or failure of consideration as between the drawer and the payee. 27 I.C. 362=16 Bom.L.R. 743. *See also* 71 M.L.J. 473. So also in the case of an endorsement of a promissory note which has been discharged. 1936 M. 879= 71 M.L.J. 473. In order to place the burden of proof on the holder, the defendant must first prove that the circumstances specified in S. 118 (*g*) exist. When these facts are proved, the holder must prove that he became such in due course; in this *onus* will include proof that value was given. 101 I.C.

119. In a suit upon an instrument which has been dishonoured, the Court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.

Presumption on proof of protest.

120. No maker of a promissory note, and no drawer of a bill of exchange or cheque and no acceptor of a bill of exchange for the honour of the drawer, shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.

Estoppel against denying orginal validity of instrument.

325=1927 L. 137. Transferee of tainted pro-note—Holder in due course—*Onus* of proof—Remedy against transferor. *See* 113 I.C. 456=1928 M. 1238. *See also* 1933 A. L.J 1241=1933 A. 754; 57 I.C. 304; 28 Punj.L.R. 295=102 I.C. 42=1927 L. 864.

SEC. 119.—Under S. 119 Court is entitled to presume dishonour if there is a proper protest. 10 L.W. 39=52 I.C. 370.

SEC. 120.—The specific provision in S. 120 is subject to the general rule enacted in S. 26. 117 I.C. 133 (M). The fact that no consideration actually passed between the drawer of a cheque and the payee when the cheque was drawn, will not affect the right of the plaintiff who is a *bona fide* endorsee of the cheque to sue for the recovery of his money as a holder in due course. 12 Luck. 139=1936 O.W.N. 377=1937 Oudh 155. Though S. 120 precludes the maker of promissory note from denying the validity of the note, where money is not advanced as a simple loan unconditionally upon the promissory note, but is advanced after the note had been executed and on certain conditions previously agreed upon, the promisor is entitled to prove circumstances in repudiation of his liability. 34 P.L.R. 470=1933 L. 456. The payee of a negotiable instrument to bearer is not a *"holder in due course"*. 24 I.C. 721. *See also* 26 A.L.J. 729 (F.B.). The condition precedent to the application of S. 120 is that there must be a properly stamped bill of exchange before the Court at which the Court is entitled to look. 48 A. 332=93 I.C. 63=1926 A. 359. *See also* 26 A.L.J. 729 (F.B.). As to whether *"holder in due course"* includes bearer of a promissory note who is made payee, *see* 26 A.L.J. 729=50 A. 839=1928 A. 371.

SS. 120 AND 121—APPLICABILITY—APPLICATION UNDER S. 19, MADRAS AGRICULTURISTS' RELIEF ACT.—Ss. 120 and 121 do not apply to applications under S. 19 of the Madras Agriculturists' Relief Act for relief of debtors who are agriculturists. The words "suit thereon" in Ss. 120 and 121 clearly show that the proceeding intented to be denoted by those words is a proceeding initiated by some one who is entitled to sue or take legal steps to recover the money due on a negotiable instrument, *viz.*, by the promisee or payee; and they cannot apply to proceedings initiated by the maker or promisor for relief under a special Act like the Madras Act IV of 1938. There is consequently no estoppel in the way of an applicant under S. 19 of the Madras Act IV of 1938, which prevents him from establishing that a debt evidenced by a negotiable instrument executed after 1932, was really one incurred before 1932, by showing that the instrument was in renewal of an earlier instrument executed prior to 1932. So far as Madras Act IV of 1938 is concerned, there is no justification for regarding a debt incurred under a promissory note in a different way from other debts, as the object of the Act is to give relief to agriculturist debtors, whether the original debt was incurred under a negotiable instrument or otherwise. 50 L.W. 587=1940 Mad. 52=(1939) 2 M. L.J. 658. In a suit on a promissory note by the endorsee thereof, the maker or defendant (debtor) is not barred by S. 120 of the Negotiable Instruments Act from pleading or setting up any defence open to the promissor under Madras Act IV of 1938. The section only prevents the maker of the note from denying the validity of the instrument as originally made or drawn. It does not bar any defence which is independent of a plea that the instrument as originally made or drawn was invalid. 54 L.W. 577=(1941) 2 M.L.J. 808=1942 Mad. 169.

SECS. 120 AND 122.—An endorser of a negotiable instrument is estopped as against the endorsee from setting up the invalidity of the instrument. 42 M. 470=36 M.L.J. 301. The fact that no consideration actually passed between the drawer of a cheque and the payee when the cheque was drawn, will not affect the right of the plaintiff who is a *bona fide* endorsee of the cheque to sue for the recovery of his money as a holder in due course. 12 Luck. 139=161 I.C. 818= 1936 O.W.N. 377=1937 Oudh 155.

Estoppel against denying capacity of payee to indorse.

121. No maker of a promissory note and no acceptor of a bill of exchange [1][payable to order] shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same.

Estoppel against denying signature or capacity of prior party.

122. No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.

CHAPTER XIV.

OF CROSSED CHEQUES.

Cheque crossed generally.

123. Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable", that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

Cheque crossed specially.

124. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable", that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

Crossing after issue.

125. Where a cheque is uncrossed, the holder may cross it generally or specially.

Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

Payment of cheque crossed generally.

126. Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Payment of cheque crossed specially.

Where a cheque is crossed specially the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed. or his agent for collection.

Payment of cheque crossed specially more than once.

127. Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

Payment in due course of crossed cheque.

128. Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof.

Payment of crossed cheque out of due course.

129. Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

LEG. REF.

[1] The words "payable to order" were substituted for the words "payable to, or to the order of a specified person" by Act VIII of 1919.

Cheque bearing "not negotiable".

130. A person taking a cheque crossed generally or specially, bearing in either case the words "not negotiable" shall not have and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.

Non-liability of banker receiving payment of cheque.

131. A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

[1][*Explanation.*—A banker receives payment of a crossed cheque for a customer within the meaning of this section notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof.]

Application of Chapter to drafts.

131-A. The provisions of this Chapter shall apply to any draft, as defined in section 85-A, as if the draft were a cheque. (*Inserted by Act XXXIII of* 1947.)

CHAPTER XV.

OF BILLS IN SETS.

Set of bills.

132. Bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished.

Exception.—When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

Holder of first acquired part entitled to all.

133. As between holders in due course of different parts of the same set he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

CHAPTER XVI.

OF INTERNATIONAL LAW.

Law governing liability of maker, acceptor or indorser of foreign instrument.

134. In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the

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LEG. REF.

[1] Inserted by Act XVIII of 1922, S. 2.

SEC. 131.—In considering the liability of a collecting bank in receiving payment on behalf of a customer of a cheque, the title to which is defective, the test of negligence is whether the transaction of paying in any given cheque coupled with circumstances antecedent and present was so out of the ordinary course that it ought to have aroused doubts in the banker's mind and caused him to make inquiry. 9 R. 585=1932 R. 6. Under S. 131, a banker, in order to escape the liability which the general law imposes on a person or party who converts the goods belonging to the true owner thereof, must discharge the burden of establishing that he received payment on behalf of a customer of his of a cheque not belonging to the customer but to some one else in good faith and without negligence. Negligence is essentially a question of fact and depends on the circumstance of each case. 48 Bom.L.R. 393.

SECS. 134 AND 137.—A suit was brought

acceptor and indorser by the law of the place where the instrument is made payable.

Illustration.

A bill of exchange was drawn by *A* in California, where the rate of interest is 25 per cent., and accepted by *B*, payable in Washington, where the rate of interest is 6 per cent. The bill is indorsed in British India, and is dishonoured. An action on the bill is brought against *B*, in British India. He is liable to pay interest at the rate of 6 per cent. only; but if *A* is charged as drawer, *A* is liable to pay interest at the rate of 25 per cent.

Law of place of payment governs dishonour.

135. Where a promissory note, bill of exchange or cheque is made payable in a different place from that in which it is made or indorsed, the law of the place where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient.

Illustration.

A bill of exchange drawn and indorsed in British India, but accepted payable in France, is dishonoured. The indorsee causes it to be protested for such dishonour, and gives notice thereof in accordance with the law of France, though not in accordance with the rules herein contained in respect of bills whih are not foreign. The notie is sufficient.

Instrument made, etc., out of British India, but in accordance with its law.

136. If a negotiable instrument is made, drawn, accepted or indorsed out of British India, but in accordance with the law of British India, the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or indorsement made thereon in British India.

Presumption as to foreign law.

137. The law of any foreign country regarding promissory notes, bills of exchange and cheques shall be presumed to be the same as that of British India, unless and until the contrary is proved.

[1]CHAPTER XVII.

NOTARIES PUBLIC.

Power to appoint notaries public.

138. The [2][Central Government] may, from time to time, by notification in the Official Gazette, appoint[3] any person, by name or by virtue of his office, to be a notary public under this Act and to exercise his functions as such within any local area, and may, by like notification, remove from office any notary public appointed under this Act.

LEG. REF.

[1] Ch. XVII was added by the Act II of 1885, S. 10.

[2] Substituted by A.O., 1937, for "Local Government."

[3] For appointment of notaries public within districts and sub-districts of the Madras Presidency, *see* Mad. R. and O.; *Gazette of India*, 1904, Pt. I, p. 824; in Bombay, *see* Bom. R. and O.

[4] For rules under this section, *see* Notification No. 1433, dated 30th September, 1886 *Gazette of India*, 1886, Pt. I, p. 548. On the extension of the Act to Upper Burma similar rules were framed with respect to that Province, *see* Notification No. 489, dated 11th May, 1894, *Burma Gazette*, Pt. II, p. 109, Bur. R. M.

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upon certain promissory notes executed by the defendant in the Nizam's Dominions. Not having been stamped, they were not admissible in evidence even on payment of a penalty under the law in force in the Nizam's Dominions. It was contended by the defendant in the suit that the documents were void and unenforceable. *Held*, the result of the provision in the foreign statute was only to make them inadmissible in evidence in the Nizam's Courts and not void and that they could be sued upon in British India. 53 M. 968=1930 M. 1004 =59 M.L.J. 548.

SEC. 135.—Bills of exchange—*Foreign bills*—dishonour, notice of—Acceptance—Custom of trade. 508 I.C. 641=46 C. 584. The mere fact that the bills were left with the drawees for more than the customary time could not bar the plaintiffs from recovering on the bills. 46 C. 584. On this section, *see also* 47 B. 493 =72 I.C. 246=1923 B. 241.

SEC. 136.—*See* 22 M. 337; 3 M.H.C.R. 14.

139. The [1][Central Government] may, from time to time, by notification in the Official Gazette, make rules consistent with this Act for the guidance and control of notaries public appointed under this Act, and may, by such rules[4] (among other matters), fix the fees payable to such notaries.

Power to make rules for notaries public.

SCHEDULE.

[ENACTMENTS REPEALED.]

Rep. by the Amending Act, 1891 (*XII of* 1891).

Rules relating to Notaries Public.

No. 1433, dated 30th September, 1886.—In exercise of the power conferred by section 139 of the Negotiable Instruments Act XXVI of 1881 (as amended by Act II of 1885), the Governor-General in Council is pleased to make the following Rules for the guidance and control of Notaries Public appointed under that Act, and fix the fees payable to those Notaries:—

1. Notaries Public shall, in transacting business under the Act, use the forms set forth in the Appendix to this Notification. (*Forms omitted.*)

2. Besides recording declarations of payment for honour (section 113), Notaries Public shall, following the practice existing in the Presidency-towns, also register notings and protests made by them. No particular form of register is necessary for these purposes, but Notaries Public shall keep a substantial blank book in which to enter copies of all the letters which they may write presenting bills for acceptance or payment or better security; of all bills[1] noted, or protested, or paid for honour, together with all endorsements thereon (including that made by themselves, to the effect that the bill has been noted or protested for non-acceptance or non-payment or want of better security); and of all protests made by themselves and of all declarations made by payers for honour. Notaries Public shall further, after examination of each entry in the book, affix their signature thereto, and, where demand of acceptance or payment or better security was made by a clerk, shall cause him to affix his signature also to the entry relating to the demand.

3. The book shall be known as the Notarial Register, and the pages thereof shall be numbered consecutively.

4. Every Notary Public shall permit the District Judge or such officer as the Local Government from time to time appoints in this behalf to inspect his register at such times, not oftener than twice a year, as the District Judge or officer may fix.

5. When the original instrument is an Oriental language, any noting or protest or entry in his register which has to be made in respect of the instrument, by a Notary Public may be made either in that language or in English.

6. In making presentments of bills or notes, Notaries Public shall observe the provisions of Chapter V of the Act:

Provided taht it shall not be necessary for a Notary Public to allow the drawer of a bill of exchange time for deliberation as provided by section 63.

7. Every Notary Public shall use a plain circular seal bearing if he has been appointed by name, his name and the name of the local area within which he has been appointed to exercise his functions and the circumscription "Notary Public", and, if he has been appointed by virtue of his office, the name of his office and of the local area within which he has been appointed to exercise his functions and the circumscription "Notary Public".

8. Every Notary Public shall have an office at such place within the local area for which he has been appointed as may be approved in this behalf by the District Judge.

9. Notaries Public shall charge fees at the rates mentioned below, namely:—

(1) For noting an instrument—

				Rs[2]
If the amount of the instrument does not exceed			Rs. 1,000	2
If it exceeds Rs.	1,000	but does not exceed	5,000	35
Do.	5,000	do	20,000	6
Do.	20,000	do	30,000	7
Do.	30,000	do	50,000	8
Do.	50,000			

LEG. REF.

[1] In cases where the language of the bill is unknown to the Notary Public, and where it is impossible to find any one acquainted with the language of the bill to copy it into the register, an entry in the register of an abstract of the bill will be sufficient.

[2] In addition to the above fees, travelling allowance, at the rate of three annas a mile by rail and eight annas a mile by road, may be charged when the Notary Public is required to attend at any place more than one mile from his office.

(2) For protesting an instrument—				
If the amount of the instrument does nos exceed			1,000	6
If it exceeds Rs.	1,000	but does not exceed	5,000	7
Do.	5,000	do	20,000	10
Do.	20,000	do	30,000	11
Do.	30,000	do	40,000	12
Do.	40,000	do	50,000	13
Do.	50,000	do	60,000	14
Do.	60,000	do	70,000	15
Do.	70,000	do	80,000	16
Do	80,000	do	90,000	17
Do	90,000	do	100.000	18
Do	100,000	do		22

(3) For recording a declaration of payment of honour, **Rs. 2—8**

(4) Duplicate protests,—half the charge for the original.

10. These rules shall come into force on the first day of January, 1887.

THE NEGOTIABLE INSTRUMENTS (INTEREST) ACT (XXX OF 1926).

[*Repealed by Act I of* 1938.]

THE NORTHERN INDIA FERRIES ACT (XVII OF 1878).

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35. Delegation of powers.
36. [*Repealed.*]

[*Amended by Acts* 38 *of* 1920; 3 *of* 1886; 23 *of* 1937; 2 *of* 1901 *and Reg.* 7 *of* 1901; *Punj. Act,* 20 *of* 1883; *U. P. Act* 14 *of* 1883; *C. P. Act I of* 1883; *Assam Act* 8 *of* 1926.]

[*9th November*, 1878.

An Act to regulate Ferries in Northern India.

WHEREAS it is expedient to regulate ferries in the Punjab, the North-Western Provinces, Oudh, Central Provinces, Assam, and Ajmer and Merwara; It is hereby enacted as follows: –

Preamble.

I.—PRELIMINARY.

Short title.

1. This Act may be called THE NORTHERN INDIA FERRIES ACT, 1878.

Local extent.

It extends only to the [1]territories respectively administered by the Lieutenant-Governors of the Punjab and the North-Western Provinces and the Chief Commissioners of Oudh, the Central Provinces, Assam, and Ajmer and Merwara.

Commencement.

It shall come into force[2] in each of the said territories on such date as the Provincial Government may, by notification in the Official Gazette, fix in this behalf.

2. [*Repealed.*] *Repealed by the Repealing Act* (*I of* 1928), *S.* 2 *and Sch.*

Interpretation-clause.

3. In this Act the word "ferry" includes also a bridge of boats, pontoons or rafts, a swing-bridge, a flying-bridge and a temporary bridge, and the approaches to, and landing-place of, a ferry.

II.—PUBLIC FERRIES.

Power to declare, establish, define and discontinue public ferries.

4. The Provincial Government may from time to time—

(*a*) [3]declare what ferries shall be deemed public ferries, and the respective districts in which, for the purposes of this Act, they shall be deemed to be situate;

(*b*) [3]take possession of a private ferry and declare it to be a public ferry;

(*c*) establish new public ferries where, in its opinion, they are needed;

(*d*) define the limits of any public ferry;

[4](*e*) change the course of any public ferry; and

[5](*f*) discontinue any public ferry which it deems unnecessary.

Every such declaration, establishment definition, change or discontinuance shall be made by notification in the official Gazette.

[6][Provided that, when a river lies between two provinces, the powers conferred by this section shall, in respect of such river, be exercised jointly by

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[1] At present corresponds to the Punjab, the N.W.F.P., the U.P., the C.P., Assam and Ajmer-Merwara.

[2] The Act was brought into force in the Punjab on 1st April, 1881, *See* Punjab Gazette, Pt. I, p. 139; the U.P. on the 1st January, 1879, *see* North-Western Provinces and Oudh Gazette, 1878, Pt. I, p. 2035; Assam on 1st April, 1879, *see* Assam Gazette, 1879, Pt. I, p. 187.

In the *Act as applicable to Ajmer-Merwara*—

(*a*) in section 4 for the words "the Commissioner of the Division in which such ferry is situate" the words "the Deputy Commissioner" shall be substituted.

(*b*) in sections 8 and 11 for the word "Commissioner" the words "Deputy Commissioner" shall be substituted.

(*c*) in section 12 for the words "the Commissioner of a division" the words "the Deputy Commissioner" shall be substituted, the words "within such division" in clause (*a*) shall be omitted, and for the word "Commissioner" where it occurs for the second and third time the words "Deputy Commissioner" shall be substituted.

(*d*) in sections 15, 16, 19, 24 and 31, for the words "the Commissioner of the division" the words "the Deputy Commissioner" shall be substituted. (Act VI of 1945.)

[3] For list of ferries declared to be public ferries in the Punjab, *see* Punjab Local Rules and Orders; for the North-West Frontier Province, see *Gazette of India*, 1915, Pt. I, p. 92.

[4] For notifications transferring ferries from one district to another, *see* Punjab Local Rules and Orders.

[5] For notifications ordering the discontinuance of ferries, *see* Punjab Local Rules and Orders.

[6] Substituted for the original proviso by the Devolution Act (XXXVIII of 1920), sec. 2 and First Schedule.

the Provincial Governments of those provinces by notifications in their respective official Gazettes[1][* * *].

Provided also that, when any alteration in the course or in the limits of a public ferry is rendered necessary by changes in the river, such alteration may be made, by an order under his hand, by the [2]Commissioner of the Division in which such ferry is situate, or by such other officer as the Provincial Government may, from time to time, appoint by name or in virtue of his office in this behalf.

Claims for compensation.

5. Claims for compensation for any loss sustained by any person in consequence of a private ferry being taken possession of under section 4 shall be inquired into by the Magistrate of the district in which such ferry is situate, or such officer as he appoints in this behalf, and submitted for the consideration and orders of the Provincial Government.

Superintendence of public ferries.

6. The immediate superintendence of every public ferry shall, except as provided in section 7 [3][and section 7-A] be vested in the Magistrate of the district in which such ferry is situate, or in such other officer as the Provincial Government may, from time to time, appoint by name or in virtue of his office in this behalf.

and such Magistrate or officer shall, except when the tolls at such ferry are leased, make all necessary arrangements for the supply of boats for such ferry, and for the collection of the authorised tolls leviable thereat.

Management may be vested in municipality.

7. The Provincial Government may direct that any public ferry situate within the limits of a town be managed by the officer or public body charged with the superintendence of the municipal arrangements of such town;

[4][and thereupon the ferry shall be managed accordingly.]

Management may be vested in District Council or District or Local Board.

[5]**7-A.** The Provincial Government may direct that any public ferry, wholly or partly within the area subject to the authority of a District Council or a District Board or a Local Board in the Province, be managed by that Council or Board, and thereupon that ferry shall be managed accordingly.

Letting ferry tolls by auction.

[6][8. The tolls of any public ferry may, from time to time, be let by public auction for a term not exceeding five years with the approval of the [7]Commissioner, or by public auction, or otherwise than by public auction, for any term with the previous sanction of the Provincial Government.

The lessee shall conform to the rules made under this Act for the management and control of the ferry, and may be called upon by the officer in whom the immediate superintendence of the ferry is vested, or, if the ferry is

LEG. REF.

1 The words "and in any case where the said Local Governments fail to agree as regards the exercise of any such power, they shall exercise such power subject to the control of the Governor-General in Council" repealed by A.O., 1937.

2 In the North-West Frontier Province, for "Commissioner of the Division" *read* "Revenue Commissioner." *See* sec. 6 (1) (*f*) of Regulation VII of 1901.

3 These words in sec. 6 were added by the Punjab District Board Act (XX of 1883), sec. 79 in the Punjab; in the U.P. by the U.P. Local Boards Act (XIV of 1883), sec. 65; in the C.P. by C.P Act I of 1883, sec. 44; and in Assam by Assam Act VIII of 1926, sec. 43.

4 Substituted by the A.O., 1937 for "and may further.....paid, accordingly".

5 Substituted by *ibid.* for old sec. 7-A. The section is inapplicable to Ajmer-Merwara.

6 This section was substituted for the original sec. 8 by the Northern India Ferries (Amendment) Act (III of 1886), sec. 1.

7 In the N.W.F.P. References to "Commissioner" or "Commissioner of a Division" are to be construed as referring to Revenue Commissioner. *See* the N.W.F.P. Law and Justice Reg. (VII of 1901), sec. 1 (*f*).

managed by a municipal or other public body under section 7 or section 7-A, then by that body, to give such security for his good conduct and for the punctual payment of the rent as the officer or body, as the case may be, thinks fit.

When the tolls are put up to public auction, the said officer or body, as the case may be, or the officer conducting the sale on his or its behalf, may, for reasons recorded in writing, refuse to accept the offer of the highest bidder, and may accept any other bid, or may withdraw the tolls from auction.]

Recovery of arrears from lessee.

9. All arrears due by the lessee of the tolls of a public ferry on account of his lease may be recovered from the lessee or his surety (if any) by the Magistrate of the district in which such ferry is situate as if they were arrears of land-revenue.

Power to cancel lease.

10. The Provincial Government may cancel the lease of the tolls of any public ferry on the expiration of six months' notice in writing to the lessee of its intention to cancel such lease.

When any lease is cancelled under this section, the Magistrate of the district in which such ferry is situate shall pay to the lessee such compensation as such Magistrate may, with the previou sanction of the Provincial Government award.

Surrender of lease.

11. The lessee of the tolls of a public ferry may surrender his lease on the expiration of one month's notice in writing to the Provincial Government of his intention to surrender such lease, and on payment to the Magistrate of the district in which such ferry is situate of such compensation as such Magistrate, subject to the approval of the [1]Commissioner, may in each case direct.

Power to make rules.

12. Subject to the control of the Provincial Government the [1]Commissioner of a division, or such other officer as the Provincial Government may, from time to time, appoint in this behalf, by name or in virtue of his office, may, from time to time, make rules consistent with this Act—

(*a*) for the control and the management of all public ferries [2]within such division and for regulating the traffic at such ferries;

[3][(*b*) for regulating the time and manner at and in which, and the terms on which, the tolls of such ferries may be let by auction, and prescribing the persons by whom auctions may be conducted;]

(*c*) for compensating persons who have compounded for tolls payable for the use of any such ferry when such ferry has been discontinued before the expiration of the period compounded for; and

(*d*) generally to carry out the purposes of this Act; and, when the tolls of a ferry have been let under section 8, such [1]Commissioner or other officer may, from time to time, (subject as aforesaid), make additional rules consistent with this Act—

(*e*) for collecting the rents payable for the tolls of such ferries;

(*f*) in cases in which the communication is to be established by means of a bridge of boats, pontoons or rafts, or a swing-bridge, flying-brodge, or temporary bridge, for regulating the time and manner at and in which such bridge

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LEG. REF.

[1] In the North-West Frontier Province, references to "Commissioner" or "Commissioner of a division" are to be construed as referring to the Revenue Commisisoner. *See* the North-West Frontier Province Law and Justice Regulation (VII of 1901) sec. 1 (*f*).

[2] These words are repealed in the North-West Frontier Province. *See* sec. 3 of the North-West Frontier Province Law and Justice Regulation (VII of 1901).

[3] This clause of sec. 12 was substituted for the original cl. (*b*) by the Northern India Ferries Amendment Act (III of 1886), sec. 1 (2).

The original clause was as follows:—

"(*b*) for regulating the time and manner at and in which, the terms on which, and the persons by whom, the tolls of such ferries may be let by auction."

shall be constructed and maintained and opened for the passage of vessels and rafts through the same, and

(*g*) in cases in which the traffic is conveyed in boats, for regulating (1) the number and kind of such boats and their dimensions and equipment; (2) the number of the crew to be kept by the lessee for each boat; (3) the maintenance of such boats continually in good condition; (4) the hours during which, and the intervals within which, the lessee shall be bound to ply; and (5) the number of passengers, animals and vehicles, and the bulk and weight of other things, that may be carried in each kind of boat at one trip.

The lessee shall make such returns of traffic as the [1]Commissioner or other officer as aforesaid may, from time to time, require.

Private ferry not to ply within two miles of public ferry without sanction.

13. [2][Except with the sanction of the Magistrate of the district or of such other officer as the Provincial Government may, from time to time, appoint in this behalf, by name or in virtue of his office, no person shall establish, maintain or work a ferry to or from any point within a distance of two miles from the limits of a public ferry.]

Provided that, in the case of any specified public ferry, the Provincial Government may, by notification in the official Gazette, reduce or increase the said distance of two miles to such extent as it thinks fit:

Provided also that nothing hereinbefore contained shall prevent persons plying between two places, one of which is without, and one within, the said limits, when the distance between such two places is not less than three miles, or apply to boats [3][which do not ply for hire, or] which the Provincial Government expressly exempts from the operation of this section.

Person using approaches, etc., liable to pay toll.

14. Whoever uses the approach to, or landing place of, a public ferry is liable to pay the toll payable for crossing such ferry.

Tolls.

15. [5]Tolls, according to such rates as are, from time to time, fixed by the Provincial Government, shall be levied on all persons, animals, vehicles and other things crossing any river by a public ferry and not employed or transmitted on the public service.

Provided that the Provincial Government may, from time to time declare that any persons, animals, vehicles or other things shall be exempt from payment of such tolls.

Where the tolls of a ferry have been let under section 8, any such declaration, if made after the date of the [6][lease], shall entitle the lessee to such abatement of the rent payable in respect of the tolls as may be fixed by the [1]Commissioner of the division or such other officer as the Provincial Govern-

LEG. REF.

[1] *See* footnote 1, p. 3971, *supra.*

[2] Para. 1 of sec. 13 was substituted for the original para. 1 by the Northern India Ferries (Amendment) Act,, 1886 (III of 1886), sec. 2 (1).

The original paragraph was as follows—

"No person shall, except with the sanction of the officer charged with the superintendence of a public ferry, keep a ferry-boat for the purpose of plying for hire to or from any point within a distance of two miles from the limits of such public ferry,"

[3] These words in sec. 13 were added by Act III of 1886, sec. 2 (2).

[4] An explanation has been added to sec. 13 by C.P. Act XXIII of 1937 in the Central Provinces.

[5] So much of sec. 15 is repealed as provides for the exemption from tolls of any person, animals, vehicles or other things exempted by sec. 3 of the Indian Tolls (Army) Act (II of 1901).

For list of tolls leviable on ferries in the Punjab and for exemption from such tolls in certain cases, *see* Punjab Local Rules and Orders. For exemption in respect of the Nowshera bridge of boats, see *Gazette of India*, 1906, Pt. II, p. 519.

[6] In sec. 15 "lease" was substituted for "auction" by the Northern India Ferries (Amendment) Act, 1886 (III of 1886), sec. 1.

SEC. 14: APPROACH, MEANING OF, includes an approach from the highway to the landing place. It is not limited to the distance between the landing place and the river bank. 144 I.C. 662=1933 L. 890.

ment may, from time to time, appoint, in this behalf by name or in virtue of his office.

Table of tolls.

16 The lessee or other person authorised to collect the tolls of any public ferry shall affix a table of such tolls, legibly written or printed in the vernacular language and, also if the Commissioner of the division so directs, in English in some conspicuous place near the ferry,

and shall be bound to produce, on demand, a list of the tolls, signed by the Magistrate of the district or such other officer as he appoints in this behalf.

List of tolls.

Tolls, rents, compensation and fines are to form part of revenues of province.

[1][**17.** All tolls, rents, compensation and fines under this Act (other than tolls received by any lessee) shall form part of the revenues of the Province.]

Compounding for tolls.

18. The Provincial Government may, if it thinks fit, from time to time fix rates at which any person may compound for the tolls payable for the use of a public ferry.

III.—PRIVATE FERRIES.

Power to make rules.

19. The [2]Commissioner of the division may, with the previous sanction of the Provincial Government from time to time, make rules for the maintenance of order and for the safety of passengers and property at ferries other than public ferries.

Tolls.

20. The tolls charged at such ferries shall not exceed the highest rates for the time being fixed under section 15 for similar public ferries.

IV.—PENALTIES AND CRIMINAL PROCEDURE.

Penalty for breach of provisions as to table of tolls, list of tolls and return of traffic.

21. Every lessee or other person authorised to collect the tolls of a public ferry, who neglects to affix and keep in good order and repair the table of tolls mentioned in section **16,**

or who wilfully removes, alters or defaces such table, or allows it to become illegible.

or who fails to produce on demand the list of the tolls mentioned in section 16,

and every lessee who neglects to furnish any return required under section 12.

shall be punished with fine which may extend to fifty rupees.

Penalty for taking unauthorised toll and for causing delay.

22. Every such lessee or other person as aforesaid and any person in possession of a private ferry asking or taking more than the lawful toll, or without due cause delaying any person, animal, vehicle or other thing, shall be punished with fine which may extend to one hundred rupees.

Penalty for breach of rules made under sections 12 and 19.

23. Every person breaking any rule made under section 12 or section 19 shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

Cancelment of lease on default or breach of rules.

24. When any lessee of the tolls of a public ferry makes default in the payment of the rent payable in respect of such tolls, or has been convicted of an offence under section 23 or, having been convicted of an offence under section

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LEG. REF.

[1] Substituted for the original section by A.O., 1937.

[2] *See* footnote 1 at p. 3971, *supra.*

SEC. 22.—Under this section it is an offence for a lessee to ask or take more than the lawful toll. It is no offence to ask for or take less. *See* 65 P.R. 1887 (Cr.).

21, or section 22, is again convicted of an offence under either of those sections, the Magistrate of the district may, with the sanction of the [1]Commissioner of the division, cancel the lease of the tolls of such ferry, and make other arrangements for its management during the whole or any part of the term for which the tolls were let.

Penalties on passengers offending.

25. Every person crossing by any public ferry, or using the approach to, or landing place thereof, who refuses to pay the proper toll, and every person—

who, with intent to avoid payment of such toll, fraudulently, or forcibly crosses by any such ferry without paying the toll, or

who obstructs any toll-collector or lessee of the tolls of a public ferry or any of his assistants in any way in the execution of their duty under this Act, or

who, after being warned by any such toll-collector, lessee or assistant not to do so, goes or takes any animals, vehicles or other things into any ferry-boat, or upon any bridge at such a ferry, which is in such a state or so loaded as to endanger human life or property, or

who refuses or neglects to leave, or remove any animals, vehicles or goods from, any such ferry-boat or bridge, on being requested by such toll-collector, lessee or assistant to do so,

shall be punished with fine which may extend to fifty rupees.

Penalty for maintaining private ferry within prohibited limits.

[2][**26.** Whoever establishes, maintains or works a ferry in contravention of the provisions of section 13 shall be punished with fine which may extend to five hundred rupees, and with a further fine which may extend to one hundred rupees, for every day during which the ferry is maintained or worked in contravention of those provisions.]

Fines payable to lessee.

27. Where the tolls of any public ferry have been let under the provisions hereinbefore cotnained, the whole or any portion of any fine realised under section 25 or section 26 may, notwithstanding anything contained in section 17, be at the discretion of the convicting Magistrate or Bench of Magistrates, paid to the lessee.

Penalty for rash navigation and stacking of timber.

28. Whoever navigates, anchors, moors or fastens any vessel or raft, or stacks any timber, in a manner so rash or negligent as to damage a public ferry shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both: and the toll-collector or lessee of the tolls of such ferry, or any of his assistants may seize and detain such vessel, raft or timber pending the inquiry and assessment hereinafter mentioned.

Power to arrest without warrant.

29. The police may arrest without warrant any person committing an offence against section 25 or section 28.

Power to try summarily.

30. Any Magistrate or Bench of Magistrates having summary jurisdiction under Chapter XVIII of the [3]Code of Criminal Procedure, may try any offence against this Act in manner provided by that Chapter.

Magistrate may assess damage done by offender.

31. Every Magistrate or Bench of Magistrates trying any offence under this Act may inquire into and assess the value of the damage (if any) done or caused by the offender to the ferry concerned, and shall order the amount of

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LEG. REF.

[1] In the North-West Frontier Province *for* "Commissioner of the division" *read* "Revenue Commissioner". *See* sec. 6 (1) (*f*) of the North-West Frontier Province Law and Justice Regulation (VII of 1901).

[2] Sec. 26 was substituted for the original sec. 26 by the Northern India Ferries (Amendment) Act (III of 1886), sec. 2.

[3] *See* now the Code of Criminal Procedure (V of 1898), Ch. 22.

such value to be paid by him in addition to any fine imposed upon him under this Act; and the amount so ordered to be paid shall be leviable as if it were a fine, or, when the offence is one under section 28, by the sale of the vessel, raft or timber causing the damage, and of any thing found in or upon such vessel or raft.

The [1]Commissioner of the division may, on the appeal of any person deeming himself aggrieved by an order under this section, reduce or remit the amount payable under such order.

V.—MISCELLANEOUS.

Power to take possession of boats, etc., on surrender or cancellation of lease.

32. When the lease of the tolls of any ferry is surrendered under section 11 or cancelled under section 24, the Magistrate of the district may take possession of all boats and their equipment and all other materials and appliances used by the lessee for the purposes of such ferry, and use the same (paying such compensation for the use thereof as the Provincial Government may in each case direct) until such a Magistrate can conveniently procure proper substitutes therefor.

Similar power in cases of emergency.

33. When any boats or their equipment or any materials or appliances suitable for setting up a ferry, are emergently required for facilitating the transport of officers, or troops of Her Majesty on duty, or of any other persons on the business of Her Majesty, or of any animals, vehicles or baggage belonging to such officers, troops or persons or of any property of Her Majesty, the Magistrate of the district may take possession of and use the same (paying such compenation for the use thereof as the [2][Central Government where the transport is in connection with the affairs of the Central Government, and the Provincial Government in other cases] may in each case direct) until such transport is completed.

Jurisdiction of Civil Courts barred.

34. No suit to ascertain the amount of any compensation payable, or abatement of rent allowable, under this Act shall be cognizable by any Civil Court.

Delegation of powers.

35. The Provincial Government may, from time to time, delegate,[3] under such restrictions as it thinks fit, any of the powers conferred on it by this Act to any [1]Commissioner of a division or Magistrate of a district, or to such other officer as it thinks fit, by name or by virtue of his office.

36. [*Validation of proceedings since repeal of Regulation VI of* 1891 *in Punjab.*] *Rep. by the Amending Act,* 1891 (*XII of* 1891).

THE INDIAN OATHS ACT (X OF 1873).[4]

Year.	No.	Short title.	Amendments.
1873	X	The Indian Oaths Act.	Repealed in part, XII of 1873; XII of 1876, VI of 1900, S. 48; I of 1938; amended, VI of 1919, S. 2; X of 1927; XXXV of 1934; XXXIX of 1939

LEG. REF.

[1] In the North-West Frontier Province *for* "Commissioner" and "Commissioner of the division" *read* "Revenue Commissioner". *See* sec. 6 (1) (*f*) of the North-West Frontier Province Law and Justice Regulation (VII of 1901).

[2] Substituted by A.O., 1937, for "Local Government."

[3] For notification delegating to District Magistrates the power to compound for tolls payable at public ferries, *see* Punjab Local Rules and Orders.

[4] For the Statement of Objects and Reasons, *see* Gazette of India, 1873, Pt. V, p. 17; for proceedings in Council, see *ibid.*,

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16. Official oaths abolished.
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[*8th April*, 1873.

An Act to consolidate the law relating to judicial oaths, and for other purposes.

Preamble.

WHEREAS it is expedient to consolidate the law relating to judicial oaths, affirmations and declarations, and to repeal the law relating to official oaths, affirmations and declarations; It is hereby enacted as follows:—

LEG. REF.

1872, Supplement, p. 889; *ibid.*, 1873, Supplement, pp. 3, 233, 235 to 246, 281, 395 and 410; *ibid.*, 1873, Extra Supplement, pp. 1 to 8.

For civil rules of practice made by the High Court of Madras under this Act, the Code of Civil Procedure (Act XIV of 1882) and certain other Acts, for observance by subordinate Civil Courts in that presidency except the Small Cause Court at Madras, *see* Fort St. George Gazette, 1905, Supplement, p. 1.

Act X of 1873 has been declared in force in—

the Sonthal Parganas by the Sonthal Parganas Settlement Regulation (III of 1872), sec. 3, as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (III of 1899), B. and O. Code, Vol. I;

the Arakan Hill District by the Arakan Hill District Laws Regulation 1916 (I of 1916), sec. 2 Bur. Code, Vol I;

Upper Burma generaly (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), sec. 4 (1) and Sch. I Bur. Code, Vol. I;

British Baluchistan by the British Baluchistan Laws Regulation, 1913 (II of 1913), sec. 3 Bal. Code;

Angul District (with an exception) by the Angul Laws Regulation, 1913 (III of 1913), sec. 3 B. and O. Code, Vol. I;

Pargana of Manpur by the Manpur Laws Regulation, 1926 (II of 1926), sec. 2.

It has further been declared, by notification under sec. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), to be in force in the following Scheduled Districts, namely:—

The Districts of Hazaribagh, Lohardaga and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singhbhum, The District of Lohardaga then included the Palamu District, separated in 1894; Lohardaga is now called the Ranchi District, *see* Calcutta Gazette, (1899, Pt. I, p. 44)—*See* Gazette of India. 1891, Pt. I, p. 504.

The North-Western Provinces Tarai—*See* Gazette of India, 1876, Pt. I, p. 505.

The Scheduled Districts in Ganjam and Vizagapatam—*See* Fort St. George Gazette, 1898, Pt. I, p. 666 and Gazette of India, 1898, Pt. I, p. 869.

It has been extended, by notification under sec. 5 of the same Act, to the Scheduled District of Coorg.—*See* Gazette of India, 1876, Pt. I, p. 417.

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money wrongfully recovered by one side or the other—Jurisdiction of Civil Court not barred. 144 I.C. 662=1933 L. 890.

I.—Preliminary.

Short title.

1. This Act may be called THE INDIAN OATHS ACT, 1873.

Local extent.

It extends to the whole of British India, and, so far as regards [1][British subjects to all Indian States].

[*Commencement.*] *Repealed by the Repealing Act,* 1876 (*XII of* 1876).

2. [*Repeal of enactments.*] *Repealed by the Repealing Act,* 1873 (*XII of* 1873).

Saving of certain oaths and affirmations.

3. Nothing herein contained applies to proceedings before courts-martial, or to oaths, affirmations or declarations prescribed [2][by or under any Instruction under the Royal Sign Manual of His Majesty or] by any law which [3][no legislature or authority in British India has power to repeal].

II.—Authority to administer Oaths and Affirmations.

Authority to administer oaths and affirmations.

4. The following Courts and persons are authorized to administer, by themselves or by an officer empowered by them in this behalf, oaths and affirmations in discharge of the duties or in exercise of the powers imposed or conferred upon them respectively by law:—

(*a*) all Courts and persons having by law or consent of parties authority to receive evidence;

(*b*) the Commanding Officer of any military [4][naval], [5][or air force] station [4][or ship] occupied by troops in the service of Her Majesty:

LEG. REF.

[1] Substituted for "subjects of Her Majesty to the territories of Native Princes and States in aliance with Her Majesty" by A. O., 1937.

[2] Inserted by the Act VI of 1919, sec. 2, *see* the Indian Articles of War Act (V of 1869); the Indian Volunteers Act (XX of 1869); and the Indian Marine Act (XIV of 1887).

[3] Substituted by A.O., 1937, for "under the provisions of the Indian Councils Act, 1861, the Governor-General in Council has not power to repeal".

[4] Inserted by Act XXXV of 1934, sec. 2 and Sch.

[5] Inserted by Act X of 1927, sec. 2 and Sch.

SEC. 1.—Oaths Act cannot abrogate the provisions of the Evidence Act. 1926 N. 194=90 I.C. 378. Form of oath—When binding. *See* L.R. 5 A. 147 (Rev.). Power of Court to go into evidence when party agrees to abide by opponent's oath. 45 A. 724=1924 A. 126. An application for an oath under the Act must be one without any conditions, such as if the Court does not hold the evidence to be sufficient then defendants should take an oath. It is not open to a party to ask the Court to adjudicate and if the Court adjudicates against them then ask the Court to start a separate proceeding under the Oaths Act. 138 I.C. 606=1932 A.L.J. 481 =1932 A. 404. Evidence given under special oath is conclusive only as against the person who offers to be bound by it. 82 I. C. 359=26 Bom.L.R. 713=26 Cr.L.J. 1237 =1924 Bom. 511. Oath affecting third person—Whether admissible—Failure to take oath on the day fixed—Decision by Court without calling for further evidence. 88 I.C. 448=23 A.L.J. 513=1925 A. 604. Where the complainant offers to be bound by the statement made by the accused, if he made the statement after walking several steps towards the Ganges and the accused made the statement under these conditions, the statement being made on oath was conclusive proof of the facts set forth in it. L.R. 5 A 147 (Rev.) A party may have a perfectly true case and yet for peculiar reasons be unwilling to bind his conscience by a particular form of oath. The refusal to take the oath in such cases can be considered merely as a piece of evidence and as not proving the falsity of that party's claim. (22 B. 680, relied on). 32 P. L.R. 716=1932 L. 25. Agreement by parties to abide by the statement of the referee—Re-examination of refree proper. *See* 48 A. 276=1926 A. 266.

SEC. 4: CASE-LAW.—All Courts are authorised to administer oaths and affirmation. 34 P.R. 1916 (Cr.); 36 I. C. 171. *See also* 1939 Cal. 657= 43 C.W.N. 1033=I.L.R. (1939) 2 Cal. 459. Though the Act extends to the *territories of Native Princes and States* in alliance with His Majesty so far as regards the subjects of His Majesty, the Vyara Court in the Baroda State cannot be treated as a Court within the meanings of secs. 4 and 14 of the Act, in relation to proceedings which were

Provided—

(1) that the oath or affirmation be administered within the limits of the station, and

(2) that the oath or affirmation be such as a Justice of the Peace is competent to administer in British India.

III.—Persons by whom Oaths or Affirmations must be made.

Oaths or affirmations to be made by—

witness;

of parties

interpreters;

jurors.

5. Oaths or affirmations shall be made by the following persons:—

(*a*) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any Court or person having by law or consent authority to examine such persons or to receive evidence;

(*b*) interpreters of questions put to, and evidence given by, witnesses; and

(*c*) jurors.

[1][Provided that where the witness is a child under twelve years of age, and the Court or person having authority to examine such witness is of opinion that, though he understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation, the foregoing provisions of this section and the provisions of section 6 shall not apply to such witness, but in any such case the absence of an oath or affirmation shall not render inadmissible any evidence given by such witness nor affect the obligation of the witness to state the truth.]

LEG. REF.

[1] Inserted by Act XXXIX of 1939, S. 2.

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held before that Court entirely under the law of that State, and which had nothing to do with any proceedings in British India or under the law in force in British India. 47 Bom. 907=25 Bom.L.R. 779=25 Cr.L.J. 333=1924 Bom. 51. Whether an arbitrator is a person authorized to take evidence and administer oath under S. 4. *See* 1934 Mad. 610=67 M.L.J. 358=40 L. W. 356.

SEC. 5: APPLICABILITY.—Sec. 5 was intended to apply to an accused person while he is under trial. 101 I.C. 657=54 C. 52 =28 Cr.L.J. 481=1927 C. 307. The term "criminal proceeding" in S. 5 is not restricted to a proceeding relating to a case pending in a Criminal Court. It only denotes a proceeding before a Criminal Court as distinguished from a Civil Court. Therefore a confession made by a person to a magistrate under S. 164, Cr. P. Code, in the course of an investigation, comes within the ambit of S. 5 and the Magistrate acts illegally in recording it on solemn affirmation. But the illegality is cured under S. 537, Cr. P. Code, if there has been no future of justice, and the confession is admissible in evidence. 225 I.C. 544=47 Cr.L.J. 772=48 P.L.R. 382.

SCOPE OF SECTION.—Court deliberately abstaining from administering an oath or affirmation to the only eye-witness to the murder on the ground that she was only 6 to 7 years of age. 6 P.L.J. 147=61 I.C. 705=1921 P. 109.

EFFECT OF.—In every case where a witness is a competent witness, the provisions of secs. 5 and 6 should be complied with. 6 P.L.J. 147. Under sec. 5, the omission to take any oath or any other irregularity in the form in which it is administered does not invalidate the proceedings. The High Court declined to interefere with the order of a Municipal Commissioner who was the editor of a newspaper, who had, prior to the disposal of the case, made very strong remarks on the case in the newspaper of which he was editor, holding that there was nothing illegal in his order, though he would have exercised a wise discretion if he had refused to sit as one of the Commissioners in the case. 21 W.R. (Cr.) 31; 25 W.R. (Cr.) 6.

CHILD.—A child of tender years should be examined as a witness only after the Court has satisfied itself that the child is intellectually sufficiently developed to enable it to understand sufficiently what it has seen and afterwards inform the Court thereof. If the Court is satisfied that the child has intelligence, it should comply with the provisions of sec. 6. 120 I.C. 514=31 Cr.L.J. 114=1930 S. 129. *See also* 1921 P. 109. Child's evidence is not inadmissible merely because no oath was administered to it. Although sec. 5 is imperative, still sec. 13 governs cases of this sort. 22 I.C. 737. *See also* 47 L.W. 161=1938 M 490=(1938) 1 M.L.J. 289; 1941 O.W.N. 1246=17

Nothing herein contained shall render it lawful to administer, in a criminal proceeding, an oath or affirmation to the accused person, or necessary to administer to the official interpreter of any Court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.

Affirmation by natives or by persons objecting to oaths.

6. Where the witness, interpreter or juror is a Hindu or Muhammadan,

or has an objection to making an oath,

he shall, instead of making an oath, make an affirmation,

In every other case the witness, interpreter or juror shall make an oath.

IV.—Forms of Oaths and Affirmations.

Forms of oaths and affirmations.

7. All oaths and affirmations made under section 5 shall be administered according to such forms as the High Court may from time to time prescribe.

And until any such forms are prescribed by the High Court, such oaths and affirmations shall be administered according to the forms now in use.

[1][* * * * * * *].

LEG. REF.

[1] Expl. to sec. 7 rep. by Act VI of 1900, sec. 48 and Sch. II.

Luck. 376=1942 O. 193; 1939 Rang. 402=1939 Rang.L.R. 104; 1937 A.M.L.J. 134; 58 A. 23=1935 A.L.J. 618=1935 A. 579; 38 A. 49=16 Cr.L.J. 829; 13 C.W.N. 942=36 C. 808; 6 P.L.J. 147; 2 I.C. 97; 11 A. 183; 10 A. 207; 16 M. 105; 1 Weir 823; 6 Cr.L.J. 130.

SECS. 5 AND 6.—If a Court thinks that a child, though of tender years, is capable of informing the Court of what it has seen or heard, it is obligatory on it to administer oath to the child as in the case of any other witness. Where the Court fails to do so on the ground that the child is not capable of realising the significance of an oath, the defect would be cured by sec. 13 of the Oaths Act. 58 A. 23=1935 A.L.J. 618=1935 A. 579. *See also* 1938 Mad. 490=(1938) 1 M.L.J. 289; 1939 Rang. 402; 17 Luck. 376.

SECS. 5, 6 AND 13.—Every person who is examined as a witness shall make an oath or affirmation and there is no exception in the case of a child of tender years. Therefore if a child is adjudged to be a competent witness, an oath or affirmation must be administered to him before he is examined; but an omission whether deliberate or inadverdent to do so does not render his evidence absolutely inadmissible. But it is for the Court to decide what weight may be given to such unsworn testimony of the child whose evidence must always be received with great caution. 1940 Rang.L.R. 104 =1939 Rang. 402. *See* now Amending Act XXXIX of 1939. Where on account of her youth, neither an oath nor affirmation was administered to a witness that does not render the evidence of such a witness inadmissible. (*See* Act XXXIX of 1939.) 1937 A. M.L.J. 134; 1930 S. 129; noted under sec. 5, *supra*.

SEC. 6.—*See* 19 C. 355; 1939 Rang. 402=1940 Rang.L.R. 104; 38 A. 49=13 A.L.J. 1072; 20 P.R. 1902 (Cr.)=47 P.L.R. 1902; 11 A. 183; 10 A. 207; 16 M. 105; 1 Weir 823; 1935 All. 579=58 A. 23. Witnesses, interpreters and jurors, who are Hindus or Muhammadans are exempt from taking oath. As repeating of the Kalma, by a Muhammadan witness, is not in accordance with the form prescribed by Chief Court under sec. 7, his refusal to do so cannot be punished under sec. 173, I. P. Code. 20 P.R. 1902 (Cr.). The offence of giving false evidence may be committed, although the person giving has been neither sworn nor affirmed. 19 C. 355. The provisions of secs. 8-11 of the Act do not apply to criminal proceedings. 5 S.L.R. 129=13 I.C. 215 =13 Cr.L.J. 23. Nor to proceedings before a Village Police Patel under secs. 14 and 15 of the Bombay Village Police Act, 1867. 58 I. C. 147=45 B. 96=1921 B. 425=21 Cr. L. J. 723. A person appointed as Local Commissioner for recording evidence in a case cannot administer oath to one of the parties in the circumstances referred to in secs. 8, 9 and 10 because under the Act a Local Commissioner is not a Court. 89 P.R. 1909=3 I.C. 621. Where the oath dictated by the plaintiff was in these terms: "If I lie in saying that I did not strike the balance and had paid the debt may my wife be considered to have been divorced from me." *Held*, that the oath was repugnant to decency and affected a third person and was obviously in contravention of sec. 8. 66 P.R. 1910 =7 I.C. 479.

SEC. 7.—Comment on the unsatisfactory nature of the oath administered in Indian Courts to Indian witnesses. "It is surely not beyond the resources of the Legislature

8. If any party to, or witness in, any judicial proceeding offers to give evidence on oath or solemn affirmation in any form common amongst, or held binding by, persons of the race or persuasion to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Court may, if it thinks fit, notwithstanding anything hereinbefore contained, tender such oath or affirmation to him.

Power of Court to tender certain oaths.

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to discover an oath or oaths which Indian witnesses would respect''. 1933 All. 834 (835)=55 All. 639.

SECS. 8 AND 11: SCOPE OF,—*See* 1937 All. 701; 1938 Bom. 465.

SEC. 8.—*See* 13 B. 389; 13 I.C. 215=5 S.L.R. 129. The word 'affect' in sec. 8 should be taken to mean 'to re-act upon in any way'. An oath in the name of a third person does not necessarily 'affect' that person. An oath in the form 'I swear by my children' is not one which is prohibited by sec. 8. 1937 A.M.L.J. 94. The ''oath or solemn affirmation'' referred to in sec. 8 *et seq* is in its nature and essence quite distinct from the oaths and affirmations contemplated by sec. 5. Under sec. 8 the oath or solemn affirmation may be as infinite alike in form and contents as racial custom or the dictates of any religious persuasion may sanction or require. Neither an invocation nor an oath or affirmation in the technical sense of these words is in any way an essential part of the so-called oath or solemn affirmation referred to in sec. 8 of the Act. 54 I.A. 301=2 Luck. 316=1927 P.C. 165=53 M.L.J. 1 (P. C.). Under sec. 8 of the oaths Act, for an oath to be administered by the Court it is necessary that it should not be against decency and that it should not affect the rights of a third party. Where during the trial the defendant offered to abide by the oath on *talak* of one of the witnesses for the plaintiff and that witness agreed to take the oath, but the defendant resiled from the offer later on. *Held*, that divorcing one's wife was not a very respectable form of oath and militated with decency and that it had also the effect of divorcing the wife who was a third party and that in the circumstances the refusal of the defendant to give an illegal oath did not affect the case at all. 189 I.C. 687=1940 Pesh. 26. Under sec. 8 the initiative should come from the parties and not from the Court. The dismissal of a suit was accordingly set aside on the ground that the lower Court might have been influenced by the refusal of the plaintiff to swear touching sacred books. 139 I.C. 836 (1)=56 C.L.J. 77=36 C.W.N. 786=1933 Cal. 116. Form of oath—Denial before deity—Purpose of oath is not to call the attention of God to the witness, but the attention of the witness to God. 84 I.C. 314=1924 Oudh 442. All that is necessary for an oath is an appeal to the Supreme Being and thinking Him as the rewarder of truth and the avenger of falsehood. 1924 Oudh 442. *See also* 1924 B. 511; 52 B. 295=30 Bom.L.R. 447=1928 B. 285; 26 A.L.J. 7=54 I.A. 301=2 Luck. 316=1927 P.C. 165=53 M.L.J. 1 (P.C.).

SECS. 8 AND 9.—The parties to the suit stated that they constituted a third person J, as a *Munhasir Ilahi* and that they would be bound by his decision but before he was examined, the plaintiff stated that he would not be bound unless a special kind of oath was administered to J. That request was refused, J's statement recorded and in accordance therewith the plaintiff's suit dismissed. *Held*, that it was open to the plaintiff to resile from the agreement before the statement of J was recorded without assigning any reasons, sec. 8 not being applicable on the ground that the parties had in the first instance never intended to administer any oath at all to J. 146 I.C. 569=1933 A. L. J. 69=1933 A. 184. *See also* 1931 A. L. J. 393=1931 A. 557 =53 A. 673. Where the mukhtarnamah gave the mukhtar authority to make a compromise, confess judgment or make a reference to arbitration. *Held*, that the powers were sufficiently wide to include authority to take action under secs. 8, 9 and 10 of the Oaths Act. 8 O.W.N. 880=1931 Oudh 350.

SECS. 8 AND 11.—Where defendant agrees to abide by plaintiff's statement in the witness box but not in the form of any special oath as is referred to in sec. 8, the agreement is binding on him even apart from sec. 11, and he cannot be allowed to resile from it. 12 Luck. 349=164 I. C. 1116=1937 O. 67. The evidence given by a person to whom the special oath is administered at the instance of a party to a suit is, when the party offering to be bound by the special oath, is suing in a representative capacity, conclusive not only as against him but also the persons whom he is properly representing in that litigation, and the decree following the taking of special oath would, therefore, clearly operate as *res judicata* against the representatives as well in the absence of allegation and proof that the party acting in a representative capacity has been guilty of fraud or collusion or other vitiating circumstances. 40 Bom.L.R. 1005=1938 Bom. 465. *See also* 222 I.C. 210=1945

9. If any party to any judicial proceeding offers to be bound by any such oath or solemn affirmation as is mentioned in section 8, if such oath or affirmation is made by the other party to, or by any witness in, such proceeding, the Court may, if it thinks fit, ask such party or witness, or cause him to be asked, whether or not he will make the oath or affirmation:

Court may ask party or witness whether he will make oath proposed by opposite party.

P. 272. An application for on oath under the Act means an application without any constitution attached. 1932 A.L.J. 481=1932 All. 404.

SEC. 9.—*See* 13 B. 389; 13 I.C. 215; 65 I.C. 700; 22 M. 234; 17 M.L.J. 99; 15 M.L.J. 536; 18 A. 46; 45 B. 96=22 Bom.L.R. 893=1921 B. 425; 31 A. 315=2 I.C. 201; 1 Weir 822. The Act gives the Court a discretion to administer the oath or not and if a party after agreeing to an oath satisfies the Court that there is good ground for retracting, the Court would exercise a wise discretion in refusing to administer the oath but when a party puts forward frivolous reasons for retracting, the Court would be justified in administering the oath notwithstanding the retraction. 49 A. 388=100 I.C. 473=1927 A. 590. *See also* 1933 A.L.J. 69=1933 A. 184; 38 P.L.R. 1171=165 I.C. 513; 35 C.W.N. 130=1931 C. 549. Where the plaintiff proposed one form of oath for the defendant and the defendant accepted it the plaintiff cannot insist on another form. 7 M.L.T. 197=5 I.C. 939. *See also* 1928 M. 488; 43 P.L.R. 38=1941 Lah. 173. Where a party agrees that he would be bound by the oath of a witness, though the other parties do not agree to be so bound, he will be bound and the case must be tried only as against the others. 27 A.L.J. 1095 =118 I.C. 188 (1)=1929 A. 759 (1). Per *Guha, J.*—The principle that an offer can be withdrawn before it is accepted is applicable to an offer made under the Oaths Act. 1931 C. 549; 1933 A. 184. *See also* 1937 Nag. 212=171 I.C. 12; 1938 Mad. 385=47 L.W. 453=(1938) 1 M.L.J. 368. It cannot be withdrawn after acceptance. 1933 A.L.J. 588=55 A. 298=1933 A. 463. Even if a party resiled from taking oaths, in matters to be proved by oaths, it is not equivalent to its proof. No decree can be passed under the circumstances against the resiling party. The Court then can proceed with the suit in ordinary manner drawing inference from the defaulter's conduct and can impose upon him appropriate costs. 1912 M.W.N. 361=15 I.C. 195. (But *see* 65 I.C. 700). *See also* 27 O.C. 217=1925 O. 104 Where in a suit on a promissory note evidence had been recorded before an agreement to abide by the defendant's oath was entered into by plaintiff. *Held*, that it was competent to the Court to decide the suit on the evidence already on record. 4 L.W. 258=26 I.C. 1001. An agreement to an oath contained a provision that if owing to the challenger's failure to pay the cost of taking the oath, the same was not taken, it should be treated as equivalent to the oath having been taken. *Held*, that the provision introduced a method of decision which the law did not authorize and can have no legal consequences. (31 M. 1, Ref.) 52 I.C. 619. Where the agreement was to take the oath on a particular day but the oath was taken on a later day the burden lies on the person who relies on oath to show that time was not of the essence of the contract. 10 L.W. 140=52 I.C. 619. A duly authorized agent holding a special power of attorney enabling him to conduct the suit in a manner he may deem fit and in particular to withdraw or compromise, can make an offer under sec. 9 to be bound by the oath of the other party and to have the case decided in accordance therewith. 38 A. 131=32 I.C. 348. The word 'party' in sec. 9 includes a duly authorised agent. Where a *vakalatnama* authorises a counsel to get statements recorded, to do *pairavi* in the case and to take such steps as he thought advisable and the client agrees to whatever he might do in the conduct of the case, the authority is sufficient to justify counsel, when no other step is open to him, submitting the case to the test of oath of a man supposed to be honest. 1943 A.L.W. 489. *See also* 1933 All. 861=1933 A.L.J. 1127. "Party" as including duly authorized representative—Pleader making offer—Client bound. *See* 114 I.C. 759= 1929 Oudh 56; 8 O.W.N. 880=1931 Oudh 350. Guardian *ad litem*—Power to consent to offer of special oath—Leave of Court not obtained—Absence of fraud or negligence—Minor if bound. 34 C.W.N. 310. The expression "any party to any judicial proceeding" in sec. 9 must be interpreted as including the pleader representing him in the case. If a pleader is authorised by the *Vakalatnama* in his favour to do all proper *pairavi* in the case and to represent his client in a litigation and to present all sorts of applications which may become necessary even though no express power to compromise the case on his behalf may have been conferred upon the pleader, still the pleader being a duly authorised person to represent the client would be fully entitled to bind the client by offering to abide by the special oath of the opposite party. For

Provided that no party or witness shall be compelled to attend personally in Court solely for the purpose of answering such question.

Administration of oath if accepted.

10. If such party or witness agrees to make such oath or affirmation, the Court may proceed to administer it, or, if it is of such a nature that it may be more conveniently made out of Court, the Court may issue a commisison to any person to administer it. and authorise him to take the evidence of the person to be sworn or affirmed and return it to the Court.

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the purposes of sec. 9 all that is necessary is that the pleader or the agent should be considered a duly authorised agent on behalf of his party to conduct the case. 1940 O.W.N. 662=1940 Oudh 314=15 Luck. 686. The word "Party" includes a duly authorized agent. 1931 Oudh 350. Where the pleader appearing for the defendants made an offer that the suit might be decided on the oath of the opposite party and it appeared that the pleader acted under instructions from one of the defendants who presumably had been authorized by the rest to take the necessary steps. *Held*, that the parties could not resile from the offer made by the pleader. 34 C.W.N. 310=129 I.C. 408=1930 C. 463. *See also* 132 I.C. 682=35 C.W.N. 130=1931 Cal. 549. If a pleader has been expressly authorized to make an offer on behalf of his client to be bound by an oath of the other party his action in that respect would be binding on the client. 137 I.C. 810 (2)=33 P.L.R. 470=1932 L. 414. The statement made by one of several defendants in pursuance of an agreement made uder the Act is binding as against the parties who had offered to be so bound. Where however the rights and liabilities of the defendants in a particular case are inseparable a decree can be passed even against the defendant, who was not a party to the agreement. 8 O.W.N. 880=1931 O. 350. Where the plaintiff does not offer to be bound by the statement on oath made by the defendant then the plaintiff's application to offer a special oath to the defendant would not come within the terms of sec. 9 and the Act would not apply. 138 I.C. 606=1932 A.L.J. 483=1932 A. 404. *See also* 26 A.L.J. 7=54 I.A. 301 =53 M.L.J. 1 (P.C.). Court has got a discretion in administering special oath or not, which discretion will not be lightly interfered with by the appellate Court. 38 P.L.R. 1171=165 I.C. 513.

SECS. 9, 10 AND 11.—Offers to be bound by oath when can be resiled from. *See* 1926 L. 240; 4 Mys.L.J. 217; 35 C.W. N. 130; 1933 A. 463. An offer to be bound by the special oath of a particular person, once accepted by the person concerned being a party to the suit, cannot be withdrawn except on very cogent grounds which, in the opinion of the Court, justifies it in exercising its discretion not to allow the special oath being administered. But it is not open to the party to make such an offer, and then to withdraw it on frivolous grounds after it has been accepted by the other party. Such an offer may be withdrawn so long as it has not been accepted by the other party and acted upon. 222 I. C. 210=1946 P. 272. A party offering to be bound by oath of the other party is entitled to resile at any time before the statement on oath is taken and it is not necessary that the Court should be satisfied that the party had good reasons for resiling. 1935 A.L.J. 212=1935 A. 276. But *see* 55 All. 298=1933 All. 463; 171 I.C. 12= 1937 Nag. 212; 38 P.L.R. 1171=165 I.C. 513.

SEC. 10.—*See* 13 B. 389; 5 S.L.R. 129=13 I.C. 215; 1 Weir. 822. Unless specially authorised, a vakil cannot agree to a decision on the oath of the opposite party in a particular form. 20 M.L.J. 386 =5 I.C. 514 (1). *See also* 15 Luck. 686= 1940 Oudh 314. Agreement to take oath must specify form of oath and place where the oath has to be administered. 21 M.L.J. 618=9 I.C. 260. Oath should be taken in the presence of parties to be bound by it. 17 I.C. 930. Where the necessary procedure, preliminary to the agreement, is not adopted the oath is not binding. The provisions of the Act must be strictly followed. 1910 M.W.N. 272=6 I.C. 604. "Oath or solemn affirmation" may be sufficiently "administered" to a witness within the meaning of sec. 10 when a statement is made by him in the presence of a deity. 54 I.A. 301=2 Luck. 316=1927 P.C. 165=53 M.L.J. 1 (P.C.). A party cannot revoke an offer to abide by the oath of another after the offer is accepted by the other side although the oath is not actually taken. 55 All. 298=144 I.C. 719=1933 A.L.J. 588= 1933 A. 463; 43 P.L.R. 38=1941 Lah. 173. But *see* 153 I.C. 686=1935 A.W.R. 78= 1935 A.L.J. 212=1935 All. 276. The offer by a party to a suit as to being bound by a statement on oath of his opponent, on being accepted by the latter, is in the nature of a binding contract. The person who makes the offer cannot, therefore, resile from the contract. 1941 Lah. 173. Where defendant agrees to a decree being passed

Evidence conclusive as against person offering to be bound.

11. The evidence so given shall, as against the person who offered to be bound as aforesaid, be conclusive proof of the matter stated.

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against him in case plaintiff takes oath in presence of six specified persons but only five of sush persons are present, he is entitled to object to the administration of the oath in the abesnce of the sixth person. And the objection being a perfectly valid one, no inferences can be drawn against the defendant. 1933 L. 452=145 I.C. 704.

SEC. 11.—The provisions of sec. 11 can only be attracted after the oath has been taken in accordance with the agreement arrived at between parties as mentioned in secs. 9 and 10. (1938) 1 M.L.J. 368=47 L. W. 453=1938 Mad. 385. Also it is necessary that the statement given by a referee should amount to evidence of the fact in dispute between the parties. 103 I.C. 348= 1927 A. 676. *See* 1 Weir 822; 31 A. 315= 6 A.L.J. 244=2 I.C. 201; 1921 B. 425; 45 B. 96=22 Bom.L.R. 898=58 I.C. 147; 21 Cr.L.J. 723; 13 B. 389; 5 S.L.R. 129 13 I.C. 215 (2); 19 A.L.J. 911=1922 A. 160; 118 P.R. 1919=29 P.W.R. 1919=49 I.C. 1005; 12 Luck. 349=1937 Oudh 67. All that is necessary to an oath is an appeal to the Supreme being and, thinking Him as the rewarder of truth and the avenger of falsehood. The form of oath is immaterial provided it involves in the mind of the witness the bringing to bear in the witness's mind this apprehension of punishment. 84 I.C. 314=1924 O. 442; 54 I.A. 301=53 M.L.J. 1 (P.C.)=1927 P.C. 165. Where the party agreeing to abide by the oath of his opponent imposes fresh conditions at the time of taking the oath, the party taking the oath has the right to enforce the agreement originally entered into and if he takes the oath according to the original agreement the evidence will be conclusive against the other party. 12 M.L.T. 613=17 I.C. 339; 98 I.C. 864=1927 L. 99; 49 A. 388=1927 A. 590. *See also* 1937 Oudh 67=12 Luck. 349; 1933 All. 861; 38 P. L. R. 1171; 1937 Nag. 212. The parties to a suit can validly agree, even apart from the Act, that they will abide by the statement of a witness, including one who is a party to the suit; and they can leave the decision of all points includin geosts arising in the case to be made according to the statement. 146 I. C. 84=1933 A.L.J. 1127=1933 A. 861 (S.B.). Where the plaintiff after agreeing to abide by the oath of a third person subsequently declined to abide by it, the Court has no power to dismiss the plaintiff's suit on account of the plaintiff not having taken the oath but must either proceed to administer the oath and decide the case in accordance therewith or accept the plaintiff's refusal to abide by the oath drawing such inference from the refusal as is permissible and then proceed with the trial of the case in accordance with law. 99 I.C. 288=1927 L. 78 (1). This section only provides that as against a person who offers to be bound by the special oath, it will be conclusive proof of the matter stated. 26 Bom.L.R. 713=82 I.C. 359=1924 B. 511. Failure of defendant to take oath owing to plaintiff's absence to hear oath— Evidence when conclusive. *See* 90 I.C. 577= 49 M. L. J. 379=1925 Mad. 1264. In a suit by a *Karta* of a joint Hindu family to which the other members including minor members were parties, the *Karta* agreed to be bound by the special oath of the defendant. No objection was taken to it by any of the plaintiffs, and the suit was dismissed on the basis of the statement made by the defendant on special oath. *Held*, that the plaintiffs including the minor members were bound by the offer made by the *Karta* to abide by the special oath of the defendant, and could not resile from that offer especially when the defendant had accepted it and performed his part. 1946 Pat. 272=222 I.C. 210. *See also* 1938 Bom4 465=40 Bom.L.R. 1005. Pre-emption— —Offer by guardian of minor defendant to be bound by oath of plaintiff—Extent of minor's liability. *See* 44 A. 117=64 I.C. 646 =1922 A. 160=19 A.L.J. 911. *An oath is binding only on the person who offers to be bound by it.* Where in a suit only one of the plaintiffs agrees to the dismissal of the suit, in case the defendant takes the oath and the defendant does so accordingly, the dismissal is conclusive only against the plaintiff who consented. 50 P.W.R. 1918; 83 P. W.R. 1918=45 I.C. 230. *See also* 1929 A. 759 (1). The effect of an oath taken under the Oaths Act is merely to furnish conclusive evidence on the matter in issue and a decision on oath in *res judicata*. 36 M. 287=24 M.L.J. 321= 18 I.C. 835. The fact that a case was decided on the oath of the defandant is not a sufficient ground for refusing the defendant an opportunity to prove to the satisfaction of the Court that the claim had been brought on a false document, to support an application under sec. 476, Cr. P. Code. 96 I. C. 877=1926 A. 577. Where a decree is passed on the evidence of a witness owing to an agreement to be bound by the oath of that witness, such a decree is not a consent decree under sec. 96 (3), C.P. Code. A consent decree means a decree in a suit which has been compromised. An agreement to be bound by the evidenec of a witness is not an agreement to compromise. Such a de-

12. If the party or witness refuses to make the oath or solemn affirmation referred to in section 8, he shall not be compelled to make it, but the Court shall record, as part of the proceedings, the nature of the oath or affirmation proposed, the facts that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his refusal.

Procedure in case of refusal to make oath.

V.—Miscellaneous.

13. No omission to take any oath or make any affirmation, no subtsitution

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cree is appealable and cannot be questioned by a separate suit. 172 I.C. 421=1938 Nag. 64=I.L.R. (1940) Nag. 310. But the agreement may amount to an adjustment of dispute under O. 23, R. 3, C.P. Code and may create an estoppel. 1937 A.L.J. 1066 =171 I.C. 697=1937 A. 701. Sec. 11 cannot be construed as meaning that the evidence given on oath in a proceeding becomes automatically conclusive in all possible proceedings in which the subject-matter of his evidence given on oath may be involved. It can only be evidence in the proceeding in which it is actually being received. In an application under O. 21, R. 100, C. P. Code, for delivery the respondent challenged the petitioner to take a special oath, and the oath having been taken the application was allowed. The respondent then filed a suit under O. 21, R. 103, and the defendant (petitioner) pleaded that no suit wodld lie because of the evidence which he had given on oath in the proceedings under O. 21, R. 100. *Held*, that though the suit following the order on the claim petition might be a continuation of the same proceedings for some purposes, there was an essential difference between the two; and unless it was clearly present to the minds of the parties that the evidence given on oath in the claim petition was not to be challenged in a subsequent suit it must be held that an oath in those proceeding must relate to the claim proceeding themselves and to them alone. The burden lay on the applicant to show that the challenge was intended to have any effect upon any possible civil suit which might be filed under R. 103 of O. 21, C.P. Code. 51 L.W. 449=1940 Mad. 627=(1940) 1 M.L.J. 685.

SEC. 12.—A Court does not act irreularly or illegally in taking into consideration plaintiff's refusal to take oath, the defendant agreeing to be bound by it. But no weight should be attached to plaintiff's refusal when defendant also refuses. 7 N.L. R. 50=10 I.C. 472. A mere *refusal to take a particular oath* is not sufficient for deciding the issue against the party refusing it. 32 I.C. 619. *See also* 93 I.C. 830=1926 C. 817. *See also* 1935 Mad. 541=42 L. W. 371. The Oaths Act does not provide for any decree being passed against a party who having once agreed that the suit may be decided against him in case he fails to take a certain oath subsequently resiles from the agreement, although the refusal to take the oath can be recorded under S. 12 of the Act, and due weight can be given to it in appreciating the evidence produced by the parties and in deciding the case on the merits. 47 P.L.R. 411 If a party refuses to make the oath, the Court has no power to compel him to make it. The duty of the Court is to record as part of the proceedings, the nature of the oath proposed, the facts that he was asked whether he would make it and that he refused it together with any reason which he may assign for his refusal. 9 Mys.L.J. 362. No doubt the refusal to take a special oath is conduct which the Court is entitled to consider along with other evidence in the case but the refusal should not automatically be allowed to out-weigh the, positive evidence which has been adduced. Where therefore the plaintiff has produced his account books which the defendant called on him to produce and he has given all the evidence necessary to support his case, his refusal to take a special oath offered by the defendant which the plaintiff considered derogatory should not be taken as reflecting on the truth of his claim. 142 I.C. 137=1933 N. 52. *See also* 1935 All. 276=1935 A.L.J. 212. A challenger should not be permitted to resile after his offer has been accepted by the other party unless good ground is shown to the satisfaction of the Court by the challenger. Apart from authorities, there is no principle of law on which an agreement can be allowed to be broken with impunity without any valid reason. 1938 M.W.N. 110=47 L.W. 453=1938 Mad. 385 =(1938) 1 M.L.J. 368. (43 L.W. 681=1936 Mad. 406=70 M.L.J. 449 reversed.) Application of sec. 12 to the case of challenger would be an extension of the provisions of sec. 12 in a manner which is not justifiable. Where the challenger, who was to light the camphor in accordance with the offer made by him, has refused to perform that which he had undertaken to do, he should be taken to have waived that condition. The Court can order any Commisisoner to light the camphor but should see that it is extinguished by the other party when taking the oath. (1938) 1 M.L.J. 368.

SEC. 13.—As to scope of section *see* 1938

Proceedings and evidence not invalidated by omission of oath or irregularity.

of any one for any other of them, and no irregularity whatever, in the form in which any one of them is administered, shall invalidate any proceeding or render inadmissible any evidence whatever, in or in respect of which such omission, substitution or irregularity took place, or shall affect the obligation of a witness to state the truth.

Persons giving evidence bound to state the truth.

14. Every person giving evidence on any subject before any Court or person hereby authorized to administer oaths and affirmations shall be bound to state the truth on such subject.

15. [*Amendment of Penal Code, Ss.* 178 *and* 181.] *Repealed by Act I of* 1938.

Official oaths abolished.

16. Subject to the provisions of sections 3 and 5, no person appointed to any office shall, before entering on the execution of the duties of his office, be required to make any oath, or to make or subscribe any affirmation or declaration whatever.

SCHEDULE.

[*Repealed by the Repealing Act* (*XII of* 1873).]

THE OBSCENE PUBLICATIONS ACT (VIII OF 1925).

[*The whole of this Act was repealed by Act I of* 1938.]

M.W.N. 90=(1938) 1 M.L.J. 289. The word "omission" in the section includes any kind of omission; and is not restricted to acidental or negligent omission. 1939 Rang. 402=1940 Rang.L.R. 104. *See also* 1935 All. 579=1935 A.L.J. 618. Sec. 13 cures the form of the oath and even an entire omission to take the oath, but does not cure the absence of authority in the officer administering the oath. 116 I.C. 248=31 Bom.L.R. 144=1929 B. 136. Consent of parties to abide by oath retracted by the parties; Court has no right to enforce the oath. (1935) M.W.N. 370. S. 13 even prior to its amendment in 1939 was quite unqualified in its terms and there was nothing to suggest that it was to apply only where the omission to administer the oath occurs *per incuriam*. Hence the evidence of a person who does not understand the nature of an oath but is otherwise competent to testify, as understanding the questions put and being able to give rational answers, is admissible in evidence and can be acted upon though there is no corroboration. Once there is admissible evidence it could be acted upon; corroboration, unless required by statute goes only to the weight and value of the evidence. This point is settled by the proviso to S. 5 of the Oaths Act added by the Amending Act of 1939. In England where provision has been made for the reception of unsworn evidence from a child it has always been provided that the evidence must be corroborated in some material particular implicating the accused. But in the Indian Act there is no such provision and the evidence is made admissible whether corroborated or not. It is a sound rule in practice not to act on the uncorroborated evidence of a child, whether sworn or unsworn, but this is a rule of prudence and not of law. (1945) 2 M.L.J. 493 (P.C.). *See also* 1938 Mad. 490=(1938) 1 M.L.J. 289. When a Judge or Magistrate has elected to take the statement of a person as evidence, he has no option but to administer either the oath or affirmation to such a person as the case may require. The proper course in such cases is to record the questions and answers put to the witness to ascertain whether he is competent to testify and, if the Court comes to the conclusion that he is competent, an oath or affirmation should be administered. A child is generally competent, if he is old enough to understand that he ought to speak the truth. 2 L.B.R. 322. *See also* 1935 A. 579=1935 A.L.J. 618 =58 All. 23. As to the effect of omission to record deposition as on solemn oath or affirmation, *see* 18 C.W.N. 1323. As to whether if the jury in a Sessions trial are not sworn, the omission is one which could be covered by sec. 13. *See* 20 W.R. (Cr.) 19. Where on account of her youth, neither an oath nor a affirmation was administered to a witness that does not render the evidence of such a witness inadmissible. 1937 A.M.L.J. 134. *See also* 1938 Mad. 490=(1938) 1 M.L.J. 289; 1939 Rang. 402; 15 Mys.L.J. 217=42 Mys.H.C. Rep. 295.

SEC. 14.—As to application of the section, to child witness, *see* 76 I.C. 1037=25 Cr.L.J. 317=1923 L. 332; 1939 N.L.J. 396.

THE OBSTRUCTIONS IN FAIRWAYS ACT (XVI OF 1881).

[Rep. in part by Act X of 1914.]

[15*th March*, 1881.

An Act to empower the Government to remove or destroy obstructions in fairways, and to prevent the creation of such obstructions.

WHEREAS, it is expedient to empower the Government to remove or destroy obstructions to navigation in fairways leading to ports in British India, and to prevent the creation of such obstructions: It is hereby enacted as follows:

Preamble.

Short title.

1. This Act may be called THE OBSTRUCTIONS IN FAIRWAYS ACT, 1881; [1][* * * * * *].

But nothing herein contained shall apply to vessels [2][belonging to, or hired by a contract made on behalf of, the Crown].

Central Government empowered to remove or destroy obstruction in fairway.

2. Whenever, in any fairway, leading to any port in British India, any vessel is sunk, stranded or abandoned, or any fishing stake, timber or other thing is placed or left, [2][the Central Government] may, if in its opinion such thing is, or is likely to become, an obstruction or danger to navigation,—

(*a*) cause such thing or any part thereof to be removed; or

(*b*) if such thing is of such a description or so situate that, in the opinion of the [2][Central Government], it is not worth removing, cause the same or any part thereof to be destroyed.

Central Government entitled to expenses incurred in removing obstruction.

3. Whenever anything is removed under section 2 the [3][Central Government] shall be entitled to receive a reasonable sum, having regard to all the circumstances of the case, for the expenses incurred in respect of such removal.

Dispute concerning such expenses.

Any dispute arising concerning the amount due under this section, in respect of anything so removed, shall be decided by the District Magistrate or Presidency Magistrate having jurisdiction at the place where such thing is, upon application to him for that purpose by either of the disputing parties; and such decision shall be final.

Notice of removal to be given by Central Government.

4. The [4][Central Government] shall, whenever anything is removed under section 2, publish in the Official Gazette a notification containing a description of such thing, and the time at which and the place from which the same was so removed.

Things removed may, in certain cases, be sold.

5. If, after publishing such notifications, such thing is unclaimed, or

if the person claiming the same fails to pay the amount due for the said expenses and any customs-duties or other charges properly incurred by the [4][Central Government] in respect thereof.

the [1][Central Government] may sell such thing by public auction, if it is of a perishable nature, forthwith, and, if it is not of a perishable nature, at any time not less than six months after publishing such notification as aforesaid.

6. On realizing the proceeds of such sale, the amount due for expenses

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LEG. REF.

[1] Repealed by Act X of 1914.

[2] Substituted by A.O., 1937.

[3] Substituted by A.O., 1937 for 'Government'.

[4] Substituted for 'Local Government' by A.O., 1937.

SEC. 3.—*See* Rat. 241=Cr. Rg. 8 of 1886.

Proceeds how applied.

and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the surplus (if any) shall be paid to the owner of the thing sold, or if no such person appear and claim such surplus, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same:

Provided that he makes the claim within one year from the date of the sale.

"Vessel" to include tackle, cargo, etc.

7. For the purposes of this Act, the term "vessel" shall be deemed to include also every article or thing or collection of things being or forming part of the tackle, equipment, cargo, stores or balalst of a vessel; and any proceeds arising from the sale of a vessel, and of the cargo thereof, or of any other property recovered thereform, shall be regarded as a common fund.

Power to makes rules to regulate and prohibit the placing of obstructions in fairways.

8. The Central Government may, from time to time, by notification[1] in the Official Gazette, make rules to regulate or prohibit, in any fairway leading to a port in British India, the placing of fishing stakes, the casting or throwing of ballast, rubbish or any other thing likely to give rise to a bank or shoal, or the doing of any other act which will, in [2][its] opinion, cause, or be likely to cause, obstruction or danger to navigation.

Penalty for breach of such rules.

9. Whoever is guilty of any act or omission in contravention of the rules made under section 8 may be tried for such offence in any district or presidency-town in which he is found, and shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Compensation payable in certain cases for damage caused under this Act.

10. Whenever the maintenance or creation of an obstruction in any fairway, has become lawful by long usage or otherwise, and such obstruction is removed or destroyed under section 2, or its creation is regulated or prohibited under section 8, any person having a right to maintain, or create such obstruction shall be entitled to receive from the [3][Central Government] reasonable compensation for any damage caused to him by such removal, destruction, regulation or prohibition.

Every dispute arising concerning the right to such compensation, or the amount thereof, shall be determined according to the law for the time being in force relating to like disputes in the case of land needed for public purposes and not otherwise; and for the purposes of such law the fairway from or in which such obstruction was removed or destroyed, or in which its creation was regulated or prohibited, shall be deemed to be a part of the presidency-town or district in which the port to which such fairway leads is situate.

Certain action of the Government previous to passing of this Act be deemed to have been taken hereunder.

11. Whenever any obstruction in a fairway leading to a port in British India has been removed or destroyed or whenever the creation of any such obstruction has been regulated or prohibited, by an order of the Central Government or a Provincial Government, previous to the passing of this Act, such removal, destruction, regulation or prohibition shall be deemed to have been effected under this Act.

LEG. REF.

[1] For such notification (1) for Madras, *see* Madras R. and O.; (2) for Bombay, *see* Bombay R. and O.

[2] Substituted for "his" by A.O., 1937.

[3] Substituted for 'Secretary of State for India in Council' by A.O., 1937.

SEC. 10.—*See* the Land Acquisition Act (I of 1894).

Saving of other powers possessed by Central Government.

12. Nothing herein contained shall be deemed to prevent the exercise by the [1][Central Government] of any other powers possessed by it in this behalf.

Application to fairways in inland waterways.

[2][13. All references in this Act to the Central Government shall, in relation to fairways in inland waterways, be construed as references to the Provincial Government concerned.]

THE OFFENCES ON SHIPS AND AIR CRAFT ACT (IV OF 1940).

[*Repealed by Act VI of* 1945.]

THE OFFICIAL GAZETTES ACT (XXX OF (1863.)

N.B.—This Act has been declared to have ceased to have effect by the Government of India (Adaptation of Indian Laws) Order, 1937 and has also been expressly repealed by Act I of 1938.

THE INDIAN OFFICIAL SECRETS ACT (XIX OP 1923).[3]

Year.	No.	Short title.	Amendments.
1923	XIX	The Indian Offi ial Secrets Act, 1923.	Repealed in part XII of 1927; see Act XXIV of 1939 and ordinance XXIII of 1942.

[*2nd April,* 1923.

An Act to consolidate and amend the Law in British India relating to official secrets.

WHEREAS the law in British India relating to official secrets is at present contained in two Acts of the Governor-General in Council, namely, the Indian Official Secrets Act, 1889, and the Indian Official Secrets (Amendment) Act, 1904, and one Statute of Parliament, namely, the Official Secrets Act, 1911; and

WHEREAS the Official Secrets Act, 1911, has been amended by the Official Secrets Act, 1920, which statute applies to the United Kingdom and to certain British possessions, but not to British India; and

WHEREAS it is expedient that the law relating to official secrets in British India should be consolidated and amended;

It is hereby enacted as follows:—

Short title, extent and application.

1. (1) This Act may be called THE INDIAN OFFICIAL SECRETS ACT, 1923.

(2) It extends to the whole of British India, and applies also—

(*a*) to all subjects of His Majesty and servants of the Crown within [4][any Iany Indian State]; and

(*b*) to all Indian subjects of His Majesty without and beyond British India.

Denitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) Any reference to a place belonging to His Majesty includes a place occupied by any department of the Government, whether the place is or is not actually vested in His Majesty;

LEG. REF.

[1] Substituted for "Government" by A.O., 1937.

[2] Inserted by A.O., 1937.

[3] For statement of objects and reasons, see *Gazettes of India,* 1922, Pt. V, p. 216; for Report of Select Committee, *see ibid.,* 1923, Pt. V, p. 61.

[4] Substituted by A.O., 1937.

[1][(1-A) References to a department of the Government include the departments of any Government in British India and any department of the Crown Representative, and include also the Federal Railway Authority;]

(2) expressions referring to communicating or receiving include any communicating or receiving, whether in whole or in part, and whether the sketch, plan, model, article, note, document or information itself or the substance, effect or description thereof only be communicated or received; expressions referring to obtaining or retaining any sketch, plan, model, article, note or document, include the copying or causing to be copied of the whole or any part of any sketch, plan, model, article, note or document; and expressions referring to the communication of any sketch, plan, model, article, note or document include the transfer or transmission of the sketch, plan, model, article, note or document;

(3) "document" includes part of a document;

(4) "model" includes design, pattern and specimen;

(5) "munitions of war" includes the whole or any part of any ship, submarine, aircraft, tank or similar engine, arms and ammunition, torpedo, or mine intended or adopted for use in war, and any other article, material, or device, whether actual or proposed, intended for such use;

(6) "Office under His Majesty" includes any office or employment in or under any department of the Government or of the Government of the United Kingdom or of any British possession;

(7) "photograph" includes an undeveloped film or plate;

(8) "prohibited place" means—

(*a*) any work of defence, arsenal, naval, military, or air force establishment or station, mine, minefield, camp, ship or aircraft belonging to, or occupied by or on behalf of, His Majesty, any military telegraph or telephone so belonging or occupied, any wireless or signal station or office so belonging or occupied and any factory, dockyard or other place so belonging or occupied and used for the purpose of building, repairing, making or storing any munitions of war, or any sketches, plans, models or documents relating thereto, or for the purpose of getting any metals, oil or minerals of use in time of war;

(*b*) any place not belonging to His Majesty where any munitions of war or any sketches, models, plans, or documents relating thereto, are being made, repaired, gotten or stored under contract with, or with any person on behalf of, His Majesty or otherwise on behalf of His Majesty.

(*c*) any place belonging to or used for the purpose of His Majesty which is for the time being declared by the Central Government, by notification in the Official Gazette, to be a prohibited place for the purposes of this Act on the ground that information with respect thereto, or damage thereto, would be useful to an enemy, and to which a copy of the notification in respect thereof has been affixed in English and in the Vernacular of the locality:

(*d*) any railway, road, way or channel, or other means of communication by land or water (including any works or structures being part thereof or connected therewith), or any place used for gas, water or electricity works or other works for purposes of a public character, or any place where any munitions of war or any sketches, models, plans, or documents relating thereto, are being made, repaired, or stored otherwise than on behalf of His Majesty, which

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LEG. REF.

[1] Sub-sec (1-A- of sec. 2 inserted by A. O., 1937.

[1] Words "or by any Local Government" omitted by A.O., 1937.

SEC. 2.—*Cf.* sec. 12, 1 and 2 Geo. V, c. 28.

SEC. 2, CL. (5).—*Cf.* sec. 9 (2) of 10 and 11 Geo. V, c. 75.

SEC. 2, CL. (8).—*Cf.* sec. 3 of 1 and 2 Geo. V, c. 28.

CL. (8) (*a*).—*Cf.* sec. 10 of 10 and 11 Geo. V, c. 28.

CL. (8) (*b*).—*Cf.* sec. 3 of 1 and 2 Geo. V, c. 28.

is for the time being declared by the Central Government by notification in the Official Gazette to be a prohibited place for the purposes of this Act on the ground that information with respect thereto, or the destruction or obstruction thereof, or interference therewith, would be useful to an enemy, and to which a copy of the notification in respect thereof has been affixed in English and in the vernacular of the locality;

(9) "sketch" includes any photograph or other mode of representing any place or thing; and

(10) "Superintendent of Police" includes any police officer of a like or superior rank, and any person upon whom the powers of a superintendent of Police are for the purposes of this Act conferred by the Central Government [1][* * *].

Penalties for spying.

3. (1) If any person for any purpose prejudicial to the safety or interests of the state—

(*a*) approaches, inspects, passes over or is in the vicinity of, or enters any prohibited place; or

(*b*) makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy; or

(*c*) obtains, collects, records or publishes or communicates to any other person any secret official code or pass word, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy;

he shall be punishable with imprisonment for a term which may extend, where the offence is committed in relation to any work of defence, arsenal, naval, military or air force establishment or station, mine, minefield, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of His ajesty or in relation to any secret official code, to fourteen years and in other cases to three years.

(2) On a prosecution for an offence punishable under this section with imprisonment for a term which may extend to fourteen years it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State, and, notwithtsanding that no such act is proved against him, he may be convicted, if, from the circumstances of the case or his conduct or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State; and if any sketch, plan, model, article, note, document, or information relating to or used in any prohibited place, or relating to anything in such a place, or any secret official code or pass word is made, obtained, collected, recorded, published or communicated by any person other than a person acting under lawful authority, and from the circumstances of the case or his conduct or his known character as proved it appears that his purpose was prejudicial to the safety or interests of the State, such sketch, plan, model, article, note, document or information shall be presumed to have been made, obtained, collected, recorded. published or communicated for a purpose prejudicial to the safety or interests of the State.

Communications with foreign agents to be evidence of commission of certain offences.

4. (1) In any proceedings against a person for an offence under section 3, the fact that he has been in communication with, or attempted to communicate with, a foreign agent, whether within or without British India, shall be relevant for the purpose of proving that he has, for a purpose prejudicial to the safety or interests of the State, obtained or attempted to obtain information which is calculated to be or might be. or is intended to be, directly or indirectly, useful to an enemy.

LEG. REF.

SEC. 2, CL. (9).—*Cf.* sec. 13 of 1 and 2 Geo. V, c. 28.

[1] Word 'or by any local Government omitted by A.O., 1937.

(2) For the purpose of this section, but without prejudice to the generality of the foregoing provision,—

(*a*) a person may be presumed to have been in communication with a foreign agent if—

(i) he has, either within or without British India, visited the address of a foreign agent, or consorted or associated with a foreign agent, or

(ii) either within or without British India, the name or address of, or any other information regarding, a foreign agent has been found in his possession, or has been obtained by him from any other person;

(*b*) the expression "foreign agent" includes any person who is or has been or in respect of whom it appears that there are reasonable grounds for suspecting him of being or having been employed by a foreign power either directly or indirectly, for the purpose of committing an act, either within or without British India, prejudicial to the safety or interests of the State, or who has or is reasonably suspected of having, either within or without British India, committed, or attempted to commit, such an act in the interests of a foreign power;

(*c*) any address, whether within or without British India, in respect of which it appears that there are reasonable grounds for suspecting it of being an address used for the receipt of communications intended for a foreign agent, or any address at which a foreign agent resides, or to which he resorts for the purpose of giving or receiving communications, or at which he carries on any business, may be presumed to be the address of a foreign agent, and communications addressed to such an address to be communications with a foreign agent.

Wrongful communication, etc., of information.

5. (1) If any person having in his possession or control any secret official code or pass word or any sketch, plan, model, article, note, document or information which relates to or is used in a prohibited place or relates to anything in such a place, or which has been made or obtained in contravention of this Act, or which has been entrusted in confidence to him by any person holding office under His Majesty, or which he has obtained or to which he has had access owing to his position as a person who holds or has held office under His Majesty or as a person who holds or has held a contract made on behalf of His Majesty, or as a person who is or has been employed under a person who holds or has held such an office or contract,—

(*a*) wilfully communicates the code or pass word, sketch, plan, model, article, note, document or information to any person other than a person to

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SEC. 3.—*Cf.* sec. 1 of 1 and 2 Geo. V, c. 28.

SECS. 3 AND 4: CASE-LAW.—The disclosure of Government Department Examination papers may be an offence under the Indian Official Secrets Act. 1 L.B.R. 138.

SEC. 4.—*Cf.* sec. 2 of 10 and 11 Geo. V, c. 75.

SEC. 5.—*Cf.* sec. 2 of 1 and 2 Geo. V, c. 28.

S. 5 (1) of the Official Secrets Act is very comprehensive in its nature. It applies not merely to Government servants, but also to all persons who have obtained the secret in contravention of the Act. Reading S. 5 (4) of the Act and S. 4 (1) (*f*) of the Press (Emergency Powers) Act together, an invitation to the public, contained in an article or advertisement in a newspaper, to send official secrets to the editor of a newspaper for payment comes with S. 4 (*f*) of the Press Act as well as S. 5 (1) of the Official Secrets Act. It is really an invitation encouraging and inciting any person to commit an offence. The Court is not concerned with the intention or motive underlying the article but only with the direct or indirect tendency of the words used in the article itself. 48 Bom.L.R. 151 (S.B.). "Official secret"—Meaning of. The expression "official secret" in the Official Secrets Act, has reference to a secret of one or the other department of the Government or the state and not to any secret of a private office. The word official by itself has obtained the meaning attached to it in the Act, and it cannot be held that the expression "official secret" is a wider term including secrets of any private institution. 48 Bom.L.R. 151 (S.B.)=1946 B. 322.

whom he is authorized to communicate it, or a Court of Justice or a person to whom it is, in the interests of the State, his duty to communicate it; or

(*b*) uses the information in his possession for the benefit of any foreign power or in any other manner prejudicial to the safety of the State; or

(*c*) retains the sketch, plan, model, article, note or document in his possession or control when he has no right to retain it, or when it is contrary to his duty to retain it, or wilfully fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof; or

(*d*) fails to take reasonable care of, or so conducts himself as to endanger the safety of, the sketch, plan, model, article, note, document, secret official code or pass word or information;

he shall be guilty of an offence under this section.

(2) If any person voluntarily receives any secret official code or pass word or any sketch, plan, model, article, note, document or information knowing or having reasonable ground to believe, at the time when he receives it, that the code, pass word, sketch, plan, model, article, not, document, or information is communicated in contarvention of this Act, he shall be guilty of an offence under this section

(3) If any person having in his possession or control any sketch, plan, model, article, note, document or information, whcih relates to munitions of war, communicates it, directly or indirectly, to any foreign power or in any other manner prejudicial to the safety or interests of the State, he shall be guilty of an offence under this section.

(4) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

Unauthorised use of uniforms; falsification of reports, forgery, personation, and false documents.

6. (1) If any person for the purpose of gaining admission or of assisting any other person to gain admission to a prohibited place or for any other purpose prejudicial to the safety of the State—

(*a*) uses or wears, without lawful authority, any naval, military, air force, police or other official uniform, or any uniform so nearly resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform; or

(*b*) orally, or in writing in any declaration or application, or in any document signed by him or on his behalf, knowingly makes or connives at the making of any false statement or any omission; or

(*c*) forges, alters, or tampers with any passport or any naval, military, air force, police, or official pass, permit, certificate, licence or other document of a similar character (hereinafter in this section referred to as an official document), or knowingly uses or has in his possession any such forged, altered, or irregular official document; or

(*d*) personates, or falsely represents himself to be, a person holding, or in the employment of a person holding, office under His Majesty, or to be or not to be a person to whom an official document or secret official code or pass word has been duly issued or communicated, or with intent to obtain an official document, secret official code or pass word, whether for himself or any other person knowingly makes any false statement; or

(*e*) uses, or has in his possession or under his control without the authority of the department of the Government or the authority concerned ,any die, seal or stamp of or belonging to, or used, made or provided by, any department

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SEC. 5, CL. (1) (*b*).—*Cf.* sec. 2 (1) of 10 and 11 Geo. V, c. 45.

SEC. 5, CL. (2).—*If.* sec. 9 (1) of 10 and 11 Geo. V, c. 75.

SEC. 6.—*Cf.* sec. 1 of 10 and 11 Geo. V, c. 75.

of the Government, or by any diplomatic, naval, military, or air force authority appointed by or acting under the authority of His Majesty, or any die, seal or stamp so nearly resembling any such die, seal or stamp, as to be calculated to deceive, or counterfeits any such die, seal or stamp, or knowingly uses, or has in his possession or under his control, any such counterfeited die, seal or stamp; he shall be guilty of an offence under this section.

(2) If any person for any purpose prejudicial to the safety of the State—

(*a*) retains any official document, whether or not completed or issued for use, when he has no right to retain it, or when it is contrary to his duty to retain it, or wilfully fails to comply with any directions issued by any department of the Government or any person authorised by such department with regard to the return or disposal thereof; or

(*b*) allows any other person to have possession of any official document issued for his use alone, or communicates any secret official code or password so issued, or, without lawful authority or excuse, has in his possession any official document or secret official code or password issued for the use of some person other than himself, or, on obtaining possession of any official document by finding or otherwise, wilfully fails to restore it to the person or authority by whom or for whose use it was issued, or to a police officer; or

(*c*) without lawful authority or excuse, manufactures or sells, or has in his possession for sale, any such die, seal or stamp as aforesaid;

he shall be guilty of an offence under this section.

(2) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to two years, or with fine or with both.

(4) The provisions of sub-section (2) of section 3 shall apply, for the purpose of proving a purpose prejudicial to the safety of the State, to any prosecution for an offence under this section relating to the naval, military or air force affairs of His Majesty, or to any secret official code in like manner as they apply, for the purpose of proving a purpose prejudicial to the safety or interests of the State, to prosecutions for offences punishable under that section with imprisonment for a term which may extend to fourteen years.

Interfering with officers of the police or members of His Majesty's forces.

7. (1) No person in the vicinity of any prohibited place shall obstruct, knowingly mislead or otherwise interfere with or impede, any police-officer, or any member of His Majesty's forces engaged on guard, sentry, patrol, or other similar duty in relation to the prohibited place.

(2) If any person acts in contravention of the provisions of this section, he shall be punishable with imprisonment which may extend to two years, or with fine, or with both.

Duty of giving information as to commission of offences.

8. (1) It shall be the duty of every person to give on demand to a Superintendent of Police, or other police-officer not below the rank of Inspector, empowered by an Inspector-General or Commissioner of Police in this behalf, or to any member of His Majesty's forces engaged on guard, sentry, patrol, or other similar duty, any information in his power relating to an offence or suspected offence under section 3 or under section 3 read with section 9 and, if so required, and upon tender of his reasonable expenses, to attend at such reasonable time and place as may be specified for the purpose of furnishing such information.

(2) If any person fails to give any such information or to attend as aforesaid, he shall be punishable with imprisonment which may extend to two years, or with fine, or with both.

SEC. 7.—*Cf.* sec. 3 of 10 and 11 Geo. V, c. 75.

SEC. 8.—*Cf.* sec. 6 of 10 and 11 Geo. V, c. 75.

Attempts, incitements, etc.

9. Any person who attempts to commit or abets the commission of an offence under this Act shall be punishable with the same punishment, and be liable to be proceeded against in the same manner as if he had committed such offence.

Penalty for harbouring spies.

10. (1) If any person knowingly harbours any person whom he knows or has reasonable grounds for supposing to be a person who is about to commit or who has committed an offence under section 3 or under section 3 read with section 9 or knowingly permits to meet or assemble in any premises in his occupation or under his control any such persons, he shall be guilty of an offence under this section,

(2) It shall be the duty of every person having harboured any such person as aforesaid. or permitted to meet or assemble in any premises in his occupation or under his control any such persons as aforesaid, to give on demand to a Superintendent of Police or other police-officer not below the rank of Inspector empowered by an Inspector-General or Commissioner of Police in this behalf, any information in his power relating to any such person or persons, and if any person fails to give any such information, he shall be guilty of an offence under this section

(3) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to one year, or with fine or with both.

Search warrants.

11. (1) If a Presidency Magistrate, Magistrate of the first class or sub-divisional Magistrate is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Act has been or is about to be committed, he may grant a search warrant authorising any Police officer named therein, not being below the rank of an officer-in-charge of a police station, to enter at any time any premises or place named in the warrant, if necessary, by force, and to search the premises or places and every person found therein, and to seize any sketch, plan, model, article, note or document, or anything of a like nature, or anything which is evidence of an offence under this Act having been or being about to be committed which he may find on the premises or place or any such person, and with regard to or in connection with which he has reasonable ground for suspecting that an offence under this Act has been or is about to be committed.

(2) Where is appears to a police-officer, not being below the rank of Superintendent, that the case is one of great emergency, and that in the interests of the state immediate action is necessary, he may by a written order under his hand give to any police-officer the like authority as may be given by the warrant of a Magistrate under this section.

(3) Where action has been taken by a police-officer under sub-section (2) he shall, as soon as may be, report such action, in a Presidency town to the Chief Presidency Magistrate, and outside such town to the District or Sub-divisional Magistrate.

Power to arrest.

*12. Notwithstanding anything in the Code of Criminal Procedure, 1898,—

(*a*) an offence punishable under section 3 or under section 3 read with

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SEC. 9.—*Cf.* sec. 7 of 10 and 11 Geo. V, c. 75.

SEC. 10.—*Cf.* sec. 7 of 1 and 2 Geo. V, c. 28.

SEC. 11.—*Cf.* sec. 9 of 1 and 2 Geo. V, c. 28.

SEC. 12.—*Cf.* sec. 6 of 1 and 2 Geo. V, c. 28.

*N.B.—"Sec. 12 of the Indian Official Secrets Act, 1923, shall have effect as if after clause (*a*) the following clause had been inserted:—Namely "(*aa*) an offence under sec. 5 shall be a cognisable and non-bailable offence. (*See* Ordinance XXIII of 1942, cl. 3".

section 9 with imprisonment for a term which may extend to fourteen years shall be a cognizable and non-bailable offence;

(*b*) an offence under clause (*a*) of sub-section (1) of section 6 shall be a cognizable and bailable offence; and

(*c*) every other offence under this Act shall be a non-cognizable and bailable offence, in respect of which a warrant of arrest shall ordinarily issue in the first instance.

Restriction on trial of offences.

13. (1) No Court (other than that of a Magistrate of the first class specially empowered in this behalf by the [1][appropriate Government]) which is inferior to that of a District or Presidency Magistrate shall try any offence under this Act.

(2) If any person under trial before a Magistrate for an offence under this Act at any time before a charge is framed claims to be tried by the Court of Session, the Magistrate shall, if he does not discharge the accused, commit the case for trial by that Court, notwithstanding that it is not a case exclusively triable by that Court.

(3) No Court shall take cognizance of any offence under this Act unless upon complaint made by order of, or under authority from, the [2][appropriate Government] [3][* * *] or some officer empowered by the [2][appropriate Government], in this behalf:

Provided that a person charged with such an offence may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that such complaint has not been made, but no further or other proceedings shall be taken until such complaint has been made.

(4) For the purposes of the trial of a person for an offence under this Act, the offence may be deemed to have been committed either at the place in which the same actually was committed or at any place in British India in which the offender may be found.

[4][(5) In this section, the appropriate Government means—

(*a*) in relation to any offences under section 5 not connected with a prohibited place or with a foreign power, the Provincial Government; and

(*b*) in relation to any other offence, the Central Government.]

Exclusion of public from proceedings.

14. In addition and without prejudice to any powers which a Court may possess to order the exclusion of the public from any proceedings, if, in the course of proceedings before a Court against any person for an offence under this Act or the proceedings on appeal, or in the course of the trial of a person, under this Act, application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the safety of the State, that all or any portion of the public shall be excluded during any part of the hearing. the Court may make an order to that effect, but the passing of sentence shall in any case take place in public.

LEG. REF.

[1] Substituted for 'Local Government' by A.O., 1937.

[2] Substituted for 'Governor-General in Council, by *ibid.*

[3] Words "the Local Government" omitted by *ibid.*

[4] Sub-sec. (5) of sec. 13 inserted by A.O., 1937.

SEC. 13.—*Cf.* sec. 10 (3) of 1 and 2 Geo. V, c. 28.

SEC. 13 (3).—*Cf.* sec. 3 of 1 and 2 Geo. V, c. 28.

15. Where the person guilty of an offence under this Act is a company or corporation, every director and officer of the company or corporation with whose knowledge and consent the offence was committed shall be guilty of the like offence.

Offences by companies, etc.

Repeals.

16. [*Repealed by Act XII of* 1927.]

THE OFFICIAL TRUSTEES ACT (II OF 1913).[1]

Year.	No.	Short title.	Amendments.
1913	II	The Official Trustees Act.	Repealed in part, V of 1917; XII of 1927 Amended, X of 1914; XVIII of 1919; XXI of 1922.

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LEG. REF.

[1] For Statement of Objects and Reasons, see *Gazette of India*, 1912, Pt. V, p. 202; for Report of Select Committee, see *ibid.*, 1913, Pt. V, pp. 19; and for the Proceedings in Council, see *ibid.*, 1912, Pt. VI, p. 699 and *ibid.*, 1913, Pt. IV, pp. 15 and 28.

THE OFFICIAL TRUSTEES ACT (II OF 1913).

[27*th February*, 1913.

An Act to consolidate and amend the law constituting the office of Official Trustee.

WHEREAS it is expedient to consolidate and amend the law constituting the office of the Official Trustee; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title, extent and commencement.

1. (1) This Act may be called THE OFFICIAL TRUSTEES ACT, 1913.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas, and applies also to all [1][British subjects in Indian States].

(3) It shall come into force on such date[2] as the Central Government by notification in the Official Gazette may direct.

Interpretation clause.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) [1]['Government' or 'the Government' means in relation to any Province, the Provincial Government, and, in relation to British subjects in Indian States, the Central Government.]

[1][(2) "High Court" means—

(*a*) in relation to Bengal, Assam, and the Andaman and Nicobar Islands, the High Court at Calcutta;

(*b*) in relation to Madras and Coorg, the High Court at Madras;

(*c*) in relation to Bombay and British Baluchistan, the High Court at Bombay;

(*d*) in relation to the United Provinces and Ajmer-Merwara, the High Court at Allahabad;

(*e*) in relation to the Punjab and Delhi, the High Court at Lahore;

(*f*) in relation to the Provinces of Bihar and Orissa, the High Court at Patna;

(*g*) in relation to the Central Provinces and Berar, the High Court at Nagpur;

(*h*) in relation to Sind, the Judicial Commissioner's Court;

(*i*) in relation to the North-West Frontier Province, the Judicial Commissioner's Court;

(*j*) in relation to British subjects in any Indian State, that one of the aforesaid Courts which the Central Government may from time to time notify in this behalf.]

(3) [2][*Omitted.*]

(4) "Prescribed" means prescribed by rules under this Act.

(5) [2][*Omitted.*]

(6) [2][*Omitted.*]

(7) [2][*Omitted.*]

LEG. REF.

[1] Substituted by A.O., 1937.

[2] The 1st April, 1914, see *Gazette of India*, 1914, Pt. I, p. 365.

[1] Paras. (3), (5), (6) and (7) omitted by A.O., 1937.

SEC. 1.—Official Trustee is not an officer of the Court within the meaning of R. 13 of Part II of the Bombay Original Side Rules, 30 Bom.L.R. 177=1928 B. 69. Official Trustee cannot be appointed guardian of the property of a minor. (*Ibid.*). The provisions of this Act override S. 6 of the Married Woman's Property Act. 41 C. W.N. 517=1937 Cal. 379=I.L.R. (1937) 2 Cal. 67. As to the effect of appointing official trustee as receiver. *See* I.L.R. (1942) M. 933=55 L.W. 433=(1942) 2 M. L.J. 115=1942 M. 670.

[1][(8) 'Division' means the Province or State or group of States for which an Official Trustee has been appointed under this Act.]

Extent of jurisdiction of High Courts.

3. For the purposes of this Act the High Court [2][* * *] shall have jurisdiction throughout the [3]Division[.

PART II.

THE OFFICE OF OFFICIAL TRUSTEE.

Official Trustees.

4. [4][(1) The Provincial Government for each Province, and the Central Government for British subjects in any Indian State or group of Indian States, shall appoint an Official Trustee,

Provided that nothing herein contained shall be deemed to bar the appointment of the same person as Official Trustee for two or more Divisions.]

(2) No person shall be appointed to the office of Official Trustee [5][* *] who is not—

(*a*) a Barrister; or

(*b*) an Advocate, Attorney or Vakil enrolled by a High Court; or

(*c*) a person holding the office of Deputy Administrator-General at the commencement of this Act; [6][or

(*d*) in the case of a Province other than Bengal, Madras or Bombay a person already in the service of the Crown.]

[7][* * * * * *]

Appointment and powers of Deputy Official Trustee.

5. The Government may appoint a Deputy or Deputies to assist the Official Trustee; and any Deputy so appointed shall, subject to the control of the Government and the general or special orders of the Official Trustee, be competent to discharge any of the duties and exercise any of the powers of the Official Trustee, and when discharging such duties or exercising such powers, shall have the same privileges and be subject to the same liabilities as the Official Trustee.

Official Trustee to be corporation sole, to have perpetual succession and official seal, and to sue and be sued in his corporate name.

6. The Official Trustee shall be a corporation sole by the name of the Official Trustee of the [8][Division] for which he is appointed and, as such Official Trustee, shall have perpetual succession and an Official seal, and may sue and be sued in his corporate name.

PART III.

RIGHTS, POWERS, DUTIES AND LIABILITIES OF OFFICIAL TRUSTEE.

General powers and duties of Official Trustee.

7. (1) Subject to, and in accordance with, the provisions of this Act and the rules made thereunder, the Official Trustee may, if he thinks fit,—

LEG. REF.

[1] Inserted by A.O., 1937.

[2] The words "at a Presidency-town" omitted by *ibid.*

[3] Substituted by *ibid.* for "Presidency".

[4] Substituted by *ibid.*, for the original sub-section.

[5] The words "of any of the said Presidencies" omitted by *ibid.*

[6] Inserted by *ibid.*

[7] Sub-section (3) omitted by *ibid.*

SECS. 4 AND 8.—A testator cannot appoint the Official Trustees as executor of his will; and if so appointed, he will not be entitled, by virtue of his office and as in the name of the Official Trustee, to have a grant of probate. 7 I.C. 247.

SECS. 6 AND 7.—Official trustee, position of—Suit against, for breaches—Suit against, for breaches in respect of a trust administered by him as an ordinary trustee—Consent of Governor not necessary. *See* 1940 Rang.L.R. 273=1940 Rang. 207.

(*a*) act as an ordinary trustee;

(*b*) be appointed trustee by a Court of competent jurisdiction.

(2) Save as hereinafter expressly provided, the Official Trustee shall have the same powers, duties and liabilities, and be entitled to the same rights and privileges and be subject to the same control and orders of the Court as any other trustee acting in the same capacity.

(3) The Official Trustee may decline, either absolutely or except on such condition as he may impose, to accept any trust.

(4) The Official Trustee shall not accept any trust under any composition or scheme or arrangement for the benefit of creditors nor of any estate known or believed by him to be insolvent.

(5) The Official Trustee shall not, save as provided by any rules made under this Act, accept any trust for a religious purpose or any trust which involves the management or carrying on of any business.

(6) The Official Trustee shall not administer the estate of a deceased person, unless he is expressly appointed sole executor of, and sole trustee under, the will of such person.

(7) The Official Trustee shall always be sole trustee, and it shall not be lawful to appoint the Official Trustee to be trustee along with any other person.

Official trustee may with consent be appointed trustee of settlement by grantor.

8. (1) Any person intending to create a trust other than a trust which the Official Trustee is prohibited from accepting under the provisions of this Act may, by the instrument creating the trust and with the consent of the Official Trustee, appoint him by that name or any other sufficient description to be the trustee of the property subject to such trust:

Provided that the consent of the Official Trustee shall be recited in the said instrument and that such instrument shall be duly executed by the Official Trustee.

(2) Upon such appointment the property subject to the trust shall vest in such Official Trustee, and shall be held by him upon the trusts declared in such instrument.

Appointment of Official Trustee as trustee by will

9. When the Official Trustee has by that name or any other sufficient description been appointed trustee under any will, the executor of the will [1][the testator] or the administrator of his estate shall, after obtaining probate or letters of administration, notify in the prescribed manner the contents of such will to such Official Trustee; and if such Official Trustee consents to accept the trust, then upon the execution by such executor or administrator of an instrument in writing transferring the property subject to the trust to the Official Trustee, such property shall vest in such Official Trustee, and shall be held by him upon the trusts expressed in the said will:

Provided that the consent of the Official Trustee shall be recited in the said instrument and that such instrument shall be duly executed by the Official Trustee.

10. (1) If any property is subject to a trust other than a trust which the

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LEG. REF.

SEC. 8.—*See* 37 C. 387=6 I.C. 973.

SECS. 10 AND 3 (AS AMENDED BY ORDER IN

[1] These words were substituted by Act XVIII of 1919, S. 2 and Sch. I.

Power of High Court to appoint Official Trustee to be trustee of property.

Official Trustee is prohibited from accepting under the provisions of this Act, and there is no trustee within the local limits of the ordinary or extraordinary original civil jurisdiction of the High Court willing or capable to act in the trust, the High Court may, on application, make an order for the appointment of the Official Trustee by that name with his consent to be the trustee of such property.

(2) Upon such order such property shall vest in the Official Trustee and shall be held by him upon the same trusts as the same was held previously to such order, and the previous trustee or trustees (if any) shall be exempt from liability as trustees of such property save in respect of acts done before the date of such order.

(3) Nothing in this section shall be deemed to affect the provisions of the Trustees' and Mortgagees' Powers Act, 1866, or the Indian Trusts Act, 1882.

Power of private trustees to appoint Official Trustee to be trustee of property.

11. (1) If any property is subject to a trust other than a trust which the Official Trustee is prohibited from accepting under the provisions of this Act, and all the trustees or the surviving or continuing trustee or trustees and all persons beneficially interested in the trust are desirous that the Official Trustee shall be appointed in the room of such trustee or trustees, it shall be lawful for such trustee or trustees, by an instrument in writing to appoint the Official Trustee by that name or any other sufficient description with his censent to be the trustee of such property:

Provided that the consent of the Official Trustee shall be recited in the said instrument and that such instrument shall be duly executed by him.

(2) Upon such appointment such property shall vest in the Official Trustee and shall be held by him upon the same trusts as the same was held previously to such appointment, and the previous trustee or trustees shall be exempt from all liability as trustees of such property save in respect of acts done before the date of such appointment.

Executor or administrator may pay to Official Trustee legacy, share, etc., of infant or lunatic.

12. (1) If any infant or lunatic is entitled to any gift, legacy or share of the assets of a deceased person, it shall be lawful for the person by whom such gift is made, or executor or administrator by whom such legacy or share is payable or transferable or any trustee of such gift, legacy or share, to transfer the same by an instrument in writing to the Official Trustee by that name or any other sufficient description with his consent:

Provided that the consent of the Official Trustee shall be recited in the said instrument and that such instrument shall be duly executed by the Official Trustee.

(2) Any money or property transferred to the Official Trustee under this section shall vest in him and shall be subject to the same provisions as are contained in this Act as to other property vested in such Official Trustee.

COUNCIL.)—Under the Provisions of S. 3 as amended by the Order in Council, 1937, and S. 10 of the Official Trustees Act, the High Court of Calcutta has no jurisdiction to appoint the Official Trustee of Bengal as trustee over properties situate within the province of Bihar which is outside the division of Bengal. The amended Act makes it quite plain that Bihar is now not only a separate province but a "Division" which must have an Official Trustee of its own. 42 C. W.N. 942.

Official trustee not to be required to give bond or security.

13. (1) No Official Trustee shall be required by any Court to enter into any bond or security on his appointment in any capacity under this Act.

(2) No Official Trustee or Deputy Official Trustee shall be required to verify otherwise than by his signature any petition presented by him under the provisions of this Act, and if the facts stated in any such petition are not within the Official Trustee's personal knowledge, the petition may be verified and subscribed by any person competent to make the verification.

Entry of Official Trustee not to constitute notice of a trust.

14. The entry of the Official Trustee by that name in the books of a company shall not constitute notice of a trust; and a company shall not be entitled to object to enter the name of the Official Trustee on its register by reason only that the Official Trustee is a corporation; and, in dealing with property, the fact that the person dealt with is the Official Trustee shall not of itself constitute notice of a trust.

Liability of Government.

15. (1) The revenues of the Government [1][* *] shall be liable to make good all sums required to discharge any liability which the Official Trustee, if he were a private trustee, would be personally liable to discharge, except when the liability is one to which neither the Official Trustee nor any of his officers has in any way contributed or which neither he nor any of his officers could by the exercise of reasonable diligence have averted, and in either of those cases the Official Trustee shall not, nor shall the revenues [2][of the Government] [3][* * *] be subject to any liability.

(2) Nothing in sub-section (1) shall be deemed to render the revenues [2][of the Government] [3][* * * *] or any Official Trustee appointed under this Act liable for anything done by or under the authority of any Official Trustee before the commencement of this Act.

Notice of suit not required in certain cases.

16. Nothing in section 80 of the Code of Civil Procedure, 1908, shall apply to any suit against the Official Trustee in which no relief is claimed against him personally.

PART IV.

FEES.

Fees.

17. (1) There shall be charged in respect of the duties of the Official Trustee such fees, whether by way of percentage or otherwise, as the Government may prescribe:

Provided that in the case of a trust accepted by the Official Trustee before the commencement of this Act the fees prescribed under this section shall not exceed the fees leviable in respect of such trust under the Official Trustees Act, 1864, as subsequently amended.

(2) The fees under this section may be at different rates for different properties or classes of properties or for different duties, and shall, so far as may be, be arranged so as to produce an amount sufficient to discharge the salaries and all other expenses incidental to the working of this Act (including such sum as Government may determine to be required to insure the revenues of the Government [4][* *] against loss under this Act).

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[1] The words "of India" were omitted by Act XXI of 1922, S. 3.

[2] The words "of the Government or" were inserted by ibid.

[3] The words "or of the Government of India" omitted by A.O., 1937.

[4] The words "of India" were omitted by Act XXI of 1922, S. 4.

Disposal of fees.

18. (1) All expenses which might be retained or paid out of the trust fund, if the Official Trustee were a private trustee, shall be so retained or paid, and any fees leviable under this Act shall be retained or paid in like manner as and in addition to such expenses.

(2) The Official Trustee shall transfer and pay to such authority and in such manner and at such times as the Government may prescribe, all fees received by him under this Act, and the same shall be carried to the account and credit of the Government [1][* *].

PART V.

AUDIT.

Auditors to be appointed to examine Official Trustee's accounts, etc., and to report to Government.

19. (1) The accounts of the Official Trustees shall be audited at least once annually and at any other time if the Government so direct by the prescribed person and in the prescribed manner.

(2) The auditor shall examine such accounts and shall forward to Government a statement thereof in the prescribed form, together with a report thereon and a certificate signed by him showing—

(*a*) whether the accounts contain a full and true account of everything which ought to be contained therein, and

(*b*) whether the books, which by any rules made under this Act are directed to be kept by the Official Trustee, have been duly and regularly kept, and

(*c*) whether the trust funds and securities have been duly kept and invested and deposited in the manner prescribed by this Act or any rules made thereunder;

or (as the case may be) that such accounts are deficient, or that the Official Trustee has failed to comply with this Act or the rules made thereunder in such respects as may be specified in such certificate.

Auditor's power to summon witnesses and to call for documents.

20. (1) Every auditor shall have the powers of a Civil Court under the Code of Civil Procedure, 1908,—

(*a*) to summon any person whose presence he may think necessary to attend him from time to time, and

(*b*) to examine any person, on oath to be by him administered, and

(*c*) to issue a commission for the examination on interrogatories or otherwise of any person, and

(*d*) to summon any person to produce any document or thing, the producton of which appears to be necessary for the purposes of such audit or examination.

(2) Any person who, when summoned, refuses, or without reasonable cause neglects, to attend or to produce any document or thing or attends and refuses to be sworn, or to be examined shall be deemed to have committed an offence within the meaning of, and punishable under, section 188 of the Indian Penal Code, and the auditor shall report every case of such refusal or neglect to Government.

Cost of audit, etc., how paid.

21. The cost of and incidental to every such audit and examination shall be determined in accordance with rules made by the Government and shall be defrayed in the prescribed manner.

LEG. REF. by Act XXI of 1922, S. 4.

[1] The words "of India" were omitted

Right of beneficiary to inspection and copies of accounts.

22. Every beneficiary under a trust which is being administered by the Official Trustee shall, subject to such conditions and restrictions as may be prescribed, be entitled, at all reasonable times, to inspect the accounts of such trust, and the report and certificate of the auditor and, on payment of the prescribed fee, to be furnished with copies thereof or extracts therefrom, and nothing in the Indian Trusts Act, 1882, shall affect the provisions of this section.

PART VI.

MISCELLANEOUS.

Transfer to Government of accumulations in the hands of Official Trustee.

23. When any moneys payable to a beneficiary under a trust have been in the hands of any Official Trustee for a period of twelve years or upwards whether before or after the commencement of this Act in consequence of the Official Trustee having been unable to trace the person entitled to receive the same, such moneys shall be transferred in the prescribed manner to the account and credit of the Government [1][* *]:

Provided that no such moneys shall be so transferred if any suit or proceeding is pending in respect thereof in any Court.

Mode of proceeding by claimant to recover money so transferred.

24. (1) If any claim is made to any money so transferred and such claim is established to the satisfaction of the prescribed authority, the Government [1][* *] shall pay to the claimant the amount in respect of which the claim is established.

(2) If such claim is not established to the satisfaction of the prescribed authority, the claimant may, without prejudice to his right to take any other proceedings for the recovery of such moneys, apply by petition to the High Court against the [2][Government] and, after taking such evidence as it thinks fit, such Court shall make such order on the petition in regard to the payment of such moneys as it thinks fit and such order shall be binding on all parties to the proceedings:

[3][Provided that nothing in this section affects any option afforded to a claimant by section 179 of the Government of India Act, 1935.]

(3) The Court may further direct by whom all or any part of the costs of such proceedings shall be paid.

Power of High Court to make orders in respect of property vested in Official Trustee.

25. The High Court may make such orders as it thinks fit respecting any trust property vested in the Official Trustee, or in the interest or produce thereof.

Who may apply for order under Act.

26. Any order under this Act may be made, on the application of any person beneficially interested in any trust property or of any trustee thereof.

Order of Court to have effect of a decree.

27. Any order made by a High Court under this Act shall have the same effect as a decree.

General powers of administeration.

28. The Official Trustee may, in addition to and not in derogation of any other powers of expenditure lawfully exercisable by him, incur expenditure—

LEG. REF.

1 The words "of India" were omitted by Act XXI of 1922, S. 4.

2 Substituted by A.O., 1937, for "Secretary of State for India in Council".

3 Inserted by *ibid.*

SEC. 27 —An order made by the High Court under the Official Trustees Act has the same effect as a decree under S. 27 of that Act, and is, therefore, appealable. 42 C.W.N. 942.

(*a*) on such acts as may be necessary for the proper care and mtnagement of any property belonging to any trust administered by him; and

(*b*) with the sanction of the High Court on such religious, charitable and other objects and on such improvements as may be reasonable and proper in the case of such property.

Transfer of trust Property by Official Trustee to orginal trustee or any other trustee.

29. (1) Nothing in this Act shall be deemed to prevent the transfer by the Official Trustee of any property vested in him to—

(*a*) the original trustee (if any); or

(*b*) any other lawfully appointed trustee; or

(*c*) any other person if the Court so directs.

(2) Upon such transfer such property shall vest in such trustee, and shall be held by him upon the same trusts as those upon which it was held prior to such transfer, and the Official Trustee shall be exempt from all liability as trustee of such property except in respect of acts done before such transfer:

Provided that, in the case of any transfer under this section, the Official Trustee shall be entitled to retain out of the property any fees leviable in accordance with the provisions of this Act.

Rules.

30. (1) The Government shall make rules for carrying into effect the objects of this Act and for regulating the proceedings of the Official Trustee in the discharge of his duties.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(*a*) the accounts to be kept by the Official Trustee and the audit and inspection thereof;

(*b*) the safe custody, and deposit of the funds and securities which come into the hands of the Official Trustee;

(*c*) the remittance of sums of money in the hands of the Official Trustee in cases in which such remittances are required.

(*d*) the statements, schedules and other documents to be submitted by the Official Trustee to Government or to any other authority and the publication of such statements, schedules or other documents;

(*e*) the realization of the cost of preparing any such statements, schedules or other documents;

[1][* * * * * *]

(*f*) subject to the provisions of this Act, the fees to be paid thereunder and the collection and accounting for any fees so fixed;

(*g*) the manner in which and the person by whom the costs of and incidental to any audit under the provisions of this Act are to be determined and defrayed;

(*h*) the manner in which summonses issued under the provisions of section 20 are to be served and the payment of the expenses of any persons summoned or examined under the provisions of this Act and of any expenditure incidental to such examination;

(*i*) the acceptance by the Official Trustee of trusts for religious purposes and trusts which involve the management or carrying on of business; and

(*j*) any matter in this Act directed to be prescribed.

(3) Rules made under the provisions of this section shall be published in the Official Gazette, and shall thereupon have effect as if enacted in this Act.

LEG. REF.

[1] Clause (*ee*) which was added by Act X of 1914 repealed by Act V of 1917, S. 6 and Sch.

31. [*Division of Presidency into Provinces.*] *Rep. by the A.O.*, 1937

Savings of provisions of Indian Registration Act 1908.

32. Nothing contained in this Act shall be deemed to affect the provisions of the Indian Registration Act, 1908.

[1][32-A The amendments of this Act which come into force on the commencement of Part III of the Government of India Act, 1935, shall not affect any legal proceedings pending in any Court on that date or be construed as automatically transferring any property from any Official Trustee to any other Official Trustee; but nothing in this section shall be construed as preventing a transfer of any such property in accordance with any of the other provisions of this Act.]

Savings.

Repeals.

[33. *Repealed by Act XII of* 1927.]

THE SCHEDULE.

ENACTMENTS REPEALED.

[*Repealed by the Repealing Act* (*XII of* 1927), *S.* 2 *and Sch.*]

THE PARSI MARRIAGE AND DIVORCE ACT (III OF 1936).

[*Rep. in part by Act XX of* 1937 *and amended by Act XIV of* 1940.]

[23*rd April*, 1936.

An Act to amend the law relating to marriage and divorce among Parsis.

WHEREAS it is expedient to amend the law relating to marriage and divorce among Parsis It is hereby enacted as follows:—

PRELIMINARY.

Short title, extent and commencement.

1. (1) This Act may be called THE PARSI MARRIAGE AND DIVORCE ACT, 1936.

(2) It extends to the whole of British India and, in respect of Parsi subjects of His Majesty, to the whole of India:

Provided that the Central Government may, in respect of territories in India beyond the limits of British India, by notification in the Official Gazette direct that the provisions of this Act relating to the constitution and powers of Parsi Matrimonial Courts, and to appeals from the decisions and orders of such Courts shall apply with such modifications as may be specified in the notification.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette appoint.

LEG. REF.

[1] Inserted by A.O., 1937.

SEC. 1.—The common law of England applies to the Parsis who inhabit the town and island of Bombay. The wife is entitled to pledge her husband's credit and defend herself in any action against her for dissolution of his marriage with her at his cost. The wife's solicitors must secure their costs from the husband before they apply for charging order against her property recovered or preserved in the suit by them. 12 I.C. 554=13 Bom.L.. 920. On this section, *see also* 13 B. 302 (infant marriage among Parsis); 33 B. 509; 22 B. 430.

SEC. 1 (2) —The effect of S. 1 (2) is to extend the Act even to Native States in India in its application to Parsis, provided that the Parsis are subjects of His Majesty I L R. (1941) B 589=43 Bom.L.R. 569 =1941 Bom. 330. The words "*Parsi subjects of His Majesty*" in S. 1 (2) refers to the political status of such subjects as opposed to their civil status. The jurisdiction of the Court therefore depends upon the political status of the Parsi subject, *i.e.*, his nationality and allegiance, and not upon his domicil. A mere change of domicile does not in any way change a Parsi's nationality or

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "Chief Justice" includes senior Judge;

(2) "Court" means a Court constituted under this Act;

(3) to "desert", together with its grammatical variations and cognate expressions, means to desert the other party to a marriage without reasonable cause and without the consent, or against the will, of such party;

(4) "grievous hurt" means—

(*a*) emasculation:

(*b*) permanent privation of the sight of either eye;

(*c*) permanent privation of the hearing of either ear;

(*d*) privation of any member or joint;

(*e*) destruction or permanent impairing of the powers of any member or joint;

(*f*) permanent disfiguration of the head or face; or

(*g*) any hurt which endangers life;

(5) "husband" means a Parsi husband;

(6) "marriage" means a marriage between Parsis whether contracted before or after the commencement of this Act;

(7) a "Parsi" means a Parsi Zoroastrian;

(8) "priest" means a Parsi priest and includes Dastur and Mobed; and

(9) "wife" means a Parsi wife.

II.—MARRIAGES BETWEEN PARSIS.

Requisites to validity of Parsi marriages.

3. No marriage shall be valid if—

(*a*) the contracting parties are related to each other in any of the degrees of consanguinity or affinity set forth in Schedule I; or

(*b*) such marriage is not solemnized according to the Parsi form of ceremony called "Ashirvad" by a priest in the presence of two Parsi witnesses other than such priest; or

(*c*) in the case of any Parsi (whether such Parsi has changed his or her religion or domicile or not) who has not completed the age of twenty-one years, the consent of his or her father or guardian has not been previously given to such marriage.

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his political status. 43 Bom.L.R. 569=I. L.R. (1941) Bom. 589=1941 Bom. 330. As to suit for maintenance by an illegitimate child of a Parsi, *see* I.L.R. (1943) B. 428= 1943 Bom. 338=45 Bom.L.R. 687.

SECS. 2 (2) AND 39.—There is a distinct cleavage of functions under the Parsi Marriage and Divorce Act between the presiding Judge of the Court and the delegates who are appointed to aid him in the adjudication of cases. The word "Court" is promiscuously used throughout the Act, but it cannot be read as including the delegates in all cases. Some confusion has crept into the Act by the use of the word "Court" promiscuously, but under the cleavage of functions under the Act, the word must be read in its context in order to determine whether it includes both the Judge and the delegates or the Judge alone. All interlocutory applications such as those under S. 39, are correctly dealt with by the Judge sitting alone, and an order passed in such applications by the Parsi Matrimonial Judge sitting alone without the delegates cannot be said to be a nullity. 40 Bom.L.R. 50=1938 B. 195. Parsis governed by English Common Law. I.L.R. 1943 B. 428=1943 Bom. 338.

SEC. 3.—See 22 B. 430. A Parsi minor who is over 18 and below 21 years of age is competent to maintain a suit for breach of promise of marriage, where the contract of marriage has been made by the minor's guardian and on the minor's behalf and for the minor's benefit. Such a contract is a perfectly valid one and is enforceable in law by the minor. The benefit to the minor need not be pecuniary or proprietary only. 39 Bom.L.R. 486=1937 Bom. 392.

Re-marriage when unlawful.

4. (1) No Parsi (whether such Parsi has changed his or her religion or domicile or not) shall contract any marriage under this Act or any other law in the lifetime of his or her wife or husband, whether a Parsi or not, except after his or her lawful divorce from such wife or husband or after his or her marriage with such wife or husband has lawfully been declared null and void or dissolved, and, if the marriage was contracted with such wife or husband under the Parsi Marriage and Divorce Act, 1865, or under this Act, except after a divorce, declaration or dissolution as aforesaid under either of the said Acts.

(2) Every marriage contracted contrary to the provisions of sub-section (1) shall be void.

Punishment of bigamy.

5. Every Parsi who during the lifetime of his or her wife or husband, whether a Parsi or not, contracts a marriage without having been lawfully divorced from such wife or husband, or without his or her marriage with such wife or husband having legally been declared null and void or dissolved, shall be subject to the penalties provided in sections 494 and 495 of the Indian Penal Code for the offence of marrying again during the lifetime of a husband or wife.

Certificate and registry of marriage.

6. Every marriage contracted under this Act shall, immediately on the solemnization thereof, be certified by the officiating priest in the form contained in Schedule II. The certificate shall be signed by the said priest, the contracting parties, or their fathers or guardians when they shall not have completed the age of twenty-one years, and two witnesses present at the marriage; and the said priest shall thereupon send such certificate together with a fee of two rupees to be paid by the husband to the Registrar of the place at which such marriage is solemnized. The Registrar on receipt of the certificate and fee shall enter the certificate in a register to be kept by him for that purpose and shall be entitled to retain the fee.

Appointment of Registrar.

7. For the purposes of this Act a Registrar shall be appointed Within the local limits of the ordinary original civil jurisdiction of a High Court, the Registrar shall be appointed by the Chief Justice of such Court, and without such limits, by the Provincial Government. Every Registrar so appointed may be removed by the Chief Justice or Provincial Government appointing him.

Marriage register to be open for public inspection.

8. The register of marriages mentioned in section 6 shall, at all reasonable times, be open for inspection, and certified extracts therefrom shall, on application, be given by the Registrar on payment to him by the applicant of two rupees for each such extract. Every such register shall be evidence of the truth of the statements therein contained.

Copy of certificate to be sent to Registrar-General of Birth, Deaths and Marriages.

9. Every Registrar, except the Registrar appointed by the Chief Justice of the High Court of Judicature at Bombay, shall, at such intervals as the Provincial Government by which he was appointed from time to time directs, send to the Registrar-General of Births, Deaths and Marriages for the territories administered by such

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SECS. 3, 6 AND 8.—The entry in a register maintained according to Ss. 6 to 12 is not in itself one of the requisites for a valid marriage amongst the Parsis. 22 Bom.L. R. 913=45 B. 146=1921 B. 189. Where there is no certificate and no entry in the marriage register, any other relevant evidence is admissible to prove the marriage having taken place. 45 Bom. 146.

SECS. 6 AND 8.—*See* 45 Bom. 146.

Provincial Government a true copy certified by him in such form as such Provincial Government from time to time prescribes, of all certificates entered by him in the said register of marriages since the last of such intervals.

Registration of divorces.

10. When a Court passes a decree for divorce, nullity or dissolution, the Court shall send a copy of the decree for registration to the Registrar of Marriages within its jurisdiction appointed under section 7; the Registrar shall enter the same in a register to be kept by him for the purpose, and the provisions of Part II applicable to the Registrars and registers of marriages shall be applicable, so far as may be, to the Registrars and registers of divorces and decrees of nullity and dissolution.

Penalty for solemnizing marriage contrary to section 4.

11. Any priest knowingly and wilfully solemnizing any marriage contrary to and in violation of section 4 shall, on conviction thereof, be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

Penalty for priest's neglect of requirements of section 6.

12. Any priest neglecting to comply with any of the requisitions affecting him contained in section 6 shall, on conviction thereof, be punished for every such offence with simple imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both.

Penalty for omitting to subscribe and attest certificate.

13. Every other person required by section 6 to subscribe or attest the said certificate who shall wilfully omit or neglect so to do, shall, on conviction thereof, be punished for every such offence with a fine not exceeding one hundred rupees.

Penalty for making, etc., false certificate.

14. Every person making or signing or attesting any such certificate containing a statement which is false, and which he either knows or believes to be false, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both; and if the act amounts to forgery as defined in the Indian Penal Code, then such person shall also be liable on conviction thereof, to the penalties provided in section 466 of the said Code.

Penalty for failing to register certificate.

15. Any Registrar failing to enter the said certificate pursuant to section 6 shall be punished with simple imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Penalty for secreting, destroying or altering register.

16. Any person secreting, destroying, or dishonestly or fraudulently altering the said register in any part thereof, shall be punished with imprisonment of either description as defined in the Indian Penal Code for a term which may extend to two years, or if he be a Registrar, for a term which may extend to five years and shall also be liable to fine which may extend to five hundred rupees.

Formal irregularity not to invalidate marriage.

17. No marriage contracted under this Act shall be deemed to be invalid solely by reason of the fact that it was not certified under section 6, or that the certificate was not sent to the Registrar, or that the certificate was defective, irregular or incorrect.

III.—PARSI MATRIMONIAL COURTS.

Constitution of Special Courts under the Act.

18. For the purpose of hearing suits under this Act, a special Court shall be constituted in each of the Presidency-towns of Calcutta, Madras and Bombay, and in such other places in the territories of the several Provincial Governments as such Governments respectively shall think fit.

Parsi Chief Matrimonial Courts.

19. The Court so constituted in each of the Presidency-towns shall be entitled the Parsi Chief Matrimonial Court of Calcutta, Madras or Bombay as the case may be. The local limits of the jurisdiction of a Parsi Chief Matrimonial Court shall be conterminous with the local limits of the ordinary original civil jurisdiction of the High Court. The Chief Justice of the High Court, or such other Judge of the same Court as the Chief Justice shall from time to time appoint, shall be the Judge of such Matrimonial Court, and, in the trial of cases under this Act, he shall be aided by seven delegates.

Parsi District Matrimonial Courts.

20. Every Court so constituted at a place other than a Presidency-town shall be entitled the Parsi District Matrimonial Court of such place. Subject to the provisions contained in section 21, the local limits of the jurisdiction of such Court shall be conterminous with the limits of the district in which it is held. The Judge of the principal Court of original civil jurisdiction at such place shall be the Judge of such Matrimonial Court, and in the trial of cases under this Act, he shall be aided by seven delegates.

Power to alter territorial jurisdiction of District Courts.

21. The Provincial Government may from time to time alter the local limits of the jurisdiction of any Parsi District Matrimonial Court, and may include within such limits any number of districts under its Government.

Certain districts to be within jurisdiction of the Chief Matrimonial Courts.

22. Any district which the Provincial Government, on account of the fewness of its Parsi inhabitants, shall deem it inexpedient to include within the jurisdiction of any District Matrimonial Court, shall be included within the jurisdiction of the Parsi Chief Matrimonial Court for the territories under such Provincial Government where there is such a Court.

Court seals.

23. A seal shall be made for every Court constituted under this Act, and all decrees and orders and copies of decrees and orders of such Court shall be sealed with such seal, which shall be kept in the custody of the presiding Judge.

Appointment of delegates.

24. (1) The Provincial Governments shall, in the Presidency-towns and districts subject to their respective Governments, respectively appoint persons to be delegates to aid in the adjudication of cases arising under this Act, after giving the local Parsis an opportunity of expressing their opinion in such manner as the respective Governments may think fit.

(2) The persons so appointed shall be Parsis, their names shall be published in the Official Gazette and their number shall, within the local limits of the ordinary original civil jurisdiction of a High Court, be not more than thirty, and in districts beyond such limits, not more than twenty.

SEC. 20.—No trial under the Act can be satisfactory in which a delegate who is to all intents and purposes a member of a jury, cannot understand the proceedings. 43 I.C. 71. A delegate under the Ast is in a similar position to a juror, and cannot be challenged in appeal. 43 I.C. 71. *See also* 1938 Bom. 195=40 Bom.L.R. 50.

Power to appoint new delegates.

25. The appointment of a delegate shall be for ten years; but he shall be eligible for reappointment for the like term or terms. Whenever a delegate shall die, or have completed his term of office, or be desirous of relinquishing his office, or refuse or become incapable or unfit to act, or cease to be a Parsi, or be convicted of an offence under the Indan Penal Code or other law for the time being in force, or be adjudged insolvent, then and so often the Provncial Government may appoint any person being a Parsi to be a delegate in his stead; and the name of the person so appointed shall be published in the Official Gazette.

Delegates to be deemed public servants.

26. All delegates appointed under this Act shall be considered to be public servants within the meaning of the Indian Penal Code.

Selection of delegates under sections 19 and 20 to be from those appointed under section 24.

27. The delegates selected under sections 19 and 20 to aid in the adjudication of suits under this Act, shall be taken under the orders of the presiding Judge of the Court in due rotation from the delegates appointed by the Provincial Government under section 24:

Provided that each party to the suit may, without cause assigned challenge any three of the delegates attending the Court before such delegates are selected and no delegate so challenged shall be selected.

Practitioners in Matrimonial Courts.

28. All legal practitioners entitled to practice in a High Court shall be entitled to practise in any Court constituted under this Act, and all legal practitioners entitled to practise in a District Court shall be entitled to practise in any Parsi District Matrimonial Court constituted under this Act.

Court in which suits to be brought.

29. (1) All suits instituted under this Act shall be brought in the Court within the limits of whose jurisdiction the defendant resides at the time of the institution of the suit.

(2) When the defendant shall at such time have left British India such suit shall be brought in the Court at the place where the plaintiff and defendant last resided together.

(3) In any case, whether the defendant resides in British India or not, such suit may be brought in the Court at the place where the plaintiff resides or at the place where the plaintiff and the defendant last resided together, if such Court, after recording its reasons in writing, grants leave so to do.

IV.—MATRIMONIAL SUITS.

30. In any case in which consummation of the marriage is from natural

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SEC. 29 (3).—The term "resides" is an elastic term and the meaning to be given to it must depend upon the circumstances of the case. It is not essential for the purpose of residence that a person should have a house of his own. If a person resides permanently at a particular place, there can be no doubt that it is his or her residence. But the residence need not necessarily be permanent. It is enough if it is *bona fide*, with an element of continuity about it; it should not be merely casual or for a temporary or passing purpose. 43 Bom.L.R. 569=I.L.R. (1941) Bom. 589=1941 Bom. 330.

SECS. 29 (3) AND 47 (*b*).—An application under O. 13, R. 14 (*a*) of the Original Side Rules of the Madras High Court for revocation of leave granted to a Parsi wife under S. 29 (3) to present her proceedings in the Parsi Chief Matrimonial Court in Madras (High Court), would be incompetent as the remedy could be sought only by way of an appeal under S. 47 (*b*) of the Act from the order granting leave. 1942 Mad. 159=54 L.W. 668=(1941) 2 M.L.J. 935.

SEC. 30.—In March, 1882, the plaintiff and defendant, Parsis, were married according to the rites and ceremonies of their religion. On October, 1882, the plaintiff attained puberty and for 17 months from that time she lived with the defendant in his parent's house, but there was no consummation of

Suits for nullity.

causes impossible, such marriage may, at the instance of either party thereto, be declared to be null and void.

Suits for Dissolution.

31. If a husband or wife shall have been continually absent from his or her wife or husband for the space of seven years, and shall not have been heard of as being alive within that time by those persons who would have naturally heard of him or her, had he or she been alive, the marriage of such husband or wife may, at the instance of either party thereto, be dissolved.

Grounds for divorce.

32. Any married person may sue for divorce on any one or more of the following grounds, namely:—

(*a*) that the marriage has not been consummated within one year after its solemnization owing to the wilful refusal of the defendant to consummate it;

(*b*) that the defendant at the time of the marriage was of unsound mind and has been habitually so up to the date of the suit:

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the marriage. There was no physical defect in either plaintiff or defendant nor any unwillingness in the plaintiff to consummate the marriage; but the defendant had always entertained such hatred and disgust for the plaintiff as to result, in the opinion of the medical experts, in an incurable impotency in the defendant as regards the plaintiff. The delegates unanimously found, on the evidence, that the consummation of this marriage had from its commencement been impossible; because the defendant was from a physical cause, namely, impotency as regards the plaintiff, unable to effect consummation. They also found that there was no collusion or connivance between the parties. *Held*, on this finding, that such impotency *quoad* the plaintiff must be regarded as one of the causes going to make consummation of a marriage impossible under S. 28 of Act XV of 1865, there being nothing in the Act to suggest a contrary opinion. 16 B. 639. *See also* 17 B. 146 (150).

Under the common law of England, by which the Parsis are governed, an illegitimate child of a parsi male is not legally entitled to claim maintenance from his or her putative father by suit, the only remedy being the statutory remedy provided by S. 488, Cr.P. Code. Apart from this statutory liability, a Parsi putative father cannot be legally held liable to pay maintenance to his illegitimate child. Hence no suit in a Civil Court by the illegitimate child lies for recovery of such maintenance from the putative father. I. L. R. (1943) B. 428=45 Bom.L.R. 687=1943 B. 338.

SEC. 32: SECOND MARRIAGE AFTER THE ACT BUT BEFORE IT CAME INTO OPERATION.—A Parsi residing in Bombay, after the passing of Act XV of 1865, but before it came into operation, contracted a second marriage, during the lifetime of his first wife, from whom he had not been divorced, and whom he, moreover, wilfully deserted for two years. On appeal from an order by the Judge of the Parsi Chief Matrimonial Court, rejecting a plaint for divorce by the first wife, on the ground that the subject-matter of the plaint did not constitute a cause of action, under S. 30 of Act XV of 1865. *Held*, that the facts alleged in the plaint did not amount to "bigamy coupled with adultery," nor to "adultery coupled with wilful desertion," within the meaning of S. 30 of Act XV of 1865; as a second marriage contracted by a Parsi husband during the lifetime of his first wife, was not unlawful before the Act came into operation; nor did the provisions of the Act in any way affect the validity or the consequences of such a marriage. 3 Bom.H.C.R. (A.C.J.) 113. *See also* 1936 Bom. 442=60 B. 868=38 Bom. L.R. 836.

PROCEDURE.—In a suit by a husband for divorce under S. 30 of the Parsi Marriage Act, XV of 1865, the defendant, if under the age of 21 years, although more than 18, must be deemed to be a minor, and a guardian for the suit of the defendant must be appointed. 18 B. 366. *See also* 22 B. 430 (435); 16 B. 136; 18 B. 366; 3 B.H.C. (A.C.) 113; 22 B. 430.

SEC. 32 (*b*) PROVISO.—The conditions laid down in the proviso to S. 32 (*b*) are cumulative and both of them have to be fulfilled before a plaintiff can maintain a suit for divorce on the ground that the defendant at the time of the marriage was of unsound mind and has been habitually so up to the date of the suit; the plaintiff must therefore show that he was ignorant of his spouse's unsoundness of mind at the date of the marriage, and secondly, that the suit has been brought within three years, not from the date of his knowledge of his wife's unsoundness but within three years from the date of the marriage. 1938 B. 65=39 Bom. L.R. 1146.

Provided that divorce shall not be granted on this ground, unless the plaintiff (1) was ignorant of the fact at the time of the marriage, and (2) has filed the suit within three years from the date of the marriage;

(*c*) that the defendant was at the time of marriage pregnant by some person other than the plaintiff:

Provided that divorce shall not be granted on this ground, unless (1) the plaintiff was at the time of the marriage ignorant of the fact alleged, (2) the suit has been filed within two years of the date of marriage, and (3)[1] marital intercourse has not taken place after the plaintiff came to know of the fact;

(*d*) that the defendant has since the marriage committed adultery or fornication or bigamy or rape or an unnatural offence:

Provided that divorce shall not be granted on this ground, if the suit has been filed more than two years after the plantiff came to know of the fact;

(*e*) that the defendant has since the marriage voluntarily caused grievous hurt to the plaintiff or has infected the plaintiff with venereal disease or, where the defendant is the husband. has compelled the wife to submit herself to prostitution:

Provided that divorce shall not be granted on this ground if the suit has been filed more than two years (*i*) after the infliction of the grievous hurt, or (*ii*) after the plaintiff came to know of the infection, or (*iii*) after the last act of compulsory prostitution;

(*f*) that the defendant is undergoing a sentence of imprisonment for seven years or more for an offence as defined in the Indan Penal Code:

Provided that divorce shall not be granted on this ground, unless the defendant has prior to the filing of the suit undergone at least one year's imprisonment out of the said period;

(*g*) that the defendant has deserted the plaintiff for at least three years;

(*h*) that a decree or order for judicial separation has been passed against the defendant, or an order has been passed against the defendant by a Magistrate awarding separate maintenance to the plaintiff, and the parties have not had marital intercourse for three years or more since such decree or order;

(*i*) that the defendant has failed to comply with a decree for restitution of conjugal rights for a year or more; and

(*j*) that the defendant has ceased to be a Parsi:

Provided that divorce shall not be granted on this ground if the suit has been filed more than two years after the plaintiff came to know of the fact.

SEC. 32 (*g*).—A wife suing her husband for dissolution of marriage on the ground of desertion under S. 32 (*g*) has to prove (*a*) that she has been deserted by the defendant for at least three years, and (*b*) that she has been deserted without reasonable cause and without her consent or against her will. Desertion under S. 32 (*g*) read with S. 2 (3) of the Act, in its essence, is the abandonment of one spouse by the other with the intention of breaking off matrimonial relations between them, and thereby bringing the cohabitation to an end. The question of desertion cannot be decided merely by enquiring which party left the matrimonial home first. It is the party who by his or her conduct brings the cohabitation to an end that is guilty of desertion. 1938 Bom. 86=39 Bom.L.R. 1141. A Parsi husband left his wife with his kit after a quarrel evidently with no intention of returning to her. Subsequently he came to an arrangement with her whereby he took his meals and tea with her for a fixed monthly payment, but he never stayed with her to spend his nights nor treated her as his wife. *Held*, that the husband visited his wife not as her husband but only as a boarder, and hence the desertion by the husband of his wife did not terminate and relation of husband and wife were not revived by the arrangement. 47 Bom.L.R. 819=1946 B. 211.

SEC. 32 (*j*).—A wife suing her husband for dissolution of marriage on the ground set forth in S. 32 (*j*) has the burden of proof on her. In order to succeed she must prove that her husband had ceased to be a

Joining of co-defendant.

33. In every such suit for divorce on the ground of adultery, the plaintiff shall, unless the Court shall otherwise order, make the person with whom the adultery is alleged to have been committed a co-defendant, and in any such suit by the husband, the Court may order the adulterer to pay the whole or any part of the costs of the proceedings.

Suits for judicial separation.

34. Any married person may sue for judicial separation on any of the grounds for which such person could have filed a suit for divorce, or on the ground that the defendant has been guilty of such cruelty to him or her or their children, or has used such personal violence, or has behaved n such a way as to render it in the judgment of the Court improper to compel him or her to live with the defendant.

Decrees in certain suits.

35. In any suit under section 30, 31, 32 or 34, whether defended or not if the Court be satisfied that any of the grounds set forth in those sections for granting relief exist, that none of the grounds therein set forth for withholding relief exist and that—

(*a*) the act or omission set forth in the plaint has not been condoned;

(*b*) the husband and wife are not colluding together;

(*c*) the plaintiff has not connived at or been accessory to the said act or omission:

(*d*) (save where a definite period of limitation is provided by this Act) there has been no unnecessary or improper delay in instituting the suit; and

(*e*) there is no other legal ground why relief should not be granted;

Parsi Zoroastrian and that she has filed the suit within two years after she came to know of the fact that the defendant, her husband, had ceased to be a Parsi. A mere doubt or suspecion will not suffice. It is enough for the plaintiff to prove that her husband had ceased to be a Parsi Zoroastrian during their married lives. It is not necessary to prove that the defendant continues to be a non-Parsi till the date of the suit or for any particular period of time. It is not consequently open to the defendant in such a suit to show that he had become a Parsi Zoroastrian again, either when the suit was filed or before the hearing. 1938 Bom. 68=39 Bom.L.R. 1143.

SEC. 34.—The Bombay High Court, if can grant an order of judicial separation between a Parsi husband and wife. *See* 38 B. 616=16 Bom.L.R. 211. The Parsi Matrimonial Court has exclusive jurisdiction to entertain suits concerning matrimonial disputes among Parsis. 38 B. 615. On this section, *see also* 13 Bom.L.R. 920=12 I.C. 554. Adultery of the petitioner is a legal ground on which the Court can refuse the petition for divorce. 10 Bom.L.R. 1019. "Cruelty" in S. 34 means legal cruelty as understood in English law, namely, injury causing danger to life or limb or health, or reasonable apprehension of such injury. Such cruelty need not necessarily be physical violence. It may even consist in a course of harsh conduct pursued by the husband towards his wife or their children, and also *vice versa* by the wife; and even a single act of gross cruelty may be enough to constitute legal cruelty, if it is such as to lead to a reasonable apprehension of further acts of cruelty towards the aggrieved party. I. L.R. (1938) Bom. 75=1938 Bom. 81=39 Bom. L.R. 1138. In order to constitute a ground for judicial separation there must be not merely improper behaviour, but behaviour of such a nature as to make it improper for husband and wife to live together in future. What has to be considered is the course of conduct of the parties towards each other during their married lives and whether the plaintiff has shown just and lawful grounds not only for living separately from his or her spouse, but for asking for a decree of the Court for judicial separation. It is not enough to say merely that it would not be possible for the parties to live happily together hereafter. The Court has to be satisfied that the causes of disagreement between the husband and wife are grave and weighty, and such as to show an absolute moral impossibility that the duties of married life can be discharged. In determining what is moral impossibility the Court should take into consideration the feelings and customs of the community to which the parties belong. I.L.R. (1938) Bom. 75=39 Bom. L.R. 1138=1938 Bom. 81.

SEC. 35.—*See* 1936 Bom. 442=38 Bom. L.R. 836=60 Bom. 868.

then and in such case, but not otherwise, the Court shall decree such relief accordingly.

Suit for restitution of conjugal rights.

36. Where a husband shall have deserted or without lawful cause ceased to cohabit with his wife, or where a wife shall have deserted, or without lawful cause ceased to cohabit with her husband, the party so deserted or with whom cohabitation shall have so ceased may sue for the restitution of his or her conjugal rights and the Court, if satisfied of the truth of the allegations contained in the plaint, and that there is no just ground why relief should not be granted, may proceed to decree such restitution of conjugal rights accordingly.

Counter-claim by defendant for any relief.

37. In any suit under this Act, the defendant may make a counter-claim for any relief he or she may be entitled to under this Act.

No suit to be brought to enforce marriage or contract arising out of marriage when husband is under sixteen years or wife under fourteen years.

38. Notwithstanding anything hereinbefore contained no suit shall be brought in any Court to enforce any marriage or any contract connected with or arising out of any marriage, if, at the date of the institution of the suit the husband shall not have completed the age of sixteen years, or the wife shall not have completed the age of fourteen years.

Alimony pendente lite.

39. In any suit under thsi Act if the wife shall not have an independent income sufficient for her support and the necessary expenses of the suit, the Court, on the application of the wife, may order the husband to pay her monthly or weekly during the suit such sum not exceeding one fifth of her husband's net income as the Court, considering the circumstances of the parties, shall think reasonable.

SEC. 36.—*See* 2 Bom.L.R. 845. A decree for restitution of conjugal rights under the Act is enforceable only in the manner provided in S. 36 of the Act; such provision is in substitution of, and not in addition to, the ordinary remedies provided by the Code of Civil Procedure. 9 Bom.H.C.R. (A.C.J.) 290.

SEC. 39.—S. 39 applies merely to orders pending the suit and the payments are merely payments during the suit. It does not limit or qualify the liability of the husband to the wife's solicitors. 12 I.C. 554=13 Bom.L.R. 920. The table of fees of the High Court contemplates merely party costs between the parties to a Parsi Matrimonial suit and does not relate to the rights of the wife's solicitors to recover their attorney and client's costs from the husband. 13 Bom.L.R. 920. A wife sued her husband for judicial separation in the Parsi Matrimonial Court. Alimony was ordered to be paid by an order dated 11th July, 1891, which directed the defendant to pay alimony to her from the 15th April, 1891, "until the final decree herein be passed." On the 18th July, 1891, the suit was dismissed, and after that date the defendant ceased to pay alimony. The plaintiff obtained a rule for review of judgment, which was discharged on the 27th January, 1892, and on the 18th March, 1892, she filed an appeal against the decree dismissing the suit and against the order refusing a review. She now applied for an order directing the defendant to pay her all the arrears of alimony "*pendente lite*" from the date of filing the suit or so much as had not been paid, and further alimony until the disposal of the appeal. *Held*, dismissing the application, that the words "final decree herein" in the order of the 11th July, 1891, by which alimony was granted, meant the decree in the suit and not in the appeal, that the Parsi Matrimonial Court constituted under Act XV of 1865 had no power to award alimony "*pendente lite*" after decree and pending appeal and that an unsuccessful wife is not entitled to claim alimony after final decree and pending appeal, nor for the period during which she is seeking review of judgment. 17 B. 146. Whether a Court where a petition for review is pending before it has a discretion to allow or continue alimony "*pendente lite*", *see* 17 B. 146. The words "during the suit" in S. 33 of Act XV of 1865 include the period up to the making of a final or absolute decree. *Ellis* v. *Ellis*, 8 P.D. 188 and *Dunn* v. *Dunn*, 13 P.D. 91, should guide the practice of the Parsi Matrimonial Court in allotment of alimony for the time following a decree *nisi*. 17 B. 146. Jurisdiction—"Court"—Application under S. 39—Jurisdiction to hear—Judge alone

Permanent alimony.

40. (1) The Court may, if it shall think fit at the time of passing any decree under this Act or subsequently thereto on application made to it for the purpose, order that the husband shall [1][while the wife remains chaste and unmarried]—

(*a*) to the satisfaction of the Court, secure to the wife [2][* *] such gross sum or such monthly or periodical payment of money for a term not exceeding her life as, having regard to her own property, if any, her husband's ability and the conduct of the parties, shall be deemed just, and for that purpose may require a proper instrument to be executed by all necessary parties and suspend the pronouncing of its decree until such instrument shall have been duly executed, or

(*b*) make such monthly payments to the wife for her maintenance and support as the Court may think reasonable.

In case any such order shall not be obeyed by her husband, it may be enforced in the manner provided for the execution of decrees and orders under the Code of Civil Procedure, 1908, and further the husband may be sued by any person supplying the wife with necessaries during the time of such disobedience for the price of such necessaries.

(2) The Court, if satisfied that there is a change in the circumstances of either party at any time, may at the instance of either party vary, modify or rescind such order in such manner as the Court may deem just.

[3][(3) Where an order for alimony or maintenance in favour of a wife has been made either under the provisions of the Parsi Marriage and Divorce Act, 1865, or under the provisions of this Act, the Court, if satisfied that the wife has re-married or has not remained chaste, shall vary or rescind the order.]

Payment of alimony to wife or to her trustee.

41. In all cases in which the Court shall make any decree or order for alimony it may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the Court, and may impose any terms or restrictions which to the Court may seem expedient, and may from time to time appoint a new trustee, if for any reason it shall appear to the Court expedient so to do.

Disposal of joint property.

43. In any suit under this Act the Court may make such provisions in the final decree as it may deem just and proper with respect to property presented at or about the time of marriage which may belong jointly to both the husband and wife.

Suits may be heard with closed doors.

43. In every suit preferred under this Act, the case shall be tried with closed doors should such be the wish of either of the parties.

LEG. REF.

[1] Inserted by Act XIV of 1940.

[2] The words "while she remains chaste and unmarried" were omitted by *ibid.*

[3] Added by *ibid.*

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can hear and it is not necessary for the Judge to sit with the delegates. *See* 40 Bom.L.R. 50=1938 B. 195.

SEC. 40.—Personal order for alimony—Re-marriage of wife does not necessarily operate as cessation of order. *See* I.L.R. (1938) Bom. 280=40 Bom.L.R. 195=1938 Bom. 218. A Parsi wife is incompetent to enter into a contract with her husband after the dissolution of marriage, giving up her claim to future alimony. Such a contract is contrary to public policy and is null and void. An order passed on such consent by the wife giving up her claim to future alimony would not also bind the wife and it does not require to be set aside, before the wife can claim future alimony under S. 40. 47 Bom.L.R. 514=1945 B. 537. Decree for dissolution of marriage—Order for alimony at fixed rate per month—Amount not secured—Absence of liberty to apply for variation of amount—Liberty to apply for variation implied—Inherent power of Court to vary for good cause—Re-marriage of wife is good ground for reduction. 60 B. 868 =38 Bom.L.R. 836=1936 B. 442.

Validity of trial.

44. Notwithstanding anything contained in section 19 or section 20, where in the case of a trial in a Parsi Matrimonial Court not less than five delegates have attended throughout the proceedings, the trial shall not be invalid by reason of the absence during any part thereof of the other delegates.

Provisions of Civil Procedure Code to apply to suits under the Act.

45. The provisions of the Code of Civil Procedure, 1908, shall, so far as the same may be applicable, apply to proceedings in suits instituted under this Act including proceedings in execution and orders subsequent to decree.

Determination of question of law and procedure and of fact.

46. In suits under this Act all questions of law and procedure shall be determined by the presiding Judge; but the decision on the facts shall be the decision of the majority of the delegates before whom the case is tried:

Provided that, where such delegates are equally divided in opinion, the decision on the facts shall be the decision of the presiding Judge.

Appeal to High Court.

47. An appeal shall lie to the High Court from—

(*a*) the decision of any Court established under this Act, whether a Chief Matrimonial Court or District Matrimoinal Court, on the ground of the decision being contrary to some law or usage having the force of law, or of a substantial error or defect in the procedure or investigation of the case which may have produced error or defect in the decision of the case upon the merits, and on no other ground; and

(*b*) the granting of leave by any such Court under sub-section (3) of section 29:

Provided that such appeal shall be instituted within three calendar months after the decision appealed from shall have been pronounced.

Liberty to parties to marry again.

48. When the time hereby limited for appealing against any decree granting a divorce or annulling or dissolving a marriage shall have expired, and no appeal shall have been presented against such decree, or when any such appeal shall have been dismissed, or when in the result of any appeal divorce has been granted or a marriage has been declared to be annulled or dissolved, but not sooner, it shall be lawful for the respective parties thereto to marry again, as if the prior marriage had been terminated by death.

V.—CHILDREN OF THE PARTIES.

Custody of children.

49. In any suit under this Act, the Court may from time to time pass such interim orders and make such provisions in the final decree as it may deem just and proper with

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SEC. 44.—*See* 1934 Sind 1=27 S.L.R. 280.

SEC. 45: WIFE'S COSTS IN MATRIMONIAL SUITS.—Under the Common Law, the wife is entitled to pledge her husband's credit and defend herself at his cost in any action that he may file against her for dissolution of his marriage with her. It is not necessary that the wife should be successful in the proceedings. The costs of the wife payable by the husband are not limited to the amount paid into the Court or secured by the husband for that purpose. The solicitors of the wife must make all efforts to secure their costs from their real debtor, the husband, before they can be allowed to apply for a charging order against the wife's property 'recovered or preserved' in the suit through their exertion. 13 Bom.L.R. 920. *See also* 60 Bom. 868=38 Bom.L.R. 836=1936 Bom. 442. As to costs in cases under the Act, *see* 40 Bom.L.R. 195=I.L.R. (1938) Bom. 280= 1938 Bom. 218.

SEC. 47 (*b*).—*See* 1942 M. 159=(1941) 2 M.L.J. 935 cited under S. 29, *supra*.

respect to the custody, maintenance and education of the children under the age of sixteen years, the marriage of whose parents is the subject of such suit, and may, after the final decree upon application, by petition for this purpose, make, revoke, suspend or vary from time to time all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such final decree or by interim orders in case the suit for obtaining such decree were still pending.

Settlement of wife's property for benefit of children.

50. In any case in which the Court shall pronounce a decree of divorce or judicial separation for adultery of the wife, if it shall be made to appear to the Court that the wife is entitled to any property either in possession or reversion, the Court may order such settlement as it shall think reasonable to be made of any part of such property, not exceeding one half thereof, for the benefit of the children of the marriage or any of them.

VI.—MISCELLANEOUS.

Superintendence of High Court.

51. The High Court shall have superintendence over all Courts constituted under this Act subject to its appellate jurisdiction in the same manner as it has over other Courts under section 107 of the Government of India Act, and all the provisions of that section shall apply to such Courts.

Applicability of provisions of the Act.

52. (1) The provisions of this Act shall apply to all suits to which the same are applicable whether the circumstances relied on occurred before or after the passing of this Act, and whether any decree or order referred to was passed under this Act or under the law in force before the passing of this Act, and where any proceedings are pending in any Court at the time of the commencement of this Act, the Court shall allow such amendment of the pleadings as may be necessary as the result of the coming into operation of this Act.

(2) A Parsi who has contracted a marriage under the Parsi Marriage and Divorce Act, 1865, or under this Act, even though such Parsi may change his or her religion or domicile, so long as his or her wife or husband is alive and so long as such Parsi has not been lawfully divorced from such wife or husband or such marriage has not lawfully been declared null and void or dissolved under the decree of a competent Court under either of the said Acts, shall remain bound by the provisions of this Act.

53. [*Repeal.*] *Rep. by the Repealing and Amending Act* (*XX of* 1937). *S.* 3 *and Sch.* II.

SCHEDULE I.

(*See* Section 3.)

Table of prohibited degrees of consanguinity and affinity.

A man shall not marry his—

Paternal grand-father's mother.
2. Paternal grand-mother's mother.
3. Maternal grand-father's mother.
4. Maternal grand-mother's mother.
5. Paternal grand-mother.

SEC. 52.—The relief by way of declaration of nullity of marriage on the ground of unsoundness of mind which was available under S. 27 of Act XV of 1865 has been abrogated under the new Act of 1936, which only gives a right to have the marriage dissolved on the ground of unsoundness of mind provided the suit is brought within three years of the marriage. In view of S. 52 of the new Act, the new Act has to be applied to a suit brought after the new Act, though the circumstances relied on by the plaintiff for relief in the suit actually occurred before the passing of the new Act. 1938 Bom. 65=39 Bom.L.R. 1146.

6. Paternal grand-father's wife.
7. Maternal grand-mother.
8. Maternal grand-father's wife.
9. Mother or step-mother.
10. Father's sister or step-sister.
11. Mother's sister or step-sister.
12. Sister or step-sister.
13. Brother's daughter or step-brother's daughter, or any direct lineal descendant of a brother or step-brother.
14. Sister's daughter or step-sister's daughter, or any direct lineal descendant of a sister or step-sister.
15. Daughter or step-daughter, or any direct lineal descendant of either.
16. Son's daughter or step-son's daughter, or any direct lineal descendant of a son or step-son.
17. Wife of son or step-son, or of any direct lineal descendant of a son or step-son.
18. Wife of daughter's son or of step-daughter's son, or of any direct lineal descendant of a daughter or step-daughter.
19. Mother of daughter's husband.
20. Mother of son's wife.
21. Mother of wife's paternal grand-father.
22. Mother of wife's paternal grand-mother.
23. Mother of wife's maternal grand-father.
24. Mother of wife's maternal grand-mother.
25. Wife's paternal grand-mother.
26. Wife's maternal grand-mother.
27. Wife's mother or step-mother.
28. Wife's father's sister.
29. Wife's mother's sister.
30. Father's brother's wife.
31. Mother's brother's wife.
32. Brother's son's wife.
33. Sister's son's wife.

A woman shall not marry her—

1. Paternal grand-father's father.
2. Paternal grand-mother's father.
3. Maternal grand-father's father.
4. Maternal grand-mother's father.
5. Paternal grand-father.
6. Paternal grand-mother's husband.
7. Maternal grand-father.
8. Maternal grand-mother's husband.
9. Father or step-father.
10. Father's brother or step-brother.
11. Mother's brother or step-brother.
12. Brother or step-brother.
13. Brother's son or step-brother's son, or any direct lineal descendant of a brother or step-brother.
14. Sister's son or step-sister's son, or any direct lineal descendant of a sister or step-sister.
15. Son or step-son, or any direct lineal descendant of either.
16. Daughter's son or step-daugher's son, or any direct lineal descendant of daughter or step-daughter.
17. Husband of daughter or of step-daughter, or of any direct lineal descendant of a daughter or step-daughter.
18. Husband of son's daughter or of step-son's daughter, or of any direct lineal descendant of a son or step-son.
19. Father of daughter's husband.
20. Father of son's wife.
21. Father of husband's paternal grand-father.
22. Father of husband's paternal grand-mother.
23. Father of husband's maternal grand-father.
24. Father of husband's maternal grand-mother.
25. Husband's paternal grand-father.
26. Husband's maternal grand-father.
28. Brother of husband's father
27. Husband's father or step-father.

29. Brother of husband's mother.
30. Husband's brother's son, or his direct lineal descendant.
31. Husband's sister's son, or his direct lineal descendant.
32. Brother's daughter's husband.
33. Sister's daughter's husband.

NOTE.—In the above table the words "brother" and "sister" denote brother and sister of the whole as well as half blood. Relationship by step means relationship by marriages.

SCHEDULE II.

(*See* Section 6.)

Certificate of Marriage.

	Date and place of marriage.
	Names of the husband and Wife.
	Condition at the time of marriage.
	Rank or profession.
	Age.
	Residence.
	Names of the fathers or guardians.
	Rank or profession.
	Signature of the officiating priest.
	Siganatures of the contracting parties.
	Signatures of the fathers or guardians of the contracting parties under 21 years of age.
	Signatures of wittesses.

THE PARTITION ACT (IV OF 1893)[1]

Year.	No.	Short title.	Amendments.
1893	IV	Partition Act.	Repealed in part, X of 1914, Am, Act XIII of 1898.

[1] For Statement of Objects and Reasons, see *Gazette of India*, 1892, Pt. V, p. 46; for Report of the Select Committee, see *ibid.*, 1893, Pt. V, p. 51 and for Proceedings in Council, see *ibid.*, 1893, Pt. VI, pp. 38 and 49.

For Civil Rules of Practice made by the High Court, Madras, under this Act, the Code of Civil Procedure and certain other Acts for observance by the Subordinate Civil Courts of that Presidency, except the Madras Small Cause Court, see *Fort St. George Gazette*, 1905 (Supplement), p. 1. The Act has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act (XIII of 1898), Burma Code.

[*9th March*, 1893.

An Act to amend the Law relating to Partition.

WHEREAS it is expedient to amend the law relating to partition; It is hereby enacted as follows:—

Title, extent and saving.

1. (1) This Act may be called THE PARTITION ACT, 1893:

(2) It extends to the whole of British India; [*]

[1][* * * * *]

(4) But nothing herein contained shall be deemed to affect any local law providing for the partition of immovable property paying revenue to Government.

LEG. REF.

[1] The word "and" at the end of sub-S. (2) and sub-S. (3) repealed by Act X of 1914, S. (3) and Sch. II.

SEC. 1: GENERAL.—A suit for partition determines the shares of the co-sharers *inter se*. 17 C.W.N. 128. The existence of unity of title and of unity of possession is a necessary condition for the maintainability of a suit for partition. 10 Cut.L.T. 66. Decree for partition can be passed in spite of previous partition if the previous one does not conform to the shares of parties. 29 C.W.N. 229=1925 C. 425. In the case of joint property, the presumption is that it is liable to be partitioned. 39 P.L.R. 876. In partition cases, the rights and claims of each party in the matter of possession and improvements effected should be taken into consideration, and possession should be maintained in an equitable manner. 18 Lah.L.T. 10. Preliminary decree for partition—Form and contents. *See* I.L.R. (1941) 2 Cal. 410=1942 Cal. 300. The most ordinary method when one co-sharer has put up buildings on the land is to allot to him for his share a portion of the land which contains his building. When this cannot be done or would not be fair, it may nevertheless be unreasonable and unnecessary to treat such co-sharer exactly as the others. 41 C.W.N. 613=39 Bom.L.R. 748=1937 P.C. 61=(1937) 2 M.L.J. 114 (P.C.). A partition of property can always be made by oral agreement; if the terms of the partition are reduced to writing then the document must be registered; but there is no necessity for any writing whatever in carrying out a partition. (6 L.B.R. 170 and 1931 Cal. 223, Foll.) 164 I.C. 392=1936 Rang. 336. Where it is a part of the arrangement between the parties that a deed of partition should be executed in terms of a partition made orally between them, the oral agreement, so long as the deed is not executed, is not complete so as to be binding upon them. 1936 O.W.N. 1162=1937 Oudh 53. The general rule is that a suit for partition must embrace all the joint properties. But there are certain recognised exceptions to this rule. One of them is that where properties are held jointly by all the co-sharers jointly with strangers who cannot conveniently be added as parties to the suit for partition between members of the joint family, such joint properties should be excluded from partition as forming an exception to the general rule. 40 C.W.N. 1237. A suit for partition of common properties, and not joint properties, is not liable to be dismissed on the ground that the suit does not include all the common properties available for partition. In the case of tenants-in-common or in a case where an award has taken place between several persons, a person who files a suit to enforce the award is not bound to include each and every property that is given under the award. The rule against partial partition which applies to the case of a joint Hindu family does not apply to the case of tenants-in-common, especially when there has been an award by which rights have been created in favour of the parties in specific properties. 41 Bom.L.R. 170=1939 Bom. 114. Apart from the Act, the Court has an inherent power to refuse to divide the property by metes and bounds and to adopt such other means as may appear equitable for effecting a just partition. 1932 M. 15=34 L.W. 730=61 M.L.J. 552. Partition of a house, with a single latrine left for common use. *See* 17 C.P.L.R. 45. On this section, *see also* 52 P.W.R. 1907; 1 I.C. 697. The ordinary rule is that a suit for partition must embrace all joint properties owned by the parties thereto. But there is also the complementary rule that a suit for partition cannot include properties in which each of the parties does not claim an interest. 40 P.L.R. 767=1939 Lah. 34. A previous partition for convenience of possession by itself cannot stand in the way of a decree for partition so long as it is not found that it was in conformity with the shares of the respective parties. (21 C.W.N. 229, Rel. on.) 43 C.W.N. 181=69 C.L.J. 527. The partition proceedings require that the partition should be *chakbat* as far as possible; but if other considerations are more important, the necessity of compactness of the *chaks* will have to be

waived. 1940 R.D. 441=1940 A.W.R. (B.R.) 216. Where there is bitter dispute between groups of co-sharers it is desirable that the plots should be divided up and allotted. The fact that such a course would result in the formation of patties of very small area should not by itself be treated as a ground for refusal of a partition. 1938 R.D. 869. No doubt in a partition suit every party, whether arrayed as a plaintiff or as a defendant, is substantially a plaintiff in the suit and is entitled to a decree, and he can move the Court, on payment of the proper stamp duty, to take steps to put him in possession of the share allotted to him. But if the Court merely passes a final decree in favour of the plaintiffs and directs that they be put in possession of their shares without allotting shares to the defendants, the latter cannot ask that a decree sheet be prepared and on payment of the requisite stamp duty they may be put in possession of the shares allotted to them. Before doing so, they must apply for an amendment of the decree so as to direct that they also be put in possession of their shares. 42 P. L.R. 148=1940 Lah. 202. A partition necessarily affects the interest of a mortgagee of an undivided share, since after the partition his security is upon the divided share or the separate allotment. He may be prejudiced if that share does not receive a proper allotment in severalty, and it is not for the benefit of all other persons interested in the joint property that he should be bound by the allotment. Hence it will in general meet the case if he is allowed to attend and be heard at that stage at which the making of a proper allotment is effected. If, however, the mortgagee has proceeded to a sale pending partition, the purchaser will become a necessary party to the partition suit. I.L.R. (1940) 1 Cal. 255=67 I.A. 11=44 C.W.N. 233=42 Bom.L.R. 331=1940 P.C. 11=(1940) 1 M.L.J. 97 (P.C.). Where in a suit for partition a preliminary decree was passed, the fact that an appeal had been preferred from that decree does not oust the jurisdiction of the trial Court to entertain a petition of compromise and an application for permission to compromise on behalf of the minor defendants. A partition suit in which a preliminary decree has been passed must be deemed to be pending until the passing of the final decree. 12 Luck. 260=1936 Oudh 320. A partition suit in which a preliminary decree has been passed is still a pending suit and the rights of parties who are added after the preliminary decree have to be adjusted at the time of final decree. 67 I.A. 11=I.L.R. (1940) 1 Cal. 255=44 C.W.N. 233=1940 P.C. 11=(1940) 1 M.L.J. 97 (P.C.). If the shares of the defendants are not defined in the preliminary decree, nor is there anything on the record to show that it was intended at any time to define and separate them it is not open to the Court to go beyond the terms of the preliminary decree while framing the final decree and determine the shares of the defendants also. 1944 M.L.R. 102 (Civ.). The Court should direct their partition in the suit itself and give the plaintiff and such of the defandants who may so desire separate allotments of their shares. 48 C.W.N. 759=1044 F.L.J. 231=1944 Cal. 421. An order dismissing a partition suit in default after a preliminary decree has been passed is illegal. The Court cannot, however, ignore that order and take further proceedings in the suit, unless it is set aside in due course of law. An order appointing a commissioner to effect partition cannot be deemed to be tantamount to an order setting aside the dismissal of the suit in default. 162 I.C. 412=1936 Lah. 875. The costs mentioned in the partition proceedings are only an estimate and the liability arises on the date the partition is actually confirmed. The person whose name stands in the khewat on that date is liable in respect of it. 1940 A.W.R. (B.R.) 199=1940 O. W.N. 1043. *See also* 40 C.W.N. 1237. Where there is discrepancy between the partition papers consisting of the *chitta* and the *dole* on the one hand and the partition map on the other, the rule that is to be followed is that the partition papers should prevail over the map in as much as the map simply purports to delineate the plots that are allotted to the co-sharers by the partition papers. 46 C.W.N. 509. Where two persons jointly purchased land but one of them advanced more than his half-share of the purchase-money on the promise of the other person to pay the excess amount, the latter cannot have partition and possession of his half-share without paying the excess amount to the other. 22 L.W. 782=1926 M. 186. Mines—Difficulty and expense of valuation no fround for refusal of partition. 23 Pat. 115=1944 Pat. 261. The fact that property to be partitioned is under attachment under S. 146, Criminal Procedure Code, is no reason why the Commissioner's discretion in making allotments should be fettered. 23 Pat. 115=1944 Pat. 261. Suit for partition—Forum—Land bearing specific number in a *khata khewat* and assessed to land revenue—It could be partitioned only by the Revenue Court. 1944 A. L.W. 292. What amounts to partition—Award directing a partition, if a partition deed—Stamp duty. *See* 101 I.C. 401. As to the method of the preparation of accounts by Commissioner appointed for partition, *see* I.L.R. (1941) 2 Cal. 410=1941 Cal. 300. Receiver's accounts. 1942 Cal. 300.

CONSTRUCTION OF ACT.—The Partition Act must be construed strictly. 1929 A.L.J. 651 =1929 A. 443.

Power to Court to order sale instead of division in partition suits.

2. Whenever in any suit for partition in which, if instituted prior to the commencement of this Act, a decree for partition might have been made, it apepars to the Court that, by reason of the nature of the property to which the suit relates, or of the number of the shareholders therein or of any other special circumstance, a division of the property cannot reasonably or conveniently be made and that a sale of the property, and distribution of the proceeds would be more beneficial for all the shareholders, the Court may, if it thins fit, on the request of any of such shareholders interested individually or collectively to the extent of one moiety or upwards, direct a sale of the property and a distribution of the proceeds.

SECS. 1 (4) AND 2.—Where a mortgagee right in a zamindari property is sought to be partitioned the party to the suit, owning at least a moiety, can request the Court to have the property sold to the highest bidder and to distribute the sale proceeds amongst the sharers. 35 A. 387=19 I.C. 651=11 A.L.J. 534.

SEC. 2: APPLICABILITY—"REQUEST" MEANING OF.—S. 2 authorises the Court to apply S. 2 only on the previous request of the parties. The consent of parties must appear in the record prior to judgment. 1942 N.L.J. 134. Where the request made by the co-sharer is that a sale may be held and that whoever among the co-sharers offers the highest bid may be given the property, the request does not amount to a request under S. 2, and so the provisions of the Act do not apply. 1929 A.L.J. 651=1929 A. 443. Where, on the report of the Official Commissioner recommending a sale, notice is issued to all the parties and the sale is held, it should not be set aside for want of a requisition under S. 2 of the Act, if it is valid otherwise. 142 I.C. 461=1933 S. 40. As to allowing 5 per cent. of purchase-money as solatium to auction-purchaser on setting aside sale, *see* 1933 S. 40. In the absence of a finding that a division of the property cannot reasonably or conveniently be made, action cannot be taken under S. 2 of the Partition Act. 36 P.L.R. 258=1934 L. 965. "Moiety"—meaning of. *See* 1930 Cal. 616=52 C.L.J. 68 =131 I.C. 264.

SCOPE.—Where a suit for partition of property situated in business area of a town is instituted, a prayer that the partition should take place according to the Partition Act can be made at any stage of the litigation where the parties own more than a moiety of the property in dispute. 1930 L. 639. Shareholders of different grades may sue for partition, because the right of partition exists when two persons are in joint possession of land under permanent titles though those titles may not be identical. A shareholder, however small, may sue for partition of the entire property. But an application under S. 2 contemplates a somewhat different set of circumstances. There may be partition as between persons possessing one moiety of the property in the zemindari right and other persons possessing the other moiety in permanent tenancy right. But if there is an application by the tenants representing only the tenant's interest, it would be anomalous if that would give them a right to have a direction from the Court for the sale of the entire property, even though the zamindars were not willing. 52 C.L.J. 68 =1930 C. 616. A claim by a co-owner to partition of a party wall cannot ordinarily be resisted, even where the claim causes inconveinence and difficulty of partition. In the case of a party wall, it is impracticable to take any action under S. 2, Partition Act 1934 L. 893=155 I.C. 223.

IRREGULARITY IN PROCEEDING—*De novo* PROCEEDINGS—PROCEDURE.—Where partition proceedings are badly drawn up, they may be quashed and proceedings started *de novo*, but there should be as little disturbance as possible of any agreement or orders passed in the prior proceedings. 18 R.D. 6=11 O.W.N. 94.

MORTGAGE BY JOINT OWNER PRIOR TO PARTITION—RIGHTS OF MORTGAGEE.—Where the property is joint at the time of the execution of a mortgage by a joint owner, he could only mortgage his undivided share in the property, and such a right is always subject to the right of the other co-owners to effect a partition, and when such partition is carried out, the mortgagee can only enforce his rights against such property as falls to the share of his mortgagor unless he can show that the partition was fraudulent. It is not essential that the mortgagee should have been made a party to the partition proceedings. 1934 L. 809=16 L. 392.

PARTITION DECREE—DELIVERY OF POSSESSION.—In execution of a final decree for partition, *A's* share was delivered, but it was found that *A* could not get actual possession of his share as some huts belonging to other co-sharers were standing on it: *Held*, that Court's order for a fresh delivery of possession by removing the huts was within jurisdiction. 38 C.W.N. 832=1934 C. 793.

SUIT FOR PARTITION,—DUTY OF COURT.—In a suit for partition, it is not incumbent on

3. (1) If, in any case in which the Court is requested under the last fore-

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the Court to effect a partition of the property only if the parties are to abide by the partition or agree to the appointment of a particular person as a local commissioner. 36 P.L.R. 258=1934 L. 965.

SUIT FOR PARTITION—RIGHTS OF DEFENDANTS *inter se*—IF SHOULD BE DECIDED.—It is no doubt usual in partition suits to decide the shares of all the parties. But where the defendants agreed to have a preliminary decree being passed in favour of the plaintiff for partition of his share without their rights being decided, and the preliminary decree was not appealed against, it is not open to the defendants in subsequent proceedings to contend that their rights *inter se* should have been decided. 36 P.L.R. 112=1934 L. 872.

SUBSEQUENT EVENTS.—As to power of Court to take into consideration, *see* 1933 S. 371.

SECS. 2 AND 3: SCOPE AND APPLICATION.—S. 3 comes into play only when a sale has been applied for under S. 2 by a shareholder or shareholders interested to the extent of at least one-half of the property. It is at that stage and before the sale is actually ordered that the right to apply, for leave to buy at a valuation can be exercised under S. 3. But that can be done only by a shareholder other than the large shareholder who applied for sale under S. 2. The effect, curiously enough, is to favour the smaller shareholder at the expense of the larger and that explains why Ss. 2 and 3 have been so strictly construed by the Courts. If a sale is directed under S. 2 and S. 3 does not apply either because the application was not of the nature, or the applicant was not the one specified in the section, then the sale is governed by S. 6, and shareholders and strangers alike may bid at the sale. 34 L.W. 730=61 M.L.J. 552. The provisions of the Act apply to the stage at which the suit is in the Court of first instance. 1923 A 293 (1). The principle underlying S. 2 is that partition ought not to be made, if by partition the intrinsic value of the property would be destroyed. 103 I.C. 367=1927 A. 686. The sale which a Court directing partition can order under the section is only of a complete share, and not a mere portion thereof. 91 I.C. 1009=1926 O. 230. An appellate Court can order sale of property, when the partitioning is inconvenient, provided objection was taken to the mode of partitioning in the trial Court and the mode suggested by the party was disallowed. 33 I.C. 810=14 A.L.J. 35. *See also* 5 C.W.N. 128; 24 M. 639; 32 B. 103. If any party to a decree for partition finds it inconvenient in actual practice, it is open to him to apply under S. 2 of the Act. 20 A.L..J 90=1922 A. 185. *See* 1924 L. 325; 3 Lah.L.J. 102=1921 L. 160 (1)=66 I.C. 885. The proper time to apply under S. 3 is before the Court makes an order under S. 2 and after the request had been made by one of the parties that the property should be sold. 48 M. 920 =49 M.L.J. 411=1925 M. 1234=91 I.C. 516. "Such shareholder" occurring in the latter part of S. 3 (1) must necessarily mean the shareholder who applied for leave to buy. 48 M. 920. *See also* 91 I.C. 516 =1925 M. 1234. Consent order directing sale—Subsequent application claiming to buy property at a valuation—S. 3, if applicable. *See* 91 I C. 516=1925 M. 1234. In a suit by plaintiff for purchase of defendant's share at a valuation by Court, defendant has the option of asking the Court that the plaintiff's share may be sold to him at a valuation fixed by the Court. 97 I.C. 690=1926 C. 1190. Dwelling-house—Reasonably or conveniently partitioned—Application for withdrawal of suit. 47 I.C. 905=16 A.L. J. 584 If, in a suit for partition, there are two parcels of land, one capable of partition, and the other not so capable, the Court can order the sale of the latter. But an order directing the sale of one of the allotments obtained after partition is not within Ss. 2 and 9 of the Act. 49 C. 1043 =36 C.L.J. 217=1923 C. 221. Order for sale—When inappropriate. 96 P.R. 1916 =34 I.C. 587. Any of the parties consenting to a sale under the Act may withdraw his consent, but the withdrawal must be made before the order for sale is made. 62 I.C. 430=13 L.W. 429. Suit for partition—Consent order directing sale—Subsequent application claiming to buy property at a valuation—S. 3 if applies to the case. 48 M. 920=49 M.L.J. 411.

SECS. 2 AND 4.—Unless there is an application under S. 2 or 4 of the Partition Act, the Court has no jurisdiction to impose a forced sale upon the members of a family. If the Court orders a sale without there being an application under S. 2 or without fixing the valuation of the share as required by S. 4, then its order is without jurisdiction rendering it liable to be set aside in revision by the High Court. 1944 Mad. 428=(1944) 1 M.L.J. 296. Where the passage in a dweling-house giving access to the rooms of different co-sharers must perforce be left joint, the property is not susceptible of partition by metes and bounds. 24 I.C. 273 (1)=7 S.L.R. 117. A co-sharer who applies for sale of the property has no right to buy up the shares of other co-shares; the right to buy out is vested in other co-sharers who have not applied for sale. 24 I.C. 273.

SEC. 3.—*See* under S. 2. Where two or more co-sharers apply for leave to buy the

Procedure when sharer undertakes to buy.

going section to direct a sale, any other shareholder applies for leave to buy at a valuation the share or shares of the party or parties asking for a sale, the Court shall order a valuation of the share or shares in such manner as it may think fit and offer to sell the same to such shareholder at the price so ascertained, and may give all necessary and proper directions in that behalf.

(2) If two or more shareholders severally apply for leave to buy as provided in sub-section (1), the Court shall order a sale of the share or shares to the shareholder who offers to pay the highest price above the valuation made by the Court.

(3) If no such shareholder is willing to buy such share or shares at the price so ascertained, the applicant or applicants shall be liable to pay all costs of or incident to the application or a plications.

Partition suit by transferee of share in dwelling-house.

4 (1) Where a share of a dwelling-house belonging to an undivided family has been transferred to a person who is not a member of such family and such transferee sues for partition, the Court shall, if any member of the family being a shareholder shall undertake to buy the share of such transferee, make a valuation of such share in such manner as it thinks fit and direct the sale of such share to such shareholder, and may give all necessary and proper directions in that behalf.

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property, the procedure laid down in S. 3 (2) of the Act must be followed. 103 I.C. 367=1927 A. 686. Court is not authorized to hold a public auction. 40 C.W.N. 955.

SEC. 3 (2).—In order to attract the provisions of S. 3 (2), the application to buy must be made by more than one shareholder as provided in sub-clause (1), that is to say, those shareholders must necessarily be other than the one referred to in S. 2 who had originally made the application asking for a direction of the Court to sell the property and to distribute the proceeds. But if there are only two shareholders, one of whom had applied under S. 2, the other can apply under S. 3 (1) to buy the property at Court valuation. S. 3 (2) has no application to such a case. 45 P.L.R. 419=1944 L. 32.

SEC. 4: CONDITIONS TO BE FULFILLED FOR APPLICATION OF S. 4.—S. 4 should be liberally construed. I.L.R. (1937) Nag. 73=19 N.L.J. 241=1937 Nag. 4. For the application of S. 4, four conditions ought to be fulfilled: (1) The house should be owned by an undivided family; (2) the share of a co-sharer should have been transferred to a stranger to the family; (3) the purchaser should have sued for partition; and (4) a member of the family being a shareholder claims or undertakes to buy the share of the stranger transferee 119 I.C. 523=1929 A. 414. *See also* 34 L.W. 730 =1932 M. 15=61 M.L.J. 552. S. 4, will apply even to a house, a portion of which is already separated owing to one member selling his interest in it. 119 I.C. 523=1929 A. 414. The fact that the purchaser of a share of a dwelling house belonging to an undivided family is not a member of that family is quite sufficient to bring him within the ambit of S. 4 of the Act, although he may be related to the members of that family by blood and may even be an immediate neighbour. 50 C.W.N. 450. The operation of S. 4 comes into play after it is found that a stranger transferee is entitled to partition. In fact no order can be passed under the Act before such a transferee establishes his claim. 90 I.C. 121=1926 C. 95; 39 A. 672=41 I.C. 867. *See also* 15 C.W.N. 555 (Note)=11 I.C. 370. S. 4, lays upon the Court the duty of fixing the valuation of the share which the shareholder purposes to buy in, in such manner as it thinks fit and then to order the sale accordingly. Where an application is made under S. 4 of the Act, the value of the share to be bought in must be fixed by the Court and cannot be put up to auction. 1944 M. 428=(1944) 1 M.L.J. 296. The section must be strictly construed. 15 C. W.N. 555 (Note). *See also* 1937 Nag. 4. The object of S. 4 is to enable the members to buy out an outsider who is a transferee from one of the co-sharers. Ordinarily an application of this kind would be made before a preliminary decree is passed. 46 B. 341=23 Bom.L.R. 1083=1922 B. 121. *See also* 12 C.L.J. 525; 7 C.L.J. 98. An application under S. 4 can be made at any stage of a suit even in an appellate Court; a party in a partition suit whether a plaintiff or a defendant is at the same time a plaintiff as well as a defendant. This dual capacity of a party in a partition suit does not preclude even a defendant who claims a share in the dwellinghouse from being treated as plaintiff for purposes of S. 4. 49 C. L.J. 136=116 I.C. 161=1929 C. 269. *See also* I.L.R. (1937) N. 73=1937 N. 4

(2) If in any case described in sub-section (1) two or more members of the family being such shareholders severally undertake to buy such share, the Court shall follow the procedure prescribed by sub-section (2) of the last foregoing section.

(word 'sons' interpreted). *See also* 1943 Pesh. 79. It may be made even after a preliminary decree in the suit. 45 C. 873 =22 C.W.N. 515; 1943 Pesh. 79=209 I. C. 557. The transferee of a share in an divided property is entitled under S. 44, Transfer of Property Act, to his transferor's right to joint possession or other common or part enjoyment of the property in all cases except where the subject matter of the transfer is a share of a dwelling-house belonging to an undivided family of which he (the transferor) is not a member in which case he is not entitled to joint possession or other common or part enjoyment of the property but is entitled to a partition of the property which, however, must be denied to him under S. 4, Partition Act, in the event of a member of the family being a shareholder undertaking to buy the share of the transferee. 1940 Rang. 53. Option of purchase given under this section is not taken away by the preliminary decree. 1922 C. 129. *See also* 12 C.L.J. 525; 45 C. 873. S. 4 refers to cases where a share of a dwelling-house belonging to an undivided family has been transferred to a person who is not a member of such a family the principle being that property must so far as possible be left in the possession of the person in occupation. 73 I.C. 748. "Family," meaning of. *See* 12 C.L.J. 525=7 I C. 436; 40 I.C. 577. The expression "undivided family" means an undivided family whether Hindu, Mohamedan, Christian or Buddhist, etc. (30 All. 324, Rel. on.) 187 I.C. 844=1940 Rang. 53. *See also* 1939 A. 640. Undivided family in S. 4 means a family which is undivided *qua* the dwelling-house in question. 190 I.C. 117=1941 P. 4. "Undivided family," meaning of—"Family"—"Dwelling-house." *See* 109 I.C. 67=1928 C. 539; 9 O.C. 166. "Dwelling-house belonging to an undivided family"—What is. *See* 4 A.L.J. 209=29 A. 308. The words "undivided family" in S. 4 must be taken to mean undivided *qua* the dwelling-house in question and to be a family which owns the house but has not divided it. To attract S. 4 the transfer should be to a person who does not jointly own the house with the transferor. Consequently, where a Mahomedan owning a house jointly with his brothers transfers a share in the house to his wife, the brothers are entitled to offer to buy the share transferred as the wife must be deemed to be a stranger within S. 4. 209 I.C. 557=1943 Pesh. 79. "Dwelling-house" in S. 4 includes the land and appurtenances which are ordinarily and reasonably necessary for its enjoyment. The section is not inapplicable for portions of houses left undivided. 190 I.C. 117. The Court must make a valuation of such land and appurtenances also, if any. 18 Pat.L.T. 866= 1937 P.W.N 902=1938 Pat. 13. The expression "dwelling-house belonging to an undivided family" appearing in S. 4, Partition Act, has been borrowed from S. 44, Transfer of Property Act, and bears the same meaning. The word 'family' includes a group of persons related in blood, who live in one house under one head or management and it is not restricted to a body of persons who can trace their descent from a common ancestor. 1940 Rang. 53. Section also applies to Muhammadan family. *See* 30 A. 324=5 A.L.J. 352; 38 Bom.L.R. 261= 162 I.C. 941=1936 B. 197. The mere fact that the co-sharers own and live in separate huts on the homestead which remains 'unpartitioned' does not prevent their dwelling-house from being "a dwelling-house belonging to an undivided family" within the meaning of S. 4 of the Act. 50 C.W.N. 450. The term "undivided family" has not been used in a technical sense and is applicable to Hindus and Mahomedans alike and must be held to have much the same meaning as the words "undivided family" in cl. (2), S. 44, T. P. Act. 119 I.C. 523=1929 A. 414. *See also* 1936 L. 291. It is not restricted to joint Hindu family divided in status and possessed of a dwelling-house which has not been actually divided or partitioned among the members of the family. 53 M. 417=1930 M. 561=58 M.L.J. 341; 97 I.C. 416. It means undivided *qua* the property sought to be divided and a family owning it without dividing the same. 30 I. C. 936=9 S.L.R. 84. It is sufficient if the parties are co-owners, whether as joint tenants or tenants-in-common. 30 I.C. 936 (30 A. 324, Ref.). A Court of Appeal is as much entitled to pass an order under the section as a trial Court. It can do so even after the records are sent back to the trial Court, though that Court also may have jurisdiction in the matter. 30 I C. 936. The powers can be exercised at any time before the final allotments are made The section does not indicate when the willingness should be signified to the judge. 30 I.C. 936. It cannot be held as a matter of law that two Mahomedan sisters, married or unmarried cannot form an undivided family within the meaning of S. 4 of the Act. The phrase 'undivided family' in the section is used in a very wide and general sense and two Mahomedan married daughters too may be regarded as members of an undivided family within the meaning of the Act if the

house is undivided and if one of them permanently occupies the house and the other though she lives mostly with her husband, has not permanently abandoned all intention of occupying the house should it become necessary to do so. 1941 A.L.J. 284=1941 O.W.N. 707=1941 All. 281. A widow in a joint Hindu family is a member of the "undivided family". 19 N.L.J. 241=1937 N. 4. Where a widow had, though she remarried long ago, continued to live in the family house, she retains her status as a member of an 'undivided family' *qua* the family house and as such is entitled to purchase any share which might have been sold. 1939 A.L.J. 629=1939 All. 640. Though the determining principle under the section is ownership rather than occupation, an owner, who is not in occupation and who has no intention of occupying, is not entitled to the benefit of the section, merely because he is an owner. 38 Bom. L.R. 261=1936 B. 197. A Mahomedan daughter who has married and is living with her husband but not in the dwelling house which is the subject of partition is not entitled to the benefit of S. 4 of the Act, as she is not a member of an undivided family with reference to the dwelling-house. 1936 Bom. 197. The word 'transferred' in the section includes also a Court auction-purchase. 1936 L. 291. The word 'transfer' in S. 4 is not confined only to a transfer by private agreement. It also means a transfer by operation of law. S. 2 (*d*) of the Transfer of Property Act does not govern the meaning of the word 'transfer.' 66 C.L.J. 87=1938 Cal. 171. Order under S. 4 when can be passed—Powers of appellate Court. 1926 C. 95. It is necessary for a Court, when a suit is instituted by a stranger to an undivided family for partition of a house to find first whether the house in question is a dwelling-house and belongs to an undivided family and further that, if a member of an undivided family who is a share-holder in that dwelling-house undertakes to buy his share, to value the share the valuation to be decided in any manner that the Court should think fit. 123 I.C. 336=1930 A. 509. Under S. 4, the question for consideration is whether the purchaser was a member of the undivided family to which the dwelling house belonged at the time of the sale. The fact that he was a member of the family to which the property originally belonged is quite irrelevant. 45 C. W.N. 74=1941 Cal. 311. The mere fact that the purchaser has obtained possession of the property is not sufficient to defeat the claim of a member of a family under S. 4 of the Partition Act. Unless it can be shown that the purchaser's possession was such that he could be regarded as having become a member of the family, no possession would serve to defeat the claim. 45 C.W. N. 74=1941 Cal. 311. On this section, *see also* 15 C.W.N. 555 (discretion of Court to refuse partition); 1 A.L.J. 474 (power of Court to extend time); An application under S. 4 may be made at appellate stage or at any stage before the final decree, and can be entertained in second appeal. 1940 P. 4. The word "Court" in S. 4 means not merely the trial Court, but also includes an appellate Court; an appellate Court has therefore power to act under the section though no such application has been made in the trial Court. 18 Pat.L.T. 866=1937 P. W.N. 902=1938 Pat. 13; 12 C.L.J. 525 (application under the section may be made after preliminary decree). *See also* 10 C. L.J. 503; 5 C.W.N. 128; 24 M. 639; 32 B. 103. The word "sues" may be applied indifferently either to the defendant or the plaintiff, for the suit of one party or of the other must be allowed. The word signifies not only "to prosecute" but also "to defend" or to do something which the law requires for the better prosecution or defence of the cause. In view of the clear intention of the Act, where in the course of a suit by a member of a joint family, the defendant, a transferee from another member, applies to have a partition under the Partition Act, he is correctly regarded as having "sued" for partition within the meaning of S. 4; and the plaintiffs (members) can therefore apply to buy his share. I.L.R. (1937) Nag. 73=19 N.L.J. 241=1937 Nag. 4. If a co-sharer member of an undivided family sells his share in the family dwelling-house to a stranger and thereafter another co-sharer also sells away his share to another stranger, the first co-sharer cannot, on subsequently repurchasing his share, make a claim under S. 4 of the Act when the transferee from the second co-sharer brings a suit for partition. 50 C.W.N. 450.

DECREE—FORM OF—PROCEDURE.—In a case under S. 4 of the Partition Act, ordinarily the purchaser should be asked to deposit in Court the purchase money by a time fixed by the Court, the time to be fixed and extended at the discretion of the Court. If the purchaser deposits the said purchase money within the time allowed by the Court a decree should be passed in the suit in favour of the purchaser, declaring that all rights of the plaintiff or persons claiming partition in the property in suit have been transferred by a Court sale in favour of the defendant on payment of the said sale price and plaitniff's claim for partition is dismissed. If necessary a sale certificate may also be issued to the purchaser. In case the defendant or the purchaser makes default in payment of purchase money, a decree for partition should be made in favour of plaintiff and the partition proceeded with. 1941 A.L.J. 284=1941 O.W. N. 707=1941 All. 281.

PRELIMINARY DECREE—FORM AND CONTENTS. —A preliminary decree in a partition suit must contain the following clauses:—(1) Declaration of properties belonging to the estate; (2) Declaration of shares of the parties; (3)

Representation of parties under disability.

5. In any suit for partition a request for sale may be made or an undertaking, or application for leave, to buy may be given or made on behalf of any party under disability by any person authorized to act on behalf of such party in such suit, but the Court shall not be bound to comply with any such request, undertaking or application, unless it is of opinion that the sale or purchase will be for the benefit of the party under such disability.

Reserved bidding and bidding by shareholders.

6. (1) Every sale under section 2 shall be subject to a reserved bidding, and the amount of such bidding shall be fixed by the Court in such manner as it may think fit and may be varied from time to time.

(2) On any such sale any of the shareholders shall be at liberty to bid at the sale on such terms as to non-payment of deposit or as to setting off or accounting for the purchase-money or any part thereof, instead of paying the same, as to the Court may seem reasonable.

(3) If two or more persons, of whom one is a shareholder in the property, respectively advance the same sum at any bidding at such sale, such bidding shall be deemed to be bidding of the shareholder.

Order for partition, division and allotment; (4) Appointment of Commissioner for the purpose of partition setting out the conditions, powers and duties; (5) Receiver, if appointed; (6) Special Referee to take accounts; (7) Costs prior and subsequent to preliminary decree, and a provision for the ascertainment of costs before the filing of the return at the instance of the Commissioner; (8) Provisions relating to conveyances and documents of title, etc.; (9) Liberty to apply including liberty to bring on the matter for further directions in the Partition List at the instance of the commissioner or at the instance of any party with the Commissioner's consent or with the sanction of the special officer. I.L.R. (1941) 2 Cal. 410= 1942 C. 300. The plea of a right to buy under S. 4 the share of a dwelling house transferred being one of law can be raised for the first time in appeal or revision. 209 I.C. 557=1943 Pesh. 79.

COMMISSIONER'S ACCOUNTS—METHOD OF PREPARATION.—The Commissioner of partition has to prepare the following five accounts and annex them to his *final* return: (1) *Property account*: On the credit side should be the receipts and on the debit side the amounts credited to the parties in respect of their shares. (2) *Cash account*: All receipts and disbursements should find place in such account with the respective references to the other accounts, for instance, payment to the pool account. (3) The *ledger account* should show on the credit side the share of the sale-proceeds with which each party is credited, on the debit side the amounts paid to the parties or on their account. On the debit side also should be debited the share of the pooled costs payable by each party. (4) *Costs adjustment account*: On one side the costs of the partition which have to be dealt with by the Commissioner. First, costs of the Commissioner. Then the ascertained party and party costs of each party. On the other side of the account, the liability of the parties for the aggregate of the said costs. (5) The *costs pool account* is designed mainly to meet the difficulties of advances to the parties and to the parties' solicitors. On one side should appear the amounts payable by the parties in respect of pooled costs. On the other side must be brought in all advances to the solicitors in respect of such costs. Also on this side must appear the actual amounts payable and paid to the solicitors before the final return is filed. I.L.R. (1941) 2 Cal. 410= 1942 C. 300.

RECEIVER'S ACCOUNTS—METHOD OF PREPARATION.—Receivers in partition suits should prepare a classified statement of account from which the Commissioner can at once enter up his accounts:—(1) Property account; (2) Cash accounts; (3) Parties' ledger accounts; (4) Costs adjustment account; and (5) Pool account. Receiver's costs must be taxed or assessed, and included in the above account. I.L.R. (1941) 2 Cal. 410.

Sec. 6.—Where the property is incapable of partition, the Court should direct the sale to be held among the parties and the property should be given to the party who offers the highest price above the valuation of the Court. 52 C. L. J. 68=1930 C. 616. It is incumbent upon the Court, whether it is moved in that behalf or not, to fix a reserved bidding under S. 6, and the non-observance of such a statutory provision which results in the realization of an inadequate price is a sufficient ground, where minors are concerned, to refuse to confirm the sale. 142 I.C. 461= 1933 Sind 40. A sale under S. 6 must be public and the right to bid cannot be limited to the co-sharers as in the case of a sale under S. 3 (2) of the Act. 1946 M. 299= (1946) 1 M.L.J. 107.

Procedure to be followed in case of sales.

7. Save as hereinbefore provided, when any property is directed to be sold under this Act, the following procedure shall, as far as practicable, be adopted, namely:

(*a*) if the property be sold under a decree or order of the High Court of Calcutta, Madras or Bombay in the exercise of its original jurisdiction, [1][* *] the procedure of such Court in its original civil jurisdiction for the sale of property by the Registrar;

(*b*) if the property be sold under a decree or order of any other Court, such procedure as the High Court may from time to time by rules prescribe in this behalf, and until such rules are made, the procedure prescribed in the Code of Civil Procedure in respect of sales in execution of decrees.

Orders for sale to be deemed decrees.

8. Any order for sale made by the Court under section 2, 3 or 4 shall be deemed to be a decree within the meaning of section 2 of the Code of Civil Procedure.

Saving of power to order partly partition and partly sale.

9. In any suit for partition the Court may, if it shall think fit, make a decree for a partition of part of the property to which the suit relates and a sale of the remainder under this Act.

Application of Act to pending suits.

10. This Act shall apply to suits instituted before the commencement thereof, in which no scheme for the partition of the property has been finally approved by the Court.

LEG. REF.

[1] Words 'or of the Court of the Recorder of Rangoon' omitted by A.O., 1937.

Sec. 7: OBJECTIONS TO SALE—ORDER ON—APPEAL.—As defendants are entitled to prefer objections to a sale held under the provisions of S. 7 just as in execution proceedings, an appeal lies against the decision on such objections. 30 Punj.L.R. 604=118 I. C. 530=1929 L. 245. The Partition Act provides for the case of a deadlock where certain parties do not agree. It does not however prevent the parties from bringing to sale the property by consent even in a suit for partition under the Act. Where therefore in a partition suit, a consent decree is passed by which the parties agree to a sale of certain property by the Commissioner at his discretion, the sale held under such decree is not a sale under the Partition Act and therefore the Commissioner is not bound to follow the rules of the Calcutta High Court in Chap. 27 of the Rules and Orders of that Court framed under that Act. 172 I.C. 482= 1937 Cal. 384. In a partition suit under the Act, the parties arrived at a compromise and a consent decree was passed and the parties agreed that the property in question should be sold by the Commissioner for that purpose. On this the Court directed the Commissioner to fix a reserve, while holding the sale. *Held* that the mere fact that the Commissioner was directed to fix a reserve did not mean that he was bound to sell above the reserve and that failing that he was bound to get the directions of the Court. It might have been better to do so but it was not a failure to carry out the terms of any order. 172 I.C. 482=1937 Cal. 384.

Sec. 8.—Where the trial Court allows a sale, but the appellate Court refuses to pass an order for sale reversing the trial Court's order, the appellate order is a decree and is appealable, if the requirements of a second appeal under S. 100, C. P. Code, are fulfilled. 49 C.L.J. 136=1929 C. 269. An order passed on an application made under S. 4 is a decree by reason of the provisions of S. 8 and is therefore appealable. I.L.R. (1937) N. 73=19 N.L.J. 241=1937 N. 4. An order rejecting an application for sale under S. 4 is not a "decree" and is, therefore, not appealable as such. The correctness of that order can, therefore, be questioned in an appeal filed against the final decree. 45 C. W.N. 74=1941 C. 311.

Sec. 9.—*See* notes under S. 2.

Sec. 10.—S. 10 is applicable where a preliminary decree has been made but a final partition has not been effected. 17 I.C. 284 =1912 M.W.N. 943.

THE INDIAN PARTNERSHIP ACT (IX OF 1932).

Year.	No.	Short title.	Amendment.
1932	IX	The Indian Partnership Act.	Amended by Act XXIV of 1934. Rep. in part by Act I of 1938,

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THE INDIAN PARTNERSHIP ACT (IX OF 1932).

[*8th April*, 1932.

An Act to define and amend the law relating to partnership.

WHEREAS it is expedient to define and amend the law relating to partnership; It is hereby enacted as follows:—

CHAPTER I.
PRELIMINARY.

Short title, extent and commencement.

1. (1) This Act may be called THE INDIAN PARTNERSHIP ACT, 1932.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

(3) It shall come into force on the 1st day of October, 1932, except section 69, which shall come into force on the 1st day of October, 1933.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) an "act of a firm" means any act or omission by all the partners, or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm;

(*b*) "business" includes every trade, occupation and profession;

(*c*) "prescribed" means prescribed by rules made under this Act;

(*d*) "third party" used in relation to a firm or to a partner therein means any person who is not a partner in the firm; and

(*e*) "expressions used but not defined in this Act and defined in the Indian Contract Act, 1872, shall have the meaning assigned to them in that Act."

Application of provisions of Act IX of 1872.

3. The unrepealed provisions of the Indian Contract Act, 1872, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to firms.

SEC. 1 (3)—SEC. 1 (3) of the Act enacts that S. 69 of the Act shall not come into force before the 1st October, 1933. This was intended to give time to unregistered firms to get themselves registered in order to enable them to bring suits. 15 Pat. 810=17 Pat.L.T. 713=1937 Pat. 16. The meaning of the provision that "the Act shall come into force on 1st October, 1932, except S. 69 which shall come into force on 1st October, 1933', in S. 1 (3), is that after 1st October, 1933, S. 69 will become operative and a firm which is not registered and which sues to enforce a right arising from a contract shall be non-suited. 161 I.C. 741=1936 Cal. 133.

SEC. 2 (B), 4 and 69.—S. 2, Cl. (*b*) read with S. 4 is intended to mean a continued participation of two or more persons in a trade, occupation or profession with the intention of sharing profits accruing from it. An adventure or an undertaking mentioned in S. 8 of the Act presumes the existence of a partnership as defined in S 4 and therefore *a fortiori* the existence of a business mentioned in S. 2, Cl. (*b*). A solitary transaction in which two persons have jointly lent money to another would not make those persons partners in a firm and hence registration is not necessary under S. 69 of the Act. 193 I.C. 51=1941 Pesh. 6. *See also* 1938 Nag. 550=1938 N.L.J. 403; 1940 Nag. 211=1940 N.L.J. 50; 1940 A. 230=I.L.R. 1940 A. 256.

CHAPTER II.

THE NATURE OF PARTNERSHIP.

Definition of "partnership."

4. "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

SEC. 4: ELEMENTS OF "PARTNERSHIP".— "(1) There must be an agreement entered into by all the persons concerned. *See* 51 A. 827=1929 A. 536=118 I.C. 145. *See also* 18 I.C. 141 and S. 5, *infra;* (2) the agreement must be to share the profits of a business; and (3) the business must be carried on by all or any of the persons concerned, acting for all. All these elements must be presented before a group of associates can be held to be partners. These three elements may appear to overlap, but they are nevertheless distinct. The first element relates to the voluntary contractual nature of partnership; the second gives the motive which leads to the formation of firms, *i.e.,* the acquisition of gain; and the third shows that the persons of the group who conduct the business do so as agents for all the persons in the group, and are therefore liable to account to all." Under the law as it stood before this Act a firm as such had no existence in law. The law regarded only the individual partners. This Act has to some extent recognised that the firm is some sort of legal entity apart from its partners. 1938 C. 377=62 C. 510=39 C.W.N. 606. *See also* 1937 O.W.N. 344= 1937 Oudh 438; 20 Pat.L.T. 825=1939 Pat. 323; 1937 Nag. 68=19 N.L.J. 306; 1936 Cal. 133. What is essential to constitute partnership is the actual existence of a business carried on by partners. Hence so long as the business, the profits of which the partners agree to share does not exist there can be no partnership. Persons who are working together to form a company are not partners and the relations *inter se* of those persons are governed not by the law of partnership but by the general law of contract. 21 Luck. 295=1946 O. 68=1945 A.L.W. (C.C.) 371. Partnership rests on agreement and so long as the agreement contemplates an outgoing and an incoming on the joint account in respect of a business, the partnership is complete and all subsequent rights and liabilities are governed by laws which relate to partnership. It is not the subsequent happenings which determine the question but the initial agreement. If S. 4 has effected a change it has been in the direction of widening the definition of partnership and not of narrowing it. The change in the definition of partnership has not affected the efficacy of illustrations (*a*) and (*b*) to S. 239 of the Contract Act, now repealed. 1940 N.L.J. 50=1940 Nag. 211. The mere circumstance that a person is to share profits only and not losses does not by itself militate against the presumption of partnership. I.L.R. 1937 306=39 P.L.R. 998=1937 Lah. 338 (F.B.). The question whether a transaction amounts to a partnership or not must be decided on the terms of the agreement itself and all the relevant facts. The right to participate in the profits of a business is no doubt a strong test of a partnership, but whether that relation does or does not exist must depend on the real intention and contract of the parties. The true test is whether such a participation in profits constitutes the relationship of principal and agent between the person taking the profits and those actually carrying on the business. A mere statement that the parties are to be partners will not necessarily constitute them partners in law. The mere description of a person as a "sleeping partner" would not make him a partner in law. 47 Bom.L.R. 808. There may be a partnership in a single transaction, and sharing profits and contributing to losses are indications of a partnership, but by themselves are not enough to constitute a partnership. One essential element of a partnership is that there should be agency. The words "acting for all" in S. 4 were inserted to emphasise that partners are agents and not merely principals. I.L.R. (1939) Bom. 616=41 Bom.L.R. 899=1939 Bom. 410. The mere fact that a committee is not a registered body and has no independent existence in law, cannot make the servants of the committee personally liable. Although the association as such cannot be sued, its members will be jointly liable. 1933 L. 93. Whether the relation of partners exist between two or more persons is a question of fact depending upon the real intention and contract of the parties ascertained from the contents of the written instruments (if any), and from their conduct. 28 C.W.N. 34=1924 C. 424. The use of the word "partner" or "partnership" in the agreement does not necessarily show that there is a partnership. 65 I.C. 368=1922 N. 67. *See also* 51 B. 342=1927 B. 187; nor does the omission of the word necessarily mean its absence. 51 B. 342; 28 C.W.N. 34=1924 C. 424. The law regards the body and substance of the agreement and its real character. (1932 S. 218, Ref.) The question whether certain persons are partners in the legal sense depends on the legal relation proved to exist between the partners. 139 I.C. 860 =1932 S. 78. Where one firm enters into an agreement of partnership with another, what happens in law and in fact, is that the individual partners of the one firm join with the individual partners in the other firm, the result being that all the individual partners of the two firms become partners individually in the new firm. 1938 C. 377=62 C. 510=39 C.W.N. 606. *See also* 1936 Lah. 514. In law a firm has no existence independently of its partners, and if there are two firms consisting of exactly the same partners, the real

"partner," "firm" and "firm name".

Persons who have entered into partnership with one another are called individually "partners" and collectively "a firm", and the name under which their business is carried on is called the "firm name."

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position in law is that there is only one firm. It may carry on separate businessses and carry on those businesses in different names, but in fact there is only one firm in law. (1942) I.T.R. 272.

ILLUSTRATIVE CASES.—Where husband took his wife in partnership and fixed her share, but reserved power to take more partners or determine her share, *held,* there was a partnership. 25 Bom.L.R. 1225=1924 B. 182. If parties to a contract agree to become partners they need not say that they agree to combine property, labour or skill, this may be implied. That one of them plays a dominant part is not inconsistent with partnership. 25 Bom.L.R. 1225=1924 B. 182=77 I.C. 699.

CONTRACTS AMOUNTING TO PARTNESHIP.—An agreement of partnership need not be express. It can arise out of a mutual understanding evidenced by a consistent course of conduct, and by the express admission of the parties concerned, 177 I.C. 831=1938 Nag. 324. Where four creditors of a debtor agree to sue the debtor for their individual debts, to share costs and to divide the profits of all the suits, the transaction is of the nature of a partnership in the four suits. A suit between the creditors must be brought as a suit between partners for accounts. 9 B.H.C.R. 418. Where in a partnership of four persons, three were to contribute capital, the other person who had a share in the profits for contributing labour is also a partner. 1928 A. 549=111 I.C. 686. To constitute a *contract of cultivating partnership* as distinguished from a contract of tenancy, it is enough that the person providing the land furnishes a portion of the working capital, as a part of the transaction by which he provides the land and not as a loan. Such person need not actually take part in tilling it. 10 C.P.L.R. 29. Where there is an agreement between two persons for the joint acquisition of a business and for the sharing of its profits in proportion to the contributions of each and the partnership is registered under the Partnership Act, there is a valid partnership and it is not affected either by the fact that the sale-deed refers to the partners individually and not as partners or that one of them had not paid his contribution at all. 1942 O.W.N. 269=1942 O. 327 =18 Luck. 327.

PARTNERSHIP TO WORK MINES.—A contract to work certain mines on condition that the plaintiff was to receive a sum of money as a *bonus* down and also a certain amount as rent and that the profits and losses were to be divided in the proportion of one-fourth to plaintiff and three-fourths to defendant, is a contract of partnership; and the payment of money, which went by the name of rent, was in the nature of a fixed sum to be received by the plaintiff in consideration of the land which represented his portion of the capital. 9 W.R. 499. *See also* 28 C.W.N. 34=1924 C. 424. Where there is an agreement between two persons for the joint acquisition of a business and for the sharing of its profits in proportion to the contributions of each and the partnership is registered under the Partnership Act, there is a valid partnership and it is not affected either by the fact that the sale-deed refers to the partners individually and not as partners or that one of them had not paid his contribution at all. 1942 O. W.N. 269=1942 O. 327=18 Luck. 92. *A clerk or gumastha* sharing in profits and losses may be a partner. 155 P.L.R. 1917=44 I.C. 283. *See also* 1922 N. 67=65 I.C. 368; 28 C.W.N. 34=1924 C. 424.

PARTNERSHIP WITH EXCISE LICENSEE.—It is not unlawful for an *excise licensee* to admit an unlicensed person into partnership. 14 C.P.L.R. 67 (*dissenting from* 11 C.P.L. R. 62). There is nothing illegal in persons combining to bid for and take a licence to conduct a toddy shop in their joint names. 1928 M. 1197=114 I.C. 655. So also, where one of the terms of a licence granted under the Excise Act was that the licence was non-transferable, an agreement, by which the licensee admitted certain persons to a share in the profits of the business carried on, under the licence, in consideration of their assisting him in the liquor sales, cannot render the partnership invalid, as the agreement cannot amount to a transfer of the licence. 114 P.R. 1906. *See also* 1937 Nag. 250; 1936 M. 557=70 M.L.J. 691.

CONTRACT NOT AMOUNTING TO PARTNERSHIP.—An agreement to share the trees cut in a forest does not create a partnership. 8 L. 310=1927 L. 333=100 I.C. 846. Where there is no combination of property, labour or skill, and the labour or skill or property were all on the side of the defendant, the plaintiff simply supplying the defendant with certain sums of money, the agreement between the parties is not a partnership. 4 A. 74 (80). *Creditors jointly advancing money* do not become partners, even though they possess a right to share the profits. 1922 N. 67=65 I.C. 368. But persons making an agreement to carry on a money-lending business and share the profits therefrom, are partners and constitute a firm under S. 4. I.L.R. (1937) N 358=1937 N. 134. *Marriage is not a partnership* as defined under the Act and property acquired during marriage under the Mahomedan Law cannot be regarded as partnership property. U.B.R. [December, 1901 (Mahomedan Law.)] Where the substantial purpose of an association is not to carry on a business for gain (as for instance

in the case of subscribers to the General Family Pension Fund) the fact that gain may accrue incidentally, or may arise from merely subsidiary provisions, does not make registration necessary. 17 C. 786 (803). A *firm* is not a 'person' so as to be a member of a partnership concern. 54 A. 846=1933 A. 72=1932 A.L.J. 999. *See also* 1932 C. 768. Before a minor can be admitted to benefits of partnership under S. 30 of this Act, there must be at least two adult partners who are capable of contracting. 164 I.C. 806=1936 M. 707=71 M.L.J. 373. Under the Mahomedan Law *wakf* property being vested in the Almighty, there can be no partnership in law with a *wakf*. 41 C.W.N. 629. A person cannot be at one and the same time a partner in his individual capacity and also in his representative capacity. 41 C.W.N. 629= I.L.R. (1937) 2 Cal. 160.

PARTNERSHIP AND TRADE UNION.—When several businessmen form a combination for the purpose of enriching themselves by preventing the cutting of prices and make rules, and provision for the payment into a common pool and a sharing out of it, for arbitration in case of disputes, etc., *held,* that it was simply a case of a combination of various businesses *inter se* to benefit the members and not a case of a partnership and that it fell within the definition of Trade Union. I.L. R. (1941) Nag. 702=1940 N.L.J. 239=1940 Nag. 228.

ESSENTIALS OF PARTNERSHIP.—In dealing with the subject of partnership too much attention cannot be paid to the consideration of the question:—What is a partnership and who is a partner? For it is a question of no mere academic interest, because if the relation of private partnership exists, then whatever may be the arrangements between the partners *inter se* as to how the losses are to be borne, each partner will, as between himself and the creditors of the firm. be liable to the last farthing of his fortune, *see* 51 B. 342=1927 B. 187. The foundation of this rule is "that each individual partner constitutes the others his agents for the purpose of entering into all contracts for him within the scope of the partnership concern, and consequently is liable to the performance of such contracts in the same manner as if entered into personally by himself." (*See* 163 P.L. R. 1911=10 I.C. 250.) Therefore, if once the relation of partners is established between one who actively carries on a business and another who passively participates in the profits, the latter will become equally liable with the former for the debts and liabilities of the firm. Although two persons may hold themselves out as partners and be liable to third parties accordingly, it does not follow that they would be partners *inter se*. 51 B. 342=29 Bom.L.R. 207=1927 B. 187. The right to control the partnership property and to receives profits and the liability to share in losses are elements which help one in finding whether a partnership exists. 27 B. 157 (161). An agreement express or implied, is necessary for the creation of a partnership. 51 A. 827=1929 A. 536. An agreement to share losses is not a necessary ingredient. 51 A. 827. *See also* 18 L. 306=168 I.C. 549=1937 L. 338. Before there can be a partnership in respect of a single transaction, there must be present the other requisites of a partnership. Under S. 4, there must be a 'business,' an agreement to share its profits, and the carrying on of it by all or any one acting on behalf of all. A mere isolated act of money-lending on joint security cannot be regarded as constituting business within the meaning of that definition. 1938 N.L.J. 403=1938 Nag. 550. *See also* 1940 All. 230; 1940 N.L.J. 50=1940 Nag. 221. A single transaction or venture does not amount to 'business' as mentioned in S. 4 and hence S. 69 does not apply to such a transaction. I.L.R. (1940) All. 256=1940 All. 230. Where certain persons refer to themselves as a firm, it must be presumed even in absence of evidence, that they are parties who have entered into partnership with one another and are a partnership firm. 161 I.C. 741=1936 C. 133. Once it is established beyond doubt that a person is sharing in profits and losses in a fixed proportion in a firm, there arises a strong presumption in favour of his being a partner, and it lies on him to explain or get rid of that presumption. When it is further shown that he has acted as manager of the firm and has a powerful voice in its affairs, there is no doubt of his being a partner. 153 I.C. 969=1935 L. 209. Although a right to participate in the profits of trade is a strong test of partnership, and there may be cases where from such participation alone, it may, as a presumption, not of law, but of fact, be inferred, yet whether that relation does or does not exist must depend on the real intention and contract of the parties. To constitute a partnership, the parties must have agreed to carry on business and to share profits in some way in common. 18 W.R. 384 (387)=10 B.L.R. 312 (P.C.), followed in 6 C.W.N. 429 and 10 C.W.N. 313; 51 M. 308=1928 M. 890=55 M.L.J. 12. But wherever the agreement between parties creates a relation, which is, in substance, a partnership, no mere words or declarations to the contrary will prevent, as regards third persons, the consequences flowing from the real contract. 18 W.R. 384 (P.C.). Participation in profits is not always conclusive evidence of a partnership. It is however a very cogent evidence, and if it stands alone, may be conclusive evidence. But the fact of participation in profits must be considered in the light of other circumstances. 51 M. 308=55 M.L.J. 12. *See also* 1939 Pat. 323. On the death of a Mahomedan who to the sole proprietor of a business, his heirs inherit the business as tenants in common, but do not automatically become partners. But if they continue to carry on the busines and to share the profits, the necessary inference must be that they had entered into an implied, if not express, agree-

Partnership not created by status.

5. The relation of partnership arises from contract and not from status;

ment to become partners of the new firm. The relationship of partners existing between the parties is confined to the stock-in-trade, outstandings and cash, etc., belonging to the firm, and cannot be extended to the immovable properties acquired with the income of the firm but not in the name of the firm, when such properties have nothing to do with the business of the firm which is a trading partnership carrying on a furniture business. The relationship between the parties in regard to these immovable properties is that of co-tenants. 1937 O. 438=13. Luck. 219. Hindu joint family a partner with strangers—Suit by a co-parcener for his share on the basis of dissolution before suit—Denial of dissolution—Maintainability of suit—Procedure. *See* 1938 Mad. 388=(1938) 1 M.L.J. 106. The onus is on the party who alleges a change in the firm to establish it. 32 S.L.R. 765=(1938) 2 M.L.J. 966 (P.C.).

SECS 4 AND 6.—*See* 1940 Pat. 116.

SEC. 5: PRINCIPLE OF THE SECTION.—"Our law has always treated the partnership relation as founded on voluntary contract. It does not surprise parties into a partnership against their will, although it does not require an express agreement between them. 51 A. 827; nor is it bound by their statements of intention in associating themselves together for business transactions. It will regard their conduct rather than their language in determining whether their voluntary association in a business enterprise amounts to a partnership or not." *See* 51 B. 342=1927 B. 187; 51 A. 827=1929 A. 536. To determine whether a particular contract constitutes a partnership between the parties thereto, its controlling purpose is to ascertain their intention as disclosed by the entire transaction. 28 C.W.N. 34=1924 C. 424. But the intention is the legal intention deducible from the acts of the parties. 51 B. 342. If the entire agreement between the parties has been committed to writing, every clause is to be considered and effect given to each, if possible. If the agreement is partly in writing, partly oral, and partly evidenced only by conduct then all the steps taken by the parties in connection with the enterprise are to be considered. 51 B. 342. Hence, the general rule always is that a person can become partner only by his own consent and that of the other members. Hence a minor's incapacity to become a partner by his own consent. 118 I.C. 141. *See also* 26 C. 349 (354); 25 A. 378 (384); *see* S. 30, *infra*. Minor cannot become a partner by contract. 49 C. 560=43 M.L.J. 41=1922 P.C. 237=49 I.A. 108 (P.C.) *See also* 142 I.C. 203=34 P.L.R. 346; 10 Mys.L.J. 316. The agreement or consent to form a partnership may be express or implied but is necessary for the creation of a partnership. One member of a *joint Hindu family* entering into partnership does not make the others liable in the absence of proof of agency or consensus. 51 A. 827=1929 A. 536. *See also* 56 C.L.J. 440. A manager of a joint Hindu family, who enters into a partnership business with a stranger, cannot by such act, *ipso facto* make the other members of the family partners in the business so as to clothe them with all the rights and obligations of a partner as defined by this Act. In such a case the family as a until does not become a partner, but only such of its members as in fact enter into a contractual relation with the stranger. 38 C.W.N. 1186=1934 P.C. 192=67 M.L.J. 366 (P.C.). *See also* 1927 S. 247=107 I.C. 221; 34 P.L.R. 166=1933 L. 68. But *see also* 19 A.L.J. 525=63 I.C. 548. A joint Hindu family cannot be a partnership of itself; nor can two joint families be brought into relation with one another by an agreement to be a partnership. But there can be a partnership between the managing member of one joint family, and the manager of another family, the partnership being between the two persons and not between the families. 39 C.W.N. 357. A Hindu joint family which carries on a trade or business is not a partnership under S. 4 of the Partnership Act. 39 C.W.N. 275. As to the position of an *ancestral trading firm*, see 61 C. 975=38 C.W.N. 914=1934 C. 810; 5 B. 38; 25 A. 378; 9 Bom.L.R. 287; 9 B. 311; 5 C. 792; I.C. 470; 6 C. 815; 7 B. 217; 23 B. 144; 9 Bom.L.R. 274; I.L.R. (1938) 1 Cal. 369=1939 Cal. 92. The assumption that a joint Hindu family firm can come into existence, only if the business has descended from father to son, is obviously wrong. There is no provision of law which prohibits the members of a Hindu coparcenary to start family business out of joint funds at any time, after the death of their father or other ancestor. Such a firm is exempt from registration under S. 5 of the Act. 40 P.L.R. 456=1938 Lah. 563. *See also* 1936 A.M.L.J. 130. Where a stranger is associated with the members of a joint Hindu family in a business whose capital is derived from the property of the joint family and the stranger, the rights and liabilities are determined more by the Contract Act than by the Hindu Law. 1933 A. 311. *See also* 65 C.L.J. 426. Where a stranger is associated with the joint family from the very beginning in the trade and another stranger is introduced into the partnership at a time when the family consists only of minors, the new firm cannot be said to be an ancestral firm or its offshoot and the minors are not liable for the debts of the firm, unless they have been admitted to the benefits of the partnership. 1933 A. 311. Cutchi Memons are only governed by the Hindu Law as regards succession and inheritance, and the Hindu Law cannot be applied to their property. A Cutchi Memon family carrying on business does not fall under the latter part of S. 5 of the Partnership Act.

and, in particular, the members of a Hindu undivided family carrying on a family business as such, or a Burmese Buddhist husband and wife carrying on business as such are not partners in such business.

Mode of determining existence of partnership.

[1]6. In determining whether a group of persons is or is not a firm, or whether a person is or is not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.

Explanation I.—The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not of itself make such persons partners.

LEG. REF.

[1] *Cf.* S. 2 of the English Partnership Act. Consequently a suit by an unregistered partnership composed of the members of a Cutchi Memon family is not maintainable under S. 69 of the Partnership Act. 1937 Mad. 666=(1937) 2 M.L.J. 221. Where a husband took his wife in partnership and fixed her share, but reserved to himself the power to take more partners, held there was a partnership. 25 Bom.L.R. 1225=1924 B. 182=77 I.C. 699. The mere fact that a number of Indian Christians with ties of relationship are living together in a house and have a common mess would not confer on such a group of persons the rights and obligations recognised by Hindu Law in respect of a joint Hindu family, nor can the family be treated as a partnership in the legal sense if some members thereof have been carrying on some trade. In the absence of an express or implied agency, a debt borrowed by the managers of the trade by executing a promissory note is not binding on the other members. 1934 M. 327=66 M.L.J. 671.

SECS. 4, 5 AND 6.—When more than one businessman associate together for the purpose of carrying on a business, it is legitimate to infer that they are not doing it for philanthropic purposes but intend to make a profit out of it; also that they all intend to share in the benefit of the proceeds. The person who actually conducts the business acts on behalf of all his associates, that is to say, on behalf of all who are joint proprietors with him. He does not act for his own separate and exclusive benefit. His intention is obviously to further the business as a whole for the benefit of all who own the concern. That is all that is necessary to constitute a partnership within the meaning of Ss. 4, 5 and 6 of the Act. 177 I.C. 831 =1938 N. 324. Partnership—Test to determine—Agreement reciting that one party appointed another to carry on business—Power conferred on former to dismiss latter for mismanagement—Provision for sharing of profits and losses does not constitute partnership. *See* 20 Pat.L.T. 798=1940 P. 116. *See also* 1940 P. 683=19 P. 715.

SEC. 6.—Persons may be partners in the eye of law, though they state in the document that they should not be such; and though they represent themselves to be such and be liable to third parties, they may not be partners *inter se.* 51 B. 342=29 Bom.L.R. 107. *See also* 1922 N. 67=65 I.C. 368; 56 C.L.J. 172 =1933 C. 204. It is not necessary that all the partners should share the losses, and they may agree to draw a salary instead of a share in profits. 51 B. 342=1927 B. 187. *See also* 43 C. 733=21 C.W.N. 632. Mere co-ownership of land does not make the co-owners partners nor the mere receipt of their share of income. Where two of the co-owners not only shared the profits out of the land between themselves, but jointly worked the land jointly engaged coolies and both took active part in raising the crops: *Held,* that they were partners. 1933 R. 120. A partner may after full disclosure buy partnership property for a fair price. 43 C. 733=21 C.W. N. 632=31 I.C 430. Persons filing suits and signing processes in the name of a firm do not necessarily become partners, for even salaried managers conduct proceedings in their own names describing themselves as managing proprietors. 1927 S. 247=107 I.C. 221.

EXPL. I.—A right to participate in profits is a strong but not conclusive test of partnership. The true test is whether there is really a common business carried on by or on behalf of the alleged partner. 1925 N. 436=89 I.C. 283. *See* S. 4, *supra.* "Partnership" does not mean that the partners should necessarily divide the profits at any time. Each may leave his share in the business. The real test is whether he has power to withdraw it. 1930 N. 6=121 I.C. 38. The question of partnership is a question of intention, which must be decided on a consideration of the conduct of the parties and of all the surrounding circumstances. Participation in profits, though not conclusive, is a cogent piece of evidence which must be given due weight in the light of other circumstances. 13 Luck. 219=1937 O. 438. An arrangement to share in the profits does not necessarily show that the person who shares in such profits is a partner of the firm, but this fact will have to be considered along with the evidence relating to other characteristics of a partnership, such as sharing of losses, etc., in arriving at a conclusion whether the parties intended to carry on the business in partnership. 1925 M. 768=48 M.L.J. 518; 56 C.L.J. 172=1933 C. 204.

Explanation II.—The receipt by a person of a share of the profits of a business, or of a payment contingent upon the earning of profits or varying with the profits earned by a business, does not of itself make him a partner with the persons carrying on the business;

and, in particular the receipt of such share or payment—

(*a*) by a lender of money to persons engaged or about to engage in any business,

(*b*) by a servant or agent as remuneration,

(*c*) by the widow or child of a deceased partner, as annuity, or

(*d*) by a previous owner or part owner of the business, as consideration for the sale of the goodwill or share thereof,

does not of itself make the receiver a partner with the persons carrying on the business.

Partnership at will.

7. Where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is "partnership at will."

EXPL. II (*a*).—Even an agreement that the lender shall receive a share of the borrower's profits in addition to the statutory rate of interest on the loan does not make them partners. *See* 52 M.L.J. 303=1927 M. 1096. Partnership is not created from the mere use of the word. If a person is merely to advance money and be re-paid by a share in profits, or if a person, acting as servant, is to be paid by a share in the profits and is not to be liable for losses not occasioned by his neglect or default, no partnership is created. 1922 N. 67=65 I.C. 368. *See also* 136 I.C. 396=1932 P.C. 63 (P.C.) U.B.R. Dec. 1903=47 Bom.L.R. 808. Contract, p. 10 (11), 1927 M. 1096=52 M.L.J. 303. Even the fact that the lender took an active interest in the business, is not inconsistent with his position as a lender. 10 C.W.N. 313. *See also* 4 A. 74 (80). *Creditors jointly advancing money do not become partners,* even though they possess a right to share profits. 1922 N. 67=65 I.C. 368. Muthalalis in a *Lubbai* or *Ejman* partnership in Madras Presidency are not partners and will rank as other creditors when the firm becomes insolvent. Though participation in profits is a strong test of partnership and a presumption of fact to that effect arises, yet the test is not conclusive. 51 M. 308=55 M. L.J. 12=1928 M. 890. But one person can both be a partner and creditor; as creditor for amount advanced beyond the agreed capital, he is entitled to interest and to demand of the other partners their respective shares under S. 43 of the Contract Act. 1921 N. 45=64 I.C. 183.

EXPL. II (*b*).—A *gumastha* of a firm, who is paid by a share of the profits, according to the long understood practice in this country is not a partner. 14 C. 791 (793). *See also* 54 M.L.J. 219=1927 M. 1053=106 I.C. 308. So also the fact that an *assistant in a firm of brokers* received over and above his salary, a share in the profits, and that, with the knowledge of the partners, he also occasionally signed on delivery orders, which came from buyers in favour of the firm, that he occasionally signed, with his own signature, letters dealing with mere matters of detail, that he purported to make firm offers to buyers and sellers and initialled alterations on some contracts, does not constitute him a partner in that firm. 6 C.W.N. 429. But a gumastha sharing in profits and losses may become a partner. 155 P.L.R. 1917=44 I.C. 283. A servant whose remuneration varies with the profits may be partner in a popular sense, but is not necessarily legally so. 1922 N. 96=69 I.C. 781. *See also* 1922 N. 67=65 I.C. 368. Where in addition to his salary the person was to receive a certain percentage "as commission" on net profits, *held,* the said percentage was a share in profits. 28 C.W.N. 34=1924 C. 424=81 I.C. 17.

EXPL. II (*c*).—Where the sole proprietor or a firm dies, his heirs only succeed to his assets, and do not become partners, unless they agree expressly or impliedly to continue the old firm. Such agreement can be inferred from the continuance of the old business on the same lines and in the same manner. 23 A.L.J. 961=1926 A. 161. Property left by a deceased partner and used in the business is to be treated as a loan to the partnership. 37 B. 158=19 I.C. 406.

POSITION OF RETIRING PARTNER.—Retiring partner can, in the absence of an agreement to the contrary, claim not only interest but, at his option, either a share of the profits of the business or interest on the amount of his share of the partnership assets. 52 M. 672 =1929 M. 496=56 M.L.J. 657. He is not bound to make his election until the share of the profits has been ascertained. It is not necessary that the whole of the partnership assets should be used by the remaining partners. 56 M.L.J. 657.

SEC. 7.—*Cf.* Ss. 26, 27 and 32 of the Partnership Act.

Particular partnership.

8. A person may become a partner with another person in particular adventures or undertakings.

CHAPTER III.

RELATIONS OF PARTNERS TO ONE ANOTHER.

General duties of partners,

9. Partners are bound to carry on the business of the firm to the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the firm to any partner or his legal representative.

Duty to indemnity for loss caused by fraud.

10. Every partner shall indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm.

Determination of rights and duties of partners by contract between the partners.

11. (1) Subject to the provisions of this Act, the mutual rights and duties of the partners of a firm may be determined by contract between the partners, and such contract may be express or may be implied by a course of dealing.

Such contract may be varied by consent of all the partners and such consent may be express or may be implied by a course of dealing.

Agreements in restraint of trade.

(2) Notwithstanding anything contained in section 27 of the Indian Contract Act, 1872, such contracts may provide that a partner shall not carry on any business other than that of the firm while he is a partner.

The conduct of the business.

12. Subject to contract between the partners—

SEC. 8.—This section is new and is inserted to meet cases which are probably much more frequent in India than in England. The practice of establishing "particular partnership" is much favoured by Indian firms with numerous branches, and the practice should not be hampered by doubts regarding the extent of the liabilities of the "particular partner." (*Statement of Objects and Reasons.*. A partnership may be organized for the prosecution of a single adventure as well as for the conduct of a continuous business. See S. 17, *infra.*

SEC. 9.—*Cf.* Contract Act, S. 257, and English Partnership Act, S. 28.

PRINCIPLE OF THE SECTION.—Parties, when treating for a contract of partnership, are bound to exercise the utmost good faith towards each other. *See* 1930 M. 141=123 I.C. 596. *See also* 11 A.L.J. 423=19 I.C. 250. A contract of partnership is a contract *noerrimae fidei* and S. 9 of the Act, which materially reproduces S. 257 of the Contract Act, defines the relations between the partners. All the subsequent sections dealing with the relations of partners to one another are only amplifications and illustrations of the principles contained in S. 9. I.L.R. (1944) Kar. 21. *See also* 1941 Sind 73=194 I.C. 380. A secret agreement between two partners to the prejudice of a third partner is unlawful and void. U.B.R. 1903, Jan. (Contract), pp. 4-5. So also surviving partners are treated as trustees for the benefit of the representatives of a deceased partner. 1 Bom.H.C.R. App. 51 (62). *See also* 67 I.C. 10=34 C.L.J. 405; 6 B. 528; 48 C. 906. As to the effect of an acknowledgment by surviving partner on limitation, *see* 8 M. L.J. 261. Good faith and utmost *bona fides* are required in dealings between *working and sleeping partners* when matters relating to accounts are concerned, and when, as a result of the accounts produced by the working partners, they induce the other partners to execute in their favour a promissory note in respect of the amounts so found to be due to the working partners according to the accounts produced by them, (123 I.C. 569=1930 M. 141) all the partners are deemed to have such knowledge and notice of of the acts of any of their partners relative to their business, as in discharge of their plain duty they might or ought to have obtained. 27 S.L.R. 41=1933 S. 176.

SEC. 11.—*Cf.* S. 252 and S. 27, Contract Act and S. 19, English Partnership Act, The opening words of S. 11 'subject to the provisions of this Act' mean that the relation of partners shall be governed by contract unless the contract that they enter into is one which is prohibited by any provision in the Act. S. 11 has deliberately been so worded by the Legislature as to make it clear that the relationship of the partners shall be determined by the contract between them, subject of course to the provisions of the Act. I.L.R. (1939) All. 577=1939 A.L.J. 440=1939 All. 548.

SEEC. 12.—*Cf.* Contract Act S. 253, sub-Ss. (3) to (5); S. 24. English Partnership At, 1890, As to power of partner to take part in partnership business, *see* 23 B. 144; 20 B.

(*a*) every partner has a right to take part in the conduct of the business;

(*b*) every partner is bound to attend diligently to his duties in the conduct of the business;

(*c*) any difference arising as to ordinary matters connected with the business may be decided by a majority of the partners, and every partner shall have the right to express his opinion before the matter is decided, but no change may be made in the nature of the business without the consent of all the partners; and

(*d*) every partner has a right to have access to and to inspect and copy any of the books of the firm.

Mutual rights and liabilities

13. Subject to contract between the partners—

(*a*) a partner is not entitled to receive remuneration for taking part in the conduct of the business;

(*b*) the partners are entitled to share equally in the profits earned and shall contribute equally to the losses sustained by the firm;

(*c*) where a partner is entitled to interest on the capital subscribed by him, such interest shall be payable only out of profits;

(*d*) a partner making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to

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467; 19 B. 269 A managing partner has power to borrow for the business of the partnership and acknowledge the debts. The other partners are bound by his acts and are responsible for the debts contracted by him. I.L.R. (1946) N. 301=1946 N.L.J. 215= 1946 N. 266.

SEC. 13.—*Cf.* Contract Act, S. 253 and S. 24, English Partnership Act. Cl. (*f*) is new and is intended to safeguard the firm's interests against the torts of individual partners.

CL. (*b*): PRESUMED EQUALITY OF PARTNER'S SHARES.—The presumption is about the equality of the partner's shares in profits and loss. The burden of proof is on the party who alleges a special agreement about the shares being unequal. 26 C. 281 (282). *See also* 40 P.R. 1908; 12 B.H.C. (A.C. J.) 165. As to the joint liability of partners to share loss, *see* 24 B. 77; 40 P.R. 1908. S. 13 (*b*) will come into operation only when there is no agreement between the partners. 46 L.W. 520=1938 Mad. 5=(1937) 2 M. L.J. 760. The right to interest on capital contributed by one of the partners, even when there is a stipulation for payment of such interest, ordinarily ceases at the date of the dissolution, and in the taking of accounts between the parties, no interest under this head should be allowed after the date of dissolution. Interest on capital is payable only out of profits under S. 13 (*b*) except where there is an express contract providing for payment of interest regardless of profits. 51 L.W. 108=1940 M.W.N. 29=1940 Mad. 505. On dissolution, a capitalist partner has no higher rights than the other partners. 1926 S. 49=89 I.C. 577. He cannot compel working partners to sell their rights to him. 1926 S. 49. Under this section the share of each partner in the partnership property is the value of his original contribution, and partners must contribute equally to losses sustained by the partnership. In the absence of a contract to the contrary, the share of loss or profit is ascertained by dividing the total loss or profit by the number of partners. The rule laid down is, that, if the assets of the partnership will not suffice to pay the amount of capital to be credited to each partner, the deficiency is a loss of capital; and is to be borne or made good by the partners. 40 P. R. 1908. The fact that the partners contributed capital in unequal shares will not exclude the presumption of equality in profit and loss (*see* cases *supra*), though it is a matter to be taken into consideration on the final statement of accounts (Part. Act, 1890, S. 44). As to suit for accounts in a partnership where partners contributed in unequal shares, *see* 8 L. 241=1927 L. 485. The fact that certain persons perform several acts in the expectation that a partnership would be created, such as the advance of money for purchase of partnership material, the taking of a house on rent expecting that it would be required for the partnership, cannot lead to the conclusion that a partnership has been created. Where the cardinal points have been definitely agreed upon, the fact that reference has been made to a more formal agreement in future will not prevent the Court from coming to the conclusion that the contract of partnership has been concluded. But when a cardinal point has never been agreed upon, namely, as to when the partnership is to come into force, and that date is left blank in the agreement, it cannot be held that the partnership has come into existence or that the parties are partners. 19 N.L.J. 306=1937 Nag. 68.

CL. (c).—INTEREST ON ADVANCE AND CAPITAL.—A partner is not only entitled to be repaid any actual payments or advances made by him for the purposes of the partner-

interest thereon at the rate of six per cent. per annum;

(*e*) the firm shall indemnify a partner in respect of payments made and liabilities incurred by him—

(i) in the ordinary and proper conduct of the business, and

(ii) in doing such act, in an emergency, for the purpose of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances; and

(*f*) a partner shall indemnify the firm for any loss caused to it by his wilful neglect in the conduct of the business of the firm.

The property of the firm

14. Subject to contract between the partners, the property of the firm includes all property and rights and interest in property originally brought into the stock of the firm or acquired, by purchase or otherwise, by or for the firm or for the purposes and in the course of the business of the firm, and includes also the goodwill of the business.

Unless the contrary intention appears, property and rights and interests

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ship beyond the amount of capital he has agreed to subscribe, but is also entitled to interest thereon and this even though the partners may not have been aware of the outlay. Ex parte *Chippandale,* (1854) 4 De.G., M. & G. 36; 43 E.R. 415. *See also* 1932 L. 301; 33 P.L.R. 230; 137 I.C. 162=1932 L. 389; 23 S.L.R. 313=1928 S. 133; 1921 N. 45=64 I.C. 183; 1931 N. 45. Partners are not as regards partnership dealings considered as debtor and creditor *inter se* until the concern is wound up or until there is a binding settlement of the accounts. So, one partner has no right of action against another for the balance owing to him until after final settlement of the accounts; but a partner may have a right of action against another for a debt independent of the partnership accounts. The only remedy between partners is one for partnership accounts. 62 Cal. 510=39 C. W.N. 606=1938 Cal. 377. *See also* 38 Bom. L.R. 486=1936 B. 246. Contract for payment of interest not specifically providing for such payment even in case of loss—Right to interest in case of loss. 1944 A.L.W. 496.

CL. (*f*).—As to liability of a negligent partner, *see* 87 I.C. 735=1925 B. 324.

SEC. 14.—English Partnership Act, Ss. 20 and 21 and S. 253 (1), Contract act. S. 14 of the Act is not exhaustive; it only provides what the property of the firm shall include. Debts due to a firm fall within the description of property being property acquired for the firm. I.L.R. (1938) Bom. 102=39 Bom.L.R. 1214=1938 Bom. 108. Where a partnership firm is styled 'X factory' it is improbable that the ownership rights of the partners of that firm would be confined to the business and machinery and would not include the building in which the business is conducted and the machinery is contained. I.L.R. (1938) All 638=1938 A.L.J. 610=1938 All 452. It does not necessarily follow because certain partners jointly own immovable property which they use for the purposes of the partnership business that that property is partnership property. Whether it is or is not depends upon the agreement between the partners. From the mere fact that two brothers who jointly inherited a house set up a business in that house in partnership, it could not be inferred that they were intending to transfer their shares in the house to their partnership business. 162 I.C. 143=1936 All. 270.

SECS. 14 AND 15.—*See* English Partnership Act, Ss. 20 and 21 and S. 253, Contract Act.

PARTNERSHIP PROPERTY.—The expression "partnership property" denotes everything to which all the partners are entitled *as partners:* persons may be entitled to property jointly or in common and may also be partners; yet that property may not be partnership property. Whether any particular property is or is not partnership property depends upon the agreement between the partners and, in the absence of any express agreement, upon the circumstances under which it was acquired. 9 S.L.R. 11=30 I.C. 24; 55 B. 795=1931 B. 428. Purchase of immovable property in the name of the firm with the funds of the firm and making costly improvements with the same funds are indications showing that the property so purchased is the property of the firm. 1929 S. 189. *See also* 29 M. 149; 49 P.W.R. 1916=32 I.C. 853. Land purchased by partners in a trading concern out of partnership funds does not of necessity become partnership Property. Whether they hold such land as co-owners or as partners depends upon the purpose for which it is purchased. Therefore when the land is purchased out of partnership funds, and not used for its business, the question is one to be determined on general evidence. 30 I.C. 24 =9 S.L.R. 11. In the absence of any allegation or proof to the effect that portions of the assets of partnership were, by the agreement of the partners, withdrawn from the partnership and converted into land or house to be owned by the partners as co-owners, lands and houses bought in the name of one partner and paid for by the firm or from the profits of the partnership business are *prima facie* partnership properties. 25 M. 149 (165)=11 M.L.J. 353. But a contract on

in property acquired with money belonging to the firm are deemed to have been acquired for the firm.

Application of the property of the firm.

15. Subject to contract between the partners, the property of the firm shall be held and used by the partners exclusively for the purposes of the business.

Personal profits earned by partners.

16. Subject to contract between the partners,—

(*a*) if a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm;

(*b*) If a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

17. Subject to contract between the partners—

(*a*) where a change occurs in the constitution of a firm, the mutual rights and duties of the partners in the reconstituted firm remain the same as they were immediately before the change, as far as may be;

Rights and duties of partners after a change in the firm.

(*b*) where a firm constituted for a fixed term continues to carry on business after the expiry of that term, the mutual rights and duties of the partners remain the same as they were before the expiry, so far as they may be consistent with the incidents of partnership at will; and

after the expiry of the term of the firm, and

(*c*) where a firm constituted to carry out one or more adventures or

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the part of a company to continue to employ a firm as its agents, is not to be regarded as an asset of the firm, in which the legal representative of a deceased partner of the firm would be entitled to participate, as the contract is determinable at any time by the company the profits of which would be derived entirely by the services of the surviving partners, and in respect of which no liability could be incurred by the deceased. But contracts, which would render the estate of the deceased liable in the event of loss, and in the profits of which, therefore, such estate is entitled to participate, constitute assets of the partnership. 9 B. 536 (555, 556). It is true that the mere fact that properties belonging to one of the partners have been used for the purpose of the partnership business does not make those properties partnership properties. The question whether the separate property of a partner has become partnership property depends ultimately on the real intention of the parties. Under the provisions of the Contract Act or the Partnership Act, for the purpose of bringing the separate property of a partner into the stock of the firm, it is not necessary to have recourse to any written document. As soon as the partners intend that their separate properties should become partnership properties and they are treated as such, the properties become the properties of the firm. This result is not prohibited by any provision in the T.-P. Act or the Registration Act. 49 C.W.N. 799.

LOAN BY PARTNER TO FIRM—RIGHT TO INTEREST ON.—The general rule is that the interest is not allowed between partners. But when a partner advances moneys of his own to the partnership, over and above the amount of his capital, such advances will be treated as loans by him, and he is entitled to interest on the same in the absence of a stipulation to the contrary. 12 Mys.L.J. 404=39 Mys. H.C.R. 1012 *see also* 1938 Mad. 38; 15 Mys.L.J. 3. The general rule, no doubt, is that one partner should not sue another without a suit for dissolution of partnership and rendition of accounts. But where a partner has a dual capacity, *viz.*, that of a partner and that of a creditor, there is nothing in law to prevent him as a creditor from suing some of the partners for recovery of what is due from them. The partner who, in his capacity as creditor, has advanced a loan to the partnership, is entitled to recover it irrespective of the dissolution of the partnership. 1946 Nag. 266=1946 N.L.J. 215.

GOODWILL OF THE BUSINESS—*See* 1930 P. C. 185; 34 C.W.N. 737=58 C. 208; 52 M. 672=56 M.L.J. 657=1929 M. 456.

SEC. 16.—*Cf.* Ss. 29 and 30 of the English Partnership Act and Ss. 258 and 259 of the Contract Act.

THE SELECT COMMITTEE SAID:—Ss. 29 (1) and 30 of the English Act, corresponding to Ss. 258 and 259 of the Indian Act, have been run together into this clause, without change of substance. Sub-S. (2) of S. 29 of the English Act has been placed in the Chapter on the dissolution of the firm, where it appears as cl. 50.

CASE-LAW.—A plaintiff (partner) who is liable to account should give credit for defendant's share of profits, even though the claim be barred by time. "He who seeks

where additional undertakings are carried out.

undertakings carries out other adventures or undertakings, the mutual rights and duties of the partners in respect of the other adventures or undertakings, are the same as those in respect of the original adventures or undertakings.

CHAPTER IV.

RELATIONS OF PARTNERS TO THIRD PARTIES.

Partner to be agent of the firm.

18. Subject to the provisions of this Act, a partner is the agent of the firm for the purposes of the business of the firm.

Implied authority of partner as agent of the firm.

19. (1) Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.

The authority of a partner to bind the firm conferred by this section is called his "implied authority."

(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to—

(*a*) submit a dispute relating to the business of the firm to arbitration,

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equity must do equity." 42 P.L.R. 1917=35 I.C. 910. Where one partner is carrying on a different business, the mere fact that some knowledge and information are useful in both does not create liability to account. 34 C.L.J. 405=67 I.C. 10=1921 C. 722. A minor representative of a deceased partner is not personally liable to account to survivor for partnership business carried on during deceased's lifetime. His liability is confined to the extent of assets received. 40 A. 446=16 A.L.J. 305=45 I.C. 31. One partner can recover profits from his other partner who carries on a rival trade to the prejudice of the partnership business. 19 I.C. 250=11 A.L.J. 423. A firm cannot claim commission on goods purchased on its own behalf. 36 I.C. 210. A partner can carry on separate business, not competing with firm's business. Mere facility to push private business conferred by connection with firm does not create liability to account for the profits of his private business. 1926 C. 380=90 I.C. 492.

SEC. 17.—*Cf.* S. 256 of the Contract Act and S. 27 of the English Partnership Act. A person, becoming a surety to a firm for another's conduct as cashier, will not be liable to compensate any defalcation, which occurs subsequent to a change in the constitution and the name of the firm. 28 C. 597. As to the rights of a deceased partner's representatives to share in profits made subsequent to the death of the partner by the surviving partners, *see* 48 C. 906=1922 C. 122=64 I.C. 861. The share of deceased partner is not liable for debts incurred by the surviving partners after his death. 22 S.L.R. 105=1928 S. 121=110 I.C. 730.

CHAP. IV.—INTRODUCTORY.—This Chapter is mostly taken up with the statement and development of the principle that each partner is an agent of the firm. In arrangement, it differs widely from the corresponding part of the English Act. It elaborates some of the provisions of that part and omits others and introduces some new matter. (*Report of the Select Committee*)

SEC. 18.—The agency of partners arises not by reason of contract but by reason of the existence of the relationship of parties as partners. From the fact that in a deed one party is made the agent of another for some purposes it does not follow that the relationship of partners exists between them. 19 Pat. 715=1940 Pat. 683.

SECS. 18 AND 19: PRINCIPLES OF THE SECTIONS.—The Special Committee said: "Cl. 19 begins with the first principle given in S. 5 of the English Act—that every partner is an agent of the firm. It also contains the next important principle in S. 5 of the English Act, which defines the general extent of a partner's agency, namely, that an act of a partner, which (*a*) is done to carry on business, of the kind carried on by the firm, and (*b*) is done in the way usual in such a business, binds the firm. The remainder of the English section is contained in S. 20. The second paragraph in sub-s. (1) of S. 19 introduces a convenient term intended to avoid confusion when references are made to the authority of a partner as agent. The authority defined in the first paragraph of the subclause has been variously designed as "implied," "ordinary," "apparent" and "ostensible", and it is sometimes not clear what the exact meaning of these terms may be. The word "implied" is favoured by Lindley and seems to be the most suitable, as the kind of agency contemplated is one which flows from, or is implied by the partnership of a partner. Sub-S. (2) has no statutory precedent, but has been extracted from S. 2 of Chapter I of Book II of Lindley's work, which contains an exhaustive account of the subject of the extent and limitations of a partner's implied authority. The selection has been made with regard to Indian conditions.

SEC. 19.—Cl. (a) reproduces *Stead* v. *Salt* (3 Bing. 101), which has been followed in 22 A. 135. *See also* 148 I.C. 1080=35 P.L.R. 417=1934 L. 483.

(*b*) open a banking account on behalf of the firm in his own name,
(*c*) compromise or relinquish any claim or portion of a claim by the firm,
(*d*) withdraw a suit or proceeding filed on behalf of the firm,
(*e*) admit any liability in a suit or proceeding against the firm,

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Cl. (b) is *Alliance Bank, Ltd.* v. *Kearsley* (L.R. 6 C.P. 433).

Cl. (c) is a proposition on the law of agency contained in many rulings, *see* Lindley, p. 195.

Cl. (d) is contrary to *Harwood* v. *Edwards* cited by Lindley at p. 354, a case which seems to be unreported. It seems unreasonable to hold that a partner cannot compromise a claim by the firm but that he can withdraw a suit. The clause as drafted seems best suited to Indian conditions.

Cl. (e).—This is *Hambidge* v. *De la Crouee* (3 C.B. 742).

Cl. (f) follows *Sharp* v. *Milligan* (22 Beav. 606 and 16 B. 568, dissented from in 19 M. 471).

Cl. (g) is covered by *Harrison* v. *Jackson* (7 T.R. 207).

Cl. (h) is from *Singleton* v. *Knight* (13 A.C. 788). (*Special Committee's Report.*)

AUTHORITY OF A PARTNER TO BIND THE FIRM BY HIS ACTS—GENERAL—ACT TO BE WITHIN THE SCOPE OF THE PARTNERSHIP.—Every partner is, in contemplation of law, the general and accredited agent of the partnership and may, consequently, bind all the other partners by his acts in all matters which are within the scope and objects of the partnership. *See* Story on Agency, Chap. VI, Ss. 124, 125, cited in 6 Moo. P.C. at 193, 194; 81 I.C. 513=28 C.W.N. 824=1925 C.L. 29. "Ordinary partnerships are by the law assumed and presumed to be based on the mutual trust and confidence of each partner in the skill, knowledge and integrity of every other partner. As between the partners and the outside world (whatever may be their private arrangements between themselves) each partner is the unlimited agent of every other in every matter which is partnership business and not being in its nature beyond the scope of the partnership." *Per* Lord Justice James in *Baird's Case* (1870) L.R. 5 Ch. 725, 733. *See also* 101 I.C. 742=1927 L. 385; 8 C. 678=11 C.L.R. 225; 83 I.C. 539=17 S.L. R. 164=1924 S. 29. The acts done by a partner in violation of his duty to the firm cannot bind it when the other party to the transaction is cognizant of, or co-operates in, such breach of duty. *See* Story on Agency, Chap. VI, cited in 6 Moo. P.C. 193, 194. A partner is not liable for purchases made by a co-partner, out of the scope of partnership business and without the authority of the other. 15 B.L.R. 372. Where terms of partnership cannot be ascertained, no relation of principal and agent between the parties arises. 185 P. W. R. 1916=31 I.C. 632. The mere fact that a party makes no reference to his partners or sharers in the profits does not really affect his right in assigning the actionable claim, for, as a managing partner, he has a right to assign such a claim, and the only remedy of the partners or sharers in the firm is by a suit for accounts against the managing proprietor. 1933 S. 210.

ANY REPRESENTATION BY ONE OF THE PARTNERS will not bind the other partner. 1935 C. 275=60 C.L.J. 464.

THE ACT MUST BE DONE TO CARRY ON THE BUSINESS IN THE USUAL WAY.—Every partner is an agent of the firm, and his other partners for the purpose of the business of the partnership; and *prima facie* the acts of every partner who does any act for carrying on, in the usual way, business of the kind carried on by the firm of which he is a member, bind the firm and his partners (Partnership Act, 1890, S. 5). *See* 83 I.C. 539=17 S.L.R. 164=1924 S. 29; 1926 M. 114=50 M.L.J. 67. *See also* 56 C. 556=1929 C. 714. A partner's implied or apparent authority to bind his firm is limited to acts which are necessary for carrying on the partnership business in the way in which such businesses are usually carried on, and does not extend to acts which, however urgent, are in this sense unusual. *Hawtayne* v. *Bourne*, 7 Mee. & W. 595; 56 R.R. 806; *Simpson's Claim*, 36 Ch. D. 532. *See also* 13 I.C. 255=5 S.L.R. 168; L.B.R. (1872-1892), 519, 521; 1926 S. 291=21 S.L.R. 267; 10 O.W.N. 316=1933 O. 259. A partner in a mercantile firm has authority to draw and accept bills on behalf of the firm, and even if such implied authority has been expressly cancelled, but such cancellation is not brought to the discounting banks, the discounting banks are entitled to recover against the other partners. 59 M.L. J. 661=52 A. 851; 1930 P.C. 238 (13 M. I.A. 358, Ref.). A partner in a trading firm may draw, endorse, etc., hundis for the purposes of partnership. 9 Bom.L.R. 274.

POWER TO REFER TO ARBITRATION.—One partner of a firm cannot enter into an agreement to refer a matter in dispute to arbitration on behalf of a firm unless all parties join in it. 35 P.L.R. 417=1934 L. 483.

POWER TO ENTER INTO CONTRACT.—A partner is liable for a *bona fide contract* entered into by other partners. 106 I.C. 516 =46 C.L.J. 362=1928 C. 57; 1924 C. 1056; 1925 C. 29. *See also* 9 B. 311. It is a mistake to suppose that, because a firm obtains the benefit of a contract made with one of its partners, it must needs be bound by the contract. 14 C.P.L.R. 22 (26). If a partner, who entertains customers, wishes to be reimbursed, he should take the precaution of having an agreement made for an allowance. 108 I.C. 873=23 S.L.R. 313= 1928 S. 133. *See also* 1937 L. 715. (Lease of premises in name of one partner—Other partners also are liable for rent).

IMPLIED POWER TO BORROW.—Any partner in a trading firm has an implied authority to

borrow money for the purposes of the business on the credit of the firm. 1924 B. 260 =48 B. 176=77 I.C. 548. *See also* 34 Bom.L.R. 1137=1932 B. 539; 10 R. 204= 1932 R. 118; 123 I.C. 358=1930 M. 168; 40 M. 727=31 M.L.J. 138; 28 C.W.N. 824=1925 C. 293; (1847) 6 Moo.P.C. at pp. 193, 194; 79 R.R. 53. Where, however, the business is not of a commercial nature, *e.g.*, where it is a professional business, or even the business of a farmer or a quarry worker, where there is no buying and selling of goods, or an auctioneer, no partner can borrow or pledge the partnership property so as to bind his co-partners. 48 B. 176. A partnership in rice mill is not a trading partnership and one partner cannot bind the others by negotiable instruments without express authority. 1921 L.B. 44= 66 I.C. 584=11 L.B.R. 137. The presumption as to the existence of an authority to borrow is, however, not confined to trading partnership only, but it applies to every business which cannot be carried on in the usual way without such power. 21 S.L.R. 267=1926 S. 291. A bond or promissory note executed by the managing partner, for the joint purpose of the firm and within the ordinary scope of his authority is binding on the remaining partners. 24 W.R. 60 (61). *See also* 62 I.C. 315=10 L.B.R. 321; 33 P.L.R. 411; 10 R. 204=138 I.C. 210=1932 R. 118. Where a partner of a firm executes a promissory note in his individual capacity and not on behalf of the firm, the executant alone is liable under the note. 142 I.C. 837=35 Bom.L.R. 68=1933 B. 101. A partner is always liable for the partnership debt unless there is a restriction expressed or implied on the liability of one partner on a bill or note by another partner for partnership purposes. 40 M. 727=31 M. L.J. 138. *See also* 9 Bom.L.R. 274. As to the authority of a partner to sign and endorse promissory notes on behalf of others it is sufficient if such authority can be inferred from the surrounding circumstances. 84 I.C. 391=2 R. 367=1925 R. 30. *See also* 35 Bom.L.R. 68=1933 B. 101. Dormant partner is liable only to the extent of sums borrowed by the active partner in his capacity as a member of the firm. 28 C.W. N. 824=1925 C. 293; 142 I.C. 837=1933 B. 101=35 Bom.L.R. 68. Every one of the partners, in a mercantile firm of ordinary trading partnership, is liable upon a bill drawn by a partner in the recognized trading name of the firm for a transaction incident to the business of the firm, although his name does not appear on the face of the instrument and although he be a sleeping and secret partner. In order to take a case out of this general rule, it must be shown that the holder of the bill knew, at the time he received it, that the transaction was the private affair of a single partner. 13 W.R.P.C. 29 (30)=13 M.I. A. 358. Where there is a contract with the partnership and a promissory note is signed by a partner in his own name and not in the name of the partnership, as evidence of such contract, all the partners will be liable. 123 I.C. 358=1930 M. 168; 35 Bom.L.R. 68=1933 B. 101. Where one of partners of a firm signs a promissory note, in order that all the partners are to be liable under it, it is necessary that not merely the firm's name should be disclosed "in some way", but it must be disclosed in such a way that, on any fair interpretation of the instrument, the firm must be the real person liable upon the bill. One of the partners of a firm signed a pro-note describing himself as "Proprietor, Punjab Alliance Auction Rooms, Lahore". *Held*, that this description was not sufficient to make other partners in the firm liable. 15 L. 652=1934 L. 358. The joint liability of each partner being the ordinary incident of the partnership, one of the partners has no authority, without the consent of the co-partners, to change the joint liability into a joint and several liability. 24 B. 77 (84). Where two of the partners of a firm execute a promissory note in favour of a third agreeing to pay him a certain sum of money as being due to him on taking partnership accounts, the remaining partners of the firm will not be bound by the promissory note. 117 I.C. 108=1929 A. 542. In the case of a running money-lending business one partner can borrow and mortgage firm's assets; but when it is being wound up, this cannot be done except for necessity. 8 L.B. R. 363=36 I.C. 225.

POWER TO SETTLE AN ACCOUNT.—A partner has power to settle an account between the partnership and a third person, so as to bind the other partner. 12 M.L.J. 444= 26 M. 186 (P.C.). *See also* 45 P. R. 1899=5 P.L.R. 1900 (a case of a Hindu joint family business). In a working partnership there is a presumption that a partner has authority to strike balances in the firm account. 1929 L. 512.

POWER TO PAY THE DEBTS OF THE FIRM.—One partner can apply assets in paying debts that would be otherwise barred. 19 Bom. L.R. 86=38 I.C. 873.

POWER TO MAKE PART-PAYMENTS, ENDORSE OR ACKNOWLEDGE TO SAVE LIMITATION.—On the same principle he can pass acknowledgments to stave off the claims of creditors and to save the claims from being barred by limitation. 19 Bom.L.R. 86=38 I. C. 873; 33 P.L.R. 584=1932 L. 456. *See also* on the point. 41 M. 427=34 M.L.J. 373 (F. B.), following. 37 M. 146=25 M.L.J. 501 and overruling. 32 M. 421 and 35 M. 142; 15 Mys.L.J. 3. If one partner has authority to discharge a debt he can also make part-payments and endorse them. 2 R. 367 =1925 R. 30=84 I.C. 391. *See also* 123 I.C. 358=1930 M. 168; 1931 L. 136=12 L. 270. In the case of a mercantile firm, each partner is entrusted by his co-partners with a general authority to do any act necessary for, or usually done in, carrying on the business of such partnership; a partner's authority extends to making an acknowledg-

ment by part-payment so as to bind his partners. 1926 M. 114=50 M.L.J. 67. *See also* 56 C. 556=33 C.W.N. 412=1929 C. 714; 10 B. 358 (362); 5 P.L.R. 1900 =45 P.R. 1889. Acknowledgment by a partner, during the subsistence of the partnership, must, in order to save limitation, be an act necessary for, or usually done in, carrying on the business of the partnership. But an acknowledgment by a partner, after dissolution of the business, cannot save limitation, if the creditor had, at the date of acknowledgment, notice of the dissolution. 26 B. 42=3 Bom.L.R. 484. *See also* 8 L.B.R. 363=36 I.C. 225. Similarly, where a partnership is dissolved by the death of one of the partners, the surviving partners cannot bind the representatives of the deceased by their acknowledgment, unless they are specially authorised to do so. 8 M.L.J. 261. *See also* 85 I.C. 775=1925 N. 268. An acknowledgment made by one partner does not bind the other partners in the absence of proof that they authorised such an acknowledgment or payment; and such authority cannot be presumed. 85 I.C. 775=1925 N. 268.

POWER TO RECEIVE DEBTS DUE TO THE FIRM. —Though payment to a partner of a firm debt is a valid discharge of the debt, an agreement to set-off a debt due to the firm against a private debt due from one partner must be presumed to be in fraud of the partnership and does not amount to a valid discharge of the debt due to the firm. 9 I.C. 116=13 C.L.J. 234. *See also* 6 M. L.J. 115=19 M. 471 (475). But *see* 12 L. 270=1931 L. 136, holding that such a mere adjustment does not necessarily amount to a fraud and does not prejudice the plaintiff firm, and in the absence or proof of fraud or prejudice, it is binding on the plaintiff firm. Son of a deceased partner cannot give a complete discharge of a debt due to the partnership. 109 I.C. 50=1928 L. 832. An authority to give discharge for a debt on payment would not include a power to compromise or settle it in any way a partner liked. 59 M. 1036=1936 M. 593 =71 M.L.J. 378.

POWER TO EXECUTE A RELEASE.—A partnership firm is not a legal entity like a limited liability company. Consequently, a conveyance to the firm operates as a conveyance to the individual partners. Release of property mortgaged to a firm as a firm as a whole is useless, unless it is known who the individual partners are and whether the executant of the release is authorised by them to act on their behalf. 49 B. 245=1925 B. 69.

Sub-S. 2, Cl. (a): POWER TO SUBMIT A DISPUTE TO ARBITRATION.—A partner has no authority to bind his firm by a submission to arbitration. *Stead* v. *Salt*, 1825, 3 Bing. 101; 34 Bom.L.R. 1112=1932 B. 516; 59 I.C. 501=39 M.L.J. 269; 92 I.C. 705= 1926 L. 91; 133 I.C. 558=1932 L. 291. *See also* 107 I.C. 793=1928 M. 107; 83 I. C. 539=1924 S. 29=17 S.L.R. 164. Special authority, express or implied, is necessary to bind the other partners by submission to arbitration. 7 L.W. 114=43 I.C. 508; 76 I.C. 359=1924 S. 41. But a partner who ratifies the submission will be bound by it. 7 L.W. 114=43 I.C. 508. *See also* 22 A. 135 (138). Where the suit is brought against a firm, the reference to arbitration is made by a firm, and the award is against a firm and not against the individual members thereof, the award is valid, though the submission is signed by the managing members of the firm only and not by all members. 71 I.C. 734=1923 L. 212. Where the submission has been made in good faith and the partner has to make payment in accordance with the award, the partner is entitled to claim contribution from his partners on the basis of the award. 59 I.C. 501=39 M.L.J. 269. When one or some of the partners pay off a debt due by the partnership, he or they can compel contribution from his or their other partners. Such a suit cannot be regarded as one for accounts of partnership. 1941 N.L.J. 667=1942 N. 72. Where a creditor obtains a joint decree against some of the partners of a firm in respect of a partnership debt contracted by them, one of the judgment-debtors by paying the entire decretal amount is not entitled to sue his co-judgment-debtors alone for contribution in the absence of the other partners, unless there are special circumstances. Such special circumstances generally arise where there is an express promise by the co-judgment-debtors to indemnify the plaintiff. If, on the other hand, the debt that is paid by the plaintiff is not a partnership debt but a debt contracted by the partners on their own personal liability, quite independently of the partnership business, a suit for contribution would undoubtedly lie. The mere fact that a joint decree is passed against some of the partners is not sufficient for the purpose of showing that it is a separate liability incurred by them jointly. 43 C.W.N. 1214; *see also* I.L.R. (1942) Nag. 340=1942 Nag. 72.

Sub-S. (2), Cls. (c) and (d).—Now a partner has no authority to compromise or relinquish any portion of a claim by the firm. Prior to the Act, it was held by Kincaid, J.C. and Aston, A.J.C. (Kennedy, A.J.C., dissenting) that one partner might release a cause of action in which all the partners were jointly interested in the absence of fraud. 80 I.C. 583=1925 S. 63. *See also* 76 I.C. 359=1924 S. 41. The right of one partner to claim a share in a debt fraudulently released by the others is a personal one not passing to his legal representatives. 41 M. 446=34 M.L.J. 41=44 I.C. 466. Thus cl. (*c*) would apply even where the compromise is effected in the form of "an assignment" of a decree in favour of the firm. 59 M. 1036=1936 M. 593 (noted *supra*). But *see* 1936 A.M.L.J. 79. A partner in a trading firm has an implied

(*f*) acquire immovable property on behalf of the firm,

(*g*) transfer immovable property belonging to the firm, or

(*h*) enter into partnership on behalf of the firm.

Extension and restriction of partner's implied authority.

20. The partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partner.

Notwithstanding any such restriction, any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.

Partner's authority in an emergency.

21. A partner has authority, in an emergency, to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances, and such acts bind the firm.

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authority to assign a debt due to the firm; but he has no such authority to assign a decree for money obtained by the firm for an amount which is less than the decretal amount. 43 Bom.L.R. 888=1942 Bom. 22.

Cl. (f).—A lease taken by two partners, without the concurrence of the third, cannot bind the latter, when such concurrence is a necessary condition of the partnership. 21 I.C. 3=7 L.B.R. 42. Where, one partner is empowered to take a lease and execute any necessary documents, it must be taken that such documents were intended to operate, as if all the members were parties thereto, although the other members are not mentioned in the agreement and did not execute them. 19 M. 471 (476). But *see* 16 B. 568 (574), holding that the other partners are not liable to be directly sued by the lessor for the rent reserved by the lease.

Cl. (g): PARTNER'S POWER TO MORTGAGE PARTNERSHIP PROPERTY.—Prior to the Act, the Courts were of the view that a partner can effect a legal as well as an equitable mortgage of partnership property. It is settled law in England that a partner can effect a mortgage by deposit of title-deeds. *See* Lindley on Partnership, pp. 156 and 165; and In re *Clough,* (1885) 31 Ch. D. 324; and In re *Bourne, Bourne* v. *Bourne,* (1906) 2 Ch. 427. This clause would seem to prohibit even such a mortgage, because a mortgage by deposit of title-deeds would be a transfer of the immovable property, by the operation of S. 58 of the T. P. Act. (*See* Sel. Com. Report.) The case-law in India prior to the Act is summarised below: —Power to borrow is incidental to power to trade and power to pledge the business assets is incidental to power to borrow. *See* 31 M. 206; 2 M.I.A. 487 (P.C.); 4 A. 437 (460). If the partnership be of a general commercial nature, one partner may even pledge or sell the partnership property. 81 I.C. 513=28 C.W.N. 824=1925 C. 29. The managing partner has power to execute mortgage of partnership property in order to raise money to carry on the business. 107 I.C. 453=1928 P.C. 135 (P.C.). In a partnership whose business it is to buy and deal in land, a partner can mortgage the partnership land. 10 I.C. 776.

RELATION OF PARTNERS—RIGHT OF SUIT OF INTER SE—Partners are not, as regards partnership dealings, considered as debtor and creditor *inter se* until the concern is wound up or accounts settled. One partner has, therefore, no right of action against another for the balance owing to him until after final settlement of accounts; but he can proceed against another for a debt which is independent of the partnership account. The only suit possible between the parties is one for partnership accounts. 62 C. 510= 39 C.W.N. 606. I.L.R. (1946) N. 301 =1946 N. 266. *See also* 1946 N.L.J. 215 as to suit by a partner to recover advance made by him for partnership purposes.

RIGHT OF SURVIVING PARTNER.—A surviving partner can file a suit without impleading the representatives of a deceased partner for the recovery of a partnership debt which accrued due during the lifetime of the deceased partner. 11 Mys.L.J. 344.

SUIT NOT IN FIRM NAME—ALL PARTNERS MUST BE IMPLEADED.—If a suit is not brought in the name of a firm, all the partners should be impleaded. A suit by a person as the sole owner of a firm, at the time of the institution of the suit, cannot be said to be one on behalf of the firm. 35 P.L. R. 616=1934 L. 459. Individual partners may be sued personally along with the firm and a decree can be passed against the partners as well as the firm. 187 I.C. 373= 1940 Sind 19. *See also* 1938 Rang. 205. Suit against partners—Partnership business carried on by some members of joint Hindu family—Relief against other members on footing that business is joint Hindu family business — Pleadings — Relief. *See* 1938 Rang. 205.

Sec. 20.—*Cf.* Ss. 5 and 8, English Partnership Act and S. 251, Contract Act. Partner cannot by notice absolve himself from liability for other partner's acts. But unauthorised dealings by one partner contrary to resolution by majority are not binding on partnership as against party with

22. In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm.

Mode of doing act to bind firm.

23. An admission or representation made by a partner concerning the affairs of the firm is evidence against the firm, if it is made in the ordinary course of business.

Effect of admissions by a partner.

24. Notice to a partner who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

Effect of notice to acting partner.

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notice of **resolution.** 1928 S. 37=105 I.C. 862. Where the contract of hire of a partnership lorry is made by one partner personally, such partner acts as an agent of other partners, and the former is entitled to sue upon the contract in his own name. 1933 N. 221 (2). Partnership contract—Damages for breach of agreement—Liability of partners. 1933 O. 259. Debt contracted by one partner—Liability of other partner or his estate—Money borrowed by executor of such partner—Estate not liable. Executor is personally liable. 1940 Rang. 60.

Sec. 22.—*Cf.* S. 6 of the English partnership Act.

PRINCIPLES OF THE SECTION—FIRM WHEN BOUND BY ACTS OF ITS AGENTS.—See *British Homes Ass. Corp., Ltd.* v. *Paterson,* (1902) 2 Ch. 404; 126 I.C. 741=1928 B. 516; 1926 M. 390; 1930 S. 4. *See also* 13 I. C. 255=5 S.L.R. 168; 35 Bom.L.R. 68= 1933 B. 101. Though it is true that there was no provision in the Contract Act corresponding to S. 22 of the Partnership Act, that section has not effected any change in the law. It does no more than state what was the law, namely, that the act of a partner in order to bind the firm should be done on behalf of the firm, but it is not necessary that it should also purport to be so done. 58 L.W. 236=1945 M. 263=(1945) 1 M.L.J. 279.

SEC. 22 is controlled by S. 27. Negotiable Instruments Act. *See* 1945 M. 439 =(1945) 2 M.L.J. 113. One partner cannot bind the others by guarantee apparently unconnected with the partnership. [*Duncan* v. *Lowndes,* (1813) 3 Camp. 478; 20 N.L. R. 140=1924 N. 411.] A partner is not liable for the action of other partners unless the same is on behalf of the partnership. 20 N.L.R. 140=1924 N. 411. A bill given for partnership purposes by one partner in his own name, and not in the firm's name, does not bind the other partner. Re *Adansonia Fibre Co., Miles' Claim,* (1874) 9 Ch. App. 635. *See also* 39 B. 261=42 I.A. 48 =28 M.L.J. 515 (P.C.). A pro-note was headed "The Lahore Cotton Baling Press," and signed by one *G* alone. A suit was brought against *G* and *H,* alleging that *H* was the partner and thus liable. *Held,* that the form of the document showed that *H* was not liable. 111 I.C. 645=1928 L. 722. Where two persons form a partnership for the purpose of a trading adventure, and goods are purchased or moneys raised, ostensibly by an individual adventurer, but truly and substantially for the purpose of the joint adventure, the adventurers are liable as partners. But there is no such responsibility for goods purchased upon the credit of an individual adventurer, though they are afterwards brought into stock as his contribution to the joint adventure. The test to be applied to each case, to find out whether the transaction is or is not a partnership transaction, is laid down in (1810) 12 East 421; 39 B. 261= 42 I.A. 48=28 M.L.J. 515=26 I.C. 915 (P.C.). Where some of the partners signed an agreement without any words following their signatures to show in what capacity they signed, but the instrument sufficiently disclosed that the agreement was made on behalf of the firm, it was held that the other partners also were bound by the agreement. 113 I.C. 380=1928 M. 1196=55 M.L.J. 574. Words which may be construed as merely a description or as showing the designation of the person signing the instrument will not be sufficient to make a firm liable. 1930 S. 4.

Sec. 23.—"S. 23 is based on S. 15 of the English Act." (*Report of the Select Committee.*)

"IF IT IS MADE IN THE ORDINARY COURSE OF BUSINESS".—If the transaction in connection with which a representation or an admission is made is within the scope of the partner's authority as agent of the firm, such representation or admission will bind all the partners, otherwise it will not, unless actually authorized or ratified by them. *See* 84 I.C. 199=1924 N. 411. It is receivable against the partner making it, although not ordinarily conclusive against him.

Sec. 24.—*Cf.* S. 16 of the English Partnership Act.

Liability of a partner for acts of a firm.

25. Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.

Liability of the firm for wrongful acts of a partner.

26. Where, by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefor to the same extent as the partner.

Liability of firm for misapplication by partners.

27. Where—

(*a*) a partner acting within his apparent authority receives money or property from a third party and misapplies it, or

(*b*) a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm,

the firm is liable to make good the loss.

Holding out

28. (1) Any one who by words spoken or written or by conduct represents himself, or knowingly permits himself to be represented, to be a partner in a firm, is liable as a

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SEC. 25.—*Cf.* English Partnership Act, Ss. 9 and 12 and Indian Contract Act, Ss. 249 and 250. Partners are jointly and severally liable for the acts or omissions of any of them which cause loss or damage to third persons, if such acts are either done by a partner in the ordinary course of the firm's business or with the authority of his partners (S. 26). They are also jointly and severally liable where a partner receives and misapplies the money or property of a third person while acting within the scope of his apparent authority, and where the firm receives, in the ordinary course of its business, money or property which is misapplied by one or more of the partners while in the firm's custody (S. 27). *See* 48 B. 176=1924 B. 260. Surety letter of managing partner given on behalf of the firm binds all the partners. 1939 N.L.J. 80=1939 Nag. 31. When a firm ceases to exist, but some of the partners carry on the business under the same name, the retiring partners cannot be made liable for any transaction entered into after the dissolution. 68 I.C. 932=1922 L. 466. The estate of the deceased partner is not liable for the debt contracted by the surviving partner to enable him to perform a contract entered into during the lifetime of the former. The suit debt being binding on the partnership assets, the surviving partner has power to pledge the partnership assets in discharge of it. As regards that amount, a personal decree against the partnership assets in his hands can be passed. 42 M. 15=35 M.L.J. 669=47 I.C. 958. Except on dissolution of the partnership, no suit could be maintained by a partner or his assignee for contribution against the other partner in respect of a partnership debt. 33 M.L.J. 509=43 I.C. 217. A partner is always liable for the partnership debt, unless there is a restriction expressed or implied on the liability to be incurred by one partner on a bill or promissory note which may be executed by another partner for partnership purposes. 40 M. 727=31 M.L.J. 138. Where a partnership is rescinded on the ground of fraud, the partners at fault cannot ask the other partners to contribute to the loss which may have resulted in the partnership. 60 I.C. 709=1921 L. 130.

SEC. 26.—*See* S. 10, English Partnership Act. "Ss. 26 and 27 describe the tortious acts for which a firm is liable. They reproduce Ss. 10 and 11 of the English Act, with very little change." (*Report of the Select Committee.*) The mere fact that a partner, in instituting a malicious prosecution against a stranger, described himself as the agent of the partnership, acting in the matter of the complaint against the stranger on behalf of the firm, is not sufficient to render the firm or all the partners liable in damages to the stranger. There must be evidence to show that the firm was in some way or other concerned in the prosecution and had instigated it. 28 B. 226 (231). As to liability of partner for criminal breach of trust, *see* 1939 L. 406=41 P.L.R. 37; 1939 Sind 21.

SEC. 27.—*See* S. 11, English Partnership Act. Any partner in a trading firm has an implied authority to borrow money for the purposes of the business on the credit of the firm. A firm would be a trading firm if its business consists in buying and selling. In such a case, there is no duty cast on the person who advances the money to make any further enquiries and the other partners are responsible though the borrowing partner may misappropriate the money. 48 B. 176=77 I.C. 548=1924 B. 260.

SEC. 28.—*See* S. 14, English Partnership Act and Ss. 245 and 246 of the Indian Contract Act. "S. 28 introduces the doctrine of 'holding out.'"

PRINCIPLES OF THE SECTION.—*See* 10 C.W.N. 313; 18 W.R. 384; 78 P.R. 1903. Any

partner in that firm to any one who has on the faith of any such representation given credit to the firm; whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

(2) Where after a partner's death the business is continued in the old firm name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the firm done after his death.

Rights of transferee of a partner's interest.

29. (1) A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of the business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

(2) If the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled as against the remaining partners, to receive the share of the assets of the firm to which the transferring partner is entitled, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

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conduct on the part of a person reasonably calculated to lead others to suppose that he is a partner in a particular business amounts to a holding out on his part; for by such conduct he lends his credit to the concern. A frequent method of holding out consists in the use of one's name as a part of the firm style. Such use is a virtual representation that the person thus named is a member of the firm. *See* 88 I.C. 584=1925 O. 451; 87 I.C. 508=29 C.W.N. 496=1925 C. 937. The addition of "& Co." to the name of an individual does not indicate that any particular person is designated by those words. Still a person may be held out as a partner, without having his name appear in the firm style, or being disclosed in any way. 1925 O. 451. Under this Act the rule of liability by "holding out" can be relied on only by the persons to whom the representation has been made and who have acted on the faith of its being true. 87 I.C. 905=1925 S. 310. *See also* 10 C.W.N. 313; 18 W.R. 384 (387); 78 P.R. 1903. As to liability of retiring partner, *see* 137 P.L.R. 1908=102 P.W.R. 1908. But there may be cases in which the holding out has been so public and so long continued that the Court may infer that one dealing with the parties knew it and relied upon it, without direct testimony to that effect.

SEC. 29.—*See* S. 31, English Partnership Act.

CHANGE OF MEMBERSHIP OF FIRM BY TRANSFER OF A PARTNER'S INTEREST IN THE FIRM.—It is competent for a partner to sell his interest in the firm and retire therefrom. Such transaction does not prevent the continuance of the partnership by the other partners. On the contrary, if the business is thereafter carried on by the other partners, it will be presumed that their original contract remains in force, so far as it is consistent with the change of members. Without the retirement of a partner, the members of an existing firm may admit a new member into the firm. If the incoming partner is induced to become a member of the firm by false and fraudulent representations, he may rescind or maintain an action on the ground of fraud. As to the effect of fraud on creditors, *see* 18 N.L.R. 186=64 I.C. 719=1922 N. 70. The fundamental principle underlying the law of partnership is that a stranger cannot be foisted upon the partners against their will; consequently even when a partner transfers his interests in a firm the transferor does not cease to be a partner nor does the transferee become one. 1942 N.L.J. 229. The assignee of a partner is not bound by any settlement of accounts entered into by the remaining partners behind his back and after notice of assignment. 52 M. 509=1929 M. 627=56 M.L.J. 776. The legal power of a partner to make a transfer of his interest to a third person is unquestioned. The transferee, however, does not become a tenant-in-common with the other partners in any specific goods, but acquires only the interest his vendor had, which is his share of the residue after the affairs of the firm are settled and the debts paid, including, debts due from the firm to a partner. Such a purchase does not make the buyer a partner in the firm, without the concurrence of all the partners, either given expressly or implied from conduct. The assignee or mortgagee of the share of a partner is entitled to receive a share of the profits to which the assigning partner would be entitled and the assignee must accept the accounts of profits agreed to by the partners. 10 P. 792=12 Pat.L.T. 361=1932 P. 15. *See also* 4 L.W. 10=34

30. (1) A person who is a minor according to the law to which he is subject may not be a partner in a firm, but, with the consent of all the partners for the time being, he may be admitted to the benefits of partnership.

Minors admitted to the benefits of partnership.

(2) Such minor has a right to such share of the property and of the profits of the firm as may be agreed upon, and he may have access to and inspect and copy any of the accounts of the firm.

I.C. 543. A third party assignee of the rights of a partner has no right to call for an account of the partnership business from the other partners; even when the transfer results in or is followed by a dissolution the transferee can claim an account only from the date of dissolution. The Act does not deal with the case of a transfer by an ex-partner after dissolution but there is no reason why the right of such a transferee to claim an account of the partnership from the other ex-partners should be any larger than the right of a transferee or assignee under S. 29 of the Act. To a suit by such a transferee for accounts from the date of the partnership and not merely from the date of dissolution, the assignor is a necessary party and his non-joinder is fatal. I.L.R. (1944) Kar. 21. Where two out of a firm of three partners assigned their shares to two others and it was not proved that the third partner relinquished his claim upon the assignors as a partner, although he might have had knowledge of the assignment, he is entitled to sue for the winding up of the partnership and for a decree for account as against the assignor-partners and the assignees. 26 I.A. 202=27 C. 93 (P.C.). One partner cannot by his action introduce a third party without the consent of the other partners, so as to give the third party a right to interfere in the management of the business or to ask for an account. It is only when dissolution occurs that the right of the assignee arises to take action in the same way as his assignor could have done, to claim an account as from the date of the dissolution. But it is the assignor and not the assignee who can sue for dissolution. 27 Bom.L.R. 409=1925 B. 347. *See also* 10 P. 792, *supra*. That is the law as laid down in the English Partnership Act (*see* Sec. 31) and that also represents and always represented the law in India, although there was, before the enactment of this section, no statutory provision to that effect. 10 P. 792. The purchaser of the right of one of the partners of a mill, pending a suit for dissolution and accounts, is not entitled to maintain a separate suit for damages for use and occupation of the mill even though the mill solely belonged to his vendor. 19 C.W.N. 1115=31 I.C. 707. A receiver appointed at the instance of an assignee of the share of a partner cannot, any more than the assignee himself, sue the other partners for accounts before dissolution. 10 P. 792=133 I.C. 40=1932 15. As to exceptional circumstances, under which the right to account may be recognised. 10 P. 792. A partner has no right to any specific items of partnership property, but a partner in a firm, unlike a shareholder in a joint stock company, is a 'joint owner' and holds an interest in the partnership property, and dissolution of partnership operates as a transfer of that interest An agreement to assign his interests in a firm owning immovable property requires to be registered. 55 M. 72=1931 M. 580=60 M. L.J. 527. In a suit by a transferee or an assignee from an ex-partner in a firm after the dissolution of the partnership, for accounts of the dissolved partnership as a whole and not for accounts after the date of the dissolution only, the assignors are necessary parties. Consequently, when they are not joined either as plaintiffs or defendants till more than three years after the dissolution of the partnership, the entire suit must stand dismissed. Sec. 130 (2), T. P. Act, does not obviate the necessity of impleading the assignor in such a suit. 194 I.C. 380=1941 Sind 73.

SEC. 29 (2)—Scope—If abrogated by S. 130 (2). T. P. Act. *See* I.L.R. (1944) Kar. 21. Lease in favour of three partners from Government in respect of lands with salt pans—Clause prohibiting alienation or taking in of new partners without consent of lessor—Arrangement between one of the partners and financier that latter was to receive a share of profits of that partner—Not opposed to public policy or terms of the lease—Right of stranger to sue for accounts and share of profits—Madras Salt Act (IV of 1889)—Not a bar. 1944 M.W.N. 416=57 L.W. 394 (2)=1944 M. 394=(1944) 1 M.L.J. 461.

SEC. 30.—*Cf.* Ss. 247 and 248, Contract Act. There is nothing corresponding to this section in the English Act. A minor on attaining majority cannot be adjudicated insolvent for the debts of the firm. 36 I.C. 787=1917 M.W.N. 150; 58 I.C. 557. Both under S. 30 of the Partnership Act and under S. 247 of the Contract Act which was repealed by the former Act, a minor cannot be a partner in a firm though he may be admitted to the benefits of a partnership. There can therefore be no question of a minor retiring from a partnership when he is still a minor. Under S. 30 of the Partnership Act, a minor who is admitted to the benefits of a partnership, will no doubt become a partner if he fails to give notice within six months of his becoming a major; but this will not apply when the minor had become a major before the Partnership Act came into force. S. 248, Contract Act, which was in force before the Partnership Act, did not provide for the minor becoming a partner on failure to give public notice. The position would only be

(3) Such minor's share is liable for the acts of the firm, but the minor is not personally liable for any such act.

(4) Such minor may not sue the partners for an account or payment of his share of the property or profits of the firm, save when severing his connection with the firm, and in such case the amount of his share shall be determined by a valuation made as far as possible in accordance with the rules contained in section 48:

Provided that all the partners acting together or any partner entitled to dissolve the firm upon notice to other partners may elect in such suit to dissolve the firm, and thereupon the Court shall proceed with the suit as one for dissolution and for settling accounts between the partners and the amount of the share of the minor shall be determined along with the shares of the partners.

(5) At any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of the partnership, whichever date is later, such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm, and such notice shall determine his position as regards the firm:

Provided that, if he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.

(6) Where any person has been admitted as a minor to the benefits of partnership in a firm, the burden of proving the fact that such person had no knowledge of such admission until a particular date after the expiry of six months of his attaining majority shall lie on the person asserting that fact.

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that he became liable on attaining majority for the obligation incurred since the admission to the benefits of the partnership unless he gave public notice within a reasonable time of his repudiation of partnership. 1945 P. W.N. 320=1945 P. 286. Though a minor partner cannot be adjudicated insolvent, the firm can be and its profits can be dealt with for the benefit of the creditors. Minor has a right to share in the property still left. 21 S.L.R. 280=1927 S. 18=97 I.C. 446. *See also* 42 A. 515=18 A.L.J. 611=55 I.C. 557; 42 C. 225=26 I.C. 836; 42 I.C. 98. S. 247, the infant, while entitled to share in the which an infant partner occupies, does not seem to accord with the English cases. Under S. 247, the infant, while entitled to share the profits of the business, is not liable for the losses except to the extent of his own share in the partnership property. According to the English cases, a minor is no more bound by a contract of partnership than by any other contract. Moreover, under S. 247, the minor's share in the property of the firm is liable for its obligations, whether he has derived benefit from the business or not. 20 B. 767 (777). S. 248, Contract Act, seems to place the creditors of the firm in a more favourable position than in England. 25 C. W.N. 847=66 I.C. 811=1921 C. 538. *"Benefits of partnership"* include benefits which minor would enjoy if he were major. 86 I.C. 944=18 S.L.R. 96=1925 S. 272. As to the scope of this section, *see* 23 B. 146 (161). As to what amounts to the admission of a minor to the benefits of a partnership, *see* 1917 M.W.N. 150=36 I.C. 787. This section is subject to the provisions of S. 11, Contract Act, and a minor cannot simultaneously create a partnership and admit himself to its benefits. There must be a partnership already in existence before a minor can be admitted to the benefits thereof. 1922 L. 441=67 I.C. 95. The question whether a minor has been admitted to the benefits of a partnership is one of fact to be pleaded and proved at the trial and cannot be allowed to be raised for the first time in appeal. 49 C. 560=49 I.A. 108=1922 P.C. 237=43 M.L.J. 41 (P.C.). Where one of two partners died leaving a minor son, but the business was carried on under the old name and style with the partnership funds, *held*, that the minor could not enter into a contract with the surviving partner and was consequently not a partner. 53 A. 479=130 I.C. 704=1931 A. 327. In a such case the partnership having come to an end on the death of one of the partners, there was no question of the minor being admitted to the benefits of the partnership. 53 A. 479. Although a minor cannot be a member of partnership by his own contract, yet, if he is admitted to the benefits of the partnership by the other members, he can bind the others by his dealings in respect of the partnership business. 42 I. C. 98. Ss. 247 and 248, Contract Act, are independent of Hindu law and apply to all persons. 36 I.C. 787. *See*, however, 41 M. 824, *infra*. Ss. 247 and 248, Contract Act, do not apply to minor members in a joint family trade whether started by manager or inherited. The minor's interest depends on his belonging to the family, not on his agreement or admission. Minor is not liable for debts contracted during his minority. 41 M. 824=35 M.L.J. 473=49 I.C. 220. *See also* 23 C.W.N. 500=29 C.L.J. 280=51 I.C. 597. A Hindu infant, who by birth or inheritance, becomes entitled to an

(7) Where such person becomes a partner,—

(*a*) his rights and liabilities as a minor continue up to the date on which he becomes a partner, but he also becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership, and

(*b*) his share in the property and profits of the firm shall be the share to which he was entitled as a minor.

(8) Where such person elects not to become a partner,—

(*a*) his rights and liabilities shall continue to be those of a minor under this section up to the date on which he gives public notice,

(*b*) his share shall not be liable for any acts of the firm done after the date of the notice, and

(*c*) he shall be entitled to sue the partners for his share of the property and profits in accordance with sub-section (4).

(9) Nothing in sub-section (7) and (8) shall affect the provisions of section 28.

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interest in a joint family business, does not necessarily become a member of the trading partnership which carries on the business. He can only become a member of the partnership by a consentient act on the part of himself and his partners. 26 C. 349 (354). Members of the family, who are minors and are not shown to have been admitted into a trading firm and to have taken part in its business, need not be made parties as plaintiffs to a suit to recover arrears due to a family trading firm. 25 A. 378 (384). The guardian of a Hindu minor is competent to carry on an ancestral trade on behalf of the minor; but the minor is not personally liable for the debts of the business and, on the analogy of the rule in S. 247 with regard to his liability on being admitted to partnership contracts, the share of the minor in the property is alone liable. 3 C. 738. S. 247 is not strictly applicable, however, where the minor is the sole owner of the firm, as there is no case of partnership there. But, in such a case, where the ancestral trade is carried on under the superintendence of the natural guardian of the minor for the benefit of herself (she having a claim to maintenance) and the said minor, the latter will be bound by all the acts of the natural guardian, which are necessarily incidental to or flowing out of the carrying on of that trade 20 B. 767 (777, 779).

POSITION OF MINOR PARTNER.—Minor, though participating in profits of a firm, is not a partner. *See* 23 B. 146 (161). A person who is under the age of majority cannot be a member of the "firm" as defined in S. 4. He may be admitted to the benefits of a firm but cannot be made personally liable for any obligations of the firm. His share in the property of the firm is liable for the obligations of the firm and that share is no more than his right to participate in the property of the firm, after its obligations have been satisfied. 21 S.L.R. 280=1927 S. 18; 30 C. 539 (P.C.) and 49 C. 560=1922 P.C. 237=43 M.L.J. 41=49 I.A. 108 (P. C.). *See also* 25 C.W.N. 847=66 I.C. 811; and 43 I.C. 76=7 L.W. 218. By merely being admitted to the benefits of a partnership, a minor does not become a partner. It is only by his acquiescence after he attains majority that he can be said to have accepted the position of a partner, with all the liabilities of a partner. 62 I.C. 802=1921 M. 98=40 M.L.J. 153.

SEC. 30 (2).—A minor admitted to the benefits of partnership is entitled to participate in the property of the firm after its obligations are discharged. 49 C. 560=43 M. L.J. 41 (P.C.). *See also* 18 S.L.R. 96= 1925 S. 272; 21 S.L.R. 280=1927 S. 18; 42 A. 515; 42 C. 225; 58 I.C. 557. Minors admitted to partnership are liable to the extent of their shares for partnership debts, but they are not personally liable. 30 Bom. L.R. 762=1928 P.C. 135 (P.C.). *See also* 51 I.C. 597=23 C.W.N. 500; 21 S.L.R. 280=97 I.C. 446; 1936 M. 707=71 M.L.J. 373; 66 I.C. 811=25 C.W.N. 847; 43 I.C. 76=7 L.W. 218; 3 C. 738; 41 M. 824=35 M.L.J. 473=49 I.C. 220. Minor member of joint Hindu family not liable for debts, contracted during his minority *See also* 11 C.W.N. 135.

RIGHTS OF MINOR SONS OF DECEASED PARTNER.—Where, on the death of one of two partners, his widow and minor sons agreed to continue the partnership, but later sued for dissolution, *held,* the minors were like partners but not liable for losses, and the surviving partner was liable to account to the deceased partner's representatives for his share of the profits and assets at his death, deducting a reasonable amount as remuneration for his services since then. 6 R. 198=1928 R. 160. But *see also* 53 A. 479=1931 A. 327, *cited supra.* In a suit against a partnership firm, there cannot be a personal decree against the minor partners. They would be liable only to the extent of their interest in the assets of the firm. 35 P.L.R. 539.

MINOR REPRESENTATIVE OF DECEASED PARTNER, LIABILITY OF.—A minor representa-

CHAPTER V.

INCOMING AND OUTGOING PARTNERS.

Introduction of a partner

31. (1) Subject to contract between the partners and to the provisions of section 30, no person shall be introduced as a partner into a firm without the consent of all the existing partners.

(2) Subject to the provisions of section 30, a person who is introduced as a partner into a firm does not thereby become liable for any act of the firm done before he became a partner.

Retirement of a partner

32. (1) A partner may retire—

(*a*) with the consent of all the other partners,

(*b*) in accordance with an express agreement by the partners, or

(*c*) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

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tive of deceased partner managing the firm is liable to account to the survivor for partnership business carried on during the deceased's lifetime. The liability of the minor is not taken away by minor's want of personal knowledge. This liability is however confined to the extent of assets received by the minor representative. 40 A. 446=16 A.L.J. 305=45 I.C. 31. *See also* 71 M.L.J. 373.

FRAUD BY MINOR.—The exception of an infant is not made in S. 115, Evidence Act, and therefore, a minor, who executed a registered sale-deed representing himself to be of full age, is estopped from subsequently seeking to set aside the sale, on the ground of his minority. 21 B. 198 (201); 23 B. 146 (155).

Chap. V.—"Though Chapter VII on the Registration of Firms is the most important departure in the Act as regards substance, this Chapter is the most important departure as regards form. As mentioned in the Select Committee's Report, it contains no material change in the law of partnership, but it collects together and sets out in a convenient form all rules relating to the coming in of a partner, and all rules relating to the going out of a partner *in so far as these rules do not relate to the dissolution of the firm or to the consequences of dissolution.* As a result of the limitation on the selection of these provisions, they relate chiefly to what is referred to in various places in the Act as a 'change in the firm', that is, a change in the constitution of the firm which has not resulted in the dissolution of the firm. However, a few provisions, such as S. 34 (1) and S. 37 are of general application, that is, they apply where the firm continues without dissolution, and also where a dissolved firm is reconstituted and carries on the business with the property and assets of the dissolved firm is reconstituted and carries on the business with the property and assets of the dissolved firm. For this reason, the Chapter is given the non-committal title of 'Incoming and Outgoing Partners,' rather than the restricted title of 'Change in a Firm,' which would otherwise have been more suitable". (*Report of Select Committee*)

Sec. 31.—*Cf.* Ss. 249 and 253 (6) of the Contract Act and Ss. 17 and 24 of the English Act. S. 249, Contract Act, had no application to cases where, by *arrangement* between the parties, a person becomes entitled to the profits and liable for the debts accruing to and incurred by the firm, before his admission as a partner. 9 C.L. R. 21.

Sec. 31 (2): LIABILITY OF INCOMING PARTNER—COMMENCEMENT.—If a newly constituted partnership agrees among its members that the members of the new partnership shall have the poewr to bind it for the taking on of the debts of the previous firm which the new partnership had taken over, that would be binding on the new partnership, provided, however, there is anything in the transaction to show that the persons who executed the bills or notes or whatever are relied upon, were purporting to act on behalf of the new partnership. 1927 M. 889=53 M.L.J. 303. Even if the incoming partner has agreed with his co-partners that as between themselves, the partnership shall be deemed to have commenced at an earlier date, or that the debts of the old firm shall be taken over by the new, this is not of itself sufficient to give creditors who are no parties to the agreement, any right to sue the new partner for anything done before he in fact become a partner. 51 M.L.J. 506=49 M. 930=1926 M. 1138. To give the creditors this right, there must be some agreement to that effect between the new partners and the creditors. 51 M.L. J. 506=49 M. 930. Apart from privity of contract, a creditor cannot rely on agreement between partners *inter se* such as that the new partner would be liable for antecedent debts. (*Ibid*) To determine whether a new partner becomes liable to an existing creditor of the firm, two questions have to be considered (1) whether the new firm has

(2) A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm, and such agreement may be implied by a course of dealing between such third party and the reconstituted firm after he had knowledge of the retirement.

(3) Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement:

Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.

(4) Notices under sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm.

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assumed the liability to pay the debt, and (2) whether the creditor has agreed to accept the new firm as his debtors, and to discharge the old partnership from its liability 35 C.W.N. 593. If a partner of a firm retires after he has entered into a contract and a new partner joins the firm, the newly constituted firm is different from the old firm and cannot institute a suit on the contract entered into by the latter, except when the new firm took over all the liabilities and outstandings of the old firm 65 I. C. 26=1922 S. 13.

PURCHASER OF STOCK OF OLD FIRM.—S. 262, Contract Act, does not provide for a statutory charge on the property. Hence where a person purchases the stock of an old firm, he is not liable for the debts of the firm, unless such debts are made a charge on the property purchased 1933 A.L.J. 170=1933 A. 175.

Sec 32 (2): PRINCIPLE OF SUB-S. (2).—The law that the creditor is not bound by the arrangements between the partners new and old is more for the benefit of the creditor than to his detriment If a partner retires after the debt was contracted with an arrangement with his co-partners for extinction of his personal liability, such an arrangement does not affect the right of the creditor who can hold all the partners who dealt with him liable. 35 C.W.N. 593. As a general rule, however, a partner who retires from a firm often takes from the continuing partners a contract indemnifying him against firm debts Such contracts of indemnity do not, however, relieve the retiring partner from liability to firm creditors If a person has retired from a firm, he is entitled to show that immediately after the date of retirement, he wrote to the Bank and informed them that he had severed his connection with the firm and could not continue to guarantee its account. If he does that, any statement by him made at the time as the reason for his refusing to continue to guarantee is admissible to explain his conduct. 35 C.W.N. 705=1932 C. 236. A *continuing guarantee* given to a firm, or in respect of the transactions of a firm, is, in the absence of agreement to the contrary revoked as to the future by a change in the firm The reason is that such a change destroys its identity (*See* S. 38, *infra.*) *Acknowledgment by one of the several partners* in the absence of notice of dissolution by resigning partner is binding on resigning partner. 56 C. 556=33 C.W.N. 412=1929 C. 714 *See also* 1926 M. 114=50 M.L.J. 67; 26 B. 42. Where notice of dissolution was sent to the branches and the *arhitas* of the firm, and there was no attempt at concealment of the change in its constitution, the mere fact that the continuing partner retained the old firm's name, which does not disclose the identity of the retired partners, cannot render them liable for debts contracted by the continuing partner, after their retirement. 78 P R. 1903. But where the persons who intended to retire from business did in fact continue to associate with its work, a presumption may legitimately be drawn in favour of the continuance of the partnership 1921 C. 722=67 I.C. 10=34 C.L.J. 405. A partner who has retired before a certain transaction with the firm to which he had belonged takes place, cannot be held responsible, unless it can be shown that the transaction was with either a previous customer or one who was aware that the retired partner had been a partner. 137 P. L.R. 1908=102 P.W.R. 1908; 68 I. C. 932=1922 L. 466; *see also* 14 L. 188=1933 L. 417; or that he has *actually held himself out to be a partner,* a position which gives rise to a different class of consideration. 137 P.L.R. 1908=102 P.W.R. 1908. If a person is a member of a firm, and known to be such, persons dealing with the firm may be influenced by his credit, and unless he takes proper steps to make his retirement clear, he will be held responsible to those who knew of his partnership and might have been influenced by the fact. But it is definite personal knowledge which is required. It cannot be held as a principle that when a person has dealings with a man who was once a member of a joint Hindu family and competent to pledge the resources of that family such person can hold all the members, who once constituted a joint Hindu family responsible, unless they have taken the precaution publicly to proclaim their partition. If it be shown that the father of

Expulsion of a partner.

33. (1) A partner may not be expelled from a firm by any majority of the partners, save in the exercise in good faith of powers conferred by contract between the partners.

(2) The provisions of sub-section (2), (3) and (4) of section 32 shall apply to an expelled partner as if he were a retired partner.

Insolvency of a partner

34. (1) Where a partner in a firm is adjudicated an insolvent he ceases to be a partner on the date on which the order of adjudication is made whether or not the firm is thereby dissolved.

(2) Where under a contract between the partners the firm is not dissolved by the adjudication of a partner as an insolvent, the estate of a partner so adjudicated is not liable for any act of the firm and the firm is not liable for any act of the insolvent, done after the date on which the order of adjudication is made.

Liability of estate of deceased partner.

35. Where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death.

36. (1) An outgoing partner may carry on a business competing with that

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a minor son, had notice of a fact, such minor cannot say that he had no notice. 137 P. L. R. 1908=102 P. W. R. 1908. The outgoing partner has a right to be indemnified against the partnership debts by the appropriation thereto of the partnership assets unless such right has been taken away by any deed or agreement to which he is a party. 1933 S. 182.

Sec. 32, sub-S. (3): PRINCIPLE OF SUB-CL. (3).—Obligations resulting from contracts entered into before a partner's retirement are binding upon him, even though such obligations are not consummated until after his retirement and although as between himself and the new firm, the latter has undertaken to discharge them. The same is true of obligations incurred after his retirement, and before notice thereof has been duly given unless he is a dormant partner. *See* 75 P.R. 1908=122 P.W.R. 1908; 28 B. 606 (614). But for liabilities incurred by the new firm after his retirement, which has been duly notified, he is not responsible. *See also* 1922 L. 466; 9 M. 492. The phrase *Chikmi Sharik,* by its etymological sense, means a partner whose name is not disclosed, that is, a dormant partner. Therefore, on the retirement of a *Shikmi Sharik,* no notice of the dissolution of the partnership need be given. But he is liable to all the claims on the partnership till the date of his retirement. The *onus* of proving that he has retired from the partnership at a specified period lies on him, on general principles as well as under S. 105, Evidence Act. 75 P.R. 1908=122 P.W.R. 1908. Where goods are sent to a firm on inspection during the continuance of a partnership and out of them those that are not required are returned after the dissolution of the partnership, though the cause of action may not arise till the unrequired goods are returned, yet all those persons who were members of the firm at the time the goods were sent to it on inspection will be liable for the goods taken. 29 C.W.N. 496=1925 C. 937.

NOTICE—*See* 28 B. 606; 9 M. 492 (494). When a dormant partner ceases to be a member of the firm, the real authority of his co-partners to bind him is thereby withdrawn; and as *ex hypothesi* no one knows of the authority, no one is entitled to rely upon its continuance. 1930 B. 449 following 1927 B. 560 and 1929 P.C. 132. *See also* 1938 A.L.J. 907=1938 A. 619; 1936 Pat. 539=15 Pat. 709. As to the liability of dormant partners, *see* 13 W.R. 29 (30)=13 M.I.A. 358 (P.C.); 9 W.R. 355 (356). *See also* 8 C. 678. S. 264, Contract Act, is a particular form of estoppel by conduct and a person is not entitled to take advantage of it unless the facts raise a presumption that the absence of public notice excited in him a belief which caused him to do something that he would not otherwise have done. 1933 L. 591=34 P.L.R. 1022.

Secs. 32, 33 and 45.—Though a partner's connection with a firm may have ceased, the firm would nevertheless continue to be bound by the transactions of that partner made with third parties, until public notice of the severance is given or it is shown that the third party was aware of the severance on the date of transaction. 1938 A.L.J. 907=1938 A. 619.

Sec. 33.—*See* 12 C.W.N. 455; 1938 All. 619.

Sec. 35.—This section is derived from sub-S. (3) of S. 36 of the English Act. Like S. 34, it is confined to the case where the firm continues without dissolution. Where dissolution has occurred, these matters are provided for in Ss. 45 and 47. (*Report of Select Committee.*)

Sec. 36: CONTINUED USE OF FIRM NAME.—The right to continue the use of the old firm name, after the retirement of a partner, may be acquired by an express agreement

Rights of outgoing partner to carry on competing business.

of the firm and he may advertise such business, but, subject to contract to the contrary, he may not—

(*a*) use the firm name,

(*b*) represent himself as carying on the business of the firm, or

(*c*) solicit the custom of persons who were dealing with the firm before he ceased to be a partner.

(2) A partner may make an agreement with his partners that on ceasing to be a partner he will not carry on any business similar to that of the firm within a specified period or within specified local limits; and, notwithstanding anything contained in section 27 of the Indian Contract Act, 1872, such agreement shall be valid if the restrictions imposed are reasonable.

Agreements in restraint of trade.

37. Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, then, in the absence of a contract to the contrary, the outgoing partner, or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six per cent. per annum on the amount of his share in the property of the firm:

Right of outgoing partner in certain cases to share subsequent profits

Provided that where by contract between the partners an option is given to surviving or continuing partners to purcrase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner, assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section.

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with such partner. 1922 L. 466. Where, after dissolution of a certain firm, the assets are divided between the partners, one of the partners can make use of the old firm's name in suits and execution proceedings for the recovery of the debts which fell to his share at the division, unless that causes any risk of liability to the others, and an injunction cannot be granted to restrain such use at the instance of the others. 9 R. 52=1931 R. 138. Mere passive acquiescence or even consent to the use of the firm's name by a partner who has left the firm would not make him liable to persons dealing with the firm after he has left it. 3 I.C. 415=13 C.W.N. 931.

Sec. 37.—Section corresponds to S. 42 of the English Partnership Act.

SCOPE OF SECTION.—Where a partner, on the death of another partner, retains the partnership capital in his hands and employs it in trade, he is bound to render an account of the profits of the partnership to the other partner's son from the time of the death of that partner up to the date when the final decree is made. 53 A. 479=1931 A. 327. Where on the dissolution of a firm one of the partners retains assets of the firm in his hands without any settlement of accounts and applies them in continuing the business for his benefit, he may be ordered to account for these assets with interest thereon, even in the absence of fraud or misconduct in the nature of fraud: 1915 P.C. 116=42 C. 914=42 I.A. 91=29 M. L.J. 70 (P.C.). The assets of the deceased partner are a loan to the firm if they are retained in the business after his death, and the arrangement he makes at the time of death binds his estate. 37 B. 158=19 I. C. 406=15 Bom.L.R. 192. Where on an assignment of a partner's share the partnership is dissolved and a new firm is formed by the remaining partners, the assignee is entitled at his option either to the profits of the new firm or interest at 6 per cent. 52 M. 509=1929 M. 627=56 M.L.J. 776. Option of legal representative—Claim for share of assets only—Maintainability. (1947) 1 M.L.J. 20.

PROFITS ATTRIBUTABLE TO THE SHARE OF THE OUTGOING PARTNER'S CAPITAL.—A minor who is entitled to claim the assets of his deceased father in a partnership cannot claim as of right a share in the profits of the concern. There is no fiduciary relation between the surviving partners and the legal representatives of the deceased partner. The amount due to the deceased is a loan and nothing more. 4 L.W. 521=37 I.C. 728.

NATURE OF RIGHT—ALTERNATIVE—INTEREST OR PROFITS.—The right under this section where it exists, is an *alternative right* to interest on the capital improperly

38 A continuing guarantee given to a firm, or to a third party in respect of the transactions of a firm, is, in the absence of agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm.

Revocation of continuing guarantee by change in firm.

CHAPTER VI.

DISSOLUTION OF A FIRM.

39. The dissolution of partnership between all the partners of a firm is called the "dissolution of the firm".

Dissolution of a firm.

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retained in the business or to an account of the profits made by its use; and one or other of these alternatives must be distinctly chosen. A double claim for both profits and interest is inadmissible. Vyse *v.* Foster, 1874 L.R. 7 H. L. at p. 336. *See also* 1929 M. 456=56 M.L.J. 657=52 M. 672. He is not bound to make his election until the share of the profits that would fall to him has been ascertained and hence his final election must be postponed until the accounts have been taken. And for such retiring partner to be able to claim his share of the profits, it is not necessary that the whole of the partnership assets are so used. 52 M. 672=1929 M. 456=56 M.L.J. 657. Where a partner invests capital of his own in the partnership business, he should in equity be allowed to charge interest on the capital so employed in making up the profit and loss account of the business. 110 I.C. 639=23 S.L.R. 471 =1929 S. 85. In an action to dissolve and wind up the affairs of a partnership, until the accounts have been taken, it is impossible to say what if anything is due from any partner or co-partner; interest, therefore, should only be allowed to the plaintiffs from the date of final decree by which amount (if any) is found to be due from the defendants to the plaintiffs and not from the date of plaint. 58 C. 208=34 C.W.N. 737=1930 P.C. 185 (P.C.). A partner is not charged with interest in respect of overdrawings. 1930 P.C. 185.

SEC. 38.—*Cf.* sec. 18 of the English Act and sec. 260 of the Indian Contract Act. (Report of Select Committee.)

CHAPTER VI.—This Chapter is derived from that part of the English Act which is headed "disolution of Partnership and its consequences," but it excludes certain matters alredy included in the previous Chapter, and introduces some new matter, notably sec. 55 on goodwill. (Report of Select Committee.)

SEC. 39.—As to the position of parties in a partnership suit being in some particulars different from that of the position of parties in an ordinary money suit, *see* 11 L. 359 =1930 L. 725. Where a member of a joint Hindu family enters into a partnership, he might be representing the family of which he may be a member and may as such be accountable to the other members of the family; but so far as other parties to the deed of partnership are concerned, they must confine themselves to the terms of the deed itself and cannot be permitted to travel beyond it by raising a plea that his brother, a person not party to the said deed should have been impleaded in a suit for dissolution of partnership. 1930 L. 655 = 11 L. 359. *See also* Notes under sec. 42, cl. (*c*), *infra*. The presumption of agency does not exist in the case of a partnership which has ceased to be a going concern. 1925 N. 268=85 I.C. 775. Though it be true that a mere suspension of business of partnership does not necessarily lead to the conclusion that there has been a dissolution of the partnership, still the cessation of business coupled with other circumstances may legitimately lead to the inference that the partnership had been dissolved. 107 I. C. 673=26 A.L.J. 249=1928 A. 58; 1927 P.C. 70 and 1925 A. 786, Dist. After a partnership has been dissolved and accounts settled, any balance struck by a partner is one without authority and consideration. It does not create any liability on the firm. 95 I.C. 88=1926 L. 522 (2).

SUIT FOR DISSOLUTION AND ACCOUNTS—PROCEDURE.—Where a suit is filed for dissolution and settlement of accounts of a partnership business, ordinarily the liabilities have to be paid and assets to be collected and the business has to be wound up. Sometimes this is begun by ascertaining the liabilities and assigning them either to the parties with the consent of the creditors or by discharging them out of the sale proceeds of the assets of the business. The amounts due to the partnership are valued and assigned to the parties, or auctioned between them, or sold to third parties. 160 I.C. 642=1936 Lah. 458. When a partnership at will is formed, apart from the circumstances in which the Court may dissolve it, it can come to an end by a notice of dissolution or abandonment by one of the partners of the partnership. The fact that no further partnership business is done does not result in a dissolution of the partnership. The distinction between the closing of a business and the dissolution of a partnership must be kept in view. I.L.R. (1940) Bom. 505=42 Bom.L.R. 511=1940 Bom. 263. *See also* 1938 Sind 82=32 S.L. R. 672.

DECREE—FORM OF.—The proper form of an order in dissolution of partnership is given in Form 21, Appendix D to the C. P. Code where there is a form given for a preliminary decree in a suit for dissolution of partnership and the taking of partner-

Dissolution by agreement.

40. A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners.

Compulsory dissolution.

41. A firm is dissolved—

(*a*) by the adjudication of all the partners or of all the partners but one as insolvent, or

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ship accounts. The practice which has obtained some recognition of copying down the concluding sentences of a judgment and incorporating those as an order instead of making an order as contemplated by the first schedule is bad. 179 I.C. 64=1938 Rang. 478. A suit for dissolution of a partnership by one partner against another, without impleading all the partners of the business is not maintainable. 46 Mys.H. C. R. 234=19 Mys.L.J. 351. Even an assignee of a partner's rights cannot intervene until after dissolution, still less can a person who claims to be a mortgagee of partnership property from a partner for a non-partnership purpose. Such a person claiming under a title which is a nullity as against the firm and the other partners cannot be joined in a suit for dissolution. 1941 N.L.J. 657. Where one of the partners in a firm takes proceedings under the U. P. Encumbered Estates Act without disclosing the existence of the partnership and the other partner's claim in such proceedings are rejected and a suit for disslotion and accounts is brought by him thereafter, it cannot be contended that the liability of the partner applicant under U. P. Encumbered Estates Act is wiped out by reason of the proceedings under the U. P. Encumbered Estates Act. The claim in the suit was by one member of a partnership against the other members and the proceedings under the U. P. Encumbered Estates Act cannot be taken into consideration in taking accounts in such a suit. I.L.R. (1945) All. 520=1945 A.W.R. (H.C.) 344=1945 A.L.J. 201=1945 All. 332. Dissolution —Suit for accounts. Interest can be allowed only from the time when the amount is found due (*i.e.*,) the date of the final decree. 1944 A.L.W. 496. Partnership— Dissolution— Date — Family firm partner with another—Deaths, withdrwals and additions of family members during course of partnership—Effect. *See* (1945) 1 M.L.J. 305 (P.C.)=1945 P.C. 71=I.L.R. (1945) Kar. P. C. 134. Where on the dissolution of a partnership there is no settlement of accounts between the partners and one of the partners is thereafter compelled to pay a debt due by the partnership to third parties, a suit by such partner against the others for contribution cannot be maintained if at the time of the filing of such suit, a suit for general account of partnership is barred by limitation. 21 Luck. 295=1946 O.A. (C.C.) 59=1946 Oudh 117=1946 O.W.N. 59.

Sec. 40 covers the case where all the partners agree that the firm should then be dissolved; and also the case where the dissolution occurs in pursuance of a contract previously made, for example, in the articles of partnership. (Report of Select Committee.) It is open to the partners of a partnership to come together and agree to an account among themselves, even after the expiry of three years from date of dissolution; and such a settlement is supported by consideration, as all of them make mutual promises to abide by such settlement. 142 I.C. 549=37 C.W.N. 580=1933 P.C. 120=64 M.L.J. 596 (P.C.). A firm carries on business so long as its business debts remain undischarged. The mere fact that no new business was done after a particular date does not amount to a dissolution of the firm. 32 S.L.R. 672=1938 Sind 82; 1938 Rang. 478. *See also* 1937 Mad. 599; 1940 B. 63. Where the predominant intention of the executants of a deed of partnership is that the firm shall continue to carry on business without running the risk of dissolution at the instance of one of the partners who did not agree with the rest and wherein machinery is provided by which a partner apprehending loss can obtain adequate relief and there is a provision for settlement of disputes by arbitration, it is clear that it was the intention of the executants that the parnership shall not be dissolved on the happening of the contingencies mentioned in the Partnership Act. In such a case one of the partners has no right to bring a suit for dissolution of the partnership on the ground that the managing partner does not manage the business in a manner which may be profitable to the partners. I.L.R. (1939) A. 577=1939 A.L.J. 440=1939 All. 548.

Sec. 41 relates to events whose occurence unavoidably dissolves a firm. Cl. (a) is new, but needs no comment. Cl. (*b*) is sec. 34 of the English Act and sec. 255 of the Indian Contract Act. The proviso incorporates a suggestion made by Lindley at page 682. (Report of Select Committee.)

CL. (*a*).—As to the dissolution of the partnership by the bankruptcy or insolvency of the partners, it may be remarked that this naturally, and indeed, upon just reasoning, necessarily produces this effect, for the bankrupt partners are thereby disabled to perform their portion of the partnership contract, since all their property, is by operation of law immediately upon the declaration of bankruptcy or insolvency, divested out of them and it passses by assignment to the persons who are duly designated as the assignees thereof, to dispose of the same, and to distribute the proceeds among their creditors. The assignees are not, on the one hand, compellable to become partners, nor, on the other hand, are

(*b*) by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership:

Provided that, where more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not of itself cause the dissolution of the firm in respect of its lawful adventures and undertakings.

Dissolution on the happening of certain contingencies.

42. Subject to contract between the partners a firm is dissolved—

(*a*) if constituted for a fixed term, by the expiry of that term;

(*b*) if constituted to carry out one or more adventures or undertakings, by the completion thereof;

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the other partners compellable to admit them into the partnership. But a more important and an absolutely conclusive ground is that the further continuation of the partnership is utterly incompatible with the whole policy and objects of the bankrupt and insolvent systems. These systems contemplate an immediate sale and distribution of the assets among the creditors; and the assignees have no authority whatever to enter into any further engagements in any trade or business on account of the creditors, or at their risk. (Story, sec. 313); 1928 S. 71=106 I.C. 54; 1925 S. 310=87 IS.C. 905. A *fortiori*, the like doctrine applies where all the partners become bankrupt, for then the whole property is divested out of all of them. (Story, sec. 313.) But the mere failure of a company does not dissolve a partnership. 1929 A. 236=117 I.C. 824. On this section, *see also* 1932 S. 71=26 S.L.R. 204; 1932 S. 164; 1932 B. 316=34 Bom.L.R. 623.

SEC. 41, CL. (*b*).—The illegality of the partnership is no answer to a demand against it arising out of a transaction to which it is a party if the other person was not aware of it. If a business is carried on by two partners and is legal only so far as one is concerned, the presumption is that he has benefited by one half of the loan and a decree should be given against that partner only for half the amount borrowed by the partnership. 43 M. 141=38 M.L.J. 123=54 I.C. 45. Sec. 25, Punjab Laws Act, only applies to a person's misconduct previous to his being declared an insolvent, and the bankruptsy of a firm does not necessarily involve a legal prohibition of its business. The partners themselves are thereby prevented from carrying on the business, but it does not follow that the business itself is prohibited by law. 37 P.R. 1897. A suit to recover even the money advanced as capital for the purposes of a partnership, which was partly illegal, is bad. 3 Bom. L.R. 169.

SEC. 42.—It is the duty of the Courts to bring about the fulfilment of the expectations of the parties, and when a partnership has been entered into for a fixed term, the Courts should not permit a partner to drive the others to a dissolution. 1921 C. 633=66 I.C. 473=2 L. 351=1922 L. 195. Where plaintiff and defendant entered into partnership for a fixed term, but plaintiff failed to carry out his part of the partnership work, it was held that the plaintiff was not entitled to compensation for certain work done by him, that the defendant could not be expected to wait indefinitely for plaintiff to do his share of work, but that he was entitled to the nett share of profits. 6 P.L.R. 1915=27 I.C. 650. On this section, *see also* 86 I.C. 950=1925 S. 300. When a partner dies, his representative has an interest in and a lien upon the partnership assets and can claim a taking of accounts as upon dissolution caused by the death of the deceased. Where the surviving partners alienate any property, the proper remedy of the personal representative of the deceased partner is to ask for the taking of a general partnership account and not by a suit for a half-share in the alienated property. I.L.R. (1939) Nag. 396=1936 Nag. 182.

CLS. (*b*) AND (*c*).—*See* 1924 M. 708=80 I.C. 378=46 M.L.J. 503; 46 I.C. 467=118 P.W.R. 1918; 1939 A. 217. The principle of this sub-cl. (*c*) is that partners cannot be expected to acquiesce in new partners being forced upon them. In the event of a partner dying, they may well object to the executors or administrators or other heirs coming into the business. *See* 101 P. R. 1914=27 I.C. 69=218 P.L.R. 1915. Even where there is a period fixed, the death of one partner dissolves the partnership and the case of a partnership for a particular adventure is no better than the case where there is an express period. 52 M.L.J. 318=1927 M. 491.

EFFECT OF PROVISIONS IN THE ARTICLES OF ASSOCIATION CONCERNING DEATH.—But although a dissolution of the partnership takes place by law upon the death of any one of the partners, this proposition must be understood with the limitation that, by the articles of co-partnership, or other agreement between the partners, it is not otherwise stipulated by the parties. For it is entirely competent for the parties to vary this general result of law by an express agreement; and if such an agreement exists, it will depend upon the particular terms thereof. 66 I.C. 811=25 C.W.N. 847=1921 C. 538; 124 I.C. 19=1931 A. 225; 68 I.C. 722=1922 L. 349, 13 C.W.N. 299=

13 I.C. 23. A contract to the contrary (*i.e.*) death should not necessarily dissolve the partnership, need not be always express. It may be inferred from certain facts; but the mere existence of an adventure is not such a fact as leads to the inference of an agreement to the contrary. The mere fact that the accounts were intended to be taken after all the stock is sold cannot be held to mean that there is an agreement that if there is a death before all the stock is sold there is to be no dissolution. 1927 M. 491=52 M. L.J. 318. *See also* 8 Bom.L.R. 8; 94 I.C. 547=1925 S. 103; 1921 C. 538=25 C.W.N. 847=66 I.C. 811. It may be inferred also from the conduct of the parties. 16 L. 881 =1935 L. 350. Under sec. 42, the dissolution of a partnership on the death of a partner is subject to contract between the parties. Such a contract need not be express but may be deduced from the conduct of the parties. The conduct of the parties may be that of the parties subsequent to the death of the partner. After the death of a partner, it may be inferred from the subsequent conduct of the surviving partner and of the heirs of the deceased partner that there was a contract between the original parties that the partnership would not be dissolved by the death of any partner. I.L.R. (1946) A. 309=1946 All. 259. Where on the death of a partner, the business was carried on the assumption that his widow was a partner, *held*, that the conduct of the parties showed that there must have been a contract between the original parties, that the partnership would not be dissolved by the death of a partner, but should be continued with the representative of the deceased as a partner. 16 C.W.N. 299=15 C.L. J. 204. *See also* 25 C.W.N. 847=1921 C. 538; 124 I.C. 19=1931 A. 225. Death of a partner—Trust deed by deceased partner to continue the business, attested by the other partners—Effect of. 48 C. 906=26 C.W.N. 463=1922 C. 122. The profits of a business continued after the death of a partner may as regards the legal representatives of the deceased partner, be regarded as accretions to the property in accordance with the maxim *'accessorium siquitur sum principale'*—the accessory right follows the principal. 48 C. 906. Where a partnership is continued after the death of one of the partners it is technically a new partnership and not the old partnership. 94 I.C. 547=1925 S. 103. *See also* 68 I.C. 722 =1922 L. 349; 23 I.C. 771=7 S.L.R. 85; 25 W.R. 118 (119). For the purpose of ascertaining what shares the surviving partners brought into the new partnership an account may have to be taken of the old partnership. 1924 M. 708=80 I.C. 378 = 46 M.L.J. 503. *See also* 1930 M. 393=57 M.L.J. 404. Where partnership is dissolved by the death of a partner, and a suit is filed for accounts the business is to be regarded as continuing business up to the date of the final decree. 81 I.C. 525=1924 P.C. 93 (P.C.). A partnership dissolves on the death of a partner, and unless a new partnership is formed, the representatives of the deceased partner cannot be made jointly liable with the surviving partners. 11 I. C. 403=60 P.W.R. 1911. *See also* 40 A. 446=45 I.C. 31=16 A.L.J. 305; (1939) 2 M.L.J. 279=1939 M. 891. The death of a partner operates as a dissolution of the partnership, and the fact that the representatives of the deceased received, some time after his death, an account and a portion of the amount advanced, together with the money due to him in the way of profits, would not reconstitute the partnership but rather indicates a contrary intention. 25 W.R. 49. Where one of the terms of an agreement among the partners was that, in case of a vacancy caused by the death or retirement of any of them, his nominee should be admitted into the partnership, the business must, in default of such nomination, be intended to be carried on by the continuing or surviving partners. Where the will of such a partner did not refer to the firm or nominate a successor in the partnership, the mere fact that he left all his property to his executor cannot be construed so as to make the executor a partner in the place of the testator. Such an executor is entitled to an account up to the date of the testator's death, but not to a share in the "goodwill" of the business as an asset of the firm, when the goodwill is attached to the name of the firm, which, by the partnership agreement itself, is to be used by the surviving partners for their own benefit. 9 B. 536 (555). Even if a partnership continues after the death of a partner, the estate of the deceased is not liable in respect of subsequent obligations, in the absence of an express agreement. 8 Bom.L.R. 8. On this section, *see also* 114 I.C. 881=1929 A. 148; 31 I.C. 45; 38 I.C. 278; 74 I.C. 721=1924 A. 277; 102 P.R. 1914=27 I.C. 69. It was decided in some of the older cases that an injunction may be granted in cases in which a member of a joint Hindu family was prevented from taking part in the business of the firm. *See* 23 B. 144. *See also* 20 B. 467; 19 B. 269. It is doubtful if this is still good law. *See* S. 5, *supra*, and notes thereunder. A partnership between the manager of a joint Hindu family and a stranger does not make every member of the family a partner so as to clothe him with all the rights and all obligations of a partner. The effect of a partition in the family is to confer on the coparcener a right to call on the manager to get in the assets of the firm due to him as partner by proper proceedings against his copartners. 34 M.L.J. 271= 41 M. 454=43 I.C. 9. *See also* 61 I.A. 257=57 M. 931=1934 P.C. 192=67 M. L.J. 366 (P.C.); 39 C.W.N. 357; 101 P. R. 1914=27 I.C. 69. Where the divided members of a Hindu family run a business, they are partners and where one member puts an end to such partnership, sec. 253 (8) of the Contract Act will ap-

(*c*) by the death of a partner; and

(*d*) by the adjudication of a partner as an insolvent.

Dissolution by notice of partnership at will.

43. (1) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intetnion to dissolve the firm.

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ply. 63 I.C. 548=19 A.L.J. 525=1921 A. 411. Where subsequent to the partition of a Hindu joint family, the family business is carried on jointly by two of the members on one side and another member on the other, the death of the latter dissolves the partnership. 47 A. 784=1925 A. 595. A power-of-attorney executed by two members of a joint Hindu family is not terminated by the death of one of them when the interest of the deceased member passes to the surviving member. 35 M.L.J. 294=44 I.C. 849. Where the manager of a joint Hindu family enters into a partnership for the family benefit with a person, a stranger to the family, the partnership is dissolved on the death of the manager in the absence of any agreement with the survivors, who have no right in such a case against the other partners even to sue for any assets received by them, subsequently to the dissolution of the partnership. 78 I. C. 198=20 N.L.R. 49=1924 N. 263. But *see also* 61 P.R. 1915=31 I.C. 45. A covenant by a deceased partner of a firm binding his heirs and representatives to continue the partnership cannot be specifically enforced against the heirs and representatives; the effect of the death of the partner coupled with the refusal of the heirs and representatives to continue the partnership would be the dissolution of the firm. Where a Hindu father enters into a partnership with strangers under a deed of partnership which contains a covenant to the effect, that "on the death of any partner, his heir or representative shall thereafter be a partner in his place, being entitled to the right and interest of the said partner, and shall get the business done subjecting himself to the aforesaid terms and that on that account neither the partnership should be cancelled nor would it come to an end", and his sons after the death do not become partners or take part in the management of the business, they cannot be made liable for any loss incurred by the partnership after their father's death as sons of the deceased father. 50 L.W. 151=1939 M. 891=(1939) 2 M.L.J. 279.

MAHOMEDAN TRADING FAMILY.—Under Mahomedan Law, there is no such thing as a family trading partnership as under Hindu Law and any partnership transaction between two Mahomedan brothers must be governed by the contract between the parties as regards the partnership. Ordinarily the partnership terminates on the death of one of the partners, unless there is evidence to the contrary. 54 C. 687=1927 C. 836.

SEC. 42 CL. (*d*).—As to the effect of the insolvency of a partner, *see* 87 I.C. 905=1925 S. 310; 106 I.C. 54=1928 S. 71; 1931 R. 191=131 I.C. 62. There is no automatic dissolution of partnership upon the insolvency of a partner. If two out of four parties are insolvent the partnership continues to subsist. 14 Pat.L.T. 252=1933 P. 239. Where one of the partners becomes insolvent before the coming into force of the Partnership Act, the provisions of the Partnership Act do not apply to such a case but the Contract Act applies. The insolvency therefore of one of the partners does not by itself operate as a dissolution of the partnership. I.L.R. (1937) Nag. 28=A.I.R. 1937 Nag. 314.

SEC. 43.—Sec. 43 relates to the dissolution of partnership at will. It is taken from cl. (*c*) and the last paragraph of sec. 32 of the English Partnership Act. (Report of Select Committee).

PRINCIPLE OF THE SECTION.—Partnerships where no duration is fixed, are deemed to be mere partnerships at will (*see* sec. 7, *supra*) and therefore are ordinarily at the common law dissolvable at the will of any one or more of the partners. 67 I.C. 10=34 C.L.J. 405=1921 C. 722. The intention to dissolve may be inferred in the case of partnerships at will from circumstances showing that a partner has in fact abandoned his interest. 49 P.W.R. 1916=32 I. C. 853. *See also* 35 P.L.R. 557=1934 L. 557. A partnership is not necessarily dissolved merely because it is closed or its business has stopped. It must be dissolved in one way or the other known to and recognised by the law (89 I.C. 122; 1930 L. 378; 66 I.C. 811; Ref.) 37 L.W. 288=1933 M. 353. Where no term is expressly limited for its duration, and there is nothing in the contract to fix it, the partnership may be terminated at a moment's notice by either party. *See* 67 I.C. 10=1921 C. 722; 63 I.C. 548=1921 A. 411. In a partnership at will, a partner is entitled to dissolution. It is not an equitable right but it is a legal right under the Code and under the contract. 51 I.A. 154=5 L. 23=1924 P.C. 2=46 M.L.J. 158 (P.C.). The dissolution takes place as from the date of the notice (67 I.C. 10=34 C.L.J. 405), and without regard to the state of mind of the partner to whom the notice is given. Partnership at will is dissolved from the date on which one partner retires and no notice of the retirement is necessary. 25 I.C. 22. In cases where the partnership is not at will, it is the duty of the Courts to bring about the fulfilment of the expectations of the parties; and when a partnership has been entered into for a fixed term the Courts

(2) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.

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should not permit a partner to drive the others to a dissolution. 66 I.C. 473=2 L. 351=1922 L. 195. In the case of a dissolution by notice if the assistance of the Court is required by means of a decree for dissolution, the suit for dissolution must follow the notice. Where the notice is given more than 4 months after the institution of the suit, the relief for dissolution of partnership cannot be granted in that suit. 13 Luck. 219=1937 O. 438. Filing a plaint in a suit for dissolution by one partner is enough in itself to put an end to a partnership at will. 1927 P.C. 70=53 M.L.J. 245 (P.C.). A partnership at will is presumed to endure only so long as the parties are in life and have a capacity to continue it. The dissolution of it, either by death or by a supervening incapacity, will come under consideration when we speak of dissolution by mere operation of law. *See* secs. 42 and 44. *See also* 100 I.C. 616=1927 M. 491=52 M.L.J. 318. Where a partnership had come into existence for a fixed period with a clause enabling one partner to dissolve by giving notice of a specified period to the other, then any other method of dissolution by agreement between the partners must be strictly proved, and where the party on whom the onus of proof lies relies on the document to prove the dissolution and the document can with equal justification be read as having two different meanings, then the party fails to satisfy the onus which would lie upon him. 28 Bom.L.R. 1275=50 B. 665=1926 B. 585.

SEC. 44: LUNACY.—The lunacy of a partner does not of itself dissolve the partnership, but confirmed lunacy is a ground for dissolution if the other partners apply to the Court for a decree of dissolution on that ground. 53 C. 214=1928 C. 271.

CASE-LAW.—The adultery of one partner with his co-partner's wife is a sufficient ground for dissolving the partnership. 5 B.L.R. 109. Partner aggrieved by gross misconduct of other partners towards him which makes it impossible for him to continue as partner—Proper remedy is to sue for dissolution under this section. 64 I.C. 204. *See also* 11 C.W.N. 311. A partner guilty of misconduct cannot sue for dissolution of the partnership or for any other relief. The law is the same on this ponit as in England. Partner who destroys the old account books of the firm, makes such interpolations in the account books which make them worthless and unreliable, falsely prepares the balance sheet or tries to deprive his firm of a valuable asset is guilty of misconduct. 1 L. 6=57 I.C. 185. Even when a partnership is entered into for a fixed term, a decree for dissolution may be passed, when the mutual confidence, which the partners reposed in each other at the time when the partnership was entered into, has ceased. 89 I.C. 333=1926 L. 145. *See also* 30 C.W.N. 440=1926 C. 745. But neither stoppage of business nor refusal of a partner to make further advances on capital account can be treated as dissolution of the firm. 66 I.C. 811=25 C.W.N. 847=1921 C. 538. When a partnership is rescinded on the ground of fraud or misconduct, the guilty partner is not entitled to ask the other members of the partnership to contribute to the losses due to his fraud. 60 I.C. 709=1921 L. 130. One partner is not liable in a suit for accounts upon a dissolution of partnership, for the probable loss sustained by them owing to his neglect or failure to carry out duties imposed upon him by the partnership agreement. 87 I.C. 735=27 Bom.L.R. 500=1925 B. 324. Refusal and neglect on the part of any one partner to perform the duties undertaken by him would give to any other partner the right to apply for dissolution. In such a case the partnership could also be dissolved by agreement without legal proceedings. But for such an agreement the consent of all the partners is necessary; otherwise the partnership can come to an end only by efflux of time or decree of Court. 57 I.C. 713=1921 P.C. 91=39 M.L.J. 257 (P.C. Mere refusal of a partner to supply capital when demanded is not conclusive proof of intention to retire. 25 C.W.N. 847=1921 C. 538. If a partner falls into an error in the management from want of a larger measure of prudence and skill than he is master of, he is not liable for the consequences. In the absence of any specific agreement to the contrary, the rule of diligence among partners is not that they should employ the middle kind of diligence which prudent men employ in their affairs, but that they are safe if they show they acted in the partnership affairs as they would have acted in their own. Good faith is required in a partner as well as diligence and if a partner is guilty of gross negligence, unskilfulness, fraud, or wanton misconduct in the course of the partnership business, he is ordinarily responsible to the other partners, for the losses and damages sustained thereby. 53 I.C. 2 [Law *v.* Law, (1905) 1 Ch. 140, Foll.]. One partner neglecting partnership (affairs) is not by itself enough to dissolve the partnership. A partner can retire, but that retirement can only be by and upon notice to the other side. 89 I.C. 122=47 A. 756=1925 A. 787. Neither stoppage of business nor refusal of a partner to make further advances on capital account can be treated as dissolution of the firm. 1921 C. 538. The question whether there has been an abandonment of the business by a partner depends on the facts of each case. 25 C.W.N. 847=1921 C. 538.

Dissolution by the Court.

44. At the suit of a partner, the Court may dissolve a firm on any of the following grounds, namely:—

(*a*) that a partner has become of unsound mind, in which case the suit may be brought as well by the next friend of the partner who has become of unsound mind as by any other partner;

(*b*) that a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner;

(*c*) that a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of the business, regard being had to the nature of the business;

(*d*) that a partner, other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conducts himself in matters relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with him;

(*e*) that a partner, other than the partner suing, has in any way transferred the whole of his interest in the firm to a third party, or has allowed his share to be charged under the provisions of Rule 49 of Order XXI of the First Schedule to the Code of Civil Procedure, 1908, or has allowed it to be sold in the recovery of arrears of land-revenue or of any dues recoverable as arrears of land-revenue due by the partner;

(*f*) that the business of the firm cannot be carried on save at a loss; or

(*g*) on any other ground which renders it just and equitable that the firm should be dissolved.

SEC. 44, CL. (*e*).—*See* 27 I.C. 344=8 S.L.R. 69. Although the subject-matter of a partnership is precarious and speculative, it is a matter of inference to be drawn from the facts of each case, whether or not there has been abandonment by a partner of his share, or loss of interest by laches. The mere fact that a partner suing for partnership accounts and for winding up, had previously declined to advance more money for the business and left the management to a co-partner is not sufficient to infer that the former abandoned or lost by laches, his position as a partner. 28 C. 53 (59)=27 I.A. 189 (P.C.) *See also* 25 M. 149 (164); 12 P.R. 1881. Consent to attachment of deceased co-partner's share of partnership assets for personal debts of latter amounts to declaration of cessation of partnership. 51 C. 161=1924 C. 801. As to effect of attachment of share of partners, *see also* 8 S. L.R. 67.

SEC. 44, CL. (*f*).—The expectation of profit being implied in every partnership. if a partnership is entered into, and everything has been done which was agreed to be done, but certain loss is the only result of going on, any partner is entitled to have the concern dissolved, although he may have agreed that the partnership should continue for some definite time, and that time has not yet expired. 1 B. 468 (474) =3 I.A. 200 (P.C.), on appeal from 8 B. H.C. (O.C.) 209. Partners have an inherent right of winding it up, or to apply to have it wound up, in the event of its not being able to be carried on with success. This inherent right, however, may be shown to have been relinquished by any provision in the agreement, from which it can be fairly inferred. 1 B. 468=3 I.A. 200 (P.C.). Courts can dissolve a partnership working at loss even before the period fixed for its continuance. 42 B. 380= 1917 P.C. 116=35 M.L.J. 262=45 I.A. 61 (P.C.). *See also* 1924 B. 57=81 I.C. 463. Where there has been a complete destruction of mutual confidence, and it is impracticable to continue the partnership business with advantage to the partners, or they can no longer perform their duties properly, the partnership should be dissolved. 30 C.W.N. 440=94 I.C. 381=1926 C. 745. *See also* 89 I.C. 333=1926 L. 145. The mere failure of a company does not *ipso facto* dissolve a partnership. 117 I. C. 824=1929 A. 236.

PRACTICE AND PROCEDURE.—Where the partners composing a firm as one entity form a partnership with another person, the dissolution of the latter partnership does not dissolve the partnership. 90 I.C. 242=1926 S. 75. A suit for dissolution and winding up of a firm and its branch firm which consists of certain additional partners who have no interest in the main firm is bad for multifariousness. 90 I.C. 970=19 S.L.R. 395=1926 S. 66. Forum for dissolution and rendition of accounts is not the place where the capital is subscribed. 42 P.R. 1916=33 I.C. 953. In

45. (1) Notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm if done before the dissolution, until public notice is given of the dissolution:

Liability for acts of partners done after dissolution.

Provided that the estate of a partner who dies, or who is adjudicated an insolvent, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable under this section for acts done after the date on which he ceases to be partner.

(2) Notices under sub-section (1) may be given by any partner,

46. On the dissolution of a firm every partner or his representative is

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the case of a partnership which is wound up, the date on which the winding up was completed is the proper date for calculating the conversion of foreign currency into British Indian currency. 52 M. 509=1929 M. 627=56 M.L.J. 776. *See also* 38 I.C. 873=19 Bom.L.R. 86; 25 W.R. 511; 12 P.R. 1881; 28 C. 53 (59)=27 I.A. 189. Where a partner withholds the annual profits of a concern from a member of the firm, the partner excluded from the profits may bring a suit for an account and for his share of the profits, and such a suit shall not be dismissed for the reason that the plaintiff does not claim a dissolution. 2 L. 351=1922 L. 195. It is only under exceptional circumstances that partners can bring actions against their co-partners, except when the action is for dissolution of partnership, in which case they may claim an account and payment over of moneys that may be found to be due to them on accounts being taken. Actions between partners, which involve the taking of partnership accounts prior to dissolution, are almost unheard of. 9 A. 120 (121). Where, in a suit for dissolution of partnership, a Subordinate Court signally failed to do its duty, and there has not been any patent neglect on the part of the plaintiff to enforce his rights, the High Court has power, by way of superintendence, under sec. 15 of the Charter Act, to direct the Subordinate Court to do its duty and to dispose of the matter according to law. 18 A. 4 (8).

SEC. 45: PRINCIPLE OF THE SECTION. If a firm is dissolved and no notice is given and people continue to trade with the firm under the firm's name they are not to be affected by a secret dissolution. Their right to sue the retiring partner upon post-dissolution transactions does not depend on the question whether they knew that he was a partner prior to the dissolution. 59 C. 40=35 C.W.N. 705=1932 C. 236. *See* now proviso to this section. 1930 B. 449; 104 I.C. 520=1927 B. 560. In the absence of notice of dissolution all partners are liable to persons dealing with the firm, though after dissolution. 1930 S. 83=121 I.C. 865. Where no public notice of dissolution is given all the partners continue to be liable as partners to a third party for any act done by any of them which would have been an act of the firm if it had been done before the retirement of the partner provided that a retired partner would not be liable to a third party if the latter deals with the firm without knowing that he was a partner. 1944 M. L.R. 77 (Civ.). On dissolution or retirement, the agency as between the partners ceases, but as regards third persons agency continues until termination is notified. Old customers must be given specific notice and for others reasonable public notice is sufficient. 1926 S. 90=93 I.C. 448. In the case of old customers of a firm publication of notice of dissolution in the public press is not sufficient to relieve a retiring partner from liability. 1 R. 47=1924 R. 133. [But now under the Act, notice under sec. 72 is sufficient.] In the absence of notice of dissolution, persons dealing with a firm are entitled to assume that the partnership still continues, though it has actually been dissolved. 50 M.L.J. 67 =1926 M. 114. *See also* 1936 Pat. 539. In cases of withdrawal of a partner from the firm or in cases of dissolution, the constituents who have dealings with the firm should have notice of the fact. Mere publication in the *Calcutta Exchange Gazette* is not in law sufficient notice. 1927 M. 661=104 I.C. 120. *See also* 56 I.A. 174 =53 B. 414=1929 P.C. 132=56 M.L.J. 739 (P.C.); 104 I.C. 520=1927 B. 560. Customers old or new dealing with partnership with knoweldge of partnership are not affected by dissolution in the absence of notice. 1928 M. 125=106 I.C. 904. *See also* 1927 S. 155=100 I.C. 389. An acknowledgment of partnership debt by a salaried partner of a joint family firm after its dissolution but before general notice thereof is binding on all partners. 1930 B. 236=125 I.C. 442. *See also* 110 I.C. 484=1928 M. 588.

PROVISO.—This section does not apply to cases of dormant partners nor to cases of death. 1927 B. 560=104 I.C. 520; 1930 B. 449; 35 C.W.N. 705=59 C. 40 =1932 C. 236. The section cannot be held to cover the case of a person dealing with the firm, for the first time, after a change from its original constitution, so as to make the partner, who had already retired liable. Such a person has had no dealing with the "firm" originally constituted at all, and cannot be said to be a person *having* dealings with a firm, who

Right of partners to have business wound up after dissolution.

entitled, as against all the other partners or their representatives, to have the property of the firm applied in payment of the debts and liabilities of the firm, and to have the surplus distributed among the partners or their representatives according to their rights.

Continuing authority of partners for purposes of winding up.

47. After the dissolution of a firm the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners, continue notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise:

Provided that the firm is in no case bound by the acts of a partner who has been adjudicated insolvent; but this proviso does not affect the liability of any person who has after the adjudication represented himself or knowingly permitted himself to be represented as a partner of the insolvent.

LEG. REF.

SEC. 46.—*Cf.* sec. 39 of the English Partnership Act.

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will not be affected by any subsequent dissolution, of which no public notice has been given, unless he himself had notice of such dissolution. 78 P.R. 1903 (Case under sec. 264, Contract Act.) But *see* 1927 M.W.N. 770=1928 M. 125. The section has no application to the case of a dormant partner. 1927 S. 155=100 I.C. 389. *See also* 1928 M. 125=106 I.C. 904; 1929 P.C. 132 =53 B. 414=56 M.L.J. 739 (P.C.); 1927 B. 560=104 I.C. 520; 1930 B. 449=128 I.C. 588. Section illustrative of particular form of estoppel and to be taken with sec. 115, Evidence Act. 1922 L. 466=68 I.C. 932. This section applies not only to persons who dealt with the firm before the dissolution, but also to persons dealing with the firm after the dissolution or change of partners. 53 C. 214=1926 C. 271. *See also* 1928 S. 121=110 I.C. 730; 87 I.C. 663; 109 I.C. 50. But see *contra* 68 I.C. 932=1922 L. 466. Dissolution by death of partner—Continuance by surviving partner —Valuation of assets, fixing of—Procedure in case of difference. 1935 M. 165= 67 M.L.J. 880.

SEC. 46: PRINCIPLE OF THE SECTION.—The right is available, and may be enforced not only against the partnership assets and the other partners, but also against all persons claiming through them in respect of their interests as partners, for example, assignees, personal representatives, trustees in bankruptcy, or judgment-creditors, except purchasers or pledgees of specific assets of the partnership who might reasonably suppose that all the partnership debts had been paid or barred by lapse of time, or who otherwise deal with the surviving or continuing partner in good faith. *See* 57 M.L.J. 404=1930 M. 393. This lien of the partner is subject to valid rights of a *bona fide* purchaser for value from surviving partners of specific property belonging to the firm. 57 M.L.J. 404=1930 M. 393 (396). If it is necessary to examine the account books of the firm from an earlier date in order to discover what credits are still due to the partnership, the examination of these accounts would not be barred out by the plaintiff's acceptance of the existing accounts as correct. I.L.R. (1939) L. 178 =1938 L. 758. A suit to enforce the right provided in sec. 46 is generally called a suit for an account, which means an account taken by a Court. The right is not affected by the fact that the retiring partner may have already inspected the accounts of the firm. I.L.R. (1939) L. 178=40 P.L.R. 753=1938 L. 758.

SEC. 47.—This section follows sec. 38 of the English Partnership Act. As to the construction and scope of section, *see* 38 Bom.L.R. 1058=1937 B. 81.

PRINCIPLE OF THE SECTION.—If the dissolution be caused by death or bankruptcy of a partner, this authority to wind up the concern devolves on the surviving or solvent partners alone, to the exclusion of the personal representatives, or trustee in bankruptcy, of the deceased or bankrupt partner. 9 I.C. 450=4 Bur.L.T. 10. Both sec. 263 of the Contract Act and sec. 47 of the Partnership Act refer to the mutual rights and obligations of the partners after dissolution the only distinction between the two sections being that instead of the words "the rights and obligations of the partners" in sec. 263, there is, in sec. 47 of the Partnership Act, a fuller expression, *viz.*, "the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners". Though the dissolution of a firm causes a dissolution of the partnership between the partners, the partnership still subsists, but merely for the purpose of winding up its business and adjusting the rights of the partners *inter se*, and for this purpose the authority of the partners to bind the firm, and all their other mutual rights and obligations, continue notwithstanding the dissolution. The power of each partner, however, extends only so far as it is necessary to wind up the affairs of the firm and to complete transactions already

Mode of settlement of accounts between partners.

48. In settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed:—

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begun. He can recover payment of a debt due to the firm and effectually release the debtor, and also give a valid receipt for the debt, provided it is not done in fraud of his co-partners or in collusion with the debtor. A partner can also accept a bill of exchange for a debt, but he has no authority to acknowledge a debt, or by his act or admission to involve his co-partners in any new legal liability. The act or dealing in order to be binding on the co-partners, must be an act necessary in the winding up of the partnership. Only the winding up can be proceeded with after dissolution, and no other business can be carried on in the name of the firm. 39 Bom.L.R. 1058=1937 Bom. 81.

ILLUSTRATIVE CASES.—A partner can give a valid discharge of a debt due to the partnership after its dissolution. 52 I.C. 456. (*See also* 36 M. 544; 41 M. 446=34 M.L.J. 41, Foll.) An individual partner of a dissolved firm has authority to assign a decree obtained by the firm. Realising what is due under the decree would come under winding up the affairs of the firm. 1936 A.M.L.J. 79. The surviving partners can release a debt due to the firm, after dissolution by the death of one partner. 41 M. 446=34 M.L.J. 41=44 I.C. 466. *See also* 1936 A.M.L.J. 79. The question whether the legal personal representatives of a deceased partner were bound by a reference to arbitration by the surviving partners in relation to a partnership contract is not a pure question of law to be decided without reference to the facts of the case. 27 M. L.J. 192=24 I.C. 307 (P.C.) One of two partners dying—Surviving partner to wind up business, and do acts necessary therefor, such as realising assets, paying off debts and fulfilling obligations. 57 M.L.J. 404=1930 M. 393=126 I.C. 97. Surviving partners are entitled to dispose of the property of the firm in connection with winding up —Sale otherwise than in connection with the winding up gives no title to the alienee. 57 M.L.J. 404=1930 M. 393. *See also* 9 I,C. 450. A partner can validly sign and verify a plaint on behalf of the firm, though dissolved. As to the powers of the manager, *see* 1930 B. 236=125 I.C. 442, cited under sec. 45, *supra*. Where there is a receiver in existence winding up the affairs of the firm under the Court, and he has been given full powers to collect all outstandings and to pay debts and to distribute the surplus, it is not possible for the managing partner of the firm to refer to arbitration a question as to whether the firm owes anything to any one. 92 I.C. 705=1926 L. 91. It is not competent to a partner of a dissolved firm to enter into a *havala* transaction in respect of a debt due to the firm, and thereby transfer the credit of an amount due to the firm by one person to another thereby making the latter the debtor of the firm instead of the former. 38 Bom.L.R. 1058=1937 B. 81. One of the partners of a firm has no power to transfer any asset of the firm after its dissolution. 175 I.C. 567=1937 Lah. 934.

SEC. 48.—This is the "accounting" section and is most important. It is copied with only very slight verbal alterations, from sec. 44 of the English Partnership Act and requires little explanation. That section has stood with success the incessant and vigilant scrutiny of lawyers, accountants and businessmen in England for nearly forty years, and may safely be followed. (Report of the Select Committee.)

ASSETS TO BE DISTRIBUTED: SUB-CL. (*b*).—On the dissolution of the partnership and in the absence of any contract to the contrary, every partner has a right to have all the partnership property sold and to have the proceeds of the sale after discharging all the partnership debts and liabilities divided among all the partners according to their respective shares. 89 I.C. 577=1926 S. 49. Outstandings due to the firm may in distributing the assets of the firm, be assigned to individual partners. Outstandings assigned to partners on dissolution—Partner entitled to use of firm name in collection thereof, unless risk of causing liability to others exists. Injunction against such use of name improper. 1931 R. 74. When partnership is dissolved and accounts are settled, a partner must have some remedy at law to enforce the manner of settlement agreed upon. 113 I.C. 669=1928 M. 1133. No partner has on dissolution a right to insist that any particular item of the partnership property shall remain unsold and that it should be either divided *in specie* or allotted to him at an arbitrary value. 89 I. C. 577=1926 S. 49. Ordinarily a partner is not entitled to partial accounts; before such a suit can be instituted a special ground must be made out. If he wants an account of partnership dealings he must sue for a general account. 166 I.C. 953=1937 Pat. 55. Although after dissolution, the managing partner has, for purposes of winding up, a right to put up items of property to sale, yet the Court can go into propriety of alienations if they are suspicious. 52 M. 509=56 M.L.J. 776=1929 M. 627. A firm is not entitled to commission in respect of goods purchased on its own behalf. 36 I.C. 210. Profits made by sale of goods ordered before dissolution, and paid for by firm's money, are divisible among partners, though goods were received and sold subsequently. 1923 O. 23=74 I.C. 324. If, on a dissolution of partnership, there is an amicable settlement of accounts and if items not included in the settlement are received later

(*a*) Losses including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits.

on, they are to be divided between all the partners. 1929 P.C. 184=116 I.C. 727 (P. C.). In all cases where, after the dissolution and complete winding up of partnership, an asset which had not been taken into account fell in, it ought to be divided between the ex-partners or their representatives according to their shares in the former partnership. 45 M. 378=49 I.A. 181 =1922 P.C. 115=43 M.L.J. 305 (P.C.).

PARTNERSHIP SUIT—PRACTICE AND PROCEDURE—FRAME OF SUIT.—An action does not lie, by one partner against the other, for an account during the pendency of the partnership, without asking for its dissolution. 9 A. 120. But a departure from this general rule may be made in certain special circumstances which will depend upon the facts of each case. 1 A.L.J. 94. *See also* 2 M.H.C.R. 28. The rule is that as between partners ordinarily, no suit will lie except one for general account. 101 I.C. 390 =1927 M. 650. A particular item or claim should not be made the subject of a distinct suit. 2 N.W.P. 90. So a partner cannot sue for money lent by him to his firm, as the advance is only one item in the partnership accounts. 25 B. 606 (612)=3 Bom. L.R. 227. *See also* 21 W.R. 300 (301). A partner cannot sue his co-partner for his share of profits, which accrued up to a particular time. He must, if he desires relief, sue for an account. 16 W.R. 141 (142). Where a partner withholds the annual profits of a concern from a firm, the partner excluded from the profits may bring a suit for an account and for his share of the profits without claiming dissolution. 66 I.C. 478=2 L. 351=1922 L. 195. When there has been a partnership, there can be no suit for the recovery of money due until it is known what amount is due. 117 I.C. 824 =1929 A. 236. Unless the claim by a partner to recover a sum of money from the other partners in respect of a transaction of the partnership forms part of the inquiry in the action for winding up the partnership, it is not sustainable, no suit will lie therefore after limitation has expired for a suit for an account. 85 I.C. 991=48 M. 482=47 M.L.J. 829=1925 M. 279. No suit lies by one partner against another for damages for breach of certain covenants in the partnership deed. In such cases the proper course is to bring a suit for general accounts and debit the defaulting partner with any loss that might have been incurred by his action, in the general account. 101 I.C. 390=1927 M. 650. The general principle that as between partners there can be no suit for any particular item of partnership account is quite sound and must be enforced under ordinary circumstances. If, however, special circumstances arise which render the application of this principle unfair and inequitable there is no reason why justice and equity should not come to the help of a partner who is being involuntarily saddled with liability which must be shared by his co-partners and for which he has no means of relief except a suit for contribution. 1942 M.L.R. 13 (Civ.). When the suit only seeks to compel the partners to discharge the obligation undertaken by them under the agreement of partnership, *e.g.*, to render accounts annually, the Courts will not be justified in refusing relief for the simple reason that no dissolution had been prayed for or that their mutual relations should be settled without the intervention of Court. 141 I.C. 277 (2)=1933 N. 127=16 N.L.J. 10. The plaintiff suing only for accounts during the currency of the partnership has to allege special grounds for seeking that relief alone and the defendant should have an opportunity of showing cause against it. 54 M. 671=1931 M. 300=60 M.L.J. 315. *See also* 88 I.C. 153 =1925 M. 737=48 M.L.J. 444. A suit will lie between partners, without dissolution, for rescission of a contract entered into between them and for damages on the ground of false representation. 130 I.C. 644=1931 L. 390. So also when advances are made by one partner to another partner, in respect of what he is to contribute to the joint capital. 18 M. 134. *See also* 97 I.C. 757=1927 M. 68; 1925 M. 737=48 M. L.J. 444; or when two partners borrow from a bank on their joint promissory note and apply the money to a partnership concern, and one of the partners is compelled to pay more than his share of the debt. 18 M. 134. The liability in respect of advances made by one partner to another, though made for the purpose of the acquisition of his share in the partnership property, is a personal one, and not being a debt of the partnership, it could not be recovered from the partnership property. The creditor partner is in no better position than the other ordinary creditors of the debtor partner, and he is not entitled to any priority over the other creditors. 49 L.W. 126=41 Bom.L.R. 663=1938 P.C. 277 (P.C.). A suit to recover an amount advanced in pursuance of a partnership agreement is not maintainable without suing for a general account, where the agreement came into force on the date on which it was executed. It is immaterial that the partnership business did not actually commence. 39 P.L.R. 896 =1938 Lah. 43. If the amount paid up by one partner was a liability of the partnership, then the mere fact of his having been compelled to pay the whole of the partnership debt would not entitle him to sue his co-partners or any of them for contribution, in the absence of any special circumstance, though he would be entitled to charge the sum paid in the partnership account. 20 C. 262 (264). *See also* 5 Bom.L.R. 912 (913)=28 B. 176; 33 M.L.J. 509=43 I.C. 217. If, on the other hand, the liability

was not a joint liability of the whole partnership, but a joint liability only of himself and some of the other partners, a separate suit would lie in that case. 26 C. 262 (264). *See also* 12 B.H.C.R. 97. It is certainly true that partners in a firm are not ordinarily entitled to bring a contribution suit in respect of individual items which they have paid on account of partnership debts, but it does not follow that one partner has no right of action for contribution against another, when there has been a final settlement of accounts between them. 1945 P.W.N. 320=1945 Pat. 286. Where some of the partners of a firm borrow money from a third party and on a joint decree being obtained by the creditor, one of them pays up the amount, he cannot sue his co-judgment-debtors (other partners) for contribution in the absence of the other partners and with adjustment of the partnership accounts, in the absence of special circumstances such as an express promise by the co-borrowers to indemnify the plaintiffs. The only remedy of the partners against other partners in respect of partnership assets is by way of a suit for accounts and not a suit for contribution. This rule only applies where the debt is really a partnership debt. Where, however, the debt is collateral to or independent of the partnership this principle has no application. In the latter case, a partner may have a right of action against another for contribution. But when the debt is a partnership debt, a suit for contribution is not maintainable in the absence of a prayer for dissolution or for accounts. 20 Pat. 811=23 P.L.T. 588=1942 Pat. 204. *See also* 1946 N. 66=1946 N.L.J. 215 (suit by partner for advance paid by him for partnership purposes). A partner of a firm to whom the other partners have executed a promissory note as a result of the adjustment of a part of the partnership account can maintain an independent suit on the promissory note without being obliged to bring a general suit for accounts of the partnership. 41 Bom.L.R. 1263=1940 Bom. 54. After dissolution, until the accounts of the partnership are completely settled, individual partners cannot sue for their share of any separate part of the partnership assets. Such suit will lie if the partnership has been completely wound up and the asset has become available to the partnership thereafter. 178 I.C. 53=1938 Lah. 259. Where, in an agreement, every partner is at liberty to borrow money on his individual credit and apply the same for the benefit of the business, the fact that such money is applied to the partnership business does not render it an item in the partnership business so as to preclude a partner, who had borrowed money and used it in the business, from maintaining a suit for contribution against the other partners. 26 C. 254=3 C.W.N. 299. It will be for the Court to determine under what circumstances it will be equitable to order a partial account, having regard to the rights of the parties under the contract. There is no rule of law now in force that a partial account can be ordered only under exceptional circumstances. 66 I.C. 478=2 L. 351=1922 L. 195. *See also* 20 N.L.J. 196=1937 N. 410.

PARTIES.—In a suit for accounts of the partnership on the death of a partner, all the representatives of the deceased partner should join. Sec. 7 of the Limitation Act applies to the case. 33 I.C. 564. In a suit about the partnership, the purchaser of the interest of a partner is properly joined as a defendant. 4 A. 437. Where in a suit for partnership accounts, a necessary party defendant has been omitted, the suit will be dismissed, if such party is afterwards added, at a time when the suit is barred as against him. 14 C. 791. In a suit for contribution after dissolution, all partners are necessary parties—Plaintiff liable to account should give credit for defendant's share of profits. 42 P.L.R. 1917=35 I.C. 910. Where in a suit for dissolution of a partnership and an account, the accounting party alleges that certain sums of money due to the firm had been set-off against cross-claims made against, the firm, he must establish the validity of the claims against the firm so as to show the propriety of his action in compromising in respect of them. 1937 O.W.N 991. *See also* 1936 Lah. 831.

In a suit for partnership accounts all parties are interested in the directions for account and the result of the account and the presence of all such persons is necessary before the Court in appeal, and the decree of the lower Court cannot be varied in the absence of any one of them. In order to decide whether owing to the failure to add the legal representatives of deceased parties to an appeal, the appeal abates in its entirety or only against the deceased party the test often applied is whether in the event of the appeal being allowed there would or would not be two contradictory decrees in the same litigation with respect to the same subject-matter. If it is likely to result in two contradictory decrees owing to non-joinder of necessary parties in appeal or on account of failure to bring on record the legal representatives of the deceased respondent who was also a necessary party to the appeal, the Court will have no alternative but to dismiss the appeal as a whole. 1942 N.L.J. 557=1943 Nag. 13=I.L.R. (1943) N. 17.

FORUM.—A suit for partnership accounts may be filed at the place where the contract of partnership is entered into (41 A. 513=50 I.C. 156); or where the business of partnership is carried on. 1916 P.R. 42=33 I. C. 953; 50 M.L.J. 298=92 I.C. 915=1926 M. 427; 132 I.C. 218=1931 L. 673.

LIMITATION.—A suit for an account of partnership, dissolved more than three years before the suit, is barred by limitation, even if the instrument of partition was re-

(*b*) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, shall be applied in the following manner and order:—

(*i*) in paying the debts of the firm to third parties;

(*ii*) in paying to each partner rateably what is due to him from the firm for advances as distinguished from capital;

(*iii*) in paying to each partner rateably what is due to him on account of capital; and

(*iv*) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

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gistered. 22 M. 14=8 M.L.J. 151; 57 M. 378=1934 M. 162=66 M.L.J. 625; 153 I. C. 969=1935 L. 209. *See also* 25 M. 26 (where plaintiff was a minor).

CONSIDERATIONS IN SETTLEMENT OF ACCOUNTS.—The facts that certain partners deliberately withheld their due services under the contract should be taken into consideration in a suit for accounts of the partnership. 57 I.C. 713=1921 P. C. 91=39 M.L.J. 257 (P.C.). Illegal payments made by the partners by way of bribes for the purpose of securing contracts for the partnership cannot be taken into account in taking accounts and ascertaining the shares of profits in the partnership. If any partner has been foolish enough to give a bribe in the hope that his partner would bear his share of the expenditure, he cannot use the Court to recover that share. Therefore items of expenditure shown to be for an unlawful purpose should be excluded in taking accounts. 49 L.W. 705=1939 Mad. 670 =(1939) 1 M.L.J. 905. In a suit for accounts of a dissolved partnership there is no law that an enquiry to determine in whose possession the account books are, must be held before the passing of a preliminary decree, though normally that should be the practice. The person in whose possession the books are and who has kept the accounts and knows all about them is entitled to file a suit for accounts. Normally there is no accounting party in such a suit, though if a partner withholds the books the Court may draw an inference against him when finally settling the accounts. 174 I.C. 837=1937 Lah. 312. *See also* 1936 Lah. 146=161 I.C. 669. Generally one partner cannot charge his co-partners with any sums in the shape of salary or commission, but where a *pardanashin* lady is a partner and the responsibility is thrown upon other partners, allowance should be made in favour of other partners. 16 C.W.N. 299=13 I.C. 23. In an action to dissolve and wind up the affairs of partnership, until the accounts have been taken, it is impossible to say what, if anything, is due from any partner or partners; interest therefore, should only be allowed to the plaintiffs from the date of final decree by which amount (if any) is found to be due from the defendants to the plaintiffs and not from the date of plaint: 1930 P.C. 185=57 I.A. 245=58 C. 208=59 M.L.J. 121 (P.C.). *See also* 39 P. L.R. 466=1937 Lah. 254=I.L.R. 1937 L. 492. The principle of the common law, which is applicable to a partnership to which neither sec. 13 (*c*) of the Partnership Act nor the English Law of partnership applies, is that any agreed interest on the capital brought in by a partner into the business is, unless the contrary is clearly expressed, a payment in lieu, or on account, of profits, and accordingly chargeable to profits only. 38 Bom.L.R. 1058=1937 Bom. 81. *See also* 1941 N.L.J. 657. If a partner makes an advance to the partnership on a promissory note, he can recover it from his partners without general accounts of the partnership being taken. It is not correct to say that no suit could lie on the note if the parties had partnership dealings. 1938 A.M.L.J. 11. Partners are not entitled to interest on their respective capitals unless there is some agreement, express or implied, to that effect. Such an agreement may be inferred if they have themselves been in the habit of charging such interest in their accounts. Where interest on capital is payable, the interest stops at the date of dissolution unless otherwise agreed. An agreement for payment of such interest can also be implied from the usage of their trade or from the practice of their firm. 38 Bom.L. R. 1058=1937 Bom. 81. *See also* 1941 N. L.J. 657; 1937 Sind 103; 1938 Mad. 38; 15 Mys.L.J. 3; 49 C.W.N. 999. In the case of a partnership which is wound up, the date on which the winding up was completed is the proper date for calculating the conversion of foreign currency into British Indian currency. 52 M. 509=1929 M. 627 =56 M.L.J. 776. Where, in a suit for dissolution of partnership, the plaintiff, who is appointed as receiver, appropriated a large amount of partnership amount to his own use, without sanction from the Court, *held*, the proper order to pass is one charging the plaintiff with the sums withdrawn by him with interest from the dates of withdrawal. 92 I.C. 274=1925 P.C. 257=23 L. W. 628 (P.C.).

PROCEDURE IN SUIT.—So far as the suit was concerned, the partnership account should be adjusted between all the parties, irrespective of any private arrangements between two or more of them *inter se*. 1930 L. 655. Partnership accounts should be taken from commencement of partnership, unless later adjustment is proved. Mere

fact that regular staff kept such accounts which were open to partners' inspection is not sufficient proof of final settlement. 33 C.W.N. 1104=1930 C. 154. Where a new partnership based on the old partnership is revived or reconstituted, by the consent of all the partners and their legal representatives, for the purpose of accounts, it is permissible to go into the accounts of the old partnership on the basis of which the new one is constituted. 102 I.C. 694=1927 L. 249. *See also* 1924 M. 708=46 M.L.J 503. In such cases, the Limitation Act is no bar to taking the accounts of the new partnership by going into the accounts of the old partnership, which have been carried on into the new partnership without interruption or settlement. 25 M. 26 (31, 32). *See also* 1929 S. 230=118 I.C. 741. All questions arising between the partners out of the partnership business must be disposed of in the winding-up suit. 8 B.H.C. (O. C.J.) 209. *See also* 12 B.H.C. 165; 70 I.C. 833=1923 A. 17 (Partnership of patent right). In a dissolution of partnership and accounts, either the partnership accounts should be taken as they stand, or if any items are objected to by the other side as false, the parties should be given an opportunity of proving the accounts. It is not equitable to reject certain items without giving an opportunity of proving them. 7 N.L.J. 212=1925 N. 188. Where plaintiff alleges certain proportion of shares, the defendant while admitting partnership alleges different proportion, it is incumbent on the Courts to weigh carefully the evidence led by both sides and to give a decision as far as possible according to the weight of that evidence. 8 L. 241=1927 L. 485. If a partner has kept accounts relating to the partnership in private books of his own, he must produce such books, for he should have kept his private accounts elsewhere, if he did not want them to be seen. After a dissolution, if books relate to the accounts which have to be taken, they must be produced. 108 I.C. 873=1928 S. 133. A suit by a sub-partner for an account of the partnership is maintainable against his partner and he must accept the accounts in the main partnership as settled between the partners of that partnership unless *mala fides* or mistake has been shown. 60 I.C. 967=14 S.L.R. 193 Ordinarily in a suit for settlement of account of a dissolved partnership and of any sub-partnership in which there are additional partners, the act or series of acts which give rise to relief for settlement of accounts of the main partnership are not the same as those which give rise to the relief for settlement of accounts of the sub-partnership. 90 I.C. 970=1926 S. 66. As to suit for accounts in the case of continuance of partnership business after death of partner, *see* 57 M. 378=1934 M. 162=66 M.L.J. 625.

EVIDENCE.—Partnership account-books being accessible to all the partners and being kept more or less under the surveillance of them all, are *prima facie* evidence against each of them, and therefore, also, for any of them against the others. A partner cannot ask them to be formally proved. 212 I.C. 416=16 R.L. 292=45 P.L.R. 441=A.I.R. 1944 Lah. 58.

INTEREST.—In a suit brought nearly two years after the dissolution of a partnership against the former managing partner, who has been retaining in his hands and for his own purposes assets of the firm without accounting for them or their proceeds to his copartner, interest is properly chargeable against the accounting defendant even though he has not acted fraudulently. 47 C.W.N. 113=1942 A.L.J. 710=1942 O.W. N. 814=1943 A.L.W. 20=45 Bom.L.R. 270 =A.I.R. 1942 P. C. 61=(1943) 1 M.L.J. 16 (P.C.).

COSTS OF PARTNERSHIP SUIT.—The costs of partnership suits should generally be paid out of the assets of the partnership, or in default of assets by the partners in proportion to their respective shares. 7 C. 428. *See also* 28 Bom.L.R. 386=1926 B. 289. Once the rights and liabilities of partners are fixed in the preliminary decree for accounts, they cannot be varied by a Judge in proceedings taken thereafter. 169 I.C. 635=1937 Sind 103.

EXECUTION OF DECREE.—A decree in a suit for dissolution of partnership is, for the purposes of execution, to be regarded as a money decree. It can be attached, but cannot be sold. 27 B. 556=5 Bom.L. R. 529. *See also* 43 C.W.N. 997. When once the decree dissolving the partnership is passed, and a receiver is appointed to take the account of the partnership and pay its debts. the creditors of the partner ship should not execute his decree against any of the partners, but must go to the Court, which has appointed the receiver. and take its directions. 5 Bom.L.R. 912 (914)=28 Bom. 176. A decree obtained against a partnership can be executed against a partner not only to the extent of the assets of the partnership in his possession but also against the other properties which he may own, unless the partner is able to prove that for some reasons his liability is limited to the extent of the assets of the firm in his hand. 43 P.L.R. J. & K. 153. Where partnership funds are, in the hands of the Court receiver, a Court of equity will not allow one of the whole body of creditors to gain priority over the remainder, by the simple expedient of attaching money in Court's hands. 16 B. 575.

RECEIVER.—The ordinary rule that no party is appointed as receiver except by consent has been departed from only in exceptional cases, as for instance, in a case of partnership where there are no allegations of fraud and where the carrying on of the business depends on the personal credit of one of the members of the firm. Court does not take upon itself the

Payment of firm debts and of separate debts.

49. Where there are joint debts due from the firm, and also separate debts due from any partner, the property of the firm shall be applied in the first instance in payment of the debts of the firm, and, if there is any surplus, then the share of each partner shall be applied in payment of his separate debts or paid to him. The separate property of any partner shall be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm.

Personal profits earned after dissolution.

50. Subject to contract between the partners, the provisions of clause (*a*) of section 16 shall apply to transactions by any surviving partner or by the representatives of a deceased partner, undertaken after the firm is dissolved on account of the death of a partner and before its affairs have been completely wound up:

Provided that where any partner or his representative has bought the good will of the firm, nothing in this section shall affect his right to use the firm name.

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management of a partnership except as incidental to winding up. 1934 Cal. 444=148 I.C. 459.

SEC. 49.—This section reproduces sec. 262 of the Indian Contract Act.

PROPERTY OF THE FIRM.—The property of the firm affected by this section *is that property* which belonged to the firm at the time of its dissolution. It includes all that was, at the commencement of the partnership, thrown into the common stock, and whatever has, during its continuance, by means thereof, been added to it. (*See* sec. 14, *supra*.) Separate property is that in which the partners are separately interested at the time of the dissolution. Property, therefore, which has been acquired in the partnership after its dissolution, is not to be treated as partnership property; and that which, though originally partnership property has, by virtue of a *bona fide* agreement, been converted into separate property before the dissolution, cannot be claimed by joint-creditors as partnership property. Separate property may similarly be converted into joint property; but the agreement by which the conversion is effected must, in any case, be completely executed and must be made in good faith. (Ex parte *Owen*, 4 D. & Sm. 351; Ex parte *Ruffin*, 6 Ves., 119; 5 R.R. 237.) *See also* 64 I.C. 719=1922 N. 70.

PARTNERS' LIEN.—Although partnership property has annexed to it a paramount liability for partnership debts, yet there is nothing in law which prevents partners from disposing of it as they like or allowing it to be treated as the sole property of one partner and obliges them to preserve it as partnership property for the benefit of the creditors of the partnership. Any disposition of the property by the agreement of the partners is effective unless made with a view to defraud the creditors; and the creditor is not entitled to be consulted in the matter. 64 I.C. 719=18 N.L.R. 186=1922 N. 70. *See also* 40 A. 446=45 I.C. 31=16 A.L.J. 305. Money or property given away does not continue to be the assets of the firm when it is given over to a third party. 54 C. 687=1927 C. 836. Debt by one partner to another—Money advanced to acquire share in partnership property—Lien on debtor partner's share. 15 L. 474=1934 L. 336.

SEC. 50.—This section corresponds to sub-sec. (2) of sec. 29 of the English Act, with necessary verbal changes. (Report of Select Committee.) *N.B.*—In secs. 50 and 53 the Second Select Committee have inserted a proviso which will protect the right of a partner who has brought the goodwill of the firm. (Report of Second Select Committee.) After dissolution the relationship between surviving and former partner is fiduciary. 57 M.L.J. 404=1930 M. 393. In the absence of any term agreed upon by the parties, any partner may determine the partnership at any time on giving notice of intention to do so. The dissolution takes place as from the date of the communication of the notice. If persons intending to retire from the partnership business continue to take things from the business and to associate otherwise with its works, a presumption may be drawn in favour of the continuance of the partnership. The accounts on a dissolution of partnership have to be taken for the benefit of all the partners concerned and there must be a full enquiry into them irrespective of the relief sought for in the plaint. If a partner without the permission of the other partner carries on a competing business with the firm, he must account for and pay over to the firm all profits made by him in such business and also make compensation to the firm for any loss occasioned thereby. The rule is not however applicable to a different business though the same knowledge and information may be useful in both. 67 I.C. 10=34 C.L.J. 405=1921 C. 722. After dissolution no ex-partner has power to do any

Return of premium on premature dissolution.

51. Where a partner has paid a premium on entering into partnership for a fixed term, and the firm is dissolved before the expiration of that term otherwise than by the death of a partner, he shall be entitled to repayment of the premium or of such part thereof as may be reasonable, regard being had to the terms upon which he became a partner, and to the length of time during which he was a partner, unless—

(*a*) the dissolution is mainly due to his own misconduct, or

(*b*) the dissolution is in pursuance of an agreement containing no provision for the return of the premium or any part of it.

Rights where partnership contract is rescinded for fraud or misrepresentation.

52. Where a contract creating partnership is rescinded on the ground of the fraud or misrepresentation of any of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled—

(*a*) to a lien on, or a right of retention of, the surplus of the assets of the firm remaining after the debts of the firm have been paid, for any sum paid by him for the purchase of a share in the firm and for any capital contributed by him;

(*b*) to rank as a creditor of the firm in respect of any payment made by him towards the debts of the firm; and

(*c*) to be indemnified by the partner or partners guilty of the fraud or misrepresentation against all the debts of the firm.

Right to restrain from use of firm name or firm property.

53. After a firm is dissolved, every partner or his representative may, in the absence of a contract between the partners to the contrary, restrain any other partner or his representative from carrying on a similar business in the firm name or from using any of the property of the firm for his own benefit, until the affairs of the firm have been completely wound up:

Provided that where any partner or his representative has bought the goodwill of the firm, nothing in this section shall affect his right to use the firm name.

Agreements in restraint of trade.

54. Partners may, upon or in anticipation of the dissolution of the firm, make an agreement that some or all of them will not carry on a business similar to that of the firm within a specified period or within specified local limits; and notwithstanding anything contained in section 27 of the Indian Contract Act, 1872, such agreement shall be valid if the restrictions imposed are reasonable.

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act to bind another ex-partner. 50 M.L. J. 67=1926 M. 114.

SEC. 51.—*See* sec. 40 of the English Partnership Act.

SEC. 52.—This corresponds with sec. 41 of the English Partnership Act with a few verbal changes.

PRINCIPLE OF SECTION.—An agreement entered into on a dissolution will be set aside if it can be shown to have been based upon error or to have been tainted with fraud, whether in the shape of positive misrepresentation or of concealment of truth. The utmost good faith is required in dealings between working and sleeping partners in matters relating to the partnership accounts. 1930 M. 141=123 I.C. 596.

SEC. 54.—This section reproduces the second exception to sec. 27 of the Contract Act, with amendments to assimilate it to sec. 36 (2). (*See also* notes under secs. 36 and 55). An agreement in restraint of trade which is exempted under the Partnership Act, is one in which the restriction must be limited to business similar to that done by the partnership, and its operation must be limited to a specified period or within specified limits. Further the restriction must be reasonable. Where an agreement between two separating parties whose firm was doing craft insurance, prevents one of the partners from doing any craft insurance business of any kind whatsoever, directly or indirectly, as an agent or as a broker, throughout the whole world, except at Karachi and except as a broker and except through the other partner, it must be held that the agreement subjects the partner to a species of slavery so far as craft insurance is concerned. Such an agreement is void under sec. 27 of the Contract Act and is not saved by sec. 54

Sale of goodwill after dissolution.

55. (1) In settling the accounts of a firm after dissolution, the goodwill shall, subject to contract between the partners, be included in the assets, and it may be sold either separately or along with other property of the firm.

Rights of buyer and seller of goodwill.

(2) Where the goodwill of a firm is sold after dissolution, a partner may carry on a business competing with that of the buyer and he may advertise such business, but, subject to agreement between him and the buyer, he may not—

(*a*) use the firm name,

(*b*) represent himself as carrying on the business of the firm,

(*c*) solicit the custom of persons who were dealing with the firm before its dissolution.

Agreements in restraint of trade.

(3) Any partner may, upon the sale of the goodwill of a firm, make an agreement with the buyer that such partner will not carry on any business similar to that of the firm within a specified period or within specified local limits, and, notwithstanding anything contained in section 27 of the Indian Contract Act, 1872, such agreement shall be valid if the restrictions imposed are reasonable.

CHAPTER VII.

REGISTRATION OF FIRMS.

Power to exempt from application of this Chapter.

56. The [1][Provincial Government of any province] may, by notification in the Official Gazette, direct that the provisions of this Chapter shall not apply to [2][that] province or to any part thereof specified in the notification.

Appointment of Registrars.

57. (1) The Provincial Government may appoint Registrars of Firms for the purposes of this Act, and may define the areas within which they shall exercise their powers and perform their duties.

(2) Every Registrar shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

LEG. REF.

[1] Substituted by the A.O., 1937.

[2] Substituted by *ibid.*, for 'any'.

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of the Partnership Act. It is most unusual and certainly not necessary when two partners, engaged in the same business, separate, for one of them to insist that the other shall not engage in the same business. I.L.R. (1943) Kar. 49=1943 Sind 197=211 I.C. 162.

SEC. 55: GOODWILL OF THE FIRM.—The terms "partnership assets" must be deemed to include the goodwill of the business, for the plaintiff is entitled to a share in the goodwill as well as to a share in the actual assets of the business. 52 M. 772=1929 M. 456=56 M.L.J. 657. *See also* 43 I.C. 661. In a suit for dissolution of partnership while taking accounts the goodwill of the partnership firm should be included in the assets and should be brought into the common account. 1930 A.L.J. 868=34 C. W.N. 737=58 C. 208=1930 P.C. 185 (P.C.).

DEFINITION.—The term "goodwill" has been defined as "the expectation of continued public patronage".

The goodwill of a business means every affirmative advantage, as contrasted with negative advantage that has been acquired in carrying on the business, whether connected with or carrying with it the benefit of its own name or style or everything connected with or carrying with it the benefit of the business. 23 S.L.R. 471=1929 S. 85.

VALUE OF GOODWILL.—The value of the goodwill of a dissolved partnership is considerably decreased by the rule laid down in the recent case of *Trego* v. *Hunt*, (1896) A.C. 7, namely, that the sale of the goodwill does not prevent the partners from carrying on a competing business with the purchaser. (*See* sub-sec. 2.) It is true that the quondam partners may be restrained by injunction from *soliciting* any person who was a customer of the old firm [sub-sec. 2, cl. (*c*)] or from representing themselves as continuing the old business [sub-sec. 2, cl. (*b*)] or from using the firm name [sub-sec. 2, cl. (*a*).] Still, the mere fact that they may compete is a serious factor in the case, and cannot fail to affect the saleable value of the firm's goodwill. The effect of possible or probable competition should be one of the main determining factors in the valuation of the

Application for registration.

58. (1) The registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee, stating—

(*a*) the firm name,

(*b*) the place or principal place of business of the firm,

(*c*) the names of any other places where the firm carries on business,

(*d*) the date when each partner joined the firm.

(*e*) the names in full and permanent addresses of the partners, and

(*f*) the duration of the firm.

The statement shall be signed by all the partners, or by their agents specially authorized in this behalf.

(2) Each person signing the statement shall also verify it in the manner prescribed.

(3) A firm name shall not contain any of the following words namely:—

"Crown," "Emperor," "Empress," "Empire," "Imperial," "King," "Queen," "Royal," or words expressing or implying the sanction, approval or patronage of the Crown or [1][the Central Government or any Provincial Government or the Crown Representative] except when the [2][Provincial Government] signifies [2][its] consent to the use of such words as part of the firm name by order in writing [3][* * *].

Registration.

59. When the Registrar is satisfied that the provisions of section 58 have been duly complied with, he shall record an entry of the statement in a register called the Register of Firms, and shall file the statement.

LEG. REF.

1 Substituted by A.O., 1937.

2 Substituted by *ibid.*

3 The words "under the hand of one of the Secretaries of the Government of India" were omitted by *ibid.*

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goodwill. 23 S.L.R. 471=1929 S. 85=110 I.C. 639. Ordinarily in the absence of a definition of shares in a partnership business there may be a presumption that the shares of the partners therein are equal even though their capitals are unequal. But where a business has commenced with unequal shares, that circumstance is of material value in deciding the shares of the partners in the subsequent business carried on by them after the retirement of one of them. In the absence of evidence to the contrary, the inference is that the shares of the retiring members have been taken by the continuing partners in the proportions in which the latter were originally interested in the concern. The circumstance that the money required for paying off the retiring partner was provided by the surviving partners not in equal shares but from the partnership funds which they held in unequal shares is of importance to show that they take the same rights in the new business. The goodwill of a business is an asset like any other asset and the representatives of a deceased partner are entitled to a share therein. If action be taken in time, the surviving partner can be restrained by an injunction from appropriating the goodwill or in any way rendering it less valuable. But where the surviving partner has for a long time appropriated all the advantages flowing therefrom, the appropriate course is to direct a valuation of the trade mark and apportion the same among the persons entitled in the proportion in which they are interested in the business. I.L.R. (1944) Mad. 729=57 L.W. 73 (2)=(1944) M.W.N. 40 =1944 Mad. 346=(1944) 1 M.L.J. 101.

SEC. 58.—Where a suit is brought by a partnership firm, which has not been registered under sec. 58, Partnership Act, a plea that the suit by it is not maintainable can be raised even after a written statement is filed by the defendant. (52 I.A. 126, Rel. on.) 161 I.C. 741=1936 C. 133. Registration of a firm which has been dissolved is not contemplated by the Partnership Act. 1940 Rang.L.R. 552=1940 Rang. 294.

SEC. 59.—Sec. 59 contemplates that when a firm has been registered, in the case of a dissolution of the firm by death of a partner, notwithstanding such death the firm should be treated as still registered for the purpose of the Act. The surviving partners whose names are in the register can sue in the name and on behalf of the

Recording of alterations in firm name and principal place of business.

60. (1) When an alteration is made in the firm name or in the location of the principal place of business of a registered firm, a statement may be sent to the Registrar accompanied by the prescribed fee specifying the alteration, and signed and verified in the manner required under section 58.

(2) When the Registrar is satisfied that the provisions of sub-section (1) ave been duly complied with, he shall amend the entry relating to the firm in the Register of firms in accordance with the statement, and shall file it along with the statement relating to the firm filed under section 59.

Noting of closing and opening of branches.

61. When a registered firm discontinues business at any place or begins to carry on business at any place, such place not being its principal place of business, any partner or agent of the firm may send intimation thereof to the Registrar, who shall make a note of such intimation in the entry relating to the firm in the Register of Firms, and shall file the intimation along with the statement relating to the firm filed under section 59.

Noting of changes in names and adresses of partners.

62. When any partner in a registered firm alters his name or permanent address, an intimation of the alteration may be sent by any partner or agent of the firm to the Registrar, who shall deal with it in the manner provided in section 61.

Recording of changes in and dissolution of a firm.

63. (1) When a change occurs in the constitution of a registered firm, any incoming, continuing or outgoing partner, and when a registered firm is dissolved, any person who was a partner immediately before the dissolution, or the agent of any such partner or person specially authorized in this behalf, may give notice to the Registrar of such change or dissolution, specifying the date thereof; and the Registrar shall make a record of the notice in the entry relating to the firm in the Register of Firms, and shall file the notice along with the statement relating to the firm filed under section 59.

Recording of withdrawal of a minor.

(2) When a minor who has been admitted to the benefits of partnership in a firm attains majority and elects to become or not to become a partner, and the firm is then a registered firm, he, or his agent specially authorized in this behalf, may give notice to the Registrar that he has or has not become a partner, and the Registrar shall deal with the notice in the manner provided in sub-section (1).

Rectification of mistakes.

64. (1) The Registrar shall have power at all times to rectify any mistake in order to bring the entry in the Register of Firms relating to any firm into conformity with the documents relating to that firm filed under this Chapter.

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firm without fresh registration after the death of the other partner. I.L.R. (1940) Bom. 715=42 Bom.L.R. 497=1940 Bom. 257. The mere fact that a joint Hindu family trading firm gets itself registered under the Partnership Act in the name of some of the members of the family does not, by itself and without more. destroy its character as such. 42 P.L.R. 418=1940 Lah. 425.

SECS. 59 AND 68: EFFECT OF REGISTRATION—INDEPENDENT PROOF OF MEMBERSHIP. —The registration of a firm raises a presumption that the parties shown as members of the firm and registered as such are actually members of it; but it is no doubt a rebuttable presumption. In the absence of evidence to the contrary, no further proof is necessary as to membership, nor is it necessary to prove that the application for registration bore the signature of the member concerned. 194 I.C. 168=16 Luck. 727=1941 Oudh 376.

SEC. 63 (1).—Sec. 63 (1) provides for the correction of the register when changes occur in the constitution of a registered firm, and unless the son gets his name included in the register he cannot maintain a suit. 57 L.W. 126=1944 Mad. 443=(1944) 1 M.L. J. 109.

(2) On application made by all the parties who have signed any document relating to a firm filed under this Chapter, the Registrar may rectify any mistake in such document or in the record or note thereof made in the Register of Firms.

Amendment of Register by order of Court.

65. A Court deciding any matter relating to a registered firm may direct that the Registrar shall make any amendment in the entry in the Register of firms relating to such firm which is consequential upon its decision; and the Registrar shall amend the entry accordingly.

Inspection of Register and filed documents.

66. (1) The Register of Firms shall be open to inspection by any person on payment of such fee as may be prescribed.

(2) All statements, notices and intimations filed under this Chapter shall be open to inspection, subject to such conditions and on payment of such fee as may be prescribed.

Grant of copies.

67. The Registrar shall on application furnish to any person, on payment of such fee as may be prescribed, a copy, certified under his hand, of any entry or portion thereof in the Register of Firms.

Rules of evidence.

68. (1) Any statement, intimation or notice recorded or noted in the Register of Firms shall, as against any person by whom or on whose behalf such statement, intimation or notice was signed, be conclusive proof of any fact therein stated.

(2) A certified copy of an entry relating to a firm in the Register of Firms may be produced in proof of the fact of the registration of such firm, and of the contents of any statement, intimation or notice recorded or noted therein.

69. (1) No suit to enforce a right arising from a contract or conferred by

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SEC. 68: PRODUCTION OF CERTIFICATE—EFFECT.—It is impossible to permit a litigant to tender in evidence such a document as is referred to in sec. 68 and then to say that the registration was a nullity because the firm had been dissolved long before. The Act appears to expressly preclude any contention by those making statements which find their way on to the Registrar of firms that such statements can be mistaken. 1940 Rang.L.R. 552=1940 Rang. 294. Entry in register as to place of business—Evidentiary value. *See* I.L.R. (1939) 2 Cal. 199=1940 Cal. 134.

SEC. 69: SCOPE AND APPLICABILITY.—The language of sub-secs. (1) and (2) of sec. 69 is wide enough to cover suits relating to a dissolved firm. Sec. 69 (1) covers a suit by a plaintiff suing in respect of a right vested in him or acquired by him as a partner in a firm, and it is not essential that the firm should be actually in existence at the date of the institution of the suit. 1937 B. 225=39 Bom.L.R. 260=I.L.R. 1937 B. 628; 1940 Nag. 78=I.L.R. 1940 Nag. 130. Sec. 69 has no application to a case where two persons as two distinct individuals institute a suit to recover money on a bond executed by the defendants, the money having been advanced by the plaintiffs from a common fund, when there is no evidence to show that they constituted a firm where the bond does not describe them as partners in any joint business, or that they carry on any business jointly, an essential element, in the definition of partnership is wanting, notwithstanding that they share profits derived from a shop owned by them. That would not make them partners in law and a suit by them is not hit by sec. 69. 1946 P.W.N. 164=224 I.C. 106. Sec. 69 applies only to a suit by a partnership and not to a suit by two or more individuals who do not constitute a firm or partnership. In order to create a partnership, there must be an agreement entered into by the parties concerned to share the profits of the business. In the absence of any evidence to show that there was such an agreement or contract between two persons, they cannot be held to be partners or members of a firm, and hence a suit by two such individuals would not be hit by sec. 69. 1946 All. 489=224 I.C. 273. Though Berar is not in British India, this Act is made applicable to it by notification. 1937 Nag. 134=I.L.R. 1937 N. 358. As to application of this section to a suit by a money-lending firm carrying on business at a place in Berar, *see* 1937 Nag. 134. Sec. 69, only prohibits a suit by the members of an unregistered firm. Where a suit is filed against certain persons who carry on business as a firm without getting themselves registered, and a decree is passed, they are entitled to appeal against that decree. Their appeal is not barred because the firm is unregistered. 58 L.W. 170 (1)=1945 M.W.N. 270=1945 Mad. 209=(1945) 1 M.L.J. 278. The partnership Act does nowhere enjoin registration. It is optional and not obligatory.

There is no implied obligation on the partners to concur in effecting registration, in a contract of partnership. Even if there is such an obligation, then the obligation would arise out of the partnership agreement (*i.e.*) out of a contract, and the rights flowing from the obligation, of a partner to compel his co-partners to effect registration would be a "right arising from a contract", and a suit to enforce such a right brought by one partner against the other partners of an unregistered firm is expressly barred by the provisions of sec. 69 (1). In such a case the proper and indeed the only available remedy is a suit for dissolution and not a suit for a mandatory injunction. 1941 Rang.L.R. 219=1941 Rang. 196. The partners of a dissolved firm who had failed to get their firm registered under the Partnership Act can maintain a suit for damages for breach of a contract. Such a suit is not affected by the prohibition contained in sec. 69 (1) and (2) of the Partnership Act. Such a suit is on the other hand saved by sec. 69 (3). "Property" in sec. 69 (3) has to be construed in its widest sense and includes a right to sue for breach of contract. Damages for breach of contract are the assets of the firm and as such can be realised by the partners of the dissolved firm although the firm has not been registered. 45 Bom.L.R. 691=1943 Bom. 385. The fact that the suit is brought by a person who was a partner but who alleges that the unregistered partnership was dissolved long before suit and that under the terms of the dissolution, he had become entitled to sue for the outstandings due to the partnership, does not take the case out of the prohibition of sec. 69 (2). 1944 M.W.N. 723=57 L.W. 607=(1944) 2 M.L.J. 406=1945 Mad. 146. Suit for dissolution of unregistered firm—Prayer for accounts—Competency. I.L.R. (1943) Nag. 24=1943 Nag. 12. Settlement of account after dissolution of unregistered firm—Suit on such settled account is not barred. I.L.R. (1944) Nag. 101=1944 N.L.J. 99=1944 Nag. 124.

SUITS BY UNREGISTERED FIRM.—Provisions of the section are imperative. A plaint filed by an unregistered firm cannot be validated by subsequent registration and amendment of plaint. 44 L.W. 648=165 I.C. 939 (2)=1936 M. 991=71 M.L.J. 663. But *see* 41 C.W.N. 534, where it was held that where a firm is registered after suit, and the plea in bar of suit is not taken till in the course of arguments, the suit should not be thrown out but should be treated as properly instituted on the day when the firm is registered. The withdrawal of a suit by an unregistered firm is no bar to a fresh suit on the same cause of action after registration of the firm, as the later suit is technically a suit by a different plaintiff. 44 L.W. 247 (1)=164 I.C. 748=1936 M. 697. The object of sec. 69 was to make sure that the general policy of the Legislature that all partnerships, should be registered will be carried out; it is not right to hold that the provision contained in sec. 69 was really in the nature of "processual" law in the sense in which that term is used in the cases dealing with the principle of retrospective operation of statutes; 1938 M. 688=(1938) 2 M.L.J. 44. Sec. 69 has to be interpreted strictly and a suit instituted contrary to its provisions is bad and cannot be subsequently validated by compliance with those provisions. The fact that objection to the maintainability of the suit on the score of non-registration is taken late at the stage of arguments is no ground for holding that the suit should be treated as valid at least from the date of compliance with the section. 1938 Mad. 185=(1937) 2 M.L.J. 717. Though a suit is filed by the individual partners of a firm, in respect of a debt due to the firm the suit is undoubtedly one, on behalf of the firm and sec. 69 applies to such a suit. 1937 A.M.L.J. 86. Under sec. 69 two conditions must exist before a suit can be dismissed. The contract must be with an unregistered firm and the person suing to recover the amount must be that firm or another unregistered firm; it is only then, that there can be an objection to the maintainability of the suit. The mere fact that the contract was with an unregistered firm is not sufficient to dismiss a suit if the plaintiff is otherwise competent to maintain it. Therefore the dismissal of a previous suit by an unregistered firm cannot operate as *res judicata* against the assignee of that firm which is a registered firm, because even the unregistered firm is competent to maintain another suit for the recovery of the same amount after its registration. 1937 L. 241. Sec. 69 is not confined either by the general law or by sec. 74 to suits in respect of obligations incurred after the coming into force of sec. 69, *i.e.*, 1-10-1933, but it applies to all suits filed after that date, though in respect of obligations incurred before that date. The section does not take away any vested rights of the parties, but only enacts a processual rule by stating that prior to bringing a suit a firm must do a certain act, namely, get itself registered. 1938 Mad. 185=(1937) 2 M.L.J. 717. Sec. 69 prevents a Court from taking cognizance of a suit brought by an unregistered firm, in the same way a Court shall not take cognizance of a suit barred by limitation; and to hold that because as the result of ignorance or mistake objection was not taken by the defendant in the suit, so the provisions of the law could be flouted, would be to frustrate the intention of the Legislature clearly expressed. Therefore the Judge is right in allowing to be taken or himself taking the objection under sec. 69 in appeal for the first time. I.L.R. (1939) Kar. 765=1939 Sind 206. Whether sec. 69 contains a pohibition against the

Effect of non-registration.

this Act shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

(2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.

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passing of decrees in favour of unregistered partnerships or whether it only contains a prohibition against the filing of suits by unregistered partnerships, *see* 51 L.W. 683=1940 Mad. 628=(1940) 1 M.L.J. 329; *see also* 40 C.W.N. 1180=64 C.L.J. 554. Where a suit by a firm has been disposed of on the ground that owing to non-registration the suit is not maintainable, the subsequent registration cannot validate the proceedings, and entitle an appellate Court to look into the merits of the case. If registration had been done during the pendency of the suit, it might no doubt have legally proceeded from that date unless there was a bar of limitation. 1939 Nag. 301=1939 N.L.J. 427. The law does not require that a plaint by a firm must expressly note that it has been registered. If the defendant opposes the suit on the ground of non-registration of the firm, he must take the objection in his pleas. The plaintiffs cannot be called upon to show at the time of arguments that they are a registered firm and the suit should not then be dismissed on ground of want of proof of registration. 39 P.L.R. 777=1938 Lah. 96.

A suit instituted in the name of a firm not being a registered firm is not properly constituted and cannot proceed in that form. The plaintiff in such a case should be allowed an opportunity to amend his plaint subject to conditions. The amendment can be allowed even at a late stage as it does not amount to an addition of parties but merely the substitution of the name in order to correct a misdescription. 1937 P.W.N. 36=1937 Pat. 526. A transferee of a debt due to an unregistered firm is not entitled to bring a suit to recover the amount of the debt, since the firm itself had no right of suing for that debt under sec. 69 (2). The fact that the original cause of action arose before that Act came into force does not affect the matter, where the debt is transferred after the passing of that Act. 71 C.L.J. 553=44 C.W.N. 387=1940 Cal. 528. *See also* 1938 M. 688=(1938) 2 M.L.J. 44; 1937 M. 419; 1940 N.L.J. 63=1940 N. 137=I.L.R. 1940 N. 70. A suit of the value of above Rs. 100 by an unregistered firm is hit by sec. 69 and a decree cannot be passed for Rs. 100 in such a suit. 42 C.W.N. 841.

APPLICABILITY TO ARBITRATION PROCEEDINGS.—Only a 'suit' as used in forensic language is excluded by this section, and not applications as are contemplated in para. 20, Sch. II, C. P. Code. 162 I.C. 670=1936 L. 136; 16 Pat. 742=1938 P. 231.

APPLICIBILITY—FIRM OF FATHER AND SON FORMING A JOINT HINDU FAMILY.—Sec. 69 does not apply to a firm of father and son who form a joint Hindu family and therefore a suit by such a firm is maintainable even though the firm is not registered. 153 I.C. 510=1935 A.L.J. 260=1935 A. 280. A Hindu joint family firm need not be registered under the Partnership Act and is not subject to the restrictions imposed by sec. 69 of that Act. 1937 A.L.J. 823 =1937 All. 650. Where after the death of a Mahomedan his sons carry on the business and some of them are minors, it is a partnership requiring registration. If such a partnership is unregistered, it cannot maintain a suit. 1939 N.L.J. 427=1939 Nag. 301.

SEC. 69.—Applicability to *Cutchi Memon* family—Firm not registered—Suit by—Maintainability—If Hindu joint family business. *See* 1937 M.W.N. 412=(1937) 2 M.L.J. 221=1937 M. 666.

SEC. 69 (2).—Sec. 69 (2) of the Act does not apply to a suit for the enforcement of an agreement entered into after the dissolution or at the time of the dissolution between the partners of an unregistered firm under which some definite sum of money was payable by one partner to another. Sec. 69 (2) applies only to a suit on behalf of the partnership. The section has to be strictly construed and the bar imposed by it cannot be extended to suits for recovery of money due on a contract entered into between the partners of an unregistered firm in pursuance of an agreement entered into after dissolution and taking of accounts. 55 L.W. 547=A.I.R. 1942 Mad. 707=(1942) 2 M.L.J. 309. A point of law, *e.g.*, that a suit falls within the mischief of sec. 69 (2) of the Partnership Act. can be raised for the first time in appeal if all the facts necessary for its determination are on the record. Sec. 69 (2). which is a stringent provision and which must therefore be strictly construed, will only apply to a suit if it is instituted either by or on behalf of a firm, that is to say, *ex facie* it purports to be filed either by or on behalf of the firm or in the interests of the firm. But this must be clear from the

(3) The provisions of sub-sections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect:—

plaint itself and must not in any case depend on the liability of a plaintiff to restore the benefits he has received out of that suit to the firm of which he is a partner eventually. Where on a reading of the plaint it is found that the suit is instituted not by or one behalf of the firm, but by a partner in his individual capacity, sec. 69 (2) would not apply. A contract entered into by a partner personally constitutes a personal contract and he is entitled to bring a suit on it in his own name without joining his partners as plaintiffs in the action; such a suit is properly instituted by him in his individual capacity and does not fall within the mischief of sec. 69 (2). I.L.R. (1942) Mad. 775=1942 M. W.N. 644=55 L.W. 446=1942 Mad. 634 =(1942) 2 M.L.J. 636. A suit was brought in the name of a registered firm. The plaint was signed by a person who styled himself as 'manager and partner general attorney'. His name was not found in the register of firms. On a contention that the suit as framed was not maintainable in view of sec. 69 (2) of the Partnership Act, it was *held*, that the use of the word 'partner' by the manager was a surplusage and that the provisions of sec. 69 (2) were not a bar to the maintainability of the suit in the form in which it was brought. 1943 O.W.N. 368=1944 Oudh 37. Payment of common debt by one or some of the partners—Suit for contribution against others—Maintainability. *See* I.L.R. (1942) Nag. 340=1942 Nag. 72. Where a registered firm has been dissolved by the retirement of one of its partners and notice of the dissolution has been given to the Registrar, the firm so far as registration is concerned is to be deemed to be still registered and can sue. I.L.R. (1941) 2 Cal. 289=1942 Cal. 76. Sec. 69 of the Partnership Act is mandatory. Registration of the firm is a condition precedent to its right to institue a suit. If a firm was not registered at the time a suit was filed by it the subsequent registration of the firm does not entitle the Court to proceed with the suit and the only course open to the Court is to dismiss the suit. ((1937) 2 M.L.J. 273, Over.) 1942 Mad. 252=54 L.W. 676=(1941) 2 M. L.J. 968=I.L.R. 1942 Mad. 355. *See also* 40 P.L.R. 667=1938 Lah. 767; 1940 A.M. L.J. 81. A suit which is not maintainable by reason of non-compliance with the section cannot become maintainable at a later stage by reason of subsequent registration. The crucial date is the date of institution of the suit, and if the firm is unregistered at the date of the institution of the suit the suit must fail; and subsequent registration before the hearing of the suit cannot cure the initial defect. 18 Pat. 114= 20 Pat.L.T. 33=1939 Pat. 239. *See also* 1936 A.M.L.J. 20. Where a partnership is dissolved by the death of a partner, a suit by the surviving partner to realise an asset of the dissolved partnership is not barred by sec. 69 (2). 1946 A. 259=1946 A. W.R. (H.C.) 56.

SEC. 69 (3).—In a suit for dissolution of an unregistered partnership, the Court has power to pass a preliminary decree directing *inter alia* that accounts be taken. A prayer for "dissolution of partnership" through Court is a compendious mode of asking a fourfold relief: (*a*) a declaration that the partnership stands dissolved from a certain date; (*b*) a declaration as to who the partners are and what are their proportionate shares; (*c*) a prayer that accounts be taken and the assets and liabilities of the partnership as on the date of dissolution be determined; and (*d*) a final decree be passed. These prayers are implicit in the prayer for dissolution made in a "suit for dissolution of partnership" and it is in this sense that this expression is used in sec. 69 (3). 39 P.L.R. 197= 1937 Lah. 633. The words "other proceedings to enforce a right arising from a contract" in sub-sec. (3) of sec. 69, are to be taken as *sue generis* of a claim of set off; that is to say when sub-secs. (1) and (2) relate to the right of bringing a suit the opening words of sub-sec. (3) relate to the right of setting up a defence and have no relation to the entirely different question of a claim to enforce the execution of a decree. Sub-sec. (3) of sec. 69 has no application to the execution of decrees, whether consent decrees or decrees after contest. Where a consent decree was passed against a firm in 1926 and it is sought to be executed in 1933, the bar of sec. 69 could not be pleaded in defence. I. L.R. (1943) Nag. 540=206 I.C. 602=1943 N.L.J. 79=1943 Nag. 175. A petition by a creditor firm for the adjudication of a debtor as an insolvent is not "a proceeding to enforce a right arising from a contract", within the meaning of sec. 69 (3) of the Partnership Act. The right of a creditor to file an insolvency petition against his debtor is a right conferred upon him by statute and is not a right arising out of a particular contract of loan between the petitioning creditor and the debtor. The fact that the creditor happens to be a firm and that a suit to recover the loan is not maintainable by reason of the firm being unregistered, does not deprive the unregistered firm of its right to file a petition in insolvency against its debtor. 48 L.W. 901 =1939 Mad. 145. Under sec. 69, sub-sec. (3) (*a*), the provisions of sub-sec. (1) are not to affect the enforcing of any right to sue for the dissolution of partnership. Where therefore arbitration proceedings are on the face of them taken for the purposes of the dissolution of partnership of an unregistered firm, the proceedings under Sch. II, para. 20, C. P. Code, would be

(*a*) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realize the property of a dissolved firm, or

(*b*) the powers of an official assignee, receiver or Court under the Presidency-Towns Insolvency Act, 1909, or the Provincial Insolvency Act, 1920, to realize the property of an insolvent partner.

(4) This section shall not apply—

(*a*) to firms or to partners in firms which have no place of business in British India, or whose places of business in British India are situated in areas to which, by notification under [1][section 56], this Chapter does not apply, or

(*b*) to any suit or claim of set-off not exceeding one hundred rupees in value which, in the Presidency-towns, is not of a kind specified in section 19 of the Presidency Small Cause Courts Act, 1882, or, outside the Presidency-towns, is not of a kind specified in the Second Schedule to the Provincial Small Cause Courts Act, 1887, or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim.

Penalty for furnishing false particulars.

70. Any person who signs any statement, amending statement, notice or intimation under this Chapter containing any particular which he knows to be false or does not believe to be true, or containing particulars which he knows to be incomplete or does not believe to be complete, shall be punishable with imprisonment which may extend to three months, or with fine, or with both.

LEG. REF.

[1] Substituted by Act XXIV of 1934.

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protected from the application of sec. 69. 162 I.C. 670=1936 L. 136. The terms of sub-sec. (3) of sec. 69 does not contemplate an execution proceeding. The fact that the decree in question was a consent decree cannot make a difference in a case where the decree-holder does not repudiate the compromise but only questions the right of the decree holder to execute the decree. In such a case neither was the execution proceeding meant to enforce a right arising from the contract nor was the objection of judgment-debtor directed against its validity. So sec. 69 (3) of the Act cannot come into play. 1939 N.L.J. 148. A suit to recover a debt due to a firm brought by persons who were the only members of a firm at the date of dissolution, is a suit to enforce a right to 'realise the property of a dissolved firm' and as such falls within the exception (*a*) to sub-sec. (3) of sec. 69 and hence is maintainable even though the partnership was an unregistered one. I.L.R. (1938) Bom. 102=39 Bom.L.R. 1214=1938 Bom. 108. *See also* 1937 Mad. 730. Sec. 69 (3) (*a*) of the Partnership Act cannot be construed as permitting a suit for accounts by a partner of an unregistered firm only if the partnership was dissolved before the date of the institution of the suit or prohibiting a prayer for accounts from being joined with the prayer for dissolution of an existing firm. A suit for dissolution of the firm and also for settlement of accounts is maintainable, and the plaintiff can be given a decree for both. 1937 A.L.J. 825=1937 A. 674. A debt due to a firm is part of its property. A suit to realise such a debt is a suit to enforce a right to realise the property and it would seem to fall within the exception in sec. 69 (3) (*i*) of the Act. Hence a suit by a partner to realise a debt due to an unregistered dissolved partnership is not barred by sec. 69 (2) of the Act. 1942 N.L.J. 227. The right of a partner of an unregistered firm to sue and obtain a decree for dissolution and accounts remain unaffected by the provisions of sec. 69 of the Partnership Act in view of the proviso contained in sub-sec. (3) thereof. I.L.R. (1940) All. 26=1939 A.L.J. 964=A.I.R. 1939 All. 735 (F. B.). *See also* 1942 N.L.J. 485=1943 Nag. 12. The expression any "right or power to realise the property of a dissolved firm" in sec. 69 (3), would include a suit to recover the outstandings of the dissolved firm. The outstandings are property and hence a suit to recover the same would be a suit to realise the property within the meaning of sec. 69 (3). Such right or power is not limited to turning the property into money by sale. 224 I.C. 273.

SECS. 69 AND 5.—Where the plaint is not clearly worded though it is stated therein that the business is a long standing one and the plaintiffs are relations descended from the same ancestor and reside in the same house, and the cause title also does not describe the plaintiffs as constituting a firm and the defendants raise the plea of non maintainability of the suit for non-registration very late, the Court should not straightaway dismiss the suit on the ground. The Court should take evidence to clear up the matter as to whether the plaintiffs really constituted a partnership firm or were carrying on a joint family business which would come within the ex-

71. (1) The [1][Provincial Government] may make rules prescribing the fees which shall accompany documents sent to the Registrar of Firms or which shall be payable for the inspection of documents in the custody of the Registrar of Firms, or for copies from the Register of Firms:

Power to make rules.

Provided that such fees shall not exceed the maximum fees specified in Schedule I.

(2) The Provincial Government may [2][also] make rules—

(*a*) prescribing the form of statement submitted under section 58, and of the verification thereof;

(*b*) requiring statements, intimations and notices under sections 60, 61 62 and 63, to be in prescribed form, and prescribing the form thereof;

(*c*) prescribing the form of the Register of Firms, and the mode in which entries relating to firms are to be made therein, and the mode in which such entries are to be amended or notes made therein;

(*d*) regulating the procedure of the Registrar when disputes arise;

(*e*) regulating the filing of documents received by the Registrar;

(*f*) prescribing conditions for the inspection of original documents;

(*g*) regulating the grant of copies;

(*h*) regulating the elimination of registers and documents;

(*i*) providing for the maintenance and form of an Index to the Register of Firms; and

(*j*) generally, to carry out the purposes of this Chapter.

(3) All rules made under this section shall be subject to the condition of previous publication.

CHAPTER VIII.

SUPPLEMENTAL.

Mode of giving public notice.

72. A public notice under this Act is given—

(*a*) where it relates to the retirement or expulsion of a partner from a registered firm, or to the dissolution of a registered firm, or to the election to become or not to become a partner in a registered firm by a person attaining majority who was admitted as a minor to the benefits of partnership, by notice to the Registrar of Firms under section 63, and by publication in the Official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business, and

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LEG. REF.

1 Inserted by A.O., 1937.

2 Substituted by A.O., 1937.

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ception provided for in sec. 5 of the Act. 65 C.L.J. 426.

SECS. 69 AND 48: UNREGISTERED FIRM—SUIT FOR DISSOLUTION AND ACCOUNTS—DECREE THAT COULD BE PASSED.—In a suit for dissolution of partnership and for accounts in respect of an unregistered firm, while the prayer for dissolution could be decreed, the plaintiff cannot obtain a decree for rendition of accounts against the defendant because, the decree to be granted under O. 20, r. 15, C. P. Code, must be modified in accordance with the provisions of law in sec. 69 of the Partnership Act. But the prayer that an account be taken may be granted in the limited terms of sec. 48; that is to say the decree in question will be under O. 20, r. 15 and Form No. 21 of Appendix D and if the plaintiff desires a receiver may be appointed to take accounts of the firm. But the decree will state that the relief of making the defendant an accounting party is not granted. I.L.R. (1939) All. 363=1939 A.L.J. 405=A.I.R. 1939 All 535.

SECS. 69 AND 74 (*b*): OPERATION OF SEC. 69.—Sec. 69 of the Act applies to suits for enforcement of claims accrued before the commencement of the Act, if such suits are started after sec. 69 begins to operate. Sec. 69 deals with procedure only, may be considered as retrospective in its operation and may be held to apply *prima facie* to all actions pending as well as future. There-

(*b*) in any other case, by publication in the Official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business.

Repeals.

73. The enactments mentioned in schedule II are hereby repealed to the extent specified in the fourth column thereof. [*Repealed by Act I of* 1938.]

Savings.

74. Nothing in this Act or any repeal effected thereby shall affect or be deemed to affect—

(*a*) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act, or

(*b*) any legal proceeding or remedy in respect of any such right, title, interest, obligation or liability, or anything done or suffered before the commencement of this Act, or

(*c*) anything done or suffered before the commencement of this Act, or

(*d*) any enactment relating to partnership not expressly repealed by this Act, or

(*e*) any rule of insolvency relating to partnership, or

(*f*) any rule of law not inconsistent will this Act.

SCHEDULE I.

MAXIMUM FEES.

[*See sub-section* (1) *of section* 7.]

Document of act in respect of which the fee is payable.	Maximum Fee
Statement under section 58	Three rupees.
Statement under section 60	One rupee.
Intimation under section 61	One rupee.
Intimation under section 62	One rupee.
Notice under section 63	One rupee.
Application under section 64	One rupee.
Inspection of the Register of Firms under sub-section (1) of section 66.	Eight annas for inspecting one volume of the register.
Inspection of documents related to a Firm under sub-section (2) of section 66.	Eight annas for the inspection of all documents relating to one firm.
Copies from the Register of Firms	Four annas for each hundred words or part thereof.

fore the pending litigations in respect of rights already accrued are saved from the operation of sec. 69 under sec. 74 (*b*). But sec. 74 (*b*) does not save litigations started after 1st October, 1938. 62 C. 213 =39 C.W.N. 67=1934 C. 754. *See also* 40 C.W.N. 1180; 15 P. 810=1937 P. 16 =17 Pat.L.T. 713; 1936 A.M.L.J. 20; 1937 M. 419=45 L.W. 276; (1937) 1 M. L.J. 610=1937 M. 528.

SECS. 69 AND 74.—The bar imposed by sec. 69 does not apply to a suit to enforce a right accrued before the Act came into force by virtue of sec. 74 of the Act. The effect of sec. 74 is that the Act is not to affect any right already acquired before the commencement of the Act. Sec. 74 (*a*) saves from the operation of the Act, a suit to enforce a right which accrued before sec. 69 came into operation, though the suit is instituted after sec. 69 cannot come into operation. The words "or anything done or suffered" before the commencement of the Act in sec. 74 (*b*) must be taken to be governed by the previous words "any legal proceeding or remedy in respect of any such right", and these words apply to legal proceedings to enforce any subsisting rights which are saved by cl. (*c*) of sec. 74. Sub-cls. (*a*) and (*c*) of sec. 74 save existing rights, and sub-cl. (*b*) saves any legal proceeding or remedy in respect of such rights. Sec. 74 (*b*) deals with procedure and nothing else, that is to say, it deals with methods of enforcing rights and not with the rights themselves. I.L.R. (1939) B. 104=40 Bom.L.R. 1275= 1939 B. 61. *See also* 1938 Mad. 688= (1938) 2 M.L.J. 44; I.L.R. (1940) Nag. 648=1940 Nag. 367; (1938) 2 M.L.J. 44; 58 A. 495=1936 All. 3; 1940 A.M.L.J. 81; 15 Pat. 810=1937 Pat. 16; 1937 Mad. 528; 1940 Sind 125; (1940) 1 M.L.J. 329= 1940 Mad. 628; (1937) 1 M.L.J. 610. Sec. 74 which saves rights and remedies which existed before the Act came into force should not be read as being subordinate to sec. 69 (2), but should prevail over sec. 69 (2). The rights and remedies which accrued before the commencement of the Act

SCHEDULE II.

ENACTMENTS REPEALED.

[*Repealed by Act I of* 1938.]

THE INDIAN PASSPORT ACT (XXXIV OF 1920.)

[*9th September*, 1920.

An Act to take power to require passports of persons entering British India.

WHEREAS it is expedient to take power to require passports of persons entering British India; It is hereby enacted as follows:—

Short title and extent.

1. (1) This Act may be called THE INDIAN PASSPORT ACT, 1920.

(2) It shall extend to the whole of British India, including British Baluchistan, the Sonthal Parganas and the district of Angul.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

"entry" means entry by water, land or air;

"passport" means a passport for the time being in force issued or renewed by the prescribed authority and satisfying the conditions prescribed relating to the class of passports to which it belongs; and

"prescribed" means prescribed by rules made under this Act.

Power to make rules.

3. (1) The Central Government may make rules requiring that persons entering British India shall be in possession of passports, and for all matters ancillary or incidental to that purpose.

(2) Without prejudice to the generality of the foregoing power such rules may—

(*a*) prohibit the entry into British India or any part thereof of any person who has not in his possession a passport issued to him;

(*b*) prescribe the authorities by whom passports must have been issued or renewed, and the conditions with which they must comply for the purposes of this Act; and

(*c*) provide for the exemption, either absolutely or on any condition, of any person or class of persons from any provision of such rules.

(3) Rules made under this section may provide that any contravention thereof or of any order issued under the authority of any such rules shall be punishable with imprisonment for a term which may extend to three months, or with fine or with both.

(4) All rules made under this section shall be published in the Official Gazette, and shall thereupon have effect as if enacted in this Act.

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are left entirely untouched. Sec. 74 is a saving section and if effect is to be given to the words used, sec. 69 (2) cannot apply in a case where a suit is filed by a firm which had not been registered but whose registration is effected during the pendency of the suit, when the suit is in respect of a liability arising prior to the Act, sec. 69 does not bar such a suit. I.L.R. (1939) Mad. 980=1939 Mad. 860=(1939) 2 M.L.J. 489. *See also* 1940 Mad. 628=(1940) 1 M.L.J. 329. From the opening words 'any legal proceeding or remedy' in sub-sec. (*b*) of sec. 74, it is clear that the sub-section relates to those legal proceedings or remedies which were open to a party in respect of any right, title, interest, obligation or liability which had already been accrued or incurred before the commencement of the Act. The absence of the words 'pending' and 'taken' indicate that it was not the intention of the legislature to exempt from the operation of sec. 69 only proceedings which had been instituted. I.L.R. (1941) All. 311=1941 A.L.J. 107 =1941 All. 178. *See also* 58 All. 495= 1935 A.L.J. 1245=1936 All. 3.

SEC. 74.—[*See* notes under 69, *supra*.] Sec. 74 not only saves the rights but also the suit to enforce these rights. There is no reason to restrict sec. 74 by saying that it covers only a right not dependent upon the adjudication of a Court. Hence a suit by an unregistered firm for rent due up to October, 1933, is not barred but is saved by sec. 74. I.L.R. (1939) Kar. 765=1939 Sind 206. The legal proceedings indicated in sec. 74 (*b*) should not be interpreted as meaning proceedings pending at the time of the commencement of the Act. 1938

Power of arrest.

4. (1) Any officer of police, not below the rank of a sub-inspector, and any officer of the Customs Department empowered by a general or special order of the [1][Central Government] in this behalf may arrest without warrant any person who has contravened or against whom a reasonable suspicion exists that he has contravened any rule or order made under section 3.

(2) Every officer making an arrest under this section shall, without unnecessary delay, take or send the person arrested before a Magistrate having jurisdiction in the case or to the officer-in-charge of the nearest police-station and the provisions of section 61 of the Code of Criminal Procedure, 1898, shall, so far as may be, apply in the case of any such arrest.

Power of removal.

5. The [1][Central Government] may, by general or special order, direct the removal of any person from British India who, in contravention of any rule made under section 3 prohibiting entry into British India without passport, has entered therein, and thereupon any [2][officer of the Crown] shall have all reasonable powers necessary to enforce such direction.

THE PATENTS AND DESIGNS ACT (II OF 1911.)

Year.	No.	Short title.	Amendments.
1911	II	The Indian Patents and Designs Act.	Repealed in part XXXI of 1920 Amended, XVII of 1924, S 2, XXIX of 1920, XI of 1930. *See* VI of 1915; XIII of 1927, VII of 1930; XX of 1937, XII of 1939; XXXIV of 1939; X of 1942; IX of 1945.

LEG. REF.

[1] Substituted for "Local Government" by A.O., 1937.

[2] Substituted for "officer of Government" by *ibid.*

Mad. 185=(1937) 2 M.L.J. 717. The Act must be construed in its plain terms, and where its terms admit of no doubt, anything in the nature of speculation as to the intention of the Legislature should be avoided. Sec. 74 (*a*) says that nothing in the Act shall affect any right acquired before the commencement of the Act; and sec. 74 (*b*) extends this saving clause to any legal proceeding or remedy in respect of any such right; that is, any such right as is mentioned in sub-sec. (*a*) and has accrued before the commencement of this Act. It would be wrong to say that sec. 74 (*b*) saves only suits which are pending at the time when the Act comes into force. It saves a remedy, which connotes the right to institute a suit as well. Hence when a suit has been instituted after 1st October, 1933, by a firm not registered under the Partnership Act for recovery of a debt accruing before that date, the suit is not barred by sec. 69 of the Act but is saved by the provisions of sec. 74 (*b*). 1938 Rang. L.R. 371=1938 Rang. 273 (F.B.). The wording of sec. 74 seems to state in express words that none of the provision of the Act, which includes the provisions of sec. 69 shall affect any remedy in respect of any obligation or liability which had arisen before the commencement of the Act. Both cases are covered namely (1) where the legal proceeding has been started before the Act and (2) where the legal proceeding arising out of a remedy that existed before the Act, has been started after the Act. 1940 N.L.J. 63=1940 Nag. 137. *See also* 1943 Nag. 175=1943 N.L.J. 79. The terms of sec. 74 save not only the rights accrued before 1st October, 1933, but also the remedy to enforce those rights. When the right to sue arose on 30th July, 1933, the bar of sec. 69 does not apply to a suit by an unregistered firm after 1st October, 1933, in respect of the right which accrued due before that date. The fact that Art. 85 of the Limitation Act applies to the account on which the suit is brought and that time is extended under that article to the last date of the accounting year of which the plaintiffs can take advantage, that being a date after 1st October, 1933, would not affect the date on which the cause of action accrued for purposes of sec. 74 of the Partnership Act. Such last date of the accounting year if necessary, and relevant only for the purpose of deciding the question of limitation, Art. 85 of the Limitation Act only extends the time for the purpose of calculating limitation, but does not affect sec. 74 of the Partnership Act which saves in certain cases the right to sue for a debt due and acknowledged before 1st October, 1933. I.L.R. (1942) Kar. 442=1943 S. 26. *See also* 1943 Nag. 175.

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THE PATENTS AND DESIGNS ACT (II OF 1911) [1]

[1*st March*, 1911.

An Act to amend the law relating to the protection of Inventions and Designs.

WHEREAS it is expedient to amend the law relating to the protection of inventions and designs; It is hereby enacted as follows:—

PRELIMINARY.

Short title, extent and commencement.

1. (1) This Act may be called THE INDIAN PATENTS AND DESIGNS ACT, 1911.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas; and

(3) It shall come into force on the first day of January, 1912.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

[2][(1) "Advocate-General means an Advocate-General appointed under the Government of India Act, 1935];

LEG. REF.

[1] For Statement of Objects and Reasons, see *Gazette of India*, 1910, Pt. V, p. 92; for Report of Select Committee, see *ibid.*, 1911, Pt. V, p. 1; and for Proceedings in Council, see *ibid.*, 1910, Pt. VI, p. 337, dated 9th April, 1910, and *ibid.*, 1911, Pt. VI, pp. 31, 45 and 179.

[2] Substituted by A.O., 1937, for original cl. (1).

SEC. 1.—Scope and object of Act. 41 A. 68=48 I.C. 450=16 A.L.J. 941. An exclusive privilege in respect of an invention under the Invention and Designs Act, 1888, was under the Patents and Designs Act, 1911, converted into a patent and extended throughout the British India. 54 I.C. 417. As to whtther Act applies to Berar, *see* 54 I.C. 417. *See also* 27 M.L.J. 573 (law applicable to suits instituted before this Act). In the case of infringement of patents, the test is to see whether a man grappling with the problem solved by the patent attacked and having no knowledge of it can say that his anticipation has solved the problem. In order to render a document a prior publication, it must publish to the world the whole invention, *i.e.*, all that is material to instruct the public to put the patent in practice. Mere suggestions are not enough. Invention is finding out something which other people have not found out. The *quid* to the patentee is the monopoly; the *quo* is that it presents to the public knowledge which they have not got. The real invention may often be the last element of the combination; an invention may further consist only in simplification. 1929 A.C. 269=116 I.C. 593 =1929 P.C. 38 (P.C.). *See also* 1944 O. W.N. 374=1945 20 Luck. 170=Oudh 6 (as to what constitutes an "invention"). Any information as to the alleged invention given by any prior publication must be for the purpose of practical utility, equal to that given by the subsequent patent. The later invention must be described in the earlier publication that is held to anticipate it, in order to sustain the defences of anticipation. Where the question is solely one of prior publication, it is not enough to prove that an apparatus described in an earlier specification could have been used to produce this or that result. It must also be shown that the specifications contained clear and unmistakeable directions so to use it. It must be shown that the public have been so presented with the invention that it is out of the power for any

(2) "article" means (as respects designs) any article of manufacture and any substance, artificial or natural or partly artificial and partly natural;

(3) "Controller" means the Controller of Patents and Designs appointed under this Act:

(4) "copyright" means the exclusive right to apply a design to any article in any class in which the design is registered;

[1][(5) "design" means only the features of shape, configuration, pattern or ornament applied to any article by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device, and does not include any trade-mark as defined in section 478, or property mark as defined in section 479 of the Indian Penal Code];

(6) "District Court" has the meaning assigned to that expression by the Code of Civil Procedure, 1908;

[2](7) "High Court" means a High Court as defined in sub-section (1) of section 219 of the Government of India Act, 1935].

LEG. REF.

[1] Substituted by Act VII of 1930.

[2] Substituted by Act XII of 1939.

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subsequent persons to claim the invention as his own. 124 I.C. 569=1930 P.C. 1 (P.C.). There must be a substantial exercise of the inventive power or inventive genius though it may in cases be very slight. Slight alterations or improvements may produce important results, and may disclose great ingenuity. Sometimes it is a combination that is the invention, if the invention requires independent thought, ingenuity and skill, producing in a distinctive form a more efficient result converting a comparatively defective apparatus into a useful and efficient one rejecting what is bad and useless in former attempts and retaining what is useful, and uniting them all into an apparatus which, taken as a whole, is novel, there is subject-matter of invention. A new combination of well-known devices and the application thereof to a new and useful purpose, may require invention to produce it, and may be good subject-matter for a patent. Having regard to the conditions of the art of wireless telegraphy there is sufficient invention for claiming a patent even though the same consists only of a small step if it is a step for ward. 1930 P.C. 1=31 L.W. 126 (P.C.). *See also* 1945 Oudh 6=20 Luck. 170. The question whether a specification of a prior invention describes the invention claimed by the subsequent inventor is a question of construction and parol evidence is only admissible for the purpose of explaining words or symbols of art and other such like technical matters and of informing the Court of relevant surrounding circumstances. The date of the know ledge or use by any other person is a date before the invention not before the patent. 1930 P.C. 1. The statute relating to patents [Patent Act (Canada), 1935] does not contemplate or authorize a contingent disclaimer. As soon as a disclaimer is filed and recorded in the office of the Commissioner it is made part of the patent; the only existing claims are the claims as amended by virtue of the disclaimer and the only invention protected by the Letters Patent is the invention, the description whereof is contained in the specification as so amended. 181 I.C. 958=1939 P.C. 91 (P.C.).

SEC. 2 (3).—*See* 54 I.C. 417.

SEC. 2 (5).—Where a design covers the whole body of goods and is part and parcel thereof, it is not a trade-mark but a 'design' nor is it a 'trade description' within S. 2 (2) of the Merchandise Marks Act, 1889. 25 I.C. 998=15 Cr.L.J. 670. Where there was no difference in shape, configuration, pattern or ornament although there was a different mode and principle of construction. *Held*, that this was not a "new" or "original" design within the meaning of the Act. 190 I.C. 281=1940 Pesh. 38. In determining whether there was novelty in the patent which is alleged to be infringed, if it can be shown that the new result was long sought for, that persons skilled in the art had been working without success to attain it, and had long regarded it as a problem and that the invention of the patentee successfully solved the problem—then such a state of affairs constitutes evidence of the strongest kind that the prior knowledge did not in fact give an obvious clue to the solution and ought not to be considered as destroying "subject-matter". Mere simplicity is not necessarily an objection; a mere scintilla of invention is sufficient, especially where the appreciation of a desideratum is one of the important features of the invention and there may be invention in improvements in what is merely simplification, though matters of ordinary skilled designing or workshop improvements cannot be considered as requiring the exercise of invention. The practical utility and commercial success of the invention may be a material factor in determining whether the new result was obvious or not. The fact

(8) "invention" means any manner of new manufacture and includes an improvement and an alleged invention;

(9) "legal representative" means a person who in law represents the estate of adeceased person;

(10) "manufacture" includes any art, process or manner of producing, preparing or making an article, and also any article prepared or produced by manufacture;

(11) "patent" means a patent granted under the provisions of this Act;

(12) [1]["patentee" means the person for the time being entered on the register of patent kept under this Act as the grantee or proprietor of the patent];

(13) "prescribed" includes prescribed by rules under this Act; and

(14) "proprietor of a [2][new or original] design,"—

LEG. REF.

[1] Substituted by Act VII of 1930.

[2] Substituted for "new and original" by *ibid.*

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that the patent has been infringed is evidence of its utility. Better evidence of the utility of the invention cannot possibly be had. 40 Bom.L.R. 478=1938 Bom. 347.

SEC. 2 (8).—*See* 17 A. 490. A new manufacture means not only a new article of manufacture, but also a new process or method of manufacturing something new. It does not mean a new principle of manufacture —a principle cannot be an invention—but means a new application of the principles so as to produce a new method or a new manufacture. 36 Bom.L.R. 881=1934 B. 407.

"INVENTION"—MEANING.—The question whether there is an invention is a question of fact. A new and useful application of an old principle may be a good subject-matter of patent. An improvement on something known may also afford subject-matter, so also a new combination of different matters already known. A patentable combination is one in which the component elements are so combined as to produce a new result or to arrive at an old result in a better or more expeditious or more economical manner. If the result of the combination is either a new article or a better or a cheaper article than before, the combination may afford subject-matter for a patent. The mere collocation of two or more things, without some exercise of inventive faculty, is not however, a subject-matter for a patent. 60 B. 261=1936 B. 99=37 Bom.L.R. 665. *See also* 1945 Oudh 6=20 Luck. 170.

SEC. 2 (8) AND (10): INVENTION WHICH CAN BE SUBJECT-MATTER OF PATENT.—It is of course true that a patent may be granted for a combination which is one producing a new result, or arriving at an old result in a better or cheaper way or giving a useful choice of means but different considerations are applicable to each of these cases in order to arrive at a conclusion as to whether or not there is good "subject-matter" in any particular combination. The fact that the result is new is of itself no doubt cogent evidence of invention, and if it has been necessary to make modifications in the form or construction of all or any of the separate old integers included in the combination in order to ensure their more perfect interaction, there is a strong presumption that there has been invention. It is immaterial whether the "invention" comes into existence by accident or by design, but on the other hand there must have been some inventive step even though the inventive step is but slight. Otherwise the patent is invalid for want of subject-matter. 43 C. W. N. 697. A patent may be sustained though each principle or process in it was previously well-known to all persons engaged in the trade to which the patent relates, provided that the mode of combining those processes was new and produced a beneficial result, and provided also that the specification claimed not the old processes, or any one of them, but only the new combination. A new combination of known processes and methods to produce a known article is a "new manufacture" within the meaning of the statute, if the result of such a combination is to produce the article either greater in yield, or cheaper in costs or better in quality. I.L.R. (1943) Lah. 372= 1943 L. 247. *See also* 60 B. 261=1936 Bom. 99; 1934 Bom. 407.

SEC. 2 (9).—*See* 8. C.W.N. 843.

SEC. 2 (10).—*See* 43 C.W.N. 697; 1934 Bom. 407; 1936 Bom. 99.

SEC. 2 (12).—*See* 41 C.W.N. 603.

SEC. 2 (13).—*See* 23 C. 702. "Manufacture," as defined by S. 2 (10) comprehends not only the production of an article but also the means or method of producing it, so that a new process or an improvement of an old process can be a manufacture. The subject-matter of a patent must be a new manufacture or art, for if there is no new manufacture or art, there is no subject-matter and therefore no invention. 37 Bom.L.R. 665= 1936 Bom. 99=60 Bom. 261; 1934 Bom. 407=36 Bom.L.R. 881.

SEC. 2 (14): 'PROPRIETOR'—MEANING.—The proprietor must be the author or one who has acquired the design from the author or a person on whom such rights have devolved. 56 A. 1032=1934 A.L.J. 664=1934 A. 798.

"ACQUIRE DESIGN"—MEANING.—To acquire a design within the meaning of S. 2

(*a*) where the author of the design, for good consideration, executes the work for some other person, means the person for whom the design is so executed; and

(*b*) where any person acquires the design or the right to apply the design to any article, either exclusively of any other person or otherwise, means, in the respect and to the extent in and to which the design or right has been so acquired, the person by whom the design or right is so acquired; and

(*c*) in any other case, means the author of the design;

and where the property in, or the right to apply, the design has devolved from the original proprietor upon any other person, includes that other person.

PART I.

PATENTS.

Application for and Grant of Patent.

Application.

3. (1) An application for a patent may be made by any person whether he is a British subject or not, and whether alone or jointly with any other person.

(2) The application must be made in the prescribed form, and must be left at the Patent Office in the prescribed manner.

(3) The application must contain a declaration to the effect that the applicant is in possession of an invention, whereof he, or in the case of a joint application one at least of the applicants, claims to be the true and first inventor or the legal representative or assign of such inventor and for which he desires to obtain a patent, and must be accompanied by [1][either a provisional or complete specification] and by the prescribed fee.

(4) Where the true and first inventor is not a party to the application, the application must contain a statement of his name, and such particulars for his identification as may be prescribed, and the applicant must show that he is the legal representative or assign of such inventor.

[4. *Specifications.*—(1) A provisional specification must describe the nature of the invention.

(2) A complete specification must particularly describe and ascertain the nature of the invention and the manner in which the same is to be performed.

(3) A specification, whether provisional or complete, must commence with the title, and in the case of a complete specification must end with a distinct statement, of the invention claimed.

(4) Where the Controller deems it desirable, he may require that suitable drawings shall be supplied at any time before the acceptance of the application, and such drawings shall be deemed to form part of the complete specification.

(5) If in any particular case the Controller considers that an application should be further supplemented by a model or sample of anything illustrating the invention or alleged to constitute an invention, such model or sample as he may require shall be furnished before the acceptance of the application, but such model or sample shall not be deemed to form part of the specification.

(6) The Controller may, where the application was accompanied by a specification purporting to be a complete specification, if the applicant so re-

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LEG. REF.

[1] Substituted by Act IX of 1945.

(14) (*b*) of the Act, means the transfer of proprietary rights in a design and not merely learning a design. 56 A. 1032=1934 A. L.J. 664=1934 A. 798.

SEC. 3.—Novelty—Specification — Combination of old materials. 41 A. 68=48 I.C. 450; 1929 P.C. 38; 1922 A. 496; *see also* 1936 Bom. 99=37 Bom.L.R. 665.

SEC. 3 (3).—As to who is an assign, *see* 23 C. 702 at pp. 709, 710.

SEC. 4: SPECIFICATION OF PATENT—DUTY

quests, treat the specification as a provisional specification and proceed with the application accordingly."] (*Substituted by Act IX of* 1945).

Time for leaving complete specification.

[4-A. (1) If the applicant does not leave a complete specification with his application, he may leave it at any subsequent time within nine months from the date of the application:

Provided that the said nine months shall be extended to such period, not exceeding ten months from the date of the application, as may be specified in a request made by the applicant to the Controller, if the request is made and the prescribed fee is paid within the period so specified.

(2) If the complete specification is not left within the period allowable under sub-section (1), the application shall be deemed to be abandoned at the expiration of ten months from the date thereof.

Provisional protection.

[4-B. (1) An invention may, during the period between the date of an application for a patent therefor and the date of sealing a patent on that application, be used and published without prejudice to that patent, and such protection from the consequences of use and publication is in this Act referred to as provisional protection.

(2) In this section, the expression 'date of an application for a patent' means, as respects an application which is post-dated or ante-dated under this Act, the date to which the application is so post-dated or ante-dated, and means, as respects any other application, the date on which it is actually made.] *Secs. 4-A and 4-B inserted by Act IX of* 1945).

Proceedings upon application.

5. [The Controller shall refer to an Examiner every application in respect of which a complete specification has been filed[1]] and if satisfied on the report of the Examiner that—

[(*a*) the nature of the invention or the manner in which it is to be performed is not particularly described and ascertained in the complete specification, or"] (*Substituted by Act IX of* 1945).

(*b*) the application, specifications and drawings have not been prepared in the prescribed manner. [2][* * *] or

(*c*) the title [3][of the specification] does not sufficiently indicate the subject-matter of the invention, or

(*d*) the statement of claim does not sufficiently define the invention, or

"[(*dd*) where a complete specification has been left after a provisional specification, the invention particularly described in the complete specification is not substantially the same as that which is described in the provisional specification, or";] (*Inserted by Act IX of* 1945).

(*e*) the invention as described and claimed is *prima facie* not a [3][manner of] new manufacture or improvement,

[1](*f*) the specification relates to more than one invention, or

(*g*) in the case of an application claiming priority under section 78-A, the specification describes and claims an invention substantially larger than or substantially different from the invention disclosed in the specification filed with the application made outside British India by virtue of which priority is claimed, or

(*h*) in the case of an application for a patent of addition under section

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LEG REF.

[1] Substituted by Act IX of 1945.

[2] The words "or relate to more than one invention" omitted by Act VII of 1930, S. 3.

[3] Inserted by Act XII of 1939.

OF PATENTEE.—It is incumbent on the patentee to particularly describe and ascertain the nature of his invention in the specification, as the ambit of his invention is circumscribed by the claims. 37 Bom.L.R. 665=1936 B. 99.

15-A, the invention described and claimed in the specification is not an improvement or modification of that described and claimed in the original specification]; he may refuse to accept the application or require that the application, specification or drawings be amended before he proceeds with the application; and in the latter case the application shall, if the Controller so directs, bear date as from the time when the requirement is complied with:

[1][Provided that, when a specification comprises more than one invention, the application shall, if the Controller or the applicant so requires, be restricted to one invention and the other inventions may be made the subject-matter of fresh application; and any such fresh application shall be proceeded with as a substantive application, but the Contnroller may, in his discretion, direct that any such fresh application made before the acceptance of the original application shall bear the date of the original application or such later date as he may fix, and the fresh application shall be deemed, for the purposes of this Act, to have been made on the date which it bears in accordance with such direction;]

[Provided further that where a complete specification is left after a provisional specification, the Controller may, if the applicant so requests, cancel the provisional specification and direct that the application shall be deemed to have been made on the date on which the complete specification was left, and proceed with the application accordingly";] (*Inserted by Act IX of* 1945).

[1-a][(1-A). If the Controller considers, at any time before the acceptance of an application, that the invention claimed therein has been wholly or in part claimed in a specification published on or after the date which the patent applied for would bear if granted, appertaining to an application for a patent which if granted will be of prior date to the patent applied for, he may require that the applicant's specification be amended by the insertion of a reference to such other specification, by way of notice to the public.]

(2) Where the Controller refuses to accept an application or requires an amendment, [1-a][or the insertion of a reference] the applicant may appeal from his decision to the Central Government.

(3) The investigations required by this section shall not be held in any way to guarantee the validity of any patent, and no liability shall be incurred by the Central Government or any officer by reason of, or in connection with, any such investigation, or any proceeding consequent thereon.

(4) Unless an application is accepted within [2][eighteen months] from the date of the application, the application shall (except where an appeal has been lodged) [3][be deemed to have been refused.]

[4][Provided that where, before, or within three months after, the expiration of the said period of twelve months, a request is made to the Controller for an extention of time [5][* * *] the application shall, on payment of the prescribed fee, be continued [1-a][for any period so requested, not exceeding in all three months from the expiration of the said period of [2][eighteen months].

Advertisement on acceptance of application.

6. On the acceptance of an application the Controller shall give notice thereof to the applicant and shall advertise the acceptance; and the application and [2][specifications], with the drawings (if any), shall be open to public inspection.

Effect of acceptance of application.

7. After the acceptance of an application and until the date of sealing a patent in respect thereof, or the expiration of the time for sealing, the applicant shall have the like privileges and rights as if a patent for the invention had been sealed on the date of the acceptance of the application:

LEG. REF.

[1] Added by Act VII of 1930.
[1-a] Inserted by Act XII of 1939.
[2] Substituted by Act IX of 1945.
[3] Substituted by Act XII of 1939.
[4] Substituted by Act VII of 1930.
[5] Omitted by Act XII of 1939.

Provided that the applicant shall not be entitled to institute any proceedings for infringement until the patent has been sealed.] (*Substituted by Act IX of* 1945).

8. [*Omitted by Act VII of* 1930.]

Opposition to grant of patent.

9. (1) Any person may, on payment of the prescribed fee, at any time within [1][four] months from the date of the advertisement of the acceptance of an application, give notice at the Patent Office of opposition to the grant of the patent on any of the following grounds, namely:—

(*a*) that the applicant obtained the invention from him, or from a person of whom he is the legal representative or assign; or

(*b*) that the invention has been claimed in any specification filed in British India which is or will be of prior date to the patent, the grant of which is opposed; or

(*c*) that the nature of the invention or the manner in which it is to be performed is not sufficiently or fairly described and ascertained in the [2][specifications]; or

(*d*) that the invention has been publicly used in any part of British India or has been publicly known in any part of British India;

but on no other ground; [2][or]

[(*e*) that the complete specification describes or claims an invention other than that described in the provisional specification, and that such other invention either forms the subject of an application made by the opponent for a patent which if granted would bear a date in the interval between the date of the application and the leaving of the complete specification, or has been made available to the public by publication in any document published in British India in that interval.] (*Added by Act IX of* 1945).

(2) Where such notice is given, the Controller shall give notice of the opposition to the applicant, and shall, on the expiration of those [3][four] months after hearing the applicant and the opponent, if desires of being heard, decide on the case.

(3) The decision of the Controller shall be subject to appeal to the Central Government.

10. (1) If there is no opposition, or, in case of opposition, if the determi-

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LEG. REF.

[1] Substituted for "three" by Act VII of 1930, S. 5.

[2] Substituted and added by Act IX of 1945.

[3] Substituted for "three' by Act XX of 1937, S. 2, and Sch. I.

SEC. 9: "APPLICATION."—An application" under S. 9 also includes an appeal from an order thereon; where the Controller of patents gives an undertaking not to proceed with the matter till "the decision of this application", the undertaking does not come to an end with the decision of the original Court. "The decision of this application must be construed to mean the final decision, *i.e.*, decision of the appellate Court; the undertaking will remain in force until then, or until the time for filing the appeal runs out." 62 C. 596=39 C.W.N. 573.

DISCRETION TO ISSUE SUBPOENAS.—The Controller of Patents must under S. 9 of the Act issue subpoenas on witnesses, if asked for by either of the parties; the words "after hearing the applicant and the opponent" in S. 9 cannot be read as meaning that the Controller need only hear the applicant and the opponent and can refuse to hear any evidence which either or both wish to adduce. "Hearing" means, "hearing the party and his evidence." 62 C. 596=39 C. W.N. 573.

SEC. 9 (3): APPEAL UNDER—GOVERNOR-GENERAL'S POWER TO REMAND.—The Governor-General has, in an appeal against an order of the Controller, power to remand the case to the Controller. The power of remand is not specifically given under the Patents and Designs Act. But all the Courts of appeal have inherent powers of remand, and the Governor-General in Council, as a Court of appeal, has such power. 62 C. 596=39 C.W.N. 573.

SEC. 10.—*See* 36 Bom.L.R. 881=1934 B. 407, cited under S. 2 (8), *supra*.

Grant and sealing of patent.

nation is in favour of the grant of a patent, a patent shall, on payment of the prescribed fee, be granted subject to such conditions (if any) as the Central Government thinks expedient to the applicant, or in the case of a joint application to the applicants jointly, and the Controller shall cause the patent to be sealed with the seal of the Patent Office.

[1][(1-A) Notwithstanding anything contained in sub-section (1), where—

(*a*) an applicant has agreed in writing that on the grant to him of a patent he will assign it to another party or to a joint applicant and refuses to proceed with the application, or

(*b*) disputes arise between joint applicants as to proceeding with an application,

the Controller, if he is satisfied of the existence of such agreement or, in any other case, that any joint applicant or applicants ought to be allowed to proceed alone, may direct that such other party or joint applicant or applicants may proceed with the application accordingly and may grant a patent to him or them, as the case may be:

Provided that—

(*i*) the Controller shall not give any such direction until every party interested has had an opportunity of being heard by him, and

(*ii*) an appeal from any such direction shall lie to the Central Government.

(2) A patent shall be sealed as soon as may be, and not after the expiration of [2][twenty-four months] from the date of application:

Provided that—

(*a*) Where the Controller has allowed an extension of the time within which an application may be accepted, a further extension of four months after the said [2][twenty-four months] shall be allowed for the sealing of the patent;

(*b*) where the sealing is delaying by an appeal to the Central Government [3][* * *] or by opposition to the grant of the patent [4][or by any proceedings taken for obtaining a direction of the controller under the provisions of sub-section (1-A)] the patent may be sealed at such time as the controller may direct;

(*c*) where the patent is granted to the legal representative of an applicant who has died before the expiration of the time which would otherwise be allowed for sealing the patent, the patent may be sealed at any time within twelve months after the date of his death; [2][or at such later time as the controller may think fit].

(*d*) where [3][for any reason], a patent cannot be sealed within the period allowed by [3][any of the foregoing provisions of], this section, that period may, on payment of the prescribed fee and on compliance with the prescribed conditions, be extended], [3][to the extent applied for but not exceeding three months].

LEG REF

[1] Inserted by Act VII of 1930, S. 6.

[2] Substituted and added by Act IX of 1945.

[3] In sub-section (2), cl. (*b*) of the proviso, the words "or by a reference under S. 8," have been omitted; and in cl (*d*) for the words "in consequence of the neglect or failure of the applicant to pay any fee" the words "for any reason" have been substituted; after the words "allowed by" the words "any of the foregoing provisions of" have been inserted and for the words "to such an extent as may be prescribed" the words "to the extent applied for but not exceeding three months" have been substituted by Act VII of 1930.

[4] Inserted by Act XII of 1939.

Date of Patent.

11. Except as otherwise expressly provided by this Act, a patent shall be dated and sealed as of the date of the application:

Provided that no proceedings shall be taken in respect of an infringement committed before the [1][advertisement of the acceptance of the application.]

Effect, extent and form of patent.

12. (1) A patent sealed with the seal of the Patent Office shall, subject to the other provisions of this Act, confer on the patentee the exclusive privilege of making, selling and using the invention throughout British India and of authorizing others so to do.

(2) Every patent may be in the prescribed form and shall be granted for one invention only, but the specification may contain more than one claim: and it shall not be competent for any person in a suit or other proceeding to take any objection to a patent on the ground that it has been granted for more than one invention.

Fraudulent application for patents.

13. (1) A patent granted to the true and first inventor or his legal representative or assign shall not be invalidated by an application in fraud of him, or by protection obtained thereon or by any use or publication of the invention subsequent to that fraudulent application during the period of protection.

[2][(2) Where a patent has been revoked by the High Court on the ground that it has been obtained in fraud of the true and first inventor, or where the grant of a patent has been refused by the Controller under section 9 on the ground stated in clause (*a*) of sub-section (1) of that section, the Controller may, on the application of the true inventor or his legal representative or assign made in accordance with the provisions of this Act, grant to him a patent for the whole or any part of the invention, and the patent so granted shall bear the same date as the patent so revoked or, in the case of a patent the grant of which has been refused, the same date as would have been borne by the patent if it had been granted:

Provided that no suit shall be brought for any infringement of the patent so granted committed before the actual date when such patent was granted.]

Term of patent.

Term of Patent.

14. (1) The term limited in every patent for the duration thereof shall, save as otherwise expressly provided by this Act, be [3][sixteen] years from its date,

[3][(1-A) Any patent the original term of which had not expired on or before the 1st day of July, 1930, shall have effect as if the term mentioned therein was sixteen years instead of fourteen years, and any licence existing at that date which has been granted for the term of the patent shall be treated as having been granted for the term as so extended if the licensee so desires.

(1-B) Where any party to a contract with the patentee or any other person entered into before the 1st day of January, 1930, is subjected to loss or liability by reason of the extension of the term of any patent under this section, any District Court having jurisdiction [4][may on application made in this behalf determine] in what manner and by which parties such loss or liability shall be borne.]

LEG. REF.

[1] In S. 11 for the words "publication of the specification" the words "advertisement of the acceptance of application" have been substituted by Act VII of 1930.

[2] Sub-s. (2) newly substituted for old sub-s. (2) by Act VII of 1930.

[3] In sub-s. (1) for the words "fourteen" the words "sixteen" has been substituted; after the same sub-section the new sub-s. (1-A) and (1-B) have been inserted; in sub-s. (2) the new proviso has been substituted for old proviso by Act VII of 1930.

[4] Substituted by Act XII of 1939.

SEC. 11.—*See* 1935 Bom. 195=37 Bom.L. R. 187=59 Bom. 564, cited under S. 15.

(2) A patent, shall, notwithstanding anything therein or in this Act, cease if the patentee fails to pay the prescribed fees within the prescribed times:

[1][Provided that where the patentee, before or within three months after the expiration of the time for payment, applies to the Controller for an extension of time [2][* * *], the patent shall, on payment of such additional fee as may be prescribed, be continued or revived as the case may be [3][for any period so applied for not exceeding in all three months from the expiration of the time for payment].]

(3) If any proceeding is taken in respect of an infringement of the patent committed after a failure to pay any fee within the prescribed time, and before any enlargement thereof, the Court before which the proceeding is taken may, if it thinks fit, refuse to award any damages in respect of such infringement.

Extension term of Patent

15. (1) A patentee may [4][* * * * *] present a petition to the Central Government praying that his patent may be extended for a further term; but such petition must be left at the Patent Office at least six months before the time limited for the expiration of the patent and must be accompanied by the prescribed fee, [4][and must be advertised by the patentee within the prescribed time and in the prescribed manner].

(2) Any person may [5][within such time as may be prescribed and on payment of the prescribed fee], give notice to the Controller of objection to the extension.

(3) Where a petition is presented under sub-section (1), the Central Government may as [6][it] thinks fit, dispose of the petition [6][itself] or refer it to a High Court for decision.

(4) If the petition be referred to a High Court, then on the hearing of such petition under this section, the patentee, and any person who has given notice under sub-section (2) of objections, shall be made parties to the proceeding, and the Controller shall be entitled to appear and be heard.

[7](5) The Central Government or the High Court to which a petition is referred shall in considering the petition have regard to the nature and merits

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LEG. REF.

[1] In sub-s. (1) for the word "fourteen" the word "sixteen" has been substituted; after the same sub-section the new sub-s. (1-A) and (1-B) have been inserted; in sub-s. (2) the new proviso has been substituted for the old proviso by Act VII of 1930.

[2] The words "by any period not exceeding three months' Omitted by Act XII of 1939.

[3] Substituted by Act XII of 1939.

[4] In sub-s. (1), the words "after advertising in the prescribed manner his intention to do so" have been omitted; and after the words "prescribed fee" the words within brackets have been added.

[5] In sub-s. (2), after the word "may" the words "within brackets have been inserted.

[6] Substituted by A.O., 1937.

[7] S. 15, sub-ss. (5) and (6) substituted by Act XII of 1939.

SEC. 15 (4): REFERENCE UNDER—FRESH PETITION TO COURT—NECESSITY.—Under S. 15 of the Act, when a petition is referred for decision to the High Court under sub-s. (4), it is the petition originally submitted to the Governor-General in Council which the High Court should dispose of. The applicant need not file a second or fresh petition in the High Court. Such a procedure is misconceived. 37 Bom.L.R. 187=59 Bom. 564 =1935 Bom. 195.

SCOPE—PROCEEDINGS UNDER—NATURE OF —PROCEDURE.—On a reference to the High Court by the Governor-General in Council, the matter ceases to be merely administrative and becomes a judicial proceeding, the parties to it being the patentee on the one hand and the objectors on the other; the Controller of Patents has also the right of audience. In such a proceeding, in the absence of any separate or special procedure, the ordinary rules of procedure followed by the High Court, devoid of its technicalities, should be adopted so far as they are applicable to the particular case. The High Court has jurisdiction to allow the objectors to file fresh objections adding further grounds of objec-

of the invention in relation to the public, to the profits made on the patent and to all the circumstances of the case.

(6) If it appears to the Central Government or to the High Court when the petition is referred to it, that the patent has not been sufficiently remunerative, the Central Government or the High Court, as the case may be, may by order extend the term of the patent for a further term not exceeding five or in exceptional cases ten years or may order the grant of a new patent for such term not exceeding ten years as may be specified in the order and subject to any restriction, conditions and provisions which the Central Government or the High Court, as the case may be, may think fit] :

Provided that any patent so extended or granted shall, notwithstanding anything therein, or in this Act, cease if the inventor fails to pay before the expiration of each year the prescribed fee.

Patents of addition.

[1][15-A) (1) Where a patent for an invention has been applied for or granted, and the applicant or the patentee, as the case may be, applies for a further patent in respect of any improvement in or modification of the invention, he may in his application for the further patent request that the term limited in that patent for the duration thereof be the same as that of the original patent or so much of that term as is unexpired, and, if he does so, a patent (hereinafter referred to as a patent of addition), may be granted for such terms as aforesaid.

(2) Save as otherwise expressly provided by this Act, a patent of addition shall remain in force as long as the patent for the original invention remains in force, but no longer, and in respect of a patent of addition no fees shall be payable for renewal:

Provided that if the patent for the original invention is revoked, then the patent of addition shall, if the authority by which it is revoked so orders, become an independent patent, and the fees payable, and the dates when they become payable, shall be determined by its date, but its duration shall not exceed the unexpired term of the patent for the original invention.

(3) The grant of a patent of addition shall be conclusive evidence that the invention is a proper subject for a patent of addition, and the validity of the patent shall not be questioned on the ground that the invention ought to have been the subject of an independent patent.]

Restoration of lapsed patent.

16. (1) Where any patent has ceased owning to the failure of the patentee to pay any prescribed fee within the prescribed time, the patentee may apply to the Controller in the prescribed manner for an order for the restoration of the patent.

(2) Every such application shall contain a statement of the circumstances which have led to the omission of the payment of the prescribed fee.

(3) If it appears from such statement that the omission was unintentional or unavoidable and that no undue delay has occurred in the making of the application, the Controller shall advertise the application in the prescribed manner, and within such time as may be prescribed any person may give notice of opposition at the Patent Office.

LEG. REF.

1 After S. 15 the new S. 15-A has been inserted by Act VII of 1930.

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tion, if that can be done under the law relating to the amendment of pleadings; and leave to amend the amendments ought to be given when the petitioner is not taken by surprise. 37 Bom.L.R. 187=1935 B. 195.

SEC. 15 (5): ENQUIRY UNDER—SCOPE OF.—In considering an application for extension of a patent, it would be legitimate for the Court to inquire what profits the inventor had made since its registration, and that inquiry may not be limited to what the inventor earned in his country, but might include profits made by him in all countries where the invention was registered or exploited. The Court in such case insists on a ful disclosure of the profits made by the inventor or his as-

(4) Where such notice is given the Controller shall notify the applicant thereof.

(5) After the expiration of the prescribed period, the Controller shall hear the case and, subject to an appeal to the Central Government, issue an order either restoring the patent subject to any conditions [1][and restrictions] deemed to be advisable or dismissing the application:

Provided that in every order under this section restoring a patent such provisions as may be prescribed shall be inserted for the protection of persons who may have availed themselves of the subject-matter of the patent after the patent had ceased.

Amendment of Application or Specification.

17. (1) An applicant or a patentee may at any time, by request in writing left at the Patent Office and accompanied by the prescribed fee, seek leave to amend his application or specification, including drawings forming part thereof by way of disclaimer, correction or explanation. stating the nature of, and the reasons for, the proposed amendment.

Amendment of application or specification by Controller.

(2) If the application for a patent has not been accepted, the Controller shall determine whether and subject to what conditions (if any) the amendment shall be allowed.

(3) In any other case the request and the nature of the proposed amendment shall be advertised in the prescribed manner, and at any time within three months from its first advertisement any person may give notice at the Patent Office of opposition to the amendment.

(4) Where such a notice is given, the Controller shall give notice of the opposition to the person making the request and shall hear and decide the case.

(5) Where no notice or opposition is given, or the person so giving notice of opposition does not appear, the Controller shall determine whether and subject to what conditions, if any, the amendment ought to be allowed.

(6) The decision of the Controller in either case shall be subject to an appeal to the Central Government.

(7) No amendment shall be allowed that would make the application or specification, as amended, claim an invention substantially larger than, or substantially different from, the invention claimed by the application or specification as it stood before amendment.

LEG. REF.

[1] The words "and restrictions" were inserted by Act XVII of 1914, Sch. I.

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signees, and if the Court believes that there has not been a full or *bona fide* disclosure, it may summarily reject the application. 37 Bom.L.R. 187=1935 B. 195.

SEC. 17 (1) AND (6): APPLICATION TO CONTROLLER FOR AMENDMENT OF SPECIFICATION.—In application under S. 17 of the Act, for amendment of specification made to the Controller of Patents, the latter has absolute powers to decide whether the amendment sought would make the specification claim an invention larger than, and substantially different from, that claimed in the original specification. This power of the Controller is, under S. 17 (6), subject to an appeal to the Governor-General in Council. In such a case it is quite impossible for the Court to investigate the matter, and then by anticipation to prohibit the Controller from proceeding, on the assumption that his decision, when given, will be erroneous. To do so would be an usurpation on the part of the Court of the jurisdiction which the law has given to the Controller. 61 C. 450=38 C.W.N. 729=1934 C. 725.

SEC. 17 (1) AND (7).—An applicant for amendment of his specification must show that his amendment falls within one or other of the three categories of disclaimer correction or explanation and that he is not claiming an invention which is substantialy larger than, or different from, that originally claimed. The onus is not discharged unless his amendment is unambiguous and he establishes with sufficient certainty either that this claim is merely one of those already covered by some one or more of the old claims upon which he relies or that it does not comprise an invention substantially

(8) Leave to amend shall be conclusive as to the right of the party to make the amendment allowed, except in case of fraud; and the amendment shall be advertised in the prescribed manner, and shall in all Courts and for all purposes be deemed to form part of the application or specification.

(9) This section shall not apply when and so long as any suit for infringement or proceeding before a Court for the revocation of the patent is pending.

Amendment of specification by the Court.

18. In any suit for infringement of a patent or proceeding before a Court for the revocation of a patent, the Court may by order allow the patentee to amend his specification by way of disclaimer, [1][correction or explanation] in such manner, and subject to such terms as to costs, advertisement or otherwise, as the Court may think fit:

Provided that no amendment shall be so allowed that would make the specification, as amended, claim an invention substantially larger than, or substantially different from, the invention claimed by the specification as it stood before the amendment, and where an application for such an order is made to the Court, notice of the application shall be given to the Controller, and the Controller shall have the right to appear and be heard.

Restriction on recovery of damages.

19. Where an amendment of a specification by way of disclaimer, correction or explanation has been allowed under this Act, no damages shall be given in any suit in respect of the use of the invention [2][before the date of the decision allowing the amendment] unless the patentee establishes to the satisfaction to the Court that his original claim was framed in good faith and with reasonable skill and knowledge.

Register of Patents.

Register of Patents.

20. (1) There shall be kept at the Patent Office a book called the Register of Patents, wherein shall be entered the names and addresses of grantees of patents, notifications of assignments and transmissions of patents, of licences under patents, and of amendments, extensions and revocations of patents, and such other matters affecting the validity or proprietorship of patents as may be prescribed.

LEG. REF.

[1] In S. 18 after the word "disclaimer" the words "correction or explanation" have been inserted by Act VII of 1930, S. 12.

[2] In S. 19 for the words "before the disclaimer, correction or explanation" the words "before the date of the decision allowing the amendment" have been substituted by S. 13 of Act VII of 1930.

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larger than or substantially different from that covered by the unamended specification 1932 A. 709=139 I.C. 657=1932 P.C. 266 (P.C.).

SEC. 17 (9): SUIT, WHEN PENDING—APPEAL, IF 'SUIT.'—After judgment was pronounced by the Court in a suit for infringement of patent, an application was presented under S. 17 of the Act to the Controller of Patents for leave to amend the specification of the amendment. The application was duly advertised under S. 17 (3) of the Act. Subsequently an appeal was filed against the decree in the suit. Objection was raised to the maintainability of the application on the ground that S. 17 (9) of the Act deprived the Controller of all jurisdiction in the matter, as the action for infringement was still to be regarded as pending. *Held*, that the suit for purposes of S. 17 (9) terminated the moment the Court pronounced its judicial decision and could not be regarded as pending when the application was presented to the Controller of Patents; that "suit" did not include an appeal from the decree in a suit for infringement, under S. 17 (9), that an action for infringement meant action before judgment; and that the filing of an appeal did not deprive the Controller of jurisdiction to deal with the application. 61 C. 450=38 C.W.N. 729=1934 C. 725.

SEC. 18.—Application to Court for amendment of specification under S. 18—Withdrawal without leave—Fresh application to Controller of Patents, if barred. *See* 61 C. 450=38 C.W.N. 729=1934 C. 725.

SEC. 20.—[*See also*, notes under S. 29, *infra*.] Register of Patents is a public document. 4 A.L.J. 11=1907 A.W.N. 23.

(2) The register of inventions and address-book existing at the commencement of this Act shall be incorporated with, and form part of, the register of patents under this Act.

(3) The register of patents shall be *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein.

(4) Copies of deeds, licences and any other documents affecting the proprietorship in any patent or in any licence thereunder, must be supplied to the Controller in the prescribed manner for filing in the Patent Office [1][* * *].

Crown.

21. [2][(1) Subject to the other provisions of this section, a patent shall have to all intents the like effect as against His Majesty the King as it has against a subject.

Patent to bind Crown.

(2) The officers or authorities administering any department of the service of His Majesty may, by themselves or by such of their agents, contractors or others as may be authorized in writing by them, at any time after the application, and after giving notice to the applicant or patentee, make, use or exercise the invention for the service of the Crown on such terms as may, either before or after the use thereof, be agreed on, with the approval of the Central Government, between such officers or authorities and the applicant or patentee, or, in default of agreement, as may be settled in the manner hereinafter provided. And the terms of any agreement or licence concluded between the applicant or patentee and any person other than such officers or authorities, shall be inoperative so far as concerns the making, use or exercise of the invention for the service of the Crown.

(3) Where an invention which is the subject of any patent has, before the date of the patent, been duly recorded in a document by, or tried by or on behalf of, the officers or authorities administering any department of the service of His Majesty (such invention not having been communicated directly or indirectly by the applicant or patentee), such officers or authorities, or such of their agents, contractors, or others as may be authorized in writing by them, may, after giving notice to the applicant or patentee, make, use or exercise the invention so recorded or tried for the service of the Crown, free of any royalty or other payment to the applicant or patentee, notwithstanding the existence of the patent. If, in the opinion of such officers or authorities, the disclosure to the applicant or patentee, as the case may be, of the document recording the invention, or the evidence of the trial thereof, if required, would be detrimental to the public interest, it may be made confidentially to counsel on behalf of the applicant or patentee, or to any independent expert mutually agreed upon.

(4) In the event of any dispute as to the making, use or exercise of an invention under this section, or the terms therefor, or as to the existence or scope of any record or trial as aforesaid, the matter shall be referred to the High Court for decision, who shall have power to refer the whole matter or any question or issue of fact arising thereon to be tried before a special or official refree or an arbitrator upon such terms as it may direct. The Court, refree or arbitrator, as the case may be, may, with the consent of the parties, take into consi-

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LEG. REF.

[1] In sub-s. (4) of S. 20 the words "and unless such copies have been so supplied, such deeds, licences or other documents shall not be received as evidence of any transaction affecting a patent" have been omitted by Act VII of 1930, S. 14.

[2] New Ss. 21 and 21-A have been substituted for old S. 21 by Act VII of 1930, S. 15.

deration the validity of the patent for the purposes only of the reference and for the determination of the issues between the applicant or patentee and such officers or authorities. The Court, refree or arbitrator, further, in settling the terms as aforesaid, shall be entitled to take into consideration any benefit or compensation which the applicant or patentee, or any other person interested in the patent, may have received directly or indirectly from the Crown or from such officers or authorities in respect of such patent:

Provided that, if the inventor or patentee is a Government servant and the subject-matter of the invention is certified by the Central Government or Provincial Government to be connected with work done in the course of such service, any such dispute shall be settled by the Central Government after hearing the applicant or patentee and any other person having an interest in the invention or patent.

(5) The right to use an invention for the services of the Crown under the provisions of this section, or any provisions for which this section is substituted, shall include, and shall be deemed always to have included, the power to sell any articles made in pursuance of such right which are no longer required for the services of the Crown.

(6) Nothing in this section shall affect the right of the Crown or of any person deriving title directly or indirectly from the Crown to sell or use any articles forfeited under any law for the time being in force relating to customs or excise.

[*N.B.*—For Temporary Amendment of this section, *see* Patents and Designs (Tem. Am.) Act, XV of 1944, cited, *infra.*]

21-A. (1) The inventor of any improvement in instruments or munitions of war may (either for or without valuable consideration) assign to the [1][Central Government] on behalf of His Majesty all the benefit of the invention and of any patent obtained or to be obtained for the invention; and the [1][Central Government] may be a party to the assignment.

Assignment of patent to the [1][Central Government.]

(2) The assignment shall effectually vest the benefit of the invention and patent in the [1][Central Government] on behalf of His Majesty, and all covenants and agreements therein contained for keeping the invention secret and otherwise shall be valid and effectual (notwithstanding any want of valuable consideration), and may be enforced accordingly by or on behalf of the [1][Central Government].

(3) Where any such assignment has been made, the Central Government may, at any time before the publication of the specification, certify to the Controller that, in the interest of the public service, the particulars of the invention and of the manner in which it is to be performed should be kept secret.

(4) If the Central Government so certify, the application and specifications, with the drawings (if any) and any amendment of the specification and any copies of such documents and drawings, shall, instead of being left in the ordinary manner at the Patent Office, be delivered to the Controller in a packet sealed by authority of the Central Government.

(5) The packet shall, until the expiration of the term during which a patent for the invention may be in force, be kept sealed by the Controller, and shall not be opened save under the authority of an order of the Central Government.

LEG. REF. State for India in Council' by A.O., 1937.

[1] Substituted for the words "Secretary of

(6) The sealed packet shall be delivered at any time during the continuance of the patent to any person authorized by the Central Government to receive it, and shall, if returned to the Controller, be again kept sealed by him.

(7) On the expiration of the term of the patent, the sealed packet shall be delivered to the Central Government.

(8) Where the Central Government certifies as aforesaid after an application for a patent has been left at the Patent Office but before the publication of the specification, the application and specifications, with the drawings (if any), shall be forthwith placed in a packet sealed by authority of the Controller, and the packet shall be subject to the foregoing provisions respecting a packet sealed by authority of the Central Government.

(9) No proceeding by petition or otherwise shall lie for revocation of a patent granted for an invention in relation to which a certificate has been given by the Central Government as aforesaid.

(10) No copy of any specification or other document or drawing, by this section required to be placed in a sealed packet, shall in any manner whatever be published or open to the inspection of the public, but, save as otherwise provided in this section, the provisions of this Act shall apply in respect of any such invention and patent as aforesaid.

(11) The Central Government may at any time waive the benefit of this section with respect to any particular invention, and the specifications, documents and drawings shall be thenceforth kept and dealt with in the ordinary way.

(12) The communication of any invention for any improvement in instruments or munitions of war to [1][* * *] the Central Government or to any person or persons authorized by [1][* * *] the Central Government to investigate the same or the merits thereof, shall not, nor shall anything done for the purposes of the investigation, be deemed use or publication of such invention so as to prejudice the grant or validity of any patent for the same.]

Compulsory Licences and Revocation.

Compulsory licences and revocation.

22. (1) Any person interested may present a petition to the Central Government, which shall be left at the Patent Office, together with the prescribed fee, alleging that [2][the demand for a patented article in British India is not being met to an adequate extent and on reasonable terms], and praying for the grant of a compulsory licence, or, in the alternative, for the revocation of the patent.

(2) The Central Government shall consider the petition, and if the parties do not come to an arrangement between themselves, the Central Government may, as [3][it] thinks fit, either dispose of the petition [3][itself] or refer it to a High Court for decision.

(3) The provisions of sub-section (4) of section 15, prescribing the procedure to be followed in the case of references to the Court under that section, shall apply in the case of references made to the Court under this section.

(4) If the Central Government is of opinion or where a reference has

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LEG. REF.

[1] The words "the Secretary of State for India in Council or" omitted by Act XXXIV of 1939.

[2] In sub-s. (1) for the words "the reasonable requirements of the public with respect to a patented invention have not been satisfied" the words "the demand for a patended article in British India is not being met to an adequate extent and on reasonable terms" have been substituted by Act VII of 1930, S. 16.

[3] Substituted by A.O., 1937.

been made under sub-section (2) to a High Court, that Court finds that [1][the demand for the patented article in British India is not being met to an adequate extend and on reasonable terms] the patentee may be ordered to grant licences on such terms as the Central Government or the High Court, as the case may be, may think just, or, if the Central Government or the High Court is of opinion that [1][the demand will not be adequately met] by the grant of licences, the patent may be revoked by order of the Central Government or the High Court:

Provided that an order of revocation shall not be made before the expiration of four years from the date of the patent, or if the patentee gives satisfactory reasons for his default.

(5) For the purposes of this section [2][the demand for a patented article shall not be deemed to have been met to an adequate extend and on reasonable terms]—

(*a*) If by reason of the default of the patentee to manufacture to an adequate extent and supply on reasonable terms the patented article or any parts thereof which are necessary for its efficient working, or to carry on the patented process to an adequate extent or to grant licences on reasonable terms, any existing trade or industry or the establishment of any new trade or industry in British India is unfairly prejudiced, [3][* * *];

(*b*) If any trade or industry in British India is unfairly prejudiced by the conditions attached by the patentee [4][* * *] to the purchase, hire or use of the patented article or to the using or working of the patented process.

(6) [*Omitted by Act VII of* 1930.]

Revocation of patents worked outside British India.

23. (1) At any time not less than four years after the date of a patent granted under this Act, any person may apply to the Central Government [5][for relief under this section] on the ground that the patented article or process is manufactured or carried on exclusively or mainly outside British India.

(2) The Central Government shall consider the application, and, if after inquiry, [6][it] is satisfied—

(*a*) that the allegations contained therein are correct; and

(*b*) that the applicant is prepared, and is in a position, to manufacture, or carry on the patented article or process in British India; and

(*c*) that the patentee refuses to grant a licence on reasonable terms, then, subject to the provisions of this section, and unless the patentee proves that the patented article or process is manufactured or carried on to an adequate extent in British India, or gives satisfactory reasons why the article or process is not so manufactured or carried on, the Central Government may, make an order—

LEG. REF.

[1] In sub-s. (4) for the words "the reasonable requirements of the public with reference to the patented invention have not been satisfied" the new words within brackets have been substituted; and for the words "the reasonable requirements of the public will not be satisfied" the words "the demand wil not be adequately met" have been substituted by Act VII of 1930.

[2] In sub-s. (5) for the words "the reasonable requirements of the public shall not be deemed to have been satisfied" the words "the demand for a patented article shall not be deemed to have been met to an adequate extent and on reasonable terms" have been substituted by Act VII of 1930.

[3] In cl. (*a*) the words "or the demand for the patented article or the article produced by the patented process is not reasonably met" have been omitted by Act VII of 1930.

[4] In cl. (*b*) the words "before or after the commencement of this Act" have been omitted by Act VII of 1930.

[5] In sub-s. (1), S. 23, for the words "for the revocation of the patent" the words "for relief under this section" shall be substituted by Act VII of 1930.

[6] Substituted by A.O., 1937.

[1][(a)] revoking the patent either—

(i) forthwith; or

(ii) after such reasonable interval as may be specified in the order, unless in the meantime it is shown to [2][its] satisfaction that the patented article or process is manufactured or carried on within British India to an adequate extent;

[1][or

(b) ordering the patentee to a grant a licence to the applicant which may be a licence exclusive to him or otherwise as the Central Government may direct.]

(3) No order revoking a patent shall be made under the last sub-section which is at variance with any treaty, convention, arrangement or engagement with any foreign country or British possession.

(4) The Central Government may, on the application of the patentee, extend the time limited in any order made under sub-section (2), clause (*ii*), for such period not exceeding two years as [2][it] may specify in a subsequent order or revoke any order made under sub-section (2), clause (*ii*), or any subsequent order if sufficient cause is in his opinion shown by the patentee.

Operation of order under section 22 or section 23.

[3][**23-A.** An order of the High Court under section 22 or of the Central Government under section 22 or section 23, directing the grant of any licence shall, without prejudice to any other method of enforcement, operate as if it were embodied in a deed granting a licence and executed by the patentee and all other necessary parties.]

Power of Controller to revoke surrendered patent.

24. A patentee may at any time, by giving notice in the prescribed manner to the Controller, offer to surrender his patent, and the Controller may, if after giving notice of the offer and hearing all parties who desire to be heard he thinks fit, accept the offer, and thereupon make an order for the revocation of the patent.

Revocation of patent on public grounds.

25. A patent shall be deemed to be revoked if the Central Government declares, by notification in the Official Gazette the patent or the mode in which it is exercised to be mischievous to the State or generally prejudicial to the public.

Legal Proceedings.

Petition for revocation of patent.

26. [4][(1) Revocation of a patent in whole or in part may be obtained on petition to or on counter-claim in a suit for infringement before a High Court on all or any of the following grounds, namely:—

LEG. REF.

[1] In sub-s. (2) after the words "may make an order" the letter and brackets "(*a*)" shall be inserted, and after cl. (*ii*) the new clause (*b*) has been added by Act VII of 1930.

[2] Substituted by A.O., 1937.

[3] Newly added by Act VII of 1930.

[4] Sec. 26, sub-s. (1), substituted by Act XII of 1939.

SEC. 26.—Utility, novelty and invention"—Meaning of. *See* 53 C. 306=1926 C. 152. *See also* 40 Bom.L.R. 478=1938 Bom. 347; (question of infringement is a mixed question of law and fact); 1940 Pesh. 38=1940 Pesh.L.J. 38. It is quite competent to a petitioner in revocation proceedings to contend under the provisions of S. 26 (1) (*b*) that an invention claimed by the patentees is neither a novelty nor a patentable invention and thus, in effect, to raise the whole question as one of subject-matter. 43 C.W.N. 697. A *bona fide* and substantial, allegation of any of the grounds specified in S. 26 (2) (*b*) would be sufficient to give a petitioner an initial *locus standi* to present a petition for revocation of a patent even in the absence of the authority of the Advocate-General. A person qualified under S.

(*a*) that the invention has been the subject of a valid prior grant of a patent in British India;

(*b*) that the true and first inventor or his legal representative or assign was not the applicant, or one of the applicants for the patent;

(*c*) that the patent was obtained in fraud of the rights of the person applying for the revocation or of any person under or through whom he claims;

(*d*) that the invention was not, at the date of the patent, a manner of new manufacture or improvement;

(*e*) that the invention does not involve any inventive step, having regard to what was known or used prior to the date of the patent;

(*f*) that the invention is of no utility;

(*g*) that the [1][complete specification] does not sufficiently and fairly describe and ascertain the nature of the invention and the manner in which the invention is to be performed;

(*h*) that the [1][complete specification] does not sufficiently and clearly ascertain the scope of the invention claimed;

(*i*) that the patent was obtained on a false suggestion or representation;

(*j*) that the primary or intended use or exercise of the invention is contrary to law;

(*k*) that the patentee has contravened, or has not complied with, the conditions contained in the patent;

(*l*) that the [1][complete specification] does not disclose the best method of performance of the invention known to the applicant for the patent at the time when the specification was left at the Patent Office;

(*m*) that prior to the date of the patent, the patentee or other persons (not being authorities administering any department of the service of His Majesty, or the agents or contractors of, or any other persons authorised in that behalf by, the Central Government) secretly worked the invention on a commercial scale (and not merely by way of reasonable trial or experiment) in British India, and thereby made direct or indirect profits in excess of such amount as the Court may in consideration of all the circumstances of the case deem reasonable:

Provided that this sub-section shall have effect in relation to the ground of revocation specified—

(*i*) in clause (*b*), subject to the provisions of section 78-A, or

(*ii*) in clause (*d*), subject to the provisons of sub-section (1) of section 13, sub-section [1][(12) of section 21-A] section 38 and section 40].

(2) A petition for revocation of a patent may be presented—

(*a*) by the Advocate-General or any person authorized by him; or

(*b*) by any person alleging—

(i) that the patent was obtained in fraud of his rights or of the rights of any person under or through whom he claims; or

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LEG. REF.

[1] Substituted by Act IX of 1945.

26 (2) (*b*) is not, however, confined to the grounds of invalidity giving him his *locus standi* to present the petition. He may also rely on other grounds, namely those set forth in S. 26 (1) of the Act. 43 C.W.N. 697.

SEC. 26 (*d*) AND (*e*).—Where a person has been manufacturing an article by a process and selling them in the market for 15 years prior to his taking out of a patent for it and has not taken any precaution to keep the process secret, the invention on the date of the patent is not a new manufacture and the patent is invalid. 1944 O.W.N. 374=1944 O.A. (C.C.) 252=1944 A. W. R. (C.C.) 252=20 Luck. 170=1945 Oudh 6.

(ii) that he, or any person under or through whom he claims, was the true and first inventor of any invention included in the claim of the patentee; or

(iii) that he, or any person under or through whom he claims an interest in any trade, business or manufacture, had publicly manufactured, used or sold, within British India, before the date of the patent, anything claimed by the patentee as his invention.

(3) The High Court may, irrespective of any provisions of the Code of Civil Procedure, 1908, in this behalf, require any person, other than the Advocate-General or any person authorized by him, applying for the revocation of a patent, to give security for the payment of all costs incurred or likely to be incurred by any person appearing to oppose the petition.

Notice of proceedings to persons interested.

27. (1) Notice of any petition for revocation of a patent under section 26 shall be served on all persons appearing from the register to be proprietors of that patent or to have shares or interests therein, and it shall not be necessary to serve the notice on any other person.

(2) The notice shall be deemed to be sufficiently served if a copy thereof is sent by post in a registered letter directed to the person and place for the time being stated in the register.

Framing issue for trial before other Courts.

28. (1) A High Court may, if it thinks fit, direct an issue for the trial, before itself or any other High Court, or any District Court, of any question arising upon a petition to itself under section 26, and the issue shall be tried accordingly.

(2) If the issue is directed to another High Court, the finding shall be certified by that Court to the High Court directing the issue.

(3) If the issue is directed to a District Court, the finding of that Court shall not be subject to appeal, but the evidence taken upon the trial shall be recorded, and a copy thereof, certified by the Judge of the Court, shall be transmitted, together with any remarks which he may think fit to make thereon, to the High Court directing the issue, and the High Court may thereupon act upon the finding of the District Court, or dispose of the petition upon the evidence recorded, or direct a new trial, as the justice of the case may require.

Suits for infringement of patents.

29. (1) A patentee may institute a suit in a District Court having jurisdiction to try the suit against any person who, during the continuance of a patent acquired by him under this Act in respect of an invention, makes, sells or uses the invention without his licence, or counterfeits it, or imitates it:

SECS. 26 AND 28.—The onus lies heavily on the petitioner to show that the respondent is not the true and first inventor of the invention. 74 P.W.R. 1915=29 I.C. 904. *See also* 10 C.W.N. 985; 17 A. 490=1895 A. W.N. 113.

SEC. 27.—In a suit by an unregistered assignee of a patent for infringement of patent rights, the Patna High Court gave judgment against the plaintiff and purported, in respect of a counter-claim made by the defendant, to revoke the patent. In view of this judgment, the Controller entered in the Register of Patents a note to the effect that the patent was revoked. The petitioner who was the original patentee and who had no notice of and was not made a party to the suit applied to the Controller in Calcutta to expunge that entry. On a reference by the Controller to the Calcutta High Court, *held*, that entry which was obviously to the detriment of the petitioner should be expunged from the record and that the renewal fee in respect of the patent offered by the petitioner should be accepted by the Controller on the basis of the validity of the patent granted to him. 41 C.W.N. 603=1937 Cal. 365=I.L.R. (1937) 2 Cal. 230.

SEC. 29.—Under the Act of 1888 a defendant in an action for infringement is allowed to set up by way of defence all the grounds on which the grant of a patent could be

[1][Provided that where a counter claim for revocation of the patent is made by the defendant, the suit, along with the counter claim, shall be transferred to the High Court for decision.]

(2) Every ground on which a patent may be revoked under [2][section 26] shall be available by way of defence to a suit for infringement.

Exemption of innocent infringer from liability for damages.

30. A patentee shall not be entitled to recover any damages in respect of any infringement of a patent granted after the commencement of this Act from any defendant who proves that at the date of the infringement he was not aware, nor had reasonable means of making himself aware, of the existence of the patent, and the marking of an article with the word "patent," "patented", or any word or words expressing or implying that a patent has been obtained for the article, stamped, engraved, impressed on, or otherwise applied to the article, shall not be deemed to constitute notice of the existence of the patent unless the word or words are accompanied by the year and number of the patent:

Provided that nothing in this section shall affect any proceedings for an injunction.

Order for inspection, etc., in suit.

31. In a suit for infringement of a patent, the Court may, on the application of either party, make such order for an injunction, inspection or account, and impose such terms and give such directions respecting the same and the proceedings thereon, as the Court may see fit.

Certificate of validity questioned and costs thereon.

32. In a suit for infringement of a patent the Court may certify that the validity of the patent came in question, and if the Court so certifies, then in any subsequent suit in that Court for infringement of the same patent the plaintiff, on obtaining a final order or judgment in his favour, shall, unless the Court trying the suit otherwise directs, have his full costs, charges, and expenses of and incidental to the said suit properly incurred.

Transmission of decrees and orders to the Controller.

33. A Court making a decree in a suit under section 29 or an order on a petition under section 26 shall send a copy of the decree or order, as the case may be, to the Controller, who shall cause an entry thereof and reference thereto to be made in the register of patents.

Power of High Court to stay proceedings, etc.

34. A High Court to which a petition has been presented under section 26 may stay proceedings on or dismiss the petition if in its opinion the petition would be disposed of more justly or conveniently by another High Court.

Hearing with assessor.

35. (1) In a suit or proceeding for infringement or revocation of a patent, the Court may, if it thinks fit, and shall on the request of [3][all] the parties to the proceedings, call in the aid of an assessor specially qualified, and try the case wholly or partially with his assistance.

LEG. REF.

[1] Proviso to sub-sec. (1) of sec. 29 added by Act XII of 1939.

[2] Substituted by Act XII of 1939.

[3] In sub-s. (1) of S. 35 for the words "either of" the word "all" have been substituted by Act VII of 1930.

opposed. *See* 27 I.C. 996=27 M.L.J. 573.

Grounds that can be pleaded as defence under the Act of 1911, cannot be pleaded in a suit instituted before the Act. 27 M.L.J. 573. Novelty and prior user as defence. *See* 18 L.W. 141=28 C.W.N. 343=1923 P.C. 108. A patent may be infringed in several ways, one of which is by using the invention or any colourable imitation thereof in the manufacture of articles or by put-

(2) A Court exercising appellate jurisdiction in respect of such suit or proceeding may, if it thinks fit, call in the aid of an assessor as aforesaid.

(3) The remuneration, if any, to be paid to an assessor under this section shall in every case be determined by the Court and be paid by it as part of the expenses of the execution of this Act.

[1][35-A. Notwithstanding anything contained in section 19, if the Court in any action for infrngement of a patent finds that any one or more of the claims in the specification in respect of which the infringement is alleged, are valid, it may, subject to its discretion as to costs and as to the date from which damages should be reckoned and to such terms as to amendment as it may deem desirable, grant relief in respect of any of such claims which are infringed without regard to the invalidity of any other claim in the specification. In exercising such discretion the Court may take into consideration the conduct of the parties in inserting such invalid claims in the specification or permitting them to remain there.]

Grant of relief in respect of particular claims.

36. Where, any person claiming [2][to have an interest in a patent] by circulars, advertisements or otherwise, threatens any other person with any legal proceedings or liability in respect of any alleged infringement of the patent, any person aggrieved thereby may bring a suit against him in a District Court having jurisdiction to try the suit, and may obtain an injunction against the continuance of such threats, and may recover such damage (if any) as he has sustained thereby, if the alleged infringement to which the threats related was not in fact an infringement of [2][the patent]:

Remedy in case of groundless threats of legal proceedings.

[3][Provided that this section shall not apply if an action for infringement of the patent is commenced and prosecuted with due diligence.]

LEG. REF.

[1] Newly added by Act VII of 1930.

[2] In S. 36 for the words "to be the patentee of an invention" the words "to have an interest in a patent" have been substituted; for the words "any legal rights of the person making such threats" the words "the patent" have been substituted by Act VII of 1930.

[3] For the old proviso to S. 36 the new proviso has been substituted by Act VII of 1930.

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ting the invention in practice in any other way. A patent may sometimes be infringed by taking a part only of the invention, but that depends on whether the part for which protection is asked is a new and material part especially in the case of combination. The question of infringement is a mixed question of law and fact. The plaintiff in a patent action has to prove that his process has been counterfeited or imitated by the defendant. It is necessary for him to give the particulars of the breaches constituting the alleged infringement of his patent rights. 37 Bom.L.R. 665. On this section, *see also* 26 A. 96; 12 C.W.N. 446; 4 A.L.J. 11. An assignee of a patent who has not registered the assignment under S. 63 of the Patents and Designs Act is not a patentee within the meaning of S. 2 (12) of that Act, and has, therefore, no right to bring any suit for infringement of patent rights regarding that patent. 41 C.W.N. 603=1937 Cal. 375=I.L.R. (1937) 2 Cal. 230. *See also* 43 C.W.N. 697. *An injunction can be granted* if it is plain that one of several patents have been infringed although the plaintiff is unable to say which patent was infringed, but it will be limited to the life of that patent which first expires. 51 C.W.N. 90. The principles upon which an interlocutory injunction will be granted in an action to restrain infringement of patent rights are well-settled. The plaintiff must make out a *prima facie* case in support of his right, that is he must establish first that he has a valid patent; next that there was in fact an infringement. If both these are established he should be granted an interlocutory injunction. If, however, there is a doubt on either subject, whether or not an injunction will be granted depends upon the degree of doubt which exists, and the balance of convenience then becomes an important consideration. 51 C.W.N. 90. If there is a substantial dispute on the question of the validity of the patent, no injunction should be granted. Where the validity of a new patent is disputed that circumstance of itself would be sufficient to justify refusal of the application for an interlocutory injunction, but if the patent is more than six years old

Miscellaneous.

37. Where, after the commencement of this Act, a patent is granted to two or more persons jointly, they shall, unless otherwise specified in the patent, be treated for the purpose of the devolution of the legal interest therein as joint tenants, but subject to any contract to the contrary, each of such persons shall be entitled to use the invention for his own profit without accounting to the others, but shall not be entitled to grant a licence without their consent, and, if any such person dies, his beneficial interest in the patent shall devolve on his legal representatives.

Grant of patents to two or more persons.

[1][38. The public use or knowledge of an invention in British India before the date of the application for a patent thereon shall not invalidate the patent granted thereon if the knowledge has been obtained surreptitiously or in fraud of the true and first inventor or his legal representative or assign or has been communicated to the public in fraud of such inventor or his legal representative or assign or in breach of confidence:

Public use or knowledge of invention:

Provided that such inventor or his legal representative or assign has not acquiesced in the public use of his invention, and that he applies for a patent within six months after the commencement of such use.]

39. If a patent is lost or destroyed, or its non-production is accounted for to the satisfaction of the Controller, the Controller may at any time, on payment of the prescribed fee, seal a duplicate thereof.

Loss or destruction of patent.

[2][40. The exhibition of an invention at an industrial or other exhibition to which the provisions of this section have been extended by the Central Government by notification in the Official Gazette, or the publication of any description of the invention during the period of the holding of the exhibition, or the use of the invention for the purpose of the exhibition in

Provisions as to exhibitions and readings before learned societies.

LEG. REF.

[1] S. 38 substituted by Act XII of 1939.

[2] Section 40 substituted by Act XII of 1939.

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then there is a *prima facie* presumption of validity. In such a case it is not enough for the defendant simply to assert that he disputes the validity of the patent; he must show by affidavit some grounds which suggest that he may succeed in impugning the patent's validity. 51 C. W. N. 90. The onus is on the plaintiff to show that his patent rights have been infringed, and initially there is no necessity for the defendant to disclose the process by which the goods complained of were manufactured. But the situation will change if the defendant has admitted that his act constitutes an infringement of the plaintiff's patent rights. If the defendant fails to explain his admission or to show that the plaintiff's process was not in fact used, the Court is entitled to draw an inference against the defendant. 51 C.W.N. 90.

SEC. 38: SCOPE—PUBLIC AND PRIVATE USER.—S. 38 of the Act distinguishes clearly between public user and private user. Whether a process has been publicly used or not is a question of fact. 36 Bom.L.R. 881=1934 B. 407=153 I.C. 481. Under S. 38, if an article manufactured under a secret process is of such a character that no one by examining it can find out the secret of that manufacture, then the sale of that article in public cannot amount to public user of the process. Public user does not mean use by the public but use in a public manner and not secretly. Public user which would invalidate an invention or rather on account of which an invention shall not be treated as a new invention must be the use of the invention in public. 1934 Bom. 407.

NOVELTY AND UTILITY.—What constitutes. *See* 40 Bom. L.R. 478=1938 Bom. 347; *also* 1936 Bom. 99=60 B. 261.

SECRET USE OF INVENTION—RIGHT TO PATENT.—When there has been no more than a secret use of the invention by the inventor with a view to taking out a patent or the manufacture for the inventor and under injunctions as to secrecy by a manufacturer, the patent will be good. But this will not be the case where the secret process has been used for profit or where the invention was communicated to a third person in a manner which both in law and in equity allowed him to do what he liked with the inven-

the place where the exhibition is held, or the use of the invention or the publication of any description thereof, during or after the period of the holding of the exhibition, by any person elsewhere without the privity or consent of the inventor or the reading of a paper by an inventor before a learned society, or the publication of that payer in the society's transaction shall not prejudice the right of the inventor to apply for and obtain a patent in respect of the invention, or the validity of any patent granted on the application:

Provided that—

(*a*) the exhibitor exhibiting the invention or the inventor reading the paper or authorising the publication thereof, as the case may be, gives to the Controller previous notice in the prescribed form; and

(*b*) the application for a patent is made before or within six months from the date of first exhibiting the invention or of the reading of the paper, as the case may be, or when it has not been so read, of the said publication].

Models to be furnished to Indian Museum.

41. The trustee of the Indian Museum may at any time require a patentee to furnish them with a model or sample of his invention on payment to the patentee of the cost of the manufacture of the model or sample, the amount to be settled, in case of dispute by the Central Government.

Foreign vessels in British Indian waters.

42. (1) A patent shall not prevent the use of an invention for the purposes of the navigation of a foreign vessel within the jurisdiction of any Court in British India, or the use of an invention in a foreign vessel within that jurisdiction, provided it is not used therein for or in connection with the manufacture or preparation of anything intended to be sold in or exported from British India.

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tion. S. 38 allows a secret user for a reasonable profit. 1934 B. 407.

PATENT—ESSENTIALS OF VALIDITY—PUBLIC USER AND PRIVATE USER—DISTINCTION.—The two features necessary to the validity of a patent are novelty and utility, but the real test is the novelty of the invention. Novelty is essential, for otherwise there would be no benefit to the public and consequently no consideration moving from the patentee. A plea of want of novelty also includes the plea of want of subject-matter. Under S. 38, there must be an absence of prior publication or of prior public user; and if the user is secret or experimental, the profits made by the inventor from his invention must not be excessive. There is a distinction under the section between public user and private user as also between public user of the invention by working it commercially, and public user of the invention from the point of view of publication. The public user of the invention for purposes of trade may, in certain cases, defeat a patent for want of novelty quite apart from the question of publication. It is also clear that, if the public has once become possessed of the knowledge of the invention before the date of the application, no patent subsequently granted is valid. 60 B. 261=37 Bom.L.R. 665=1936 B. 99.

PUBLIC USER OR PUBLICATION—WHAT CONSTITUES.—Public user does not mean a user or exercise of the invention by the public, but a user or exercise in a public manner, and that is a question of fact. If the invention is being put into practice before and at the date of the grant, the grant will not be for a new invention or manufacture, whether the invention is being practised by the patentee himself or by others. A use of the invention for purposes of trade may constitute a prior user invalidating the patent, and a prior public sale of goods or articles treated according to the invention is a public user, the sale being strong evidence of the user being commercial and not experimental. But to constitute evidence of public user, the sale must be open and in the ordinary way of business. The publication of an invention by sale of the articles treated by it for purposes of trade by the patentee or by others may constitute a prior user even if there is no publication. 60 B. 261=37 Bom.L.R. 665 =1936 B. 99.

EXPERIMENTAL USER—USER FOR PROFIT—DISTINCTION—EXCESSIVE PROFITS—TEST.—A prior user might be of an experimental nature, *i.e.*, what was genuinely necessary for the inventor to satisfy himself as to the practicability of his invention. If it exceeds such limits and is carried on for profits, such user will defeat the subsequent patent. But a distinction has to be drawn between the use of an invention for profit and the carrying out of experiments which turn out successful and only incidentally bring in profit to the inventor. There is no test or authority lay-

(2) This section shall not extend to vessels of any foreign State of which the laws do not confer corresponding rights with respect to the use of inventions in British vessels while in the ports of that State, or in the waters within the jurisdiction of its Courts.

PART II.

DESIGNS.

Registration of Designs.

Application for registration of designs.

43. (1) The Controller may, on the application of any person claim to be the proprietor of any new or original design not previously published in British India, register the design under this Part.

(2) The application must be made in the prescribed form, and must be left at the Patent Office in the prescribed manner and must be accompanied by the prescribed fee.

(3) The same design may be registered in more than one class, and, in case of doubt as to the class in which a design ought to be registered, the Controller may decide the question.

(4) The Controller may, if he thinks fit, refuse to register any design presented to him for registration; but any person aggrieved by any such refusal may appeal to the Central Government.

(5) An application which, owing to any default or neglect on the part of the applicant, has not been completed so as to enable, registration to be effected within the prescribed time shall be deemed to be abandoned.

(6) A design when registered shall be registered as of the date of the application for registration.

Registration of designs in new classes.

44. Where a design has been registered in one or more classes of goods, the application of the proprietor of the design to register it in some one or more other classes shall not be refused, nor shall the registration thereof be invalidated—

(*a*) on the ground of the design not being a [1][new or original design], by reason only that it was so previously registered; or

(*b*) on the ground of the design having been previously published in British India, by reason only that it has been applied to goods of any class in which it was so previously registered:

[1][Provided that such subsequent registration shall not extend the period of copyright in the design beyond that arising from previous registration.]

LEG. REF.

[1] In cl. (*a*), of S. 44, for the words "new and original design" the words "new or original design" have been substituted, and after clause (*b*) the proviso has been newly added by Act VII of 1930.

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ing down the limit beyond which the profits made by the inventor out of his invention are deemed excessive. It is the inventor's profit alone that has to be considered. 37 Bom. L.R. 665. Where the design in question had been in use in the locality from long before the date when the registration of the patent was applied for by the plaintiff and it is not possible to say that those designs were new or original, the plaintiff is not entitled to the protection under the Act. 77 I.C. 517=1923 A. 496. A combination of materials would not be entitled to protection, unless it was a combination of a character which involved the exercise of any special inventive power or had some originality about it. 1922 All. 496.

SEC. 43: NEW OR ORIGINAL.—There may be novelty in applying what was an old thing to a new use. 45 C. 606=48 I.C. 437=23 C. W.N. 580. *See also* 1934 Lah. 709=35 P. L.R. 731.

The test of novelty is the eye of the judge. He must place the two designs side by side and see whether one for which novelty is claimed is new. 45 C. 606. *See also* 53 C. 306=1926 C. 152.

SECS. 43 AND 53: EFFECT OF REGISTRATION. —No registration under S. 43 is effective, un-

Certificate of registration.

45. (1) The Controller shall grant a certificate of registration to the proprietor of the design when registered.

(2) The Controller may, in case of loss of the original certificate, or in any other case in which he deems it expedient, furnish one or more copies of the certificate.

Register of Designs.

46. (1) There shall be kept at the Patent Office a book called the Register of designs, wherein shall be entered the names and addresses of proprietors of registered designs, notifications of assignments and of transmissions of registered designs, and such other matters as may be prescribed.

(2) The register of designs existing at the commencement of this Act shall be incorporated with, and form part of, the register of designs under this Act.

(3) The register of designs shall be *prima facie* evidence of any matters by this Act directed or authorised to be entered therein.

Copyright in registered Designs.

Copyright on registration

47. (1) When a design is registered, the registered proprietor of the design shall, subject to the provisions of this Act, have copy right in the design during five years from the date of registration.

(2) If [1][* * *] before the expiration of the said five years application for the extension of the period of copyright is made to the Controller in the prescribed manner the Controller shall, on payment of the prescribed fee, extend the period of copyright for a second period of five years from the expiration of the original period of five years.

(3) If [1][* * *] before the expiration of such second period of five years application for the extension of the period of copyright is made to the Controller in the prescribed manner, the Controller may, subject to any rules under this Act, on payment of the prescribed fee, extend the period of copyright for a third period of five years from the expiration of the second period of five years.

LEG. REF.

[1] The words "within the prescribed time" omitted by Act XII of 1939.

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less the design or configuration sought to be protected is new and original and not of a pre-existing common type. In a suit for damages for infringement of a registered design under S. 53, the defendant can be allowed to raise in defence a plea that the design is neither new nor original. 151 I.C. 362=1934 L. 709.

SECS. 45, 43, AND 46.—A certificate of registration, issued by the controller under S. 45 (1) of the Act to the proprietor of a design when registered, is not final and conclusive. There is only a *prima facie* presumption that the person whose name is registered as the proprietor is the proprietor of a new or original design, but the presumption can be rebutted. The certificate is not conclusive, and there is nothing in the Act which prevents the defendant in a suit for damages for infringement of a registered design under S. 53 of the Act from raising in defence the plea that the design was previously published and was neither new nor original. The onus is of course on the defendant who seeks to go behind the certificate of registration to show that the plaintiff is not the proprietor of the registered design in question. 43 Bom.L.R. 280=1941 Bom. 188.

SEC. 46 (3): PERSON ENTERED AS PROPRIETOR—EVIDENTIARY VALUE.—Where a person is entered as a proprietor of registered design, there is not under the Act conclusive proof from the entry that the plaintiff is the proprietor of the design that is *prima facie* evidence that he is the proprietor. The plaintiff, in a suit for injunction and damages for infringement of registered design, has therefore the advantage that, if no evidence at all is given, then the certificate is sufficient evidence that he is the proprietor. 56 A. 1032=1934 A.L.J. 664=1934 A. 798.

Requirements before delivery on sale.

48. (1) Before delivery on sale of any articles to which a registered design has been applied, the proprietor shall—

(*a*) (if exact representations or specimens were not furnished on the application for registration), furnish to the Controller the prescribed number of exact representations or specimens of the design; and, if he fails to do so, the Controller may erase his name from the register, and thereupon the copyright in the design shall cease; and

(*b*) cause each such article to be marked with the prescribed mark, or with the prescribed words or figures, denoting that the design is registered; and, if he fails to do so, the proprietor shall not be entitled to recover any penalty or damages in respect of any infringement of his copyright in the design unless he shows that he took all proper steps to ensure the marking of the article, or unless he shows that the infringement took place after the person guilty thereof knew or had received notice of the existence of the copyright in the design.

(2) Where a representation is made to the Central Government by or on behalf of any trade or industry that in the interests of the trade or industry it is expedient to dispense with or modify as regards any class or description of articles any of the requirements of this section as to marking, the Central Government may, if [1][it] thinks fit by rule under this Act, dispense with or modify such requirements as regards any such class or description of articles to such extent and subject to such conditions as [1][it] thinks fit.

Effect of disclosure on copyright.

49. The disclosure of a design by the proprietor to any other person, in such circumstances as would make it contrary to good faith for that other person to use or publish the design, and the disclosure of a design in breach of good faith by any person other than the proprietor of the design, and the acceptance of a first and confidential order for goods bearing a new or original textile design intended for registration, shall not be deemed to be a publication of the design sufficient to invalidate the copyright thereof if registration thereof is obtained subsequently to the disclosure or acceptance.

Inspection of registered designs.

50. (1) During the existence of copyright in a design or such shorter period not being less than two years from the registration of the design as may be prescribed, the design shall not be open to inspection except by the proprietor or a person authorized in writing by him, or a person authorised by the Controller or by the Court, and furnishing such information as may enable the Controller to identify the design, and shall not be open to the inspection of any person except in the presence of the Controller, or of an officer acting under him, and on payment of the prescribed fee; and the person making the inspection shall not be entitled to take any copy of the design, or of any part thereof:

Provided that, where registration of a design is refused on the ground of identity with a design already registered, the applicant for registration shall be entitled to inspect the design so registered.

LEG. REF.

[1] Substituted by A.O., 1937.

See also 43 Bom.L.R. 280=1941 Bom. 188. (Certificate of registration of new design is not conclusive proof—Defendant can plead that design was neither new or original).

SEC. 49.—A secret process of which the publication has been going on for a number of years by manufacture with the aid of workmen who are not bound to secrecy is no longer a secret and its patent in invalid. 20 Luck. 77=1945 O. 6.

(2) After the expiration of copyright in a design, or such shorter period as aforesaid, the design shall be open to inspection, and copies thereof may be taken by any person on payment of the prescribed fee.

(3) Different periods may be prescribed under this section for different classes of goods.

Information as to existence of copyright.

51. On the request of any person furnishing such information as may enable the Controller to identify the design, and on payment of the prescribed fee, the Controller shall inform such person whether the registration still exists in respect of the design, and, if so, in respect of what classes of goods; and shall state the date of registration, and the name and address of the registered proprietor.

Cancellation of registration.

[1][51-A. (1) Any person interested may present a petition for the cancellation of the registration of a design,

(*a*) at any time after the registration of the design, to the High Court on any of the following grounds, namely:—

(i) that the design has been previously registered in British India, or

(ii) that it has been published in British India prior to the date of registration; or

(iii) that the design is not a new or original design; or

(*b*) within one year from the date of the registration, to the Controller on either of the grounds specified in sub-clauses (i) and (ii) of Clause (*a*).

(2) An appeal shall lie from any order of the Controller under this section to the High Court, and the Controller may at any time refer any such petition to the High Court, and the High Court shall decide any petition so referred.

Registration of designs to bind the Crown.

51-B. The provisions of section 21 shall apply to registered designs as if those provisions were re-enacted herein and in terms made applicable to registered designs.]

Industrial and International Exhibitions.

Provisions as to exhibitions

[2][52. The exhibition of a design or of any article to which a design is applied, at an industrial or other exhibition to which the provisions of this section have been extended by the Central Government by notification in the official Gazette or the publication of a description of the design, during the period of the holding of the exhibition or the exhibition of the design or the article or the publication of a description of the design by any person elsewhere during or after the period of the holding of the exhibition, without the privity or consent of the proprietor, shall not prevent the design from being registered or invalidate the registration thereof:

Provided that—

(*a*) the exhibitor exhibiting the design or article, or publishing a description of the design, gives to the Controller previous notice in the prescribed form; and

(*b*) the application for registration is made within six months from the date of first exhibiting the design or article or publishing a description of the design.]

LEG. REF. 1930.

[1] After S. 51, the new sections 51-A and 51-B have been inserted by Act VII of 1930.

[2] Sec. 52 substituted by Act XII of 1939.

Legal Proceedings.

Piracy of registered design.

53. (1) During the existence of copyright in any design it shall not be lawful for any person—

(*a*) for the purpose of sale to apply or cause to be applied to any article in any class of goods in which the design is registered the design or any fraudulent or obvious imitation thereof, except with the licence or written

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SEC. 53.—The equitable remedies in respect of an infringement of a design are not excluded by the statute, and in a suit for relief on the ground of infringement, the plaintiff is entitled to ask for delivery up of the goods with the infringing trade mark for destruction. 41 Bom.L.R. 45=1939 Bom. 103. S. 53 is self-contained in itself, and the two parts of S. 53 (2) are clearly disjunctive. A proprietor of a registered design who sues under S. 53 in respect of a fraudulent or obvious imitation of his registered design, is bound to elect under the section between his claim for damages along with the injunction and the payment of the sum of Rs. 1,000 which is the maximum amount recoverable. The plaintiff must make his election before the final hearing of suit. 38 Bom.L.R. 823=1936 B. 408 =I.L.R. (1937) Bom. 215. "Registered proprietor," meaning of. *See* 56 A. 1032 =1934 A. 798, cited under sec. 2 (14), *supra*. "Court" in sec. 53 must refer to the District Court. 1940 Pesh. 19. Sec. 53 creates three separate acts which are unlawful. The first is to apply the design in the way described; the second is to do anything with a view to enable the design to be applied in the way described in the statement of the first of the offences and the third is to expose or clause to be exposed for sale the article under the conditions specified under head (*b*). The acts referred to in the Patents and Designs Act must, in order to constitute offences under the Act, be committed in British India. 40 Bom.L. R. 661=1938 Bom. 413. It is not necessary, in order to entitle a plaintiff to relief on the ground of infringement of copyright in design, that the infringing design should be an exact copy or reproduction of the registered design. The words "fraudulent or obvious imitation" ought not to be construed as meaning exact reproduction. 41 Bom.L.R. 45=1939 Bom. 103. Under sec. 53 (1) (*a*) it is not the application that has to be fraudulent, but the imitation should be considered as "fraudulent or obvious" or not. A person is entitled to sue the infringer as soon as the latter causes the design to be applied to his goods and imports the same for sale in British India, though the design is actually applied to the goods in a country outside British India. 1939 Bom. 103. The question of actual damage must always be seriously considered when allotting penalties for the various offences under this section. 1933 R. 240. It is not necessary in a notice under sec. 53 (2) (*b*) that the words of the statute should be rigidly followed. It is enough if the defendants are not under any misapprehension when they receive the notice. 1933 R. 240. Suit for infringement of registration—Plea in defence that design is neither new nor original can be taken 35 P.L.R. 731=1934 L. 709; 56 A. 1032=1934 A. 798. The onus of proving that the defendant had knowledge of the plaintiff's rights in the registered designs in dispute or that the defendant applied or caused to be applied such designs to the articles sold by him lies on the plaintiffs. Sec. 106 of the Evidence Act has no application to the case and it cannot be said that such facts are peculiarly within the defendant's knowledge. 63 C. 1146=40 C. W.N. 938=1936 C. 493. Mere imitation is no offence unless there is an infringement of a patent or copyright or there is attempt to pass goods as goods of another dealer or manufacturer either by using a false trade mark or false description or a trade mark or description likely to deceive purchasers by a deliberate imitation of a genuine mark or description or by falsely giving out goods as the goods of some other dealers or manufacturer. 146 I.C. 1084=1933 N. 344.

COSTS.—Where in a suit for infringement of the plaintiff's copyright in certain trade marks or designs, the defendant states that he has been and is still ready and willing to give an undertaking to the plaintiff and to the Court not to deal with any goods printed with the plaintiff's designs or any obvious imitations thereof in case and for such period as the plaintiff established his copyright in the said designs, that amounts only to a conditional offer of an undertaking which the plaintiff is not bound to accept. But when the defendant goes further and abandons his denial of the plaitniff's rights and admits plaintiff's rights in the designs in question, the undertaking becomes an unconditional undertaking which the plaintiff should accept. The plaintiff should also pray for a judgment in the form of an order embodying the undertaking. If the plaintiff does not do so, but goes on with the suit, he ought not to get the costs incurred by so doing, but ought on the contrary to pay the costs of the defendant. The plaintiffs will get a decree with costs up to the date of the election to proceed with the suit. He will not be entitled to costs incurred subsequently, but will be liable to pay such costs to the defen-

consent of the registered proprietor, or to do anything with a view to enable the design to be so applied; or

[1][(*aa*) to import for the purposes of sale, without the consent of the registered proprietor, any article belonging to the class in which the design has been registered, and having applied to it the design or any fraudulent or obvious imitation thereof; or]

(*b*) knowing that the design or any fraudulent or obvious imitation thereof has been applied to any article, [1][in any class of goods in which the design is registered] without the consent of the registered proprietor to publish or expose to be published or exposed for sale that article.

(2) If any person acts in contravention of this section, he shall be liable for every contravention,—

(*a*) to pay to the registered proprietor of a design a sum not exceeding five hundred rupees recoverable as a contract debt, or

(*b*) if the proprietor elects to bring a suit for the recovery of damages for any such contravention, and for an injunction against the repetition thereof, to pay such damages as may be awarded and to be restrained by injunction accordingly:

Provided that the total sum recoverable in respect of any one design under clause (*a*) shall not exceed one thousand rupees.

(3) When the Court makes a decree in a suit under sub-section (2), it shall send a copy of the decree to the Controller, who shall cause an entry thereof to be made in the register of designs.

Application of certain provisions of the Act as to patents to designs.

54. The provisions of this Act with regard to certificates of the validity of a patent, and to the remedy in case of groundless threats of legal proceedings by a patentee shall apply in the case of registered designs in like manner as they apply in the case of patents, with the substitution of references to the copyright in a design for references to a patent, and of references to the proprietor of a design for references to the patentee and of references to the design for references to the invention.

PART III.

GENERAL.

Patent Office and Proceedings thereat.

Patent Office.

55. (1) The Central Government may provide for the purposes of this Act, an office which shall be called, and is in this Act referred to as, the Patent Office.

(2) The Patent Office shall be under the immediate control of the Controller of Patents and Designs, who shall act under the superintendence and direction of the Central Government.

(3) There shall be a seal for the Patent Office.

(4) Any act or thing directed to be done by or to the Controller may be done by or to any officer authorized by the Central Government.

Officers and clerks.

56. The Central Government may appoint the Controller, and so many officers and clerks, with such designations and duites, as he thinks fit.

LEG. REF.

[1] Added by Act XII of 1939.

dant. 40 C.W.N. 938=1936 Cal. 493=63 C. 1146.

PLEADINGS.—In an action for infringement of a patent, the defendant, who denies the case of the plaintiff as to the true and first inventor of the patent, must give particulars as to whom he alleges to be the true and first inventor. 40 Bom.L.R. 478=1938 Bom. 347.

Fees.

Fees.

57. (1) There shall be paid in respect of the grant of patents and the registration of designs, and applications therefor, and in respect of other matters with relation to the patents and designs under this Act, such fees as may be prescribed[1] by the Central Government so, however, that the fees prescribed in respect of the instruments and matters mentioned, in the schedule shall not exceed those there specified.

(2) A proceeding in respect of which a fee is payable under this Act or the rules made thereunder shall be of no effect unless the fee has been paid.

Provisions as to Registers and other Documents in the Patent Office.

Notice of trust not to be entered in registers.

58. There shall not be entered in any register kept under this Act, or be receivable by the Controller, any notice of any trust, expressed, implied or constructive.

Inspection of, and extracts from, registers.

59. Every register kept under this Act shall at all convenient times be open to the inspection of the public, subject to the provisions of this Act; and certified copies, sealed with the seal of the Patent Office, of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee.

Information relating to patents.

[2][59-A. A person making a request to the Controller in the prescribed manner as respects any patent specified in the request or as respects any application for a patent so specified, for information to be furnished to him by the Controller of any such matters as may be prescribed affecting that patent or application, shall be entitled, subject to the payment of the prescribed fee, to have information supplied to him accordingly.]

Privilege of reports of Controller.

60. (1) Reports of or to the Controller made under this Act shall not in any case be published or be open to public inspection.

Prohibition of publication of specification, drawings, etc., where application abandoned, etc.

61. (1) Where an application for a patent has been abandoned or [3][deemed to have been refused] the specifications and drawings (if any), accompanying or left in connection with such application, shall not, save as otherwise expressly provided by this Act, at any time be open to public inspection or be published by the Controller .

(2) Where an application for a design has been abandoned or refused, the application and any drawings, photographs, tracings, representations or specimens left in connection with the application shall not at any time be open to public inspection or be published by the Controller.

Power for Controller to correct clerical errors.

62. The Controller may on request in writing accompanied by the prescribed fee,—

(*a*) correct any clerical error in or in connection with an application for a patent or in any patent or any specification;

LEG. REF.

[1] For fees prescribed, *see* note to sec. 77, *infra*.

[2] Sec. 59-A inserted by Act XII of 1939.

[3] Substituted by Act IX of 1945.

SECS. 62 AND 64.—The Controller upon the application of a private person has no jurisdiction to cancel the registration of a design. The ordinary way of expunging the registration of a design is to apply to the High Court under sec. 64. 45 C. 606=48 I.C. 437=22 C.W.N. 530. The only person who can apply under sec. 62 is the re-

(*b*) [*Omitted by Act VII of* 1930];

(*c*) correct any clerical error in the representation of a design or in the name or address of the proprietor of any patent or design, or in any other matter which is entered upon the register of patents or the register of designs.

Entry of assignments and transmissions in registers.

[1][**63.** (1) Where a person becomes entitled by assignment, transmission or other operation of law to a patent or to the copyright in a registered design, he may make application to the Controller to register his title, and the Controller shall on receipt of such application and on proof of title to his satisfaction, register him as the proprietor of such patent or design, and shall cause an entry to be made in the prescribed manner in the register of the assignment, transmission or other instrument affecting the title.

(2) Where any person becomes entitled as mortgagee, licensee or otherwise to any interest in a patent or registered design, he may make application to the Controller to register his title, and the Controller shall, on receipt of such application and on proof of title to his satisfaction, cause notice of the interest to be entered in the prescribed manner in the registers of patents or designs, as the case may be, with particulars of the instrument, if any, creating such intrest.]

(3) The person registered as the proprietor of a patent or design shall, subject to the provisions of this Act and to any rights appearing from the register to be vested in any other person, have power absolutely to assign, grant licence as to, or otherwise deal with, the patent or design, and to give effectual receipts for any consideration for any such assignment, licence or dealing:

Provided that any equities in respect of the patent or design may be enforced in like manner as in respect of any other movable property.

[1][(4) Except in the case of an application made under section 64, a document or instrument in respect of which no entry has been made in the register in accordance with the provisions of sub-sections (1) and (2) shall not be admitted in evidence in any Court in proof of the title to a patent or to copyright in a design or to any interest therein, unless the Court, for reasons to be recorded in writing, otherwise directs.]

Rectification of register by Court.

64. (1) The [2][Controller] may, on the application in the prescribed manner of any person aggrieved by the non-insertion in or omission from the register of patents or designs of any entry, or by any entry made in either such register without sufficient cause, or by any entry wrongly remaining on either such register, or by an error or defect in any entry in either such register, make

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LEG. REF.

[1] New sub-secs. (1) and (2) have been substituted for old sub-secs. (1) and (2) and sub-sec. (4) has ben newly added by Act VII of 1930.

[2] Substituted for the words "High Court" by Act VII of 1930.

gistered proprietor or some person in whom his interest is vested. 45 C. 606. Form No 20 must be limited to application of a registered owner though it has been framed in a general way. 45 C. 606. As to power of High Court to interfere, *see ibid.*

SEC. 64.—The Controller, whose office happens to be in Calcutta, may refer any application under sec. 64 of the Act to the Calcutta Hih Court. 41 C.W.N. 603=1937 Cal. 365=I.L.R. (1937) 2 Cal. 230. An assignor of a patent is competent to maintain an application under sec. 64 (1) for the rectification of the register of patents. if the assignee has not had himself registered as proprietor and the name of the assignor continues to remain on the register as proprietor. I.L.R. (1940) 1 C. 551=44 C.W.N. 429=1940 C. 474. Sec. 64 (1) must be read as giving the subject a right

such order for making, expunging or varying such entry [1][as he thinks fit and rectify the register accordingly].

(2) The [1][Controller] may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of a register.

[1][(3) An appeal shall lie to the High Court from any order of the Controller under this section; and the Controller may refer any application under this section to the High Court for decision, and the High Court shall dispose of any application so referred.]

(4) Any order of the Court rectifying a register shall direct that notice of the rectification be served on the Controller in the prescribed manner, who shall upon the receipt of such notice rectify the register accordingly.

[1][(5) Nothing in this section shall be deemed to empower the Controller—

(*a*) to rectify the register of patents or to decide any question relating to a patent, otherwise than for the purpose of correcting a mistake of fact apparent from a reference either to the patent itself or to some order of a competent authority made under any other provision of this Act, or

(*b*) to make any such order cancelling the registration of a design as is provided for in section 51-A.]

Powers and Duties of Controller.

Powers of Controller in proceedings under Act.

65. Subject to any rules in this behalf, the Controller in any proceedings before him under this Act shall have the powers of a Civil Court for the purpose of receiving evidence [2][*] administering oaths [2][*] enforcing the attendance of witnesses [2][*] [3][compelling the discovery and production of documents, issuing commissions for the examining of witnesses and awarding costs, and such award shall be executable in any Court having jurisdiction as if it were a decree of that Court.]

Publication of patented inventions.

66. The Controller shall issue periodically a publication of patent inventions containing such information as the Central Government may direct.

Exercise of discretionary power by Controller.

67. Where any discretionary power is by, or under, this Act given to the Controller, he shall not exercise that power adversely to the applicant for a patent, or for amendment of an application, or of a specification, or for registration of a design, without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard.

Power of Controller to take directions of Central Government.

68. The Controller may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act apply to the Central Government for directions in the matter.

LEG. REF.

[1] In sub-sec. (1), for the words "as it may think fit" the words "as he thinks fit and rectify the register accordingly" have been substituted by Act VII of 1930, and in sub-sec. (2), for the word "Court", the word "Controller" has been substituted; for old sub-secs. (3) and (5) the new sub-secs. (3) and (5) have been substituted by Act VII of 1930.

[2] The word "and" omitted by Act XII of 1939.

[3] Substituted by Act XII of 1939.

to make an application to the Controller with which sub-sec. (5) prevents him from dealing. The Controller has, therefore, power under sub-sec. (3) to refer an application filed before him for the rectification of the register of patent, although he is prevented by sub-sec. (5) from dealing with it himself. I.L.R. (1940) 1 Cal. 551.

SEC. 65.—*See* 39 C.W.N. 573=62 Cal. 396=163 I.C. 997.

Refusal to grant patent, etc., in certain cases.

69. [1][(1)] The Controller may refuse to grant a patent for an invention, or to register a design of which the use would in his opinion, be contrary to law or morality.

[2][(2) An appeal shall lie to the Central Government from an order of the Controller under this section.]

Appeals to the Central Government.

70. (1) Where an appeal is declared by this Act to lie from the Controller to the Central Government the appeal shall be made within [2][three] months of the date of the order passed by the Controller, and shall be in writing, and accompanied by the prescribed fee.

(2) In calculating the said period of [2][three] months the time (if any) occupied in granting a copy of the order appealed against shall be excluded.

(3) The Central Government may, if he thinks fit, obtain the assistance of an expert in deciding such appeals, and the decision of the Central Government shall be final.

Evidence, etc.

Evidence before the Controller.

[3][**70-A.** Subject to any rules made under section 77, in any proceeding under this Act before the Controller, the evidence shall be given by affidavit, in the absence of directions by the Controller to the contrary; but in any case in which the Controller thinks it right so to do he may take evidence *viva voce* in lieu of or in addition to evidence by affidavit or may allow any party to be cross-examined on the contents of his affidavit.]

Certificate of Controller to be evidence.

71. A certificate purporting to be under the hand of the Controller as to any entry, matter or thing which he is authorised by this Act, or any rules made thereunder, to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.

Evidence of documents in Patent Office.

[3][**71-A.** Printed or written copies or extracts, purporting to be certified by the Controller and sealed with the seal of the Patent Office, of or from patents, specifications and other documents in the Patent Office, and of or from registers and other books kept there, shall be admitted in evidence in all Courts in British India, and in all proceedings, without further proof or production of the originals:

Provided that a Court may, if it has reason to doubt the accuracy or authenticity of the copies tendered in evidence, require the production of the originals or such further proof as it considers necessary.]

Transmission of copies of specifications, etc., and inspection thereof.

[4][**72.** Copies of all such specifications, drawing and amendment left at the Patent Office, as become open to the public inspection under the provisions of this Act, shall be transmitted, as soon as may be, after the printed copies thereof are available, to such authorities as the Central Government may appoint in this behalf, and shall be open to the inspection of any person at all reasonable times at places to be appointed by those authorities and approved by the Central Government.]

LEG. REF.

[1] Section renumbered as sub-section (1) by Act VII of 1930.

[2] Substituted by S. 29, *ibid.* for "Two".

[3] Inserted by Act XII of 1939.

[4] Substituted by *ibid.*

Applications and notices by post.

73. Any application, notice or other document authorized or required to be left, made or given at the Patent Office or to the Controller, or to any other person under this Act, may be sent by post.

Declaration by infant, lunatic, etc.

74. (1) If any person is, by reason of infancy, lunacy, or other disability incapable of making any statement or doing anything required or permitted by or under this Act, the lawful guardian, committee or manager (if any) of the person subject to the disability, or, if there be none, any person appointed by any Court possessing jurisdiction in respect of his property, may make such statement or a statement as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of the person subject to the disability.

(2) An appointment may be made by the Court for the purposes of this section upon the petition of any person acting on behalf of the person, subject to the disability or of any other person interested in the making of the statement or the doing of the thing.

Security for costs.

[1][74-A Where a person giving notice of any opposition under this Act or giving notice to the Court of Appeal from any decision of the Controller under this Act, neither resides nor carries on business in British India, the Controller or the Court, as the case may be, may require such person to give security for the payment of all costs incurred and likely to be incurred in the proceedings or appeal, as the case may be, and, in default of such security being given, may disallow the opposition or dismiss the appeal.]

Agency.

Subscription and verification of certain documents.

75. The following documents, namely,—

(1) applications for a patent,
(2) notices of opposition,
(3) applications for extension of term of a patent,
(4) applications for the restoration of lapsed patents,
(5) applications for leave to amend,
(6) applications for compulsory licence or revocation, and
(7) notices of surrenders of patent,

shall be signed and verified, in the manner prescribed, by the person making such applications or giving such notices:

Provided that, if such person is absent from British India, they may be signed and verified on his behalf by an agent resident in British India authorized by him in writing in that behalf.

Agency.

76. (1) All other applications and communications to the Controller under this Act may be signed by, and all attendances upon the Controller may be made by or through a legal practitioner or by or through an agent authorized to the satisfaction of the Controller.

(2) The Controller may, if he sees fit, *require*—

(*a*) any such agent to be resident in British India;

(*b*) any person not residing in British India to employ an agent residing in British India;

(*c*) the personal signature or presence of any applicant, opponent or other person.

LEG. REF.

[1] Inserted by Act VII of 1930.

Powers, etc., of Central Government.

Power for [Central Government] to make rules.

77. (1) The Central Government may make such rules[1] as [2][it] thinks expedient subject to the provisions of this Act—

(*a*) for regulating the practice of registration under this Act;

(*b*) for classifying goods for the purposes of designs;

(*c*) for making or requiring duplicates of specifications, drawings and other documents;

(*d*) for securing and regulating the publishing and selling of copies at such prices and in such manner as the Central Government thinks fit of specifications, drawings and other documents;

(*e*) for securing and regulating the making, printing, publishing, and selling of indexes to, and abridgments of, specifications, and other documents in the Patent Office; and providing for the inspection of indexes and abridgments and other documents;

[3][(*ee*) for the manner in which fees leviable under this Act may be paid;

(*eee*) for ensuring secrecy with respect to patents to which section 21-A applies];

(*f*) generally for regulating the business of the Patent Office, the conduct of proceedings before the Controller, and all things by this Act placed under the direction or control of the Controller or of the Central Government; and

(*g*) generally for the purpose of carrying into effect the provisions of this Act.

(2) The power to make rules under this section shall be subject to the condition of the rules being made after previous publication.

[4][(2-A) Nothing in sub-section (2) shall apply in the case of rules made for the purpose specified in clause (*eee*) of sub-section (1); and any such rules may modify any of the provisions of this Act so far as may be necessary for that purpose.]

(3) All rules made under this section shall be published in the Official Gazette and, on such publication shall have effect as if enacted in this Act.

Offences.

Wrongful use of words "Patent Office".

78. If any person uses on his place of business, or on any document issued by him, or otherwise, the words "Patent Office" or any other words suggesting that his place of business is officially connected with, or is, the Patent Office, he shall be punishable with fine which may extend to two hundred rupees, and, in the case of a continuing offence, with further fine of twenty rupees for each day on which the offence is continued after conviction therefor.

[4][*Reciprocal arrangements with the United Kingdom and other parts of His Majesty's Dominions.*

78-A. (1) If His Majesty is pleased by Order in Council to [5][declare

LEG. REF.

[1] For rules, see *Gazette of India*, Pt. II, dated 1th Feb., 1933.
[2] Substituted by A.O., 1937, for "he".
[3] Inserted by Act VII of 1930, S. 31.
[4] Inserted by Act XXXIX of 1920.
[5] Substituted by Act XII of 1939.

SEC. 77 (1).—As to use of forms, *see* 22 C.W.N. 580.

SEC. 78-A.—Having regard to S. 78-A of the Act, if an application is made in England and a corresponding application made in India and a patent is granted in India on the Indian application that patent will have the date of the application in England whether the English application is proceeded with or not. 51 C.W.N. 90.

Reciprocal arrangements with the United Kingdom and other parts of His Majesty's dominions.

British India to be a convention country within the meaning of section 91-A of the Patents and Designs Act, 1907] then any person who has applied for protection for any invention or design in the United Kingdom [1][or his legal representative or assignee] [2][shall either alone or jointly with any other person, be entitled to claim that the patent that may be granted to him under this Act, for the said invention or the registration of the said design under this Act, shall be in priority to other applicants and shall have] the same date as the date of the application in the United Kingdom:

Provided that—

(*a*) the application is made in the case of a patent within twelve months, and, in the case of a design within [3][six] months from the application for protection in the United Kingdom; and

(*b*) nothing in this section shall entitle the patentee or the proprietor of the design to recover damages for infringements happening prior to the actual date on which, in the case of a patent, his application is accepted, or, in the case of a design, the design is registered, in British India.

(2) The patent granted for an invention or the registration of a design shall not be invalidated—

(*a*) in the case of a patent, by reason only of the publication of a description of, or use of, the invention, or

(*b*) in the case of a design, by reason only of the exhibition or use of, or the publication of a description or representation of, the design,

in British India during the period specified in this section as that within which the application may be made.

(3) The application for the grant of a patent or the registration of a design under this section must be made in the same manner as an ordinary application under this Act:

[Provided that, in the case of a patent,—

(*a*) the application shall be accompanied by a complete specification; and

(*b*) if the application is not accepted within eighteen months from the date of the application for protection in the United Kingdom, the specification shall, with the drawings (if any) supplied therewith, be open to public inspection at the expiration of that period.] (Substituted by Act IX of 1945).

(4) Where it is made to apear to the Central Government that the Legislature of any other part of His Majesty's Dominions [4][or of any State in India], has made satisfactory provision for the protection of inventions or designs, patented or registered in British India, the Central Government may, by notification in the Official Gazette direct that the provisions of this section, with such variations or additions, if any, as may be set out in such notification, shall apply for the protection of inventions or designs patented or registered in that part of His Majesty's dominions [4][or in that State as the case may be].

Savings and Repeal.

Savings for prerogative.

79. Nothing in this Act shall take away, abridge or prejudicially affect the prerogative of the Crown in relation to the granting of any Letters Patent or to the withholding of a grant thereof.

LEG. REF.

[1] Inserted by Act XI of 1923, S. 2 and Sch. I.

[2] Substituted by Act XII of 1939.

[3] Substituted by Act VII of 1930, S. 32, for "four".

[4] Inserted by Act VII of 1930, S. 32.

80. [*Repealed by Act XII of* 1927, *Sch.*]

81. [*Repealed by Act XXXI of* 1920, *Sch. II.*]

THE SCHEDULE.

(*See section* 57.)

FEES.

	Rs.
[1][On application for a patent accompanied by provisional specification.	10
On filing complete specification after provisional specification ..	20
On application for a patent accompanied by complete specification ..	30
For sealing a patent ..	30
Before the expiration of the 4th year from the date of the patent ..	50
Before the expiration of the 5th year from the date of the patent ..	50
Before the expiration of the 6th year from the date of the patent ..	50
Before the expiration of the 7th year from the date of the patent ..	50
Before the expiration of the 8th year from the date of the patent ..	[100][1]
Before the expiration of the 9th year from the date of the patent ..	100
Before the expiration of the 10th year from the date of the patent ..	100
Before the expiration of the 11th year from the date of the patent ..	100
[1][Before the expiration of the 12th year from the date of the patent ..	150
Before the expiration of the 13th year from the date of the patent ..	150
Before the expiration of the 14th year from the date of the patent ..	150
Before the expiration of the 15th year from the date of the patent ..	150
Provided that the fees for two or more years may be paid in advance	
On application to extend the term of patent ..	50
[2][In respect of] each year of the extended term of a patent or of a new patent granted under section 15 ..	150
On appplication for registration of a design ..	3]

THE INDAN PATENTS AND DESIGNS (EXTENSION OF TIME) ACT (X OF 1942).

[*N.B.*—Note now in force.]

[14*th March*, 1942.

An Act to provide for the extension of the time limited by or under the Indian Patents and Designs Act, 1911, *for the doing of acts thereunder.*

1. (1) It shall be in force until the termination of the present hostilities and for one year thereafter (now expired).

THE INDIAN PATENTS AND DESIGNS (TEMPORARY AMENDMENT) ACT (XV OF 1944).

[Now expired.]

[22*nd November*, 1944.

An Act temporarily to amend the Indian Patents and Designs Act, 1911.

WHEREAS it is expedient temporarily to amend the Indian Patents and Designs Act, 1911 (II of 1911), for the purpose hereinafter apearing;

It is hereby enacted as follows:—

Short title.

1. This Act may be called THE INDIAN PATENTS AND DESIGNS (TEMPORARY AMENDMENT) ACT, 1944.

Temporary amendment of section 21, Act II of 1911.

2. During the period beginning on the 3rd day of September, 1939, and ending on the expiry of six months after the cessation of the present hostilities, section 21 of the Indian Patents and Designs Act, 1911, shall have effect, and shall be deemed to have had effect throughout the said period, as if—

(*a*) after sub-section (3) the following sub-section had been inserted, namely:—

LEG. REF.

[1] Substituted by Act VII of 1930, S. 33.

[2] Substituted by Act XII of 1939.

"(3-A) The powers of officers or authorities administering any department of the service of His Majesty under sub-section (2) of sub-section (3) to make, use or exercise an invention for the service of the Crown shall include the power to make, use, exercise or vend an invention upon such terms as are mentioned in sub-section (2) or sub-section (3), as the case may be, for any purpose which appears to any such officer, or authority necessary or expedient for the efficient prosecution of the war or for maintaining supplies and services essential to the life of the community; and the terms of any such agreement or licence as is mentioned in sub-section (2) shall be inoperative so far as concerns the making, use, exercise or vending of an invention under this sub-section as they are inoperative so far as concerns the making, use or exercise of an invention under sub-section (2)";

(*b*) in sub-section (4) for the words "or exercise" the words "exercise or vending" had ben substituted;

(*c*) to sub-section (5) the following proviso had been added, namely:—

"Provided that nothing in this sub-section shall affect the right to vend an invention conferred by sub-section (3-A).";

(*d*) after sub-section (5) the following sub-section had been inserted, namely:—

"(5-A) The purchaser of any article sold in pursuance of sub-section (3-A) or sub-section (5) and any person claiming through him may deal with the article in like manner as if the patent for the invention were held on behalf of His Majesty."

THE PAYMENT OF WAGES ACT (IV OF 1936).

[*N.B.*—Am. Act XX of 1937 and Act XXII of 1937. See also Ordinance III of 1940].

[23*rd April*, 1936.

An Act to regulate the payment of wages to certain classes of persons employed in industry.

WHEREAS it is expedient to regulate the payment of wages to certain classes of persons employed in industry; It is hereby enacted as follows:—

Short title, extent, commencement and application.

1. (1) This Act may be called THE PAYMENT OF WAGES ACT, 1936.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

(4) It applies in the first instance to the payment of wages to persons employed in any factory and to persons employed (otherwise than in a factory) upon any railway by a railway administration or, either directly or through a sub-contractor, by a person fulfilling a contract with a railway administration.

(5) The Provincial Government may, after giving three months' notice of its intention of so doing, by notification in the Official Gazette, extend the provisions of the Act or any of them to the payment of wages to any class of persons employed in any industrial establishment or in any class or group of industrial establishments

(6) Nothing in this Act shall apply to wages payable in respect of a wage-period which, over such wage-period, average two hundred rupees a month or more.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(i) "factory" means a factory as defined in clause (*j*) of section 2 of the Factories Act, 1934;

SEC. 2.—"Wages" as defined by sec. 2 can only mean wages earned and cannot embrace

(ii) "industrial establishment" means any—

(*a*) tramway or motor omnibus service;

(*b*) dock, wharf or jetty;

(*c*) inland steam-vessel;

(*d*) mine, quarry or oil-field;

(*e*) plantation;

(*f*) workshop or other establishment in which articles are produced, adapted or manufactured, with a view to their use, transport or sale;

(iii) "plantation" means any estate which is maintained for the purpose of growing cinchona, rubber, coffee or tea, and on which twenty-five or more persons are employed for that purpose;

(iv) "prescribed" means prescribed by rules made under this Act;

(v) "railway administration" has the meaning assigned to it in clause (6) of section 3 of the Indian Railways Act, 1890; and

(vi) "wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable, whether conditionally upon the regular attendance, good work or conduct or other behaviour of the person employed, or otherwise, to a person employed in respect of his employment or of work done in such employment, and includes any bonus or other additional remuneration of the nature aforesaid which would be so payable and any sum payable to such person by reason of the termination of his employment, but does not include—

(*a*) the value of any house accommodation, supply of light, water, medical attendance or other amenity, or of any service excluded by general or special order of the [1][* * * * *] Provincial Government;

(*b*) any contribution paid by the employer to any pension fund or provident fund;

(*c*) any travelling allowance or the value of any travelling concession;

(*d*) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(*e*) any gratuity payable on discharge.

Responsibility for payment of wages.

3. Every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under this Act:

Provided that in the case of persons employed (otherwise than by a contractor)—

(*a*) in factories, if a person has been named as the manager of the factory under clause (*e*) of sub-section (1) of section 9 of the Factories Act, 1934.

(*b*) in industrial establishments, if there is a person responsible to the employer for the supervision and control of the industrial establishment,

(*c*) upon railways (otherwise than in factories), if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned,

the person so named, the person so responsible to the employer, or the person so nominated, as the case may be, shall be responsible for such payment.

Fixation of wage-periods.

4. (1) Every person responsible, for the payment of wages under section 3 shall fix periods (in this Act referred to as wage-periods) in respect of which such wages shall be payable.

LEG. REF.

[1] Words 'Governor-General in Council or' omitted by A.O., 1937.

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potential wages. Bonus which workman might earn but has not earned cannot form part of his wages. The words "remuneration, which would, if the contract were fulfilled be payable", mean no more than remuneration payable on the fulfilment of the contract. Bonus never becomes payable to an employee who does not earn it under the terms of the contract. 42 Bom.L.R. 955= 1941 Bom. 26.

(2) No wage-period shall exceed one month.

Time of payment of wages.

5. (1) The wages of every person employed upon or in—

(*a*) any railway, factory or industrial establishment upon or in which less than one thousand persons are employed, shall be paid before the expiry of the seventh day,

(*b*) any other railway, factory or industrial establishment, shall be paid before the expiry of the tenth day,

after the last day of the wage-period in respect of which the wages are payable.

(2) Where the employment of any person is terminated by or on behalf of the employer, the wages earned by him shall be paid before the expiry of the secondworking day from the day on which his employment is terminated.

(3) The [1][Provincial Government] may, by general or special order, exempt, to such extent and subject to such conditions as may be specified in the order, the person responsible for the payment of wages to persons employed upon any railway (otherwise than in a factory) from the operation of this section in respect of the wages of any such persons or class of such persons.

(4) All payments of wages shall be made on a working day.

Wages to be paid in current coin or currency notes.

6. All wages shall be paid in current coin or currency notes or in both.

Deductions which may be made from wages.

7. (1) Notwithstanding the provisions of sub-section (2) of section 47 of the Indian Railways Act, 1890, the wages of an employed person shall be paid to him without deductions of any kind except those authorised by or under this Act.

Explanation.—Every payment made by the employed person to the employer or his agent shall, for the purposes of this Act, be deemed to be a deduction from wages.

(2) Deductions from the wages of an employed person shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely:—

(*a*) fines;

(*b*) deductions for absence from duty;

(*c*) deductions for damage to or loss of goods expressly entrusted to the employed person for custody, or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;

(*d*) deductions for house accommodation supplied by the employer;

(*e*) deductions for such amenities and services supplied by the employer as the [2][* * *] [Provincial Government] may, by general or special order, authorise;

Explanation.—The word 'services' in this sub-clause does not include the supply of tools and raw materials required for the purposes of employment.

(*f*) deductions for recovery of advances or for adjustment of overpayments of wages;

(*g*) deductions of income-tax payable by the employed person;

(*h*) deductions required to be made by order of a Court or other authority competent to make such order;

LEG. REF.

1 Substituted by A.O., 1937, for "Governor-General in Council".

2 Words 'Governor-General in Council or' omitted by A.O., 1937

SECS. 7 AND 8.—*See* I.L.R. (1941) Kar. 394=1941 S. 191.

(*i*) deductions for subscriptions to, and for repayment of advances from any provident fund to which the Provident Funds Act, 1925, applies or any recognised provident fund as defined in section 58-A of the Indian Income-tax Act, 1922, or any provident fund approved in this behalf by the Provincial Government, during the continuance of such approval;

(*j*) deductions for payments to co-operative societies approved by the Provincial Government or to a scheme of insurance maintained by the Indian Post Office; and

[(*k*) deductions, made with the written authorization of the employed person in furtherance of any War Savings scheme, approved by the Provincial Government for the purchase of securities of the Government of India or the Government of the United Kingdom.] (*Added by Ordinance III of* 1940.)

Fines.

8. (1) No fine shall be imposed on any employed person save in respect of such acts and omissions on his part as the employer, with the previous approval of the Provincial Government or of the prescribed authority, may have specified by notice under sub-section (2).

(2) A notice specifying such acts and omissions shall be exhibited in the prescribed manner on the premises in which the employment is carried on or in the case of persons employed upon a railway (otherwise than in a factory), at the prescribed place or places.

(3) No fine shall be imposed on any employed person until he has been given an opportunity of showing cause against the fine, or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines.

(4) The total amount of fine which may be imposed in any one wage-period on any employed person shall not exceed an amount equal to half-an-anna in the rupee of the wages payable to him in respect of that wage-period.

(5) No fine shall be imposed on any employed person who is under the age of fifteen years.

(6) No fine imposed on any employed person shall be recovered from him by instalments or after the expiry of sixty days from the day on which it was imposed.

(7) Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.

(8) All fines and all realisations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed; and all such realisations shall be applied only to such purposes beneficial to the persons employed in the factory or establishment as are approved by the prescribed authority.

Explanation.—When the persons employed upon or in any railway, factory or industrial establishment are part only of a staff employed under the same management, all such realisations may be credited to a common fund maintained for the staff as a whole, provided that the fund shall be applied only to such purposes as are approved by the prescribed authority.

Deductions for absence from duty.

9. (1) Deductions may be made under clause (*b*) of sub-section (2) of section 7 only on account of the absence of an employed person from the place or places where, by the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work.

(2) The amount of such deduction shall in no case bear to the wages payable to the employed person in respect of the wage-period for which the deduction is made a larger proportion than the period for which he was absent

bears to the total period, within such wage-period, during which by the terms of his employment, he was required to work:

Provided that, subject to any rules made in this behalf by the Provincial Government, if ten or more employed persons acting in concert absent themselves without due notice (that is to say without giving the notice which is required under the terms of their contracts of employment) and without reasonable cause, such deduction from any such person may include such amount not exceeding his wages for eight days as may by any such terms be due to the employer in lieu of due notice.

[1][*Explanation.*—For the purpose of this section, an employed person shall be deemed to be absent from the place where he is required to work if, although present in such place, he refuses, in pursuance of a stay-in-strike or for any other cause which is not reasonable in the circumstances, to carry out his work.]

Deductions for damage or loss.

10. (1) A deduction under clause (*c*) of sub-section (2) of section 7 shall not exceed the amount of the damage or loss caused to the employer by the neglect or default of the employed person and shall not be made until the employed person has been given an opportunity of showing cause against the deduction, or otherwise than in accordance with such procedure as may be prescribed for the making of such deductions.

(2) All such reductions and all realisations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed.

Deduction for services rendered.

11. A deduction under clause (*d*) or clause (*e*) of sub-section (2) of section 7 shall not be made from the wages of an employed person, unless the house-accommodation, amenity or service has been accepted by him, as a term of employment or otherwise and such deduction shall not exceed an amount equivalent to the value of the house-accommodation, amenity or service supplied and, in the case of a deduction under the said clause (*e*), shall be subject to such conditions as [2][* *] the Provincial Government may impose.

Deductions for recovery of advances.

12. Deductions under clause (*f*) of sub-section (2) of section 7 shall be subject to the following conditions, namely:—

(*a*) recovery of an advance of money given before employment began shall be made from the first payment of wages in respect of a complete wage-period, but no recovery shall be made of such advances given for travelling-expenses;

(*b*) recovery of advances of wages not already earned shall be subject to any rules made by the Provincial Government regulating the extent to which such advances may be given and the instalments by which they may be recovered.

Deductions for payments to co-operative societies and insurance schemes.

13. Deductions under clause (*j*) [3][and clause (*k*)] of sub-section (2) of section 7 shall be subject to such conditions as the Provincial Government may impose.

Inspectors.

14. (1) An Inspector of Factories appointed under sub-section (1) of section 10 of the Factories Act, 1934, shall be an Inspector for the purposes of this Act in respect of all factories within the local limits assigned to him.

(2) The [4][Provincial Government] may appoint Inspectors for the pur-

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LEG. REF.

1 Inserted by Act XXII of 1927, sec. 2.
2 Omitted by A.O., 1937.
3 Inserted by Ordinance III of 1940.
4 Substituted for 'Governor-General in Council' by A.O., 1937.

poses of this Act in respect of all persons employed upon a railway (otherwise than in a factory) to whom this Act applies.

(3) The Provincial Government may, by notification in the Official Gazette, appoint such other persons as it thinks fit to be Inspectors for the purposes of this Act, and may define the local limits within which and the class of factories and industrial establishments in respect of which they shall exercise their functions.

(4) An Inspector may, at all reasonable hours, enter on any premises, and make such examination of any register or document relating to the calculation or payment of wages and take on the spot or otherwise such evidence of any person, and exercise such other powers of inspection, as he may deem necessary for carrying out the purposes of this Act.

(5) Every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code.

Claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims.

15. (1) The Provincial Government may, by notification in the Official Gazette, appoint any Commisisoner for Workmen's Compensation or other officer with experience as a Judge of a Civil Court or as a stipendiary Magistrate to be the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages, of persons employed or paid in that area.

(2) Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, such person himself, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf, or any Inspector under this Act, or any other person acting with the permission of the authority appointed under sub-section (1), may apply to such authority for a direction under sub-section (3):

Provided that every such application shall be presented within six months from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made, as the case may be:

Provided further that any application may be admitted after the said period of six months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

(3) When any application under sub-section (2) is entertained, the authority shall hear the applicant and the employer or other person responsible for the

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SEC. 15.—In the case of a factory, if a person is named as the manager of the factory under the Factories Act, then he would be liable for the amount of wages. The employer is not a proper party when there is a manager appointed. I.L.R. (1940) Bom. 96=41 Bom.L.R. 1283=1940 Bom. 87. The reduction of an employee to a lower grade of pay from a higher grade for a short period is a "deduction" within the meaning of the Payment of Wages Act. If an employer terminates his existing contract with his employee, but offers to re-employ him on a lower rate, there is nothing against it in the Act, and no question of deduction would arise. I.L.R. (1941) Kar. 394=1941 Sind 191. As to appeal *see* I.L.R. (1943) A. 490=1943 A. 243 Even if no appeal lay against an order under S. 15 of the Act, an application in revision does not lie because the authority from whose order the application is preferred is not a Court subordinate to the High Court within the meaning of S. 115, C.P. Code. I.L.R. (1946) A. 248 =222 I.C. 423=1946 A.L.J. 23=1946 A. W.R. (H.C.) 33=1946 O.W.N. (H.C.) 49=1946 A. 276=1946 A.L.W. 49. But *see* 1946 Lah. 316. Where an application of the employee under S. 15 of the Act has been rejected, it must be taken that there was no 'direction' within the meaning of that word in S. 17. There is nothing in the Act which provides for an appeal in such a case. 1946 O.W.N. 66=1946 A.W.R. (C.C.) 63=1946 O.A. (C.C.) 63=21 Luck. 348=1946 Oudh 148. The "authority" appointed under S. 15, is a Civil Court and further it is a Court subordinate to the High Court within the purview of S. 115,

payment of wages under section 3, or give them an opportunity of being heard, and, after such further inquiry (if any) as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person of the amount deducted, or the payment of the delayed wages together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case and not exceeding ten rupees in the latter:

Provided that no direction for the payment of compensation shall be made in the case of delayed wages if the authority is satisfied that the delay was due to—

(*a*) a *bona fide* error or a *bona fide* dispute as to the amount payable to the employed person, or

(*b*) the occurrence of an emergency, or the existence of exceptional circumstances, such that the persons responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment, or

(*c*) the failure of the employed person to apply for or accept payment.

(4) If the authority hearing any application under this section is satisfied that it was either malicious or vexatious, the authority may direct that a penalty not exceeding fifty rupees be paid to the employer or other person responsible for the payment of wages by the person presenting the application.

(5) Any amount directed to be paid under this section may be recovered—

(*a*) if the authority is a Magistrate, by the authority as if it were a fine imposed by him as Magistrate, and

(*b*) if the authority is not a Magistrate, by any Magistrate to whom the authority makes application in this behalf, as if it were a fine imposed by such Magistrate.

Single application in respect of claims from unpaid group.

16. (1) Employed persons are said to belong to the same unpaid group if they are borne on the same establishment and if their wages for the same wage-period or periods have remained unpaid after the day fixed by section 5.

(2) A single application may be presented under section 15 on behalf or in respect of any number of employed persons belonging to the same unpaid group, and in such case the maximum compensation that may be awarded under sub-section (3) of section 15 shall be ten rupees per head.

(3) The authority may deal with any number of separate pending applications, presented under section 15 in respect of persons belonging to the same unpaid group, as a single application presented under sub-section (2) of this section, and the provisions of that sub-section shall apply accordingly.

C.P. Code, and S. 44, Punjab Courts Act. 226 I.C. 44=1946 Lah. 316 (F.B.). *See* 1946 A.L.J. 23 (*contra*).

A Civil Court is not barred by sec. 22, read with sec. 15 of the Payment of Wages Act from trying a suit in which the plaintiff is claiming a sum of money alleged to be due in lieu of notice after dismissal from employment, when the claim is entirely denied under sec. 15. Delayed wages can only mean wages which are admittedly due, but the payment of which has been postponed on some excuse or another. 217 I.C. 228.

SEC. 15 (2) AND (3).—An application for compensation alone is not contemplated by sec. 15 (2) and (3). It must be for payment of delayed wages; and it is only in such application that orders may be passed for payment of compensation. An application for compensation alone is not competent. I.L.R. (1942) Bom. 649=44 Bom.L.R. 606=1942 Bom. 273.

SECS. 15 AND 17: DECISION OF AUTHORITY —REVISION.—The authority deciding disputes under the Payment of Wages Act is not a Court subordinate to the High Court which cannot therefore entertain an application in revision against a decision of that authority. I.L.R. (1944) Nag. 531=1944 N.L.J. 256=A.I.R. 1944 Nag. 288.

Appeal.

17. (1) An appeal against a direction made under [1][sub-section (3) or sub-section (4)] of section 15 may be preferred, within thirty days of the date on which the direction was made, in a Presidency-town [2][* * *] before the Court of Small Causes and elsewhere before the District Court—

(*a*) by the employer or other person responsible for the payment of wages under section 3, if the total sum directed to be paid by way of wages and compensation exceeds three hundred rupees, or

(*b*) by an employed person, if the total amount of wages claimed to have been withheld from him or from the unpaid group to which he belonged exceeds fifty rupees, or

(*c*) by any person directed to pay a penalty under sub-section [1][(4)] of section 15.

(2) Save as provided in sub-section (1), any direction made under sub-section (3) or sub-section [1][(4)] of section 15 shall be final.

Powers of authorities appointed under section 15.

18. Every authority appointed under sub-section (1) of section 15 shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908, for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority shall be deemed to be a Civil Court for all the purposes of section 195 and of Chapter XXXV of the Code of Criminal Procedure, 1898.

Power to recover from employer in certain cases.

19. When the authority referred to in section 15 or the Court referred to in section 17 is unable to recover from any person (other than an employer) responsible under section 3 for the payment of wages any amount directed by such authority under section 15 or section 17 to be paid by such person, the authority shall recover the amount from the employer of the employed person concerned.

Penalty for offences under the Act.

20. (1) Whoever being responsible for the payment of wages to an employed person contravenes any of the provisions of any of the following sections, namely, section 5 and sections 7 to 13, both inclusive, shall be punishable with fine which may extend to five hundred rupees.

(2) Whoever contravenes the provisions of section 4, section 6 or section 25 shall be punishable with fine which may extend to two hundred rupees.

Procedure in trial of offences.

21. (1) No Court shall take cognizance of a complaint against any person for any offence under sub-section (1) of section 20, unless an application in respect of the facts constituting the offence has been presented under section

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LEG. REF.

[1] Substituted by sec. 2 and Sch. I of Act XX of 1937.

[2] Repealed by A.O., 1937.

SEC. 17: APPEALABILITY—TEST.—Under S. 17 of the Act, appeals are allowed only when there has been a 'direction' which means an order to one side to make a certain payment to the other side. It is very doubtful whether when there has been a trial on the merits and no one has been directed to make any payment to the other side any appeal lies but when the application or claim is rejected as time barred without even entering into the merits, there is no appeal. I.L.R. (1943) All. 490=1943 A.L.J. 164=1943 O.W.N. (H.C.) 97=1943 All. 243.

SEC. 17 (1): "DIRECTION"—ORDER REJECTING CLAIM *in toto*—APPEAL.—The word direction in sec. 17 (1) must be construed as including a refusal to make a direction. An employed person has a right of appeal if his claim has been rejected *in toto* as also when his claim is allowed in part only. I.L.R. (1941) Kar. 394=1941 Sind 101. Under sec. 17 (1) (*b*) the right of appeal depends on the monetary value of the claim made by the applicant and not on any finding of the trial Court. The meaning of the

15 and has been granted wholly or in part and the authority empowered under the latter section or the appellate Court granting such application has sanctioned the making of the complaint.

(2) Before sanctioning the making of a complaint against any person for an offence under sub-section (1) of section 20, the authority empowered under section 15 or the appellate Court, as the case may be, shall give such person an opportunity of showing cause against the granting of such sanction, and the sanction shall not be granted if such person satisfies the authority or Court that his default was due to—

(*a*) a *bona fide* error or *bona fide* dispute as to the amount payable to the employed person, or

(*b*) the occurrence of an emergency, or the existence of exceptional circumstances, such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment, or

(*c*) the failure of the employed person to apply for or accept payment.

(3) No Court shall take cognizance of a contravention of section 4 or of section 6 or of a contravention of any rule made under section 26 except on a complaint made by or with the sanction of an Inspector under this Act.

(4) In imposing any fine for an offence under sub-section (1) of section 20 the Court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under section 15.

Bar of suits.

22. No Court shall entertain any suit for the recovery of wages or of any deduction from wages in so far as the sum so claimed—

(*a*) forms the subject of an application under section 15 which has been presented by the plaintiff and which is pending before the authority appointed under that section or of an appeal under section 17; or

(*b*) has formed the subject of a direction under section 15 in favour of the plaintiff; or

(*c*) has been adjudged, in any proceeding under section 15, not to be owed to the plaintiff; or

(*d*) could have been recovered by an application under section 15.

Contracting out.

23. Any contract or agreement, whether made before or after the commencement of this Act, whereby an employed person relinquishes any right conferred by this Act shall be null and void in so far as it purports to deprive him of such right.

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clause is clear, and there is no justification for holding otherwise on the ground that the section lends itself to exaggeration of claims for the purpose of making any orders passed thereon appealable. I.L.R. (1941) Kar. 394=1941 S. 191.

SEC. 17 (1) (*a*) provides for an appeal only if the total sum directed to be paid by way of wages as well as compensation exceeds Rs. 300. When no amount of wages is ordered to be paid, an order for compensation alone which does not exceed Rs. 300 is not appealable under sec. 17 (1). I.L.R. (1942) Bom. 649=44 Bom.L.R. 606=1942 B. 273.

SEC. 17 (1) (*a*): RIGHT OF APPEAL—NO SUM AWARDED AS COMPENSATION.—Under sec. 17 (1) (*a*), an appeal lies if the sum directed to be paid exceeds Rs. 300, and it is not necessary that such sum should include the amount payable on acount of compensation. The words "by way of wages and compensation" in sec. 17 (1) (*a*) are by way of a description and not a condition precedent for the maintainability of an appeal. 1945 N.L.J. 281=I.L.R. (1945) N. 587=1945 N. 244.

ORDER OF DISTRICT COURT IN APPEAL—REVISION—C. P. CODE, SEC. 115.—The High Court has power to revise an order passed by the District Court in appeal under sec. 17. A District Court decides a "case" within the meaning of sec. 115, C.P. Code, when it decides the appeal. I.L.R. (1945) Nag. 587=1945 Nag. 244.

SEC. 17 (2): SUBJECT-MATTER BELOW APPEALABLE VALUE—REVISION.—The word 'final' in sec. 17 (2) of the Payment of

Application of Act to Federal Railways, mines and oilfields.

24. [1][The powers by this Act conferred upon the Provincial Government shall, in relation to Federal railways (within the meaning of the Government of India Act, 1935) mines and oilfields, be powers of the Central Government].

Display by notice of abstracts of the Act.

25. The person responsible for the payment of wages to persons employed in a factory shall cause to be displayed in such factory a notice containing such abstracts of this Act and of the rules made thereunder in English and in the language of the majority of the persons employed in the factory, as may be prescribed.

Rule-making power.

26. (1) The [2][Provincial Government] may make rules to regulate the procedure to be followed by the authorities and Courts referred to in sections 15 and 17.

(2) The Provincial Government may [3][* * *] by notification in the Official Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

(3) In particular and without prejudice to the generality of the foregoing power, rules made under sub-section (2) may—

(*a*) require the maintenance of such records, registers, returns, and notices as are necessary for the enforcement of the Act and prescribe the form thereof;

(*b*) require the display in a conspicuous place on premises where employment is carried on of notices specifying rates of wages payable to persons employed on such premises;

(*c*) provide for the regular inspection of the weights, measures and weighing machines used by employers in checking or ascertaining the wages of persons employed by them;

(*d*) prescribe the manner of giving notice of the days on which wages will be paid;

(*e*) prescribe the authority competent to approve under sub-section (1) of section 8 acts and omissions in respect of which fines may be imposed;

LEG. REF.

[1] Substituted by A.O., 1937, for the original section.

[2] Substituted by A.O., 1937.

[3] Repealed by A.O., 1937.

Wages Act prohibits only an appeal and not an application for revison. I.L.R. (1944) Nag. 540=1944 N.L.J. 329=1945 Nag. 94.

SECS. 22 AND 15—CLAIM FOR MONEY ALLEGED TO BE DUE IN LIEU OF NOTICE AFTER DISMISSAL—CLAIM DENIED UNDER SEC. 15—JURISDICTION OF CIVIL COURT—IF BARRED.—A Civil Court is not barred by sec. 22, read with sec. 15 of the Payment of Wages Act from trying a suit in which the plaintiff is claiming a sum of money alleged to be due in lieu of notice after dismissal from employment, when the claim is entirely denied under sec. 15. Delayed wages can only mean wages which are admittedly due, but the payment of which has been postponed on some excuse or other. This view seems to be confirmed by the proviso to sub-sec. (3) of sec. 15 in which it is said that a direction should not be made when the delay in the payment of wages is due to a *bona fide* dispute as to the amount payable by the employed person. This seems to suggest that any *bona fide* disputes as to the amount payable are to be tried by the Civil Courts for otherwise there would be no authority capable of making an order for payment when the amount is, in fact due. 217 I.C. 228=1945 Lah. 195.

SEC. 26: PAYMENT OF WAGES (PROCEDURE) RULES (1937), R. 12.—If a memorandum of appeal is filed with a copy of the order but without a copy of the directions,—the directions not having been drawn up in the prescribed form within a month, there is substantial compliance with the Rules. The principle underlying sec. 99, C.P. Code, is applicable to the case. 1945 N.L.J. 281 =I.L.R. (1945) Nag. 587=1945 Nag. 244.

Railway Rules and Notes under S. 26 have no statutory basis. They cannot bind the authorities in considering claims under the Act. 1941 Sind. 191.

(*f*) prescribe the procedure for the imposition of fines under section 8 and for the making of the deductions referred to in section 10;

(*g*) prescribe the conditions subject to which deductions may be made under the proviso to sub-section (2) of section 9:

(*h*) prescribe the authority competent to approve the purposes on which the proceeds of fines shall be expended;

(*i*) prescribe the extent to which advances may be made and the instalments by which they may be recovered with reference to clause (*b*) of section 12.

(*j*) regulate the scales of costs which may be allowed in proceedings under this Act;

(*k*) prescribe the amount of court-fees payable in respect of any proceedings under this Act; and

(*l*) prescribe the abstracts to be contained in the notices required by section 25.

(4) In making any rule under this section the Provincial Government may provide that a contravention of the rule shall be punishable with fine which may extend to two hundred rupees.

(5) All rules made under this section shall be subject to the condition of previous publication, and the date to be specified under clause (3) of section 23 of the General Clauses Act, 1897, shall not be less than three months from the date on which the draft of the proposed rules was published.

THE PENSIONS ACT (XXIII OF 1871).

Year.	No.	Short title.	Amendments.
1871	XXIII	Pensions Act, 1871.	Repealed in part, XII of 1892; X of 1914; XII of 1927; I of 1938.

Am (locally), Act XXI of 1886,
Declared in force—
In the Sonthal Parganas, Reg. III of 1872, S. 3, as amended by Reg. III of 1899, S. 3; in Upper Burma (except the Shan State), Act XIII of 1838, S. 4; in British Baluchistan, Reg. II of 1913, S. 3.

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THE PENSIONS ACT (XXIII OF 1871)[1]

[*8th August*, 1871.

An Act to consolidate and amend the Law relating to Pensions and Grants by Government of money or land revenue.

WHEREAS it is expedient to consolidate and amend the law relating to Pensions and Grants by Government of money or land-revenue ; It is hereby enacted as follows :—

Preamble.

I. Preliminary.

Short title.

1. This Act may be called THE PENSIONS ACT, 1871.

Extent of Act.

It extends to the whole of British India :

[2][* * * * *]

2. [*Enactments repealed. Saving of Rules.*] *Repealed by Act I of* 1938.

Interpretation section.

3. In this Act, the expression " grant of money or land-revenue " includes anything payable on the part of Government in respect of any right, privilege, perquisite or office.

REF. REF.

[1] For the Statement of Objects and Reasons *see* Gazette of India, 1871, Pt. V, p. 141; for Proceedings in Council, see *ibid.*, 1871, Supplement; pp. 314, 401, 683, 1056 and 1147.

[2] The words "and it shall come into force on the date of the passing thereof" were repealed by Act X of 1914 and the words "but not so as to affect any suit in respect of a pension or grant of money or land revenue which may have been instituted before such date" were repealed by Act XII of 1891.

SEC. 1.—Object of Act. *See* 14 B. 573; 107 I.C. 899=1928 N. 189. Act must be construed strictly. 1925 O. 210. *See also* 10 A. 396=A.W.N. (1888) 72; 1928 N. 189; 1939 Bom. 513=41 Bom.L.R. 882. The word "pension" in the Pensions Act, 1871 and in Civil Procedure Code, sec. 60 and in the Transfer of Property Act, sec. 6, implies periodical payments of money by Government to the pensioner. 58 I.A. 215 =59 C. 1=35 C.W.N. 791=1931 P.C. 160 =61 M.L.J. 208 (P.C.). *See also* 1929 A. 781. Grantee of village with release of obligation to pay revenue—Pensions Act not applicable. I.L.R. (1944) All. 233= 1944 F.L.J. 196=1944 A.L.J. 246=1944 All. 187. *See also* 222 I.C. 22=1946 L. 268. It is essential that an Officer to be entitled to pension must be in the service on the date of his retirement. An officer removed from Government service can have no claim for any pension. 2 L.W. 431= 29 I.C. 252. A decree in conformity with the award which provides for the distribution in a certain manner of a pension when received from Government does not militate against the provisions of the Act. 37 B. 442=19 I.C. 882. A grant by the British Government confirming a previous grant made by the preceding Ruler is of such rights as the Government possessed and is excluded from the purview of the Pensions Act. 31 I.C. 728. *See also* 17 B. 169; 1 B. 75. The word 'pension' has nowhere been defined but it ought to be understood in its ordinary sense as implying periodical allowances on account of past services, consideration or merit or by way of compensation to dethroned princes, their families and dependants. A grant of land revenue as such cannot be comprised in the term 'pension'. A grant of Government revenue can in no case be treated as a political pension which is a pension granted on political considerations for reasons of State. The assignment of such grants is not prohibited by the Pensions Act. 1929 A. 781 =27 A.L.J. 724. *See also* 61 M.L.J. 208 (P.C.). The provisions of the Act dealing with pensions and grants of land revenue in the District of Ratnagiri are not *ultra vires*. 59 I.C. 452=22 Bom.L.R. 1176 =45 B. 196=1921 B. 125.

SEC. 3.—[*See also* notes under sec. 1, *supra.*] A sum payable by the Government as compensation for forest dues in respect of Jaghir land taken over by the Government for forest purposes is not a pension, but a grant of money or land revenue and is not exempted from attachment. 121 I.C. 664=1930 N. 134 (1).

SECS. 3 AND 4: GENERAL.—The Pensions Act, which is one which tends to restrict the ordinary legal rights of the subject to have recourse to the Court for

"Definition."

[1][3-A. The expression "the appropriate Government" means, in relation to federal pensions, the Central Government, and in relation to other pensions, the Provincial Government.

REF. REF.

[1] Inserted by A.O., 1937.

remedy of grievances is one *to be strictly construed.* The object of the Act was to reserve to the Government the determination of all questions affecting grants of money, the bestowal of which was an act of grace or State policy on the part of the ruling powers. 107 I.C. 899=1928 N. 189. The Pensions Act is to be construed strictly in favour of the subject. A suit relating to property which is the subject of a grant, in which the plaintiff's claim is quite independent of the grant, and in which there is no dispute as to the fact of the grant or as to its validity or as to the persons entitled under it cannot be regarded as a suit relating to a grant of land revenue within the meaning of sec. 4. No certificate is necessary in the case of such a suit under sec. 4. 41 Bom.L.R. 882=1939 Bom. 513. Sec. 4 does not require that the grant should be of the land revenue alone in order to oust jurisdiction to entertain a suit relating thereto. 15 I.C. 871=23 M.L.J. 687. The nature of the grant must depend on what the Government gives and not on what may happen irrespective of the wishes of the Government. If the Government gave only the land revenue, acquisition of the lands by the pensioners does not make them grantees of immovable property. 47 A. 557=87 I.C. 569. The word "suit" does not include execution proceedings. 7 Bom. L.R. 659=30 B. 101; 16 B. 731. In order to find out whether a grant falls within the scope of sec. 4 of the Pensions Act, we have to look at the substance of what has been granted or continued by Government, whatevery may be the purely legal view as to the nature of the right granted and if the grant consists merely in the right to collect the land revenue, at any rate in the time of the British Government, or if it included this right in addition to other rights as well, then what we have to see is whether that right to collect the land revenue comes within the provisions of the Pensions Act or not. A distinction cannot be drawn between a grant of land revenue and the right to collect land revenue. Sec. 9 of the Act, which provides that nothing in secs. 4 and 8 shall affect the right of a grantee of land revenue to collect the revenue for himself, seems clearly to show that the right to collect land revenue for oneself was regarded in the scheme of the Act as a grant of land revenue. A grant of land revenue does not cease to be such a grant when the grantee becomes himself the owner of the land over which the grant extends. What has to be seen is whether the land itself has, at any time, been made exempt from revenue. The question whether there is a sort of merger, and whether the land becomes revenue free when the jagirdar purchases the rights of an owner, cannot be made to depend upon the nature of the Jagir. 222 I.C. 22=1946 L. 268.

CASES TO WHICH SECTION APPLIES.—The Act contemplates money payment to be received through the Collector from recorded persons bound to pay revenue. 1913 M.W.N. 255=23 M.L.J. 687. Sec. 4 applies not only to a suit against Government but also to suits between private parties and the previous certificate of the Collector is necessary where the suit relates to a grant of land revenue. 25 Bom.L.R. 1477 =1927 B. 81. "Grant of money or land revenue", meaning of. *See* 5 B. 408=8 I.A. 77 (P.C.). The following are included within the said expression:—(1)Malikana. *See* 17 A. 1=21 I.A. 148=2 M.L. J. 272 (P.C.) and cases referred to therein. 29 B. 480; (2) *Toda giras hak.* 5 B. 408 =8 I.A. 77 (P.C.); (3) Allowances settled by Government upon members of the family of a Nawab. 7 A.W.N. 225; (4) Allowance granted to political prisoners though the same is collected by agreement from a foreign or Native State. 50 M. 711=1927 M. 604=52 M.L.J. 622; (5) Suit to recover wages for services in temple from trustee out of funds granted by the Government. 107 I.C. 899=1928 N. 189.

THE FOLLOWING ARE GRANTS TO WHICH THE SECTION APPLIES.—A suit, by a hereditary deshmukh of certain Mahals entitled to be directly paid by the ryots thereof a percentage on the revenue assessed thereon, against the Government, to recover a portion of such percentage collected along with the revenue and retained by it. 2 B. 99=4 I.A. 119 (P.C.). Where a Jaghir, granted for the support of the grantee and his relatives, was resumed by Government, and money allowance substituted, a suit by a relative of the original grantee to recover, arrears of his share is barred. 4 M. 341. *See also* 18 M. 187; 29 B. 480; 30 M. 266=17 M.L.J. 139; 50 M. 441=1927 M. 140=51 M.L.J. 695. Civil Courts are prohibited from entertaining suits relating to any grant of money conferred by the British Government, whatever may have been the consideration for it. 5 B. 408=8 I.A. 77 (P.C.); 17 Bom. L.R. 153=27 I.C. 927 (2). Claim for maintenance by a female member—Government pension—If Act applicable. *See* 17 M.L.J. 139=30 M. 266. Sec. 4 applies to a heritable right to receive land revenue granted by the Moghul Emperor as reward for services rendered. 25 A. 73. Jaghir —Right to share—Suit for—Necessity for certificate of Collector—Omission to obtain certificate—Effect of. 6 Lah.L.J. 343=1925

II. Rights to Pensions.

4. Except as hereinafter provided, no Civil Court shall entertain any suit relating to any pension or grant of money or land-revenue conferred or made by the Britsih or any former Government, whatever may have been the consideration for any such pension or grant, and, whatever may have been the nature of the payment, claim or right for which such pension or grant, may have been substituted.

Bar to suits relating to pensions.

L. 113; 28 A. 104=27 I.C. 927; 20 M.L. J. 164=32 A. 148 (P.C.).

THE FOLLOWING DO NOT COME WITHIN THIS SECTION.—A grant of lands, revenue-free. 7 M. 191. *See also* 51 M.L.J. 695. Grant of land revenue—Suit to recover share of—If Act applies. 17 Bom.L.R. 163 =27 I.C. 927. The grant of a Zemindari, of which the revenue is remitted by the Government. 8 A.L.J. 692=33 A. 580. *See also* 114 I.C. 626=1928 M. 1246 (Jodi fixed for Jaghir land). Previous inams confirmed by British Government—Confirmation not a re-grant—Suit relating to such inam lands not governed by Pensions Act. *See* 21 M. 310. *See also* 29 B. 480 =7 Bom.L.R. 497. Agreement between Government and public servant—Increase of pay for risky services—Payment during good behaviour, meaning of—Payment on termination of service and pension—Suit to enforce agreement if maintainable. 15 C.W.N. 470=38 C. 378. Endowments for religious or pious purposes do not fall within the purview of sec. 4—Section applies only to personal grants. 17 M.L.J. 549=31 M. 12 [old 18 M.L.J. 24 (note.)]

SEC. 4: SCOPE—JURISDICTION OF REVENUE COURT WHETHER AFFECTED.—Sec. 4 of the Pensions Act does not take away the jurisdiction of the Court of Revenue to entertain a suit by the transferee of the assignee of the land revenue. The jurisdiction of the Civil Court and of the Civil Court alone is limited by the terms of the expression. 27 A.L.J. 724=1929 A. 781. Where a suit is filed in the Revenue Court by an assignee of Government revenue for arrears of revenue, the District Judge hearing the revenue appeal as a Civil Court would be competent to dispose of the matter, and his jurisdiction is not barred under sec. 4. 1936 A.L.J. 1281= 1936 All. 666. In a suit relating to a cash allowance the non-production of the Collector's certificate under sec. 4 of the Pensions Act at the time of filing the suit is not fatal. It is sufficient if it is produced even in appeal in the High Court. 37 Bom.L.R. 343=1935 B. 227. No second appeal lies to the Financial Commissioner from an order of the Commissioner passed on appeal from an order of the Deputy Commissioner in a proceeding relating to the succession of a jagir. The Financial Commissioner has wide powers of revision conferred by sec. 16 of the Land Revenue Act. The Financial Commissioner must exercise his powers of revision in dealing with cases under these rules rather more freely than is the case in regard to mutation proceedings, for instance, which concern disputes which must eventually be decided in the Civil Courts. 20 Lah.L.T. 102.

SECS. 4—6.—[*See also* notes under secs. 3 and 4.] A Civil Court is precluded from making any declaration that would in any way directly or indirectly affect the liability of Government to pay a grant of Government revenue to any person. 37 A. 338=29 I.C. 146. Sec. 4 is no bar to a suit to recover back possession of land in which *saranjam* right is resumed by the Government. 41 B. 408=39 I.C. 65. Though a suit cannot be entertained without a certificate from the Collector, still even an appeal should not be rejected for want of certificate, but plaintiff should be allowed time to produce it. 82 I.C. 486. A suit for a declaration that the plaintiff is the owner of a certain share in a *kulkarni vatan* falls within sec. 4 of the Act and is not maintainable without the certificate of the Collector. 42 B. 257=45 I. C. 580. *See also* 37 B. 91. The pre-requisite of filing a certificate under sec. 4 is not applicable to a suit for partition of the inam among the members of the family to which it was given and it does not also apply where the grant is of land also and not merely of the land revenue. 26 I.C. 87=27 M.L.J. 618. A suit for partition of lands granted by Government on account of services rendered cannot be said to be one relating to any pension or grant of money or land revenue conferred or made by the British or any former Government; and a certificate under the Act is not necessary for the maintainability of the suit. 17 N.L.J. 118. A suit by one sharer to recover his or her share of *desaigiri* money received by the defendant (another co-sharer) from the Government is not barred by secs. 4, 5 and 6 of the Pensions Act. Nor is it barred by Art. 13 of Sch. II, Provincial Small Cause Courts Act. 47 Bom. L.R. 360=1945 Bom. 496. Where certain land is granted by Government, the grant cannot be split up into two distinct grants of melwaram and kudiwaram so as to fall under sec. 4 in respect of the claim for melwaram. 36 M. 559=23 M.L.J. 728. Where the grant is not one of land revenue only, but of the soil also, sec. 4, does not apply and no certificate is necessary for a suit to recover assessment or land revenue of the village. 34 Bom.L.R. 1455 =1933 B. 23. The plaintiff was the purchaser from a widow of an allowance computed in respect of Desaigiri Huq. He applied to the Collector to have his name entered in the register under the Watan Act

5. Any person having a claim relating to any such pension or grant may prefer such claim to the Collector of the District or Deputy Commissioner or other officer authorized in this behalf by the [1][appropriate Government] ; and such Collector, Deputy Commissioner or other officer shall dispose of such claim in accordance with such rules[2] as the Chief Revenue-authority may, subject to the general control of the [1][appropriate Government], from time to time, prescribe in this behalf.

Claims to be made to Collector or other authorised officer.

6. A Civil Court, otherwise competent to try the same, shall take cognizance

LEG. REF.

1 Substituted by A.O., 1937.

2 For notifications prescribing such rules under the powers conferred by this section in Bombay, *see* Bom. R. & O. United Provinces of Agra and Oudh; *see* North Western Provinces and Oudh, List of Local Rules and Orders, Ed., 1894, p. 42. Sec. 5 has been amended in its application to U. P. by U. P. Act XII of 1922.

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but he was informed that his name had been entered only during the lifetime of the widow. He brought a suit for a declaration that he was the full owner of the allowance and not merely during the lifetime of the widow. *Held,* that the suit cannot be entertained without a certificate under sec. 6 of the Act. 33 Bom.L.R. 1059 =1931 B. 505.

SEC. 4, 5 AND 6.—The Pensions Act provides two methods of settling claims relating to grants of land revenue as to which the jurisdiction of civil Courts is barred by sec. 4 of that Act. Under sec. 5 of the Act such claims may be disposed of by the revenue authorities and under sec. 6 a Civil Court may take cognisance of disputes between rival claimants to the enjoyment of a grant of land revenue only if a certificate is granted by the revenue authorities that the case is one which a Civil Court should try. Under r. 11 of the Punjab Pension and Revenue Assignment Rules the power of granting such a certificate is vested in the Financial Commissioner only and not in any subordinate revenue authority. So, any person who has a claim relating to any grant of land revenue other than a claim against Government direct may proceed in one of two separate ways. He may apply to the Deputy Commissioner under sec. 5 of the Act for the adjudication of his claim or he may apply to the Deputy Commissioner under sec. 6 or to the Financial Commissioner direct asking that the Financial Commissioner should grant a certificate that the dispute is one that may be tried by the Civil Courts. These two ways are alternative. But if both parties have acquiesced in obtaining adjudication on the merits of the case by the revenue authorities, it is inappropriate to grant a certificate which would permit the matter to be reagitated *de novo* in a different forum. 20 Lah.L.T. 94.

SECS. 4 AND 11.—The Pensions Act does not refer only to political pensions, but relates to all pensions. 161 I.C. 499=1936 L. 85. Sec. 11 refers merely to pensions, whereas sec. 4 refers not only to pensions, but to grants of money or land revenue conferred, whatever may have been the consideration of any such grant. Sec. 4 is wider than sec. 11 and includes matters which do not come under sec. 11. 52 A. 868=1930 A. 681. There is an obvious distinction between an assignment and a remission of land revenue. A remission of land revenue cannot be regarded as an assignment. The Government may remit a liability to pay land revenue in which case no assessment is made, but that is a very different thing from assessing a certain sum and then granting or assigning that sum to some person other than the Government. A right to lakhiraj or revenue-free land is certainly not a pension or a grant of land revenue. I.L.R. (1940) All. 603=1940 A.L.J. 420=1940 All. 373 (F.B.).

SEC. 5.—The words "any such pension or grant" clearly indicate any pension or grant of money or land revenue referred to in the preceding section. The section clearly authorises the Collector, etc., to entertain a claim with reference to the grant of land revenue conferred by the former Government. The Local Government has authority to call for evidence in support of the grant and may either recognise the grant or refuse to do so. The proceeding before the officers referred to in this section is more administrative than judicial. 1929 A.L.J. 724=1929 A. 781.

SECS. 5 AND 6.—Secs. 5 and 6 bar a suit for a declaration against Government that the plaintiff is entitled to muafi rights in a certain mahal. 57 I.C. 156=12 L.W. 311 (P.C.)=1919 P.C. 127: *See also* 1937 Pesh. 65. On these sections, *see also* 20 I.C. 508=7 S.L.R. 5; 30 M. 266=17 M.L.J. 139; 18 M. 287=5 M.L.J. 168; 1 Bom. 75. A person who wants a declaration that he is entitled to a share in a pension must apply to the Collector or Deputy Commissioner or other authorised officer under sec. 5 of the Pensions Act and he cannot go to a Civil Court unless he obtains a certificate under sec. 6 of the Act. 121 I.C. 417=1930 L. 795.

SEC. 6.—[*See also* notes under secs. 3, 4 and 5.] A Civil Court cannot take cognizance of a claim relating to a jaghir except upon a certificate of Collector or other officer. 1926 L. 333. Production of the Collector's certificate subsequent to the institution of the suit is not a sufficient compliance with the section. 1928 L. 713 (2). Sec. 6 does not apply to a suit for a dec-

Civil Courts empowered to take cognizance of such claims.

of any such claim upon receiving a certificate from such Collector, Deputy Commissioner or other Officer authorized[1] in that behalf that the case may be so tried, but shall not make any order or decree in any suit whatever by which the liability of Government to pay any such pension or grant as aforesaid is affected directly or indirectly.

LEG. REF.

1 For instances of notifications authorizing officers under the powers conferred by this section and prescribing rules, in Bombay, *see* Bom. R. & O.

laration that funeral expenses cannot be claimed to be paid out of income of a jaghir. 1922 L. 365. A suit to establish a right to collect Government revenue from the villages granted as endowment to a religious office is not maintainable in the absence of a certificate under sec. 6. 28 I.C. 934. If an application for grant of a certificate under sec. 6 is rejected by the Collector, the proper procedure is to apply to the Commissioner for reversal of the Collector's order. But as the rules prescribe that a certificate can only be granted by the Financial Commissioner, it is not unreasonable to make an application direct to his Court. 20 Lah.L.T. 94. If a party to a dispute under the Pensions Act wishes the exceptional procedure of sec. 6 to be followed, he must apply for the grant of a certificate under that section before and not after the matter has been the subject of final adjudication by the highest revenue authorities under sec. 5 of the Act. In such cases, the jurisdiction of the Civil Courts is entirely barred by sec. 4 of the Act, and the regular procedure for adjudication of disputes is that prescribed by sec. 5. The revival of the jurisdiction of the Civil Courts provided by sec. 6 on a certificate from the revenue authorities is clearly intended to be an exceptional alternative to the adjudication prescribed in sec. 5, and after the parties have fought out their respective claims in the revenue forum up to the highest revenue authority it would not be correct to permit the whole matter to be reopened in the alternative forum of Civil Courts. 20 Lah.L.T. 99. *See also* 20 Lah.L.T. 94. A voluntary grant was made by Government to a shrine for its maintenance but the grant was resumable by Government at its pleasure. A suit was brought for a declaration by a certain person of his right to the office of sajjadanashin of such shrine. *Held*, that the claim in the suit not being one for a pension or grant, no certificate was necessary as required by sec. 6, Pensions Act. 1937 Pesh. 65. Saranjam inam—Suit to recover—Certificate of Collector—Failure to produce certificate—Appeal—Remand. 39 B. 352=28 I.C. 485. A suit relating to a share in an inam consisting of two-thirds of revenue is not cognizable without Collector's certificate. Where the plaintiff has not obtained the certificate, the hearing may be adjourned to enable him to produce it. 27 I.C. 927 (2)=17 Bom.L.R. 153. *See also* 39 B. 352=28 I.C. 485; 1937 O.W.N. 1131=1937 Oudh 484. (Production of certificate subsequent to institution of suit even at the appellate stage will be sufficient under the section). Certificate under sec. 6 is not a part of the cause of action. 19 Luck. 515=1944 A.W.R. (C.C) 11=1944 O.W.N. 37=1944 Oudh 139. A pension is ordinarily not attachable for sale in execution. 44 A. 697=1922 A. 429. A suit for a declaration that the plaintiff is entitled to get his name entered in place of the last manager of a Durga which is in receipt of a cash allowance from the Government is not maintainable for two reasons: (1) the right of entering the names rests exclusively with the Collector, and none else; (2) the declaration entails a corresponding liability on the Government to pay and a suit to enforce it is barred by sec. 6. 55 Bom. 119=32 Bom.L.R. 1420 =1931 Bom. 144. A suit for a declaration of the plaintiff's rights to a share of the *toda giras haq* paid to the defendants by the Government is maintainable where the plaintiff has got a certificate from the Collector authorizing the suit in spite of sec. 6 of the Pensions Act. The decree declaring that the plaintiff is entitled to a certain share in the cash allowance is one which does not affect the liability of the Government to pay; it only affects the plaintiff's right to share in the amount if and when Government pays it. 33 Bom.L.R. 783= 1931 B. 473. In 1883 the predecessors-in-interest of the plaintiff had obtained a certificate from the Collector for instituting a suit against the defendant's predecessors and had got a decree. In 1931 the plaintiff instituted a suit against the defendant without a fresh certificate. *Held*, that the original certificate ceased to have any effect after the decision of that suit and that a fresh certificate was necessary for the institution of the second suit. 14 L. 48=1933 L. 336. Where it is found that the act of the Government in substituting a fixed annual sum in the place of a percentage of Government assessment granted to plaintiff's ancestor is *ultra vires* and invalid, the plaintiff cannot, in view of sec. 6 of the Act, be entitled to an order for payment; he is only entitled to a declaration of his rights. 61 I.A. 190=58 B. 306=1934 P.C. 108=66 M.L.J. 614 (P.C.). *See also* 17 Lah.L.T. 17.

DISMISSAL OF OFFICER WHO WAS ON INVALID PENSION—SUIT FOR DECLARATION OF WRONGFUL DISMISSAL AND FOR DAMAGES.—A Police Sub-Inspector was first discharged on an invalid pension but was afterwards dismissed, with the consequence of his pension

Pensions for lands held under grants in perpetuity.

7. Nothing in sections 4 and 6 applies to—

(1) any inam[1] of the class referred to in section 1 of Madras Act No. IV of 1862;

(2) pensions heretofore granted by Government in the territories respectively subject to the Lieutenant Governor of Bengal and the North-Western Provinces either wholly or in part as an indemnity for loss sustained by the resumption by a Native Government of lands held under sanads purporting to confer a right in perpetuity. Such pensions shall not be liable to resumption on the death of the recipient, but every such pension shall be capable of alienation and descent, and may be sued for and recovered in the same manner as any other property.

III. Mode of Payment.

Payments to be made by Collector or other authorised officer.

8. All pensions or grants by Government of money or land-revenue shall be paid by the Collector or the Deputy Commissioner or other authorized officer, subject to such rules as may, from time to time, be prescribed by the Chief controlling Revenue-authority.

Saving of rights of grantees of land-revenue.

9. Nothing in sections 4 and 8 shall affect the right of a grantee of land-revenue, whose claim to such grant is admitted by Government, to recover such revenue from the persons liable to pay the same under any law for the time being in force for the recovery of the rent of land.

Commutation of pensions.

10. The [2][appropriate Government] may with the consent of the holder, order the whole or any part of his pension or grant of money or land-revenue to be commuted for a lump sum on such terms as may seem fit.

IV. Miscellaneous.

Exemption of pension from attachment.

11. No pension granted or continued by Government on political considerations, or on account of past services or present infirmities or as a compassionate allowance,

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LEG. REF.

1 *i.e.*, "Inams of the classes described in cl. (1), sec. 2 (*m*), Regulation IV of 1831, which have been, or shall be, enfranchised by the Inam Commissioner and converted into freeholds in perpetuity". The classes so described are "hereditary or personal grants of money or of land revenue, however denominated, conferred by the authority of the Governor in Council [or which, having been made by any Native Government, have been confirmed or continued by the British Government—Act XXXI of 1836] in consideration of services rendered to the State, or in lieu of resumed offices or privileges, or of Zemindaries or Palaiyams, forfeited or held under attachment of management by the officers of Government, or as a *yaumia* or charitable allowance, or as a pension.

2 Substituted by A.O., 1937.

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being withdrawn for misconduct prior to discharge. He sued the Secretary of State for a declaration that he was not liable to removal after his retirement and for damages. *Held*, the dismissal could not be considered from the point of view of its having been a breach of contract with reference to sec. 96-B (4) of the Government of India Act. The dismissal had rather to be viewed as part of the order by which he had been deprived of his pension. The damages prayed for, for the breach of contract set up, could only be for the loss of pension and the Sub-Inspector was debarred by the Pensions Act from bringing any suit that might affect his right to the pension. 57 M. 857=67 M.L.J. 123=1934 M. 516.

SEC. 7.—Cash allowance substituted for *muafi* grant of land by Mughal Emperor is not pension and is alienable property. 95 I.C. 208=24 A.L.J. 630=1926 A. 521.

SEC. 8.—Sec. 8 has been amended in its application to U.P. by U.P. Act XII of 1922 *See* 22 A. 580=8 A.L.J. 692; 11 Bom.L.R. 1369=34 B. 154.

SEC. 9.—See 10 A. 396; 1 B. 75; 6 Bom.L.R. 423.

SEC. 11.—*See* too sec. 60, Cl, Cl. (*g*) of the Code of Civil Procedure, 1908 (Act V of 1908). Sec. 11 is unqualified and must be strictly construed in favour of the pensioner. On the insolvency of a pensioner, therefore, the pension drawn by him for past services is not property which is available for distribution among his creditors under sec. 28 (5) of the Provincial Insolvency Act; and the Insolvency Court has no power to pass an order directing the insolvent to pay to the Official Receiver any part of his pension,

and no money due or to become due on account of any such pension or allowance,

shall be liable to seizure, attachment or sequestration by process of any Court in British India, at the instance of a creditor, for any demand against the pensioner, or in satisfaction of a decree or order of any such Court.

[1] [This section applies in British India also to pensions granted or continued, after the separation of Burma from India, by the Government of Burma.]

Assignments, etc., in anticipation of pension to be void.

12. All assignments, agreements, orders, sales and securities of every kind made by the person entitled to any pension, pay or allowance mentioned in section 11, in respect of any money not payable at or before the making thereof, on account of any such pension, pay or allowance, or for giving or assigning any future interest therein, are null and void.

LEG. REF.

1 Inserted by A.O., 1937.

164 I.C. 747=40 C.W.N. 142. The intention behind the provisions of sec. 11 is applicable equally to the commuted portion as well as to the uncommuted portion of the pension, and the language of sec. 11 does not exclude from its protection the money that is due under a commutation order commuting a part of the pension. The commuted portion would be "money due or to become due on account of pension," and therefore the commuted portion of the pension due to a retired Government servant is not liable to attachment at the instance of his creditors in view of sec. 11. I.L.R. 1941 M. 393=52 L.W. 719=1941 Mad. 207=(1940) 2 M.L.J. 782. The term 'pension' as used in the Pensions Act implies 'periodical payments of money to the pensioner.' A jaghir cannot be held to be pension within the meaning of the Pensions Act. (1931 P.C. 160, Rel. on.) I.L.R. (1941) Lah. 564=1940 Lah. 402. For the purposes of sec. 11, a grant of land revenue is not a pension and is, therefore, liable, to be attached in execution of a decree. 54 I.C. 331=11 L.W. 398. An assignment of revenue for services rendered was held to amount to a pension within the meaning of sec. 11 and therefore not transferable under sec. 12 of the Act. 1930 A. 681=52 A. 868. In the case of grant of land revenue in a *jaghir* the property is not exempt from attachment either under sec. 11 of the Pensions Act or under sec. 60, C. P. Code. 137 I.C. 799=1932 M. 417. Where a *sanad* under which a grant of a right to receive land revenue was made showed that it was made in recognition of the prayers which were made day and night by the grantee and which brought about prosperity in all respects it was held that the grant was on account of the past services rendered by the grantee and it therefore clearly came under sec. 11 of the Pensions Act and was hence not liable to attachment and sale in execution of any decree against the heirs of the grantee. 1942 A.L.W. 449. A pension may take the form of an assignment of land revenue such as a *jaghir*. Whether or not particular assignment of land revenue is a pension depends upon the circumstances of the particular case. 1930 L. 904. *See also* I.L.R. (1941) Lah. 564=1940 Lah. 492. *Held*, that a pattidari *jaghir* in the Ambala District cannot be regarded as a pension within the meaning of sec. 11 and the *jaghir* income is liable to be attached by the decreeholder. History of such *jaghirs* traced. 31 P.L.R. 538=1930 L. 816. Endowment by Mughal Emperor—Subsequent management by the British—Allowance to descendents not assignable. 44 A. 354=20 A.L.J. 172=1922 A. 22.. Cash allowance substituted for *muafi* grant of land made by the Mughal-Emperor is not "pension," and is alienable property. *See* 95 I.C. 208=24 A.L.J. 630=1926 A. 521. A political treaty pension cannot be attached in execution of decree. 62 I.C. 273. A *malikana* is in the nature of pension and so cannot be attached in execution. 8 A.L.J. 1326=13 I.C. 194 (1). A *jaghir* granted on political considerations is exempt from attachment whether or not it was granted for services rendered to the British Government. 61 I.C. 895 (L.). *See also* 1940 Lah. 492. Sec. 11 is wide enough to include cases where the property is to be sold in execution of a mortgage decree and cannot be limited to cases of simple money decrees. It draws no distinction between a case where the property is directed to be sold by a decree or is directed to be sold in pursuance of an attachment made by the order of a Court. 1935 A. 678. Muafi rights cannot be regarded as a "Pension" for the purposes of secs. 11 and 12. 1936 A.L.J. 161=1936 A. 298. An assignment of land revenue is not a 'pension' within the meaning of secs. 11 and 12. 1936 A.L.J. 1281=1936 All. 666.

SECS. 11 AND 12.—There is nothing in the Act to exclude allowances granted by the British Government to political prisoners from its operation in cases where the British Government by some arrangement with a foreign State collects the allowance which it fixes from the foreign State. Where a Native Chief assigned his political pension to his debtor, *held*, that the transfer is void under secs. 11 and 12 of the Act. 50 M. 711=1927 M. 604=52 M.L.J. 622.

SEC. 12.—Act has not a retrospective effect and no alienations made before the Pensions Act came into force are invalid under

Rewards to informers.

13. Whoever proves to the satisfaction of the [1][appropriate Government] that any pension is fraudulently or unduly received by the person enjoying the benefit thereof shall be entitled to a reward equivalent to the amount of such pension for the period of six months.

Power to make rules.

14. [2][In each Province], the Chief Controlling Revenue authority may, with the consent of the [1][appropriate Government], from time to time make rules[3] consistent with this Act respecting all or any of the following matters :—

(1) the place and times at which, and the person to whom, any pension shall be paid ;

(2) inquiries into the identity of claimants ;

(3) records to be kept on the subject of pensions ;

(4) transmission of such records ;

(5) correction of such records ;

(6) delivery of certificates to pensioners ;

(7) registers of such certificates ;

(8) reference to the Civil Court, under section 6, of persons claiming a right of succession to, or participation in, pensions or grants of money or land-revenue payable by Government ;

LEG. REF.

1 Substituted by A.O., 1937.

2 Inserted by A.O., 1937.

3 For notifications making rules under the powers conferred by this section in Bombay —*See* B. R. & O.; Madras—*See* M. R. & O.; United Provinces of Agra and Oudh—*See* North-Western Provinces and Oudh List of Local Rules and Orders, Ed., 1894, p. 43; Central Provinces—*See* C. P. R. & O.

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sec. 12. 26 I.C. 743 (2). *See also* 6 A. 630; 19 Luck. 515=1944 O.W.N. 37=1944 Oudh 139; 7 A. 886; 2 M.L.T. 33=30 M. 153; 12 P.L.R. (1900) 357=35 P.R. 1900. Each case of assignment of land revenue must be considered in terms of the oiginal grant and of subsequent confirmations. Where the original grant was to a certain person and his heirs in prepetuity and there is nothing in this grant which indicates that the grant was not transferable, the grant is transferable and is not barred by sec. 12. 164 I.C. 1066 =1936 A. 666. The plaintiff's predecessor sued the defendant's predecessor for a declaration of his right to a share of a political pension. Permission was obtained by him under sec. 6. The suit ended in a compromise decree. Under the compromise it was agreed that the plaintiff's predecessor and his representatives were entitled to get a monthly allowance generation after generation from the defendant's predecessor and his representatives, in lieu of the plaintiff's predecessor abandoning his claim not only to his alleged share in the political pension but also to his share in the property inherited by the defendant's predecessor. In a suit by the plaintiffs against the defendants for arrears of the monthly allowance held, by Bennet, J., that the particular part of the compromise by which the plaintiff's predecessor relinquished all his right to the pension would be null and void in view of the provisions of sec. 12 of the Pensions Act, but that the compromise would be valid and binding on the defendants to the extent of the property in their hands. *Held*, by Sulaiman, C.J., that the compromise decree was not hit by the provisions of sec. 12 at all, as an abandonment of the claim to have the question of right to the pension tried by the Court would not in itself amount to an assignment of any share in the political pension, but merely the withdrawal of the suit in lieu of the consideration offered, and that the offer made by the plaintiff's predecessor to abandon his claim to the property as well as to the pension to which he might have been entitled was not unlawful or invalid, and that the compromise decree was binding on the defendants to the extent of the property devolved on them. 1935 A.L.J. 910= 1935 A. 862. [*See also* cases under sec. 11.] A deposit of pension papers with a creditor by way of security for a loan is one of the class of transactions which sec. 12 of the Act was enacted to prevent. I.L.R. (1939) 2 Cal. 434=43 C.W.N. 1194=1940 Cal. 192.

SEC. 14.—Sec. 14 has been amended in its application to U. P. by U. P. Act XII of 1922. The Board of Revenue is not competent to revoke or cancel a certificate issued by a Collector under the Pensions Act. 18 I.C. 353=25 M.L.J. 155. The rules issued by the Government and printed at page 125 of the Board's Standing Orders cannot be deemed to be framed under sec. 14, and are *ultra vires*. 25 M.L.J. 155. The words *'branch'* and *'family'* used in R. 34 of the rules framed under sec. 14 of the Act, which governs the appointment of Dastakis, cannot have a different meaning from that given to them in Poviso (1) to R. 33. R. 34 (1) only permits the daughters of a Dastaki to be appointed in succession to him on the failure of (*a*) male members in the branch of the family to which the first Dastaki belonged, (*b*) the widow or mother of last male Dastaki in certain circumstances, or (*c*) a male member descended from divided brothers or collaterals of the first Dastaki. 1941

and generally for the guidance of officers under this Act.

All such rules shall be published in the [* *] Official Gazette, and shall thereupon have the force of law.

SCHEDULE—[*Repealed by Act I of* 1938].

THE PETROLEUM ACT (XXX OF 1934).[1]

[*Rep. in part by Act I of* 1938; *Am. by Act XXV of* 1940 *and Act III of* 1941.]

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[*6th September,* 1934.

An Act to consolidate and amend the law relating to the import, transport, storage, production, refining and blending of petroleum and other inflammable substances.

WHEREAS it is expedient to consolidate and amend the law relating to the import, transport, storage, production, refining and blending of petroleum and other inflammable substances; It is hereby enacted as follows:—

LEG. REF.

[1] The 'Indian Petroleum Act, 1899, which was in force in Berar was repealed and this Act of 1934, and also the rules and regulations made under this Act, 1934, have been extended to and declared to be in force in Berar, by Act XXIII of 1937.

N.L.J. 154. *See also* 1940 N.L.J. 78=1940 Nag. 129=I.L.R. (1940) Nag. 244. There is nothing in the correspondence leading to the present rules or in the rules themselves to justify the contention that where, originally separate P. P. Os. were issued to branches of a watan family under R. 33 (*ii*), each branch constitutes a separate family for the purposes of R. 34. Under the rules, a person claiming in the female line cannot be preferred to one descended from a collateral of the first Dastaki although that colla teral held a separate P. P. O. 1943 N.L.J. 561.

PRELIMINARY.

Short title, extent and commencement.

1. (1) This Act may be called THE PETROLEUM ACT, 1934.

[1](2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "petroleum" means any liquid hydrocarbon or mixture of hydrocarbonus, and any inflammable mixture (liquid, viscous or solid) containing any liquid hydrocarbon;

(*b*) "dangerous petroleum" means petroleum having its flashing-point below seventy-six degrees Fahrenheit;

(*c*) "flashing-point" of any petroleum means the lowest temperature at which it yields a vapour which will give a momentary flash when ignited, determined in accordance with the provisions of Chapter II and the rules made thereunder;

(*d*) "to transport" petroleum means to move petroleum from one place to another in British India, and includes moving from one place to another in British India by sea or across territory in India which is not part of British India;

(*e*) "to import" petroleum means to bring it into British India by land, sea or air, otherwise than during the course of transport;

(*f*) "to store" petroleum means to keep it in any one place, but does not include any detention happening during the ordinary course of transport;

(*g*) "motor conveyance" means any vehicle, vessel or air-craft for the conveyance of human beings, animals or goods, by land, water or air, in which petroleum is used to generate the motive power;

(*h*) "prescribed" means prescribed by rules made under this Act.

CHAPTER I.

CONTROL OVER PETROLEUM.

Import, transport and storage of petroleum.

3. (1) No one shall import, transport or store any petroleum save in accordance with the rules made under section 4.

(2) Save in accordance with the conditions of any licence for the purpose which he may be required to obtain by rules made under section 4, no one shall import any dangerous petroleum, and no one shall transport or store any petroleum.

Rules for the import, transport and storage of petroleum.

4. The Central Government may make rules—

(*a*) prescribing places where petroleum may be imported and prohibiting its import elsewhere;

(*b*) regulating the import of petroleum;

(*c*) prescribing the periods within which licences for the import of dangerous petroleum shall be applied for, and providing for the disposal, by confiscation or otherwise, of any dangerous petroleum in respect of which a licence has not been applied for within the prescribed period or has been refused and which has not been exported;

(*d*) regulating the transport of petroleum;

LEG. REF.

[1] The 'Indian Petroleum Act, 1899, which was in force in Berar was repealed and this Act of 1934, and also the rules and regulations made under this Act, 1934, have been extended to and declared to be in force in Berar, by Act XXIII of 1937.

(*e*) specifying the nature and condition of all receptacles and pipe-lines in which petroleum may be transported;

(*f*) regulating the places at which and prescribing the conditions subject to which petroleum may be stored;

(*g*) specifying the nature, situation and condition of all receptacles in which petroleum may be stored;

(*h*) prescribing the form and conditions of licences for the import of dangerous petroleum, and for the transport or storage of any petroleum, the manner in which applications for such licences shall be made, the authorities which may grant such licences and the fees which may be charged for such licences;

(*i*) determining in any class of cases whether a licence for the transport of petroleum shall be obtained by the consignor, consignee or carrier;

(*j*) providing for the granting of combined licences for the import, transport and storage of petroleum, or for any two of such purposes;

(*k*) prescribing the proportion in which any specified poisonous substance may be added to petroleum, and prohibiting the import, transport or storage of petroleum in which the proportion of any specified poisonous substance exceeds the prescribed proportion; and

(*l*) generally, providing for any matter which in its opinion is expedient for proper control over the import, transport and storage of petroleum.

Production, refining and blending of petroleum.

5. (1) No one shall produce, refine or blend petroleum save in accordanec with the rules made under sub-section (2).

(2) The Central Government may make rules—

(*a*) prescribing the conditions subject to which petroleum may be produced, refined or blended; and

(*b*) regulating the removal of petroleum from places where it is produced, refined or blended and preventing the storage therein and removal therefrom, except as dangerous petroleum, of any petrolum which has not satisfied the prescribed tests.

(3) [*Omitted by the Government of India* (*Adaptation of Indian Laws*) *Order,* 1937.]

Receptacles of dangerous petroleum to show a warning.

6. All receptacles containing dangerous petroleum shall have a stamped, embossed, painted or printed warning, either on the receptacle itself, or, where that is impracticable, displayed near the receptacle, exhibiting in conspicuous characters the words "Petrol" or "Motor Spirit," or an equivalent warning of the dangerous nature of the petroleum:

Provided that this section shall not apply to—

(*a*) any securely stoppered glass, stoneware or metal receptacle of less than two gallons capacity containing dangerous petroleum which is not for sale, or

(*b*) a tank incorporated in a motor conveyance, or attached to an internal combustion engine, and containing petroleum intended to be used to generate motive power for the motor conveyance or engine, or

(*c*) a pipe line for the transport of petroleum, or

(*d*) any tank which is wholly underground, or

(*e*) any class of receptacles which the Central Government may, by notification in the Official Gazette, exempt from the operation of this section.

No licence needed for small stocks of non-dangerous petroleum not in bulk.

7. Notwithstanding anything contained in this Chapter, a person need not obtain a licence for the transport or storage of non-dangerous petroleum if the total quantity in his possession at any one place does not exceed five hundred gallons and none of it is contained in a receptacle exceeding two hundred gallons in capacity.

No licence needed for small quantities of dangerous petroleum.

8. (1) Notwithstanding anything contained in this Chapter, a person need not obtain a licence for the import, transport, or storage of dangerous petroleum not intended for sale if the total quantity in his possession does not exceed six gallons.

(2) Dangerous petroleum possessed without a licence under this section shall be kept in securely stoppered receptacles of glass, stoneware or metal which shall not in the case of receptacles of glass or stoneware exceed one quart in capacity or in the case of receptacles of metal five gallons in capacity.

Exemptions for motor conveyances and stationary engines.

9. (1) The owner of a motor conveyance, who complies with the requirements of the law for the time being in force relating to the registration and licensing of such conveyance and its driver of pilot and the owner of any stationary internal combustion engine, shall not be required to obtain a licence—

(*a*) for the import, transport or storage of any petroleum contained in any fuel tank incorporated in the conveyance or attached to the internal combustion engine, or

(*b*) for the transport or storage of dangerous petroleum, not exceeding twenty gallons in quantity in addition to any quantity possessed under clause (*a*), provided the petroleum is intended to be used to generate motive power for the motor conveyance or engine,

[Provided further that the total quantity of dangerous petroleum which may be stored without a licence under clause (*b*) shall not exceed twenty gallons, notwithstanding that such owner may possess other motor conveyances or engines.][1]

(2) The dangerous petroleum transported or stored without a licence under clause (*b*) [of Sub-Section (1)][1] shall be kept as provided in sub-section (2) of section 8, and, if it exceeds six gallons in quantity, shall be stored in an isolated place which does not communicate with any room where any person resides or works or in any room where persons assemble.

No licence needed by railway administration acting as carrier.

10. Notwithstanding anything contained in this Chapter, a railway administration, as defined in section 3 of the Indian Railways Act, 1890, need not obtain any licence for the import or transport of any petroleum in its possession in its capacity as carrier.

Exemption of heavy oils.

11. Nothing in this Chapter shall apply to any petroleum which has its flashing-point not below two hundred degrees Fahrenheit.

General power of exemption.

12. The Central Government may, by notification in the Official Gazette, exempt any petroleum specified in the notification from all or any of the provisions of this Chapter.

Inspection of places.

13. (1) The Central Government may authorise any officer by name or by virtue of office to enter any place where petroleum is being imported, stored, produced, refined or blended, or is under transport, and inspect all receptacles, plant and appliances used in connection with petroleum in order to ascertain if they are in accordance with the provisions of this Chapter and the rules made thereunder.

(2) The Central Government may make rules regulating the procedure of officers authorised under this section.

LEG. REF.

[1] Inserted by Act XXV of 1940.

CHAPTER II.

THE TESTING OF PETROLEUM.

Inspection and sampling of petroleum.

14. (1) The Central Government may, by notification in the Official Gazette, authorise any officer by name or by virtue of office to enter any place where petroleum is being imported, transported, stored, produced, refined or blended and to inspect and take samples for testing of any petroleum found therein.

(2) The Central Government may make rules—

(*a*) regulating the taking of samples of petroleum for testing,

(*b*) determining the cases in which payment shall be made for the value of sample taken, and the mode of payment, and

(*c*) generally, regulating the procedure of officers exercising powers under this section.

Standard Test Apparatus.

15. (1) A standard apparatus for determining the flashing-point of petroleum shall be deposited with an officer to be appointed in this behalf by the Central Government, by notification in the Official Gazette.

(2) Such apparatus shall be engraved with the words "Standard Test Apparatus," and shall be verified and corrected from time to time and replaced when necessary, in accordance with rules made under section 21.

(3) The Standard Test Apparatus shall, on payment of the prescribed fee, be open to inspection at all reasonable times by any person wishing to inspect it.

Certification of other test apparatus.

16. (1) The officer appointed under section 15 shall, on payment of the prescribed fee, if any, compare with the Standard Test Apparatus any apparatus for determining the flashing-point of petroleum which may be submitted to him for this purpose.

(2) If any apparatus is found by him to agree with the Standard Test Apparatus within prescribed limits, the officer shall engrave such apparatus with a special number and with the date of the comparison, and shall give a certificate in respect of it in the prescribed form, certifying that on the said date the apparatus was compared with the Standard Test Apparatus and was found to agree with it within the prescribed limits, and specifying any corrections to be made in the results of tests carried out with the apparatus.

(3) A certificate granted under this section shall be valid for such period as may be prescribed.

(4) A certificate granted under this section shall, during the period for which it is valid, be proof, until the contrary is proved, of any matter stated therein.

(5) The officer shall keep a register in the prescribed form of all certificates granted by him under this section.

Testing officers.

17. The Central Government may authorize any officer by name or by virtue of office to test petroleum of which samples have been taken under this Act, or which may have been submitted to him for test by any person, and to grant certificates of the results of such tests.

SEC. 15.—Where the servant in breach of the conditions of the licence of his master, delivered petrol to another not having a licence to transport petrol, the master is liable for the action of his servant. 1937 A.M.L.J. 138.

Manner of Test.

18. All tests of petroleum made under this Act shall be made with a test apparatus in respect of which there is a valid certificate under section 16, shall have due regard to any correction specified in that certificate, and shall be carried out in accordance with rules made under section 21.

Certificate of testing.

19. (1) The testing officer after testing samples of petroleum shall make out a certificate in the prescribed form, stating whether the petroleum is dangerous or non-dangerous, and, if the petroleum is non-dangerous, the flashing-point of the petroleum.

(2) The testing officer shall furnish the person concerned, at his request, with a certified copy of the certificate, on payment of the prescribed fee, and such certified copy may be produced in any Court in proof of the contents of the original certificate.

(3) A certificate given under this section shall be admitted as evidence in any proceedings which may be taken under this Act in respect of the petroleum from which the samples were taken, and shall, until the contrary is proved, be conclusive proof that the petroleum is dangerous or non-dangerous, as the case may be, and, if the petroleum is non-dangerous, of its flashing-point.

Right to require re-test.

20. (1) The owner of any petroleum, or his agent, who is dissatisfied with the result of the test of the petroleum may, within seven days from the date on which he received intimation of the result of the test, apply to the officer empowered under section 14 to have fresh samples of the petroleum taken and tested.

(2) On such application and on payment of the prescribed fee, fresh samples of the petroleum shall be taken in the presence of such owner or agent or person deputed by him, and shall be tested in the presence of such owner or agent or person deputed by him.

(3) If, on such re-test, it appears that the original test was erroneous, the testing officer shall cancel the original certificate granted under section 19, shall make out a fresh certificate, and shall furnish the owner of the petroleum or his agent, with a certified copy thereof, free of charge.

Power to make rules regarding tests.

21. The Central Government may make rules—

(*a*) for the specification, verification, correction and replacement of the Standard Test Apparatus;

(*b*) prescribing fees for the inspection of the Standard Test Apparatus;

(*c*) regulating the procedure in comparing a test apparatus with the Standard Test Apparatus;

(*d*) prescribing the form of certificate to be given in respect of a test apparatus so compared, and the period for which such certificates shall be valid;

(*e*) prescribing the form of the register of such certificates;

(*f*) prescribing fees for comparing a test apparatus with the Standard Test Apparatus;

(*g*) regulating the procedure of testing officers in carrying out tests of petroleum, providing for the averaging of results where several samples of the same petroleum are tested, and prescribing the variations from standard temperatures which may be allowed;

(*h*) prescribing the form of certificates of tests of petroleum and the fees which may be charged therefor;

(*i*) providing, where the results of the testing of samples raise a doubt as to the uniformity of the quality of the petroleum in any lot under test, for the division of the lot into sub-lots, and for the selection and testing of samples of each sub-lot and for the averaging of results in accordance with the results of tests of those samples;

(*j*) prescribing fees for re-tests under section 20 and providing for their refund where the original test was erroneous; and

(*k*) generally, regulating the procedure of all officers performing duties connected with the testing of petroleum, and providing for any matter incidental to such testing.

Special rules for testing viscous or solid forms of petroleum.

22. The Central Government may also make rules providing specially for the testing of any form of petroleum which is viscous or solid or contains sediment or thickening ingredients, and such rules may modify or supplement any of the provisions of this Chapter or of the rules made under section 21 in order to adapt them to the special needs of such tests.

CHAPTER III.

PENALTIES AND PROCEDURE.

General penalty for offences under this Act.

23. (1) Whoever—

(*a*) in contravention of any of the provisions of Chapter I or of any of the rules made thereunder, imports, transports, stores, produces, refines or blends any petroleum, or

(*b*) contravenes any rules made under section 4 or section 5, or

[1][(*c*) being the holder of a licence issued under section 4 or a person for the time being placed by the holder of such licence in control or in charge of any place where petroleum is being imported or stored, or is under transport, contravenes any condition of such licence or suffers any condition of such licence to be contravened, or]

(*d*) being for the time being in control or in charge of any place where petroleum is being imported, stored, produced, refined or blended or is under transport, refuses or neglects to show to any officer authorized under section 13 any receptacle, plant or appliance used in such place in connexion with petroleum, or in any way obstructs or fails to render reasonable assistance to such officer during an inspection, or

(*e*) being for the time being in control or in charge of any place where petroleum is being imported, transported, stored, produced, refined or blended, refuses or neglects to show to any officer authorized under section 14 any petroleum in such place, or to give him such assistance as he may require for the inspection of such petroleum, or refuses to allow him to take samples of the petroleum, or

(*f*) being required, under section 27, to give information of an accident, fails to give such information as so required by that section,

shall be punishable with fine which may extend to five hundred rupees.

(2) If any person, having been convicted of an offence punishable under sub-section (1), is again guilty of any offence punishable under that sub-section, he shall be punishable for every such subsequent offence with fine which may extend to two thousand rupees.

Confiscation of petroleum and receptacles.

24. (1) In any case in which an offence under clause (*a*) or clause (*b*) or clause (*c*) of sub-section (1) of section 23 has been committed, the convicting Magistrate may direct that—

(*a*) the petroleum in respect of which the offence has been committed, or

(*b*) where the offender is convicted of importing, transporting, or storing petroleum exceeding the quantity he is permitted to import, transport or store, as the case may be, the whole of the petroleum in respect of which the offence was committed,

shall, together with the receptacles in which it is contained, be confiscated.

LEG. REF.

[1] Substituted by Act III of 1941.

(2) This power may also be exercised by the High Court in the exercise of its appellate or revisional powers.

Jurisdiction.

25. Offences punishable under this Act shall be triable, in the Presidency-towns, by a Presidency Magistrate, and elsewhere by a Magistrate of the first class, or by a Magistrate of the second class who has been specially empowered by the Central Government in this behalf.

Power of entry and search.

26. (1) The Central Government may, by notification in the Official Gazette, authorize any officer by name or by virtue of office to enter and search any place where he has reason to believe that any petroleum is being imported, transported, stored, produced, refined or blended otherwise than in accordance with the provisions of this Act and the rules made thereunder, and to seize, detain or remove any or all of the petroleum in respect of which in his opinion an offence under this Act has been committed.

(2) The provisions of the Code of Criminal Procedure, 1898, relating to searches shall, so far as they are applicable, apply to searches by officers authorized under this section.

(3) The Central Government may make rules regulating the procedure of authorized officers in the exercise of their powers under this section subject, however, to the provisions of sub-section (2).

Reports of accidents with petroleum.

27. Where any accident by explosion or fire, which is attended with loss of human life or serious injury to person or property, occurs as the result of the ignition of petroleum or petroleum vapour, or occurs in or near any place where petroleum is kept and under circumstances making it likely that it was the result of such ignition, the person for the time being in charge of the petroleum shall forthwith give information to the nearest Magistrate or to the officer in charge of the nearest police station.

Inquiries into serious accidents with petroleum.

28. (1) The inquiry mentioned in section 176 of the Code of Criminal Procedure, 1898, shall, [1][unless section 8 of the Coroner's Act, 1871, is applicable to the circumstances], be held in all cases where any person has been killed by an accident which the Magistrate has reason to believe was the result of the ignition of petroleum or petroleum vapour.

(2) Any Magistrate empowered to hold an inquest may also hold an inquiry under the said section into the cause of any accident which he has reason to believe was the result of the ignition of petroleum or petroleum vapour, if such accident was attended by serious injury to person or property, notwithstanding that no person was killed thereby.

(3) For the purposes of [1][sub-section (2)] a Commissioner of Police in a Presidency-town [2][* * *] shall be deemed to be a Magistrate empowered to hold an inquest.

(4) The result of all inquiries held in pursuance of this section [1][and of any inquiry held by a coroner in a case to which sub-section (1) refers] shall be submitted as soon as may be to the [3][Central Government [1][the Chief Inspector of Explosives in India] and the Provincial Government].

CHAPTER IV.

SUPPLEMENTAL.

Provisions relating to rules.

29. (1) In making any rules under this Act, the Central Government may—

LEG. REF.

[1] Inserted by Act XXV of 1940.

[2] The words 'or in Rangoon' omitted by A.O., 1937.

[3] Substituted for 'Local Government' by A.O., 1937.

(*a*) provide for any matter ancillary to such rules for which in its opinion provision is necessary to protect the public from danger arising from the import, transport, storage, production, refining or blending of petroleum, and

(*b*) make special provision for the special circumstances of any province or place.

(2) Every power to make rules conferred by this Act is subject to the condition of previous publication.

(3) All rules made under this Act shall be published in the Official Gazette [1][* * *].

Power to apply Act to other substances.

30. (1) The Central Government may, by notification in the Official Gazette, apply any or all of the provisions of this Act, and of the rules made thereunder with such modifications as it may specify, to any dangerously inflammable substance, other than an explosive, and thereupon the provisions so applied shall have effect as if such substance had been included in the definition of petroleum.

(2) The Central Government may make rules providing specially for the testing of any substance to which any of the provisions of this Act have been applied by notification under sub-section (1), and such rules may supplement any of the provisions of Chapter II in order to adapt them to the special needs of such tests.

Power to limit powers of local authorities over petroleum.

31. Where any enactment confers powers upon any local authority in respect of the transport or storage of petroleum, the Central Government may, by notification in the Official Gazette,—

(*a*) limit the operation of such enactment, or

(*b*) restrict the exercise of such powers, in any manner [2][it] deems fit.

32. [*Repeals.*] *Repealed by Act I of* 1938.

THE SCHEDULE.

(*Rep. by Act I of* 1938.)

PLEDGING OF CHILDREN'S LABOUR ACT (II OF 1933).

See *Children (Pledging of Labour) Act, Vol. I, p.* 303.

THE POISONS ACT (XII OF 1919).[3]

Year	No.	Short title	Amendments.
1919	XII	The Poisons Act, 1919.	Am. Act XXXVIII of 1920. Rep in pt. Act XII of 1927.

[*3rd September,* 1919.

An Act to consolidate and amend the law regulating the importation, possession and sale of poisons throughout British India.

WHEREAS it is expedient to consolidate and amend the law regulating the importation, possession and sale of poisons throughout British India; It is hereby enacted as follows—

. LEG. REF.

[1] Words 'and in the local Official Gazette' omitted by *ibid.*

[2] Substituted by A.O., 1937.

[3] For Statement of Objects and Reasons, *see* Gazette of India, 1919, Pt.V, p. 22 and for Proceedings in Council, *see ibid.*, 1919. Pt. VI, pp. 170 and 872.

Short title and extent.

1. (1) This Act may be called THE POISONS ACT, 1919.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

Power of the Provincial Government to regulate possession for sale and sale of any poison.

2. (1) [1][ ] The Provincial Government may by rule[2] regulate within the whole or any part of the territories under its administration the possession for sale and the sale, whether wholesale or retail, of any specified poison.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(*a*) the grant of licences to possess any specified poison for sale, wholesale or retail, and the fixing of the fee (if any) to be charged for such licences;

(*b*) the classes of persons to whom alone such licences may be granted;

(*c*) the classes of persons to whom alone any such poison may be sold;

(*d*) the maximum quantity of any such poison which may be sold to any one person;

(*e*) the maintenance by vendors of any such poison of registers of sales, the particulars to be entered in such registers, and the inspection of the same;

(*f*) the safe custody of such poisons and the labelling of the vessels, packages or coverings in which any such poison is sold or possessed for sale; and

(*g*) the inspection and examination of any such poison when possessed for sale by any such vendor.

Power to prohibit importation into British India of any poison except under licence.

3. The Central Government may, by notification in the Official Gazette, prohibit, except under and in accordance with the conditions of a licence, the importation into British India [3][across any customs frontier defined by the Central Government] of any specified poison, and may by rule regulate the grant of licences.

Power to regulate possession of any poison in certain areas.

4. (1) The Provincial Government[1][ ] may by rule regulate the possession of any specified poison in any local area in which the use of such poison for the purpose of committing murder or mischief by poisoning cattle appears to it to be of such frequent occurrence as to render restrictions on the possession thereof desirable.

(2) In making any rule under sub-section (1), the Provincial Government may direct that any breach thereof shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both, together with confiscation of the poison in respect of which the breach has been committed, and of the vessels, packages or coverings in which the same is found.

LEG. REF.

[1] Words 'Subject to control of the Governor-General in Council' omitted by A.O., 1937.

[2] For such rules for Madras, *see* Madras Rules and Orders, 1923, Vol. I, Pt. II, p. 287 for Assam, *see* Assam Gazette, 1921, Pt. II, p. 530; for Delhi, *see* Gazette of India, 1926, Pt. II-A, p. 481 and *ibid.*, 1928, Pt. II-A, p. 61.

[3] Inserted by A.O., 1937.

SEC. 2.—*See* 31 I.C. 364=8 Bur.L.T. 244. Where a sale (of a standard preparation containing strychnine) is effected by an assistant in a shop in the absence of the registered Pharmacist and out of his sight and hearing, when the registered pharmacist has no idea that the sale is going to take place or that it is taking place, and would never have known that it had taken place but for the fact that somebody so informed him no Court is entitled to hold that the sale has been effected either by the registered pharmacist or under his supervision. (1943) 1 K.B. 269=112 L.J. (K.B.) 221.

Presumption as to specified poisons.

5. Any substance specified as a poison in a rule made or notification issued under this Act shall be deemed to be a poison for the purposes of this Act.

Penalty for unlawful importation, etc.

6. (1) Whoever—

(*a*) commits a breach of any rule made under section 2, or

(*b*) imports [1][* *] without a licence [2][into British India across a customs frontier defined by the Central Government] any poison the importation of which is for the time being restricted under section 3, or

(*c*) breaks any condition of a licence for the importation of any poison granted to him under section 3,

shall be punishable,—

(i) on a first conviction, with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both, and

(ii) on a second or subsequent conviction, with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) Any poison in respect of whic han offence has been committed under this section, together with the vessels, packages or coverings in which the same is found, shall be liable to confiscation.

Power to issue search warrants.

7. (1) The District Magistrate, the Sub-Divisional Magistrate and, in a Presidency-town, the Commissioner of Police, may issue a warrant for the search of any place in which he has reason to believe or to suspect that any poison is possessed or sold in contravention of this Act or any rule thereunder, or that any poison liable to confiscation under this Act is kept or concealed.

(2) The person to whom the warrant is directed may enter and search the place in accordance therewith, and the provisions of the Code of Criminal Procedure, 1898, relating to search-warrants shall, as far as may be, be deemed to apply to the execution of the warrant.

Rules.

8. (1) In addition to any other power to make rules hereinbefore conferred [3][* *], the Provincial Government may make rules generally to carry out the purposes and objects of this Act [2][except section 3].

(2) Every power to make rules conferred by this Act shall be subject to the condition of the rules being made after previous publication.

(3) All rules made by the Central Government or by the Provincial Government under this Act shall be published in the Official Gazette, and on such publication shall have effect as if enacted in this Act.

Savings.

9. (1) Nothing in this Act or in any licence granted or rule made thereunder shall extend to, or interfere with, anything done in good faith in the exercise of his profession as such by a medical or veterinary practitioner.

(2) Notwithstanding anything hereinbefore contained, the Provincial Government may [4][* *] by general or special order declare that all or any of the provisions of this Act [2][except section 3] shall be deemed not to apply to any article or class of articles of commerce specified in such order, or to any poison or class of poisons used for any purpose so specified.

LEG. REF.

[1] Words "into British India" omitted by *ibid.*

[2] Inserted by A.O., 1937.

[3] Words 'and subject to the control of the Governor-General in Council' omitted by A. O., 1937.

[4] Words 'in its discretion' omitted by A. O., 1937.

SEC. 9.—*See* 31 I.C. 364 (L.B.). Rules prohibiting retail sales infringed by sale of poison in bottles which were unopened (a case under the old Act).

(3) The authority on which any power to make rules under this Act is conferred may, by general or special order, either wholly or partially—

(*a*) exempt from the operation of any such rules, or

(*b*) exclude from the scope of the exemption provided by sub-section (1), any person or class of persons either generally or in respect of any poisons specified in the order.

10. [*Repeal of Act I of* 1904.] *Repealed by the Reapealing Act,* 1927 (*XII of* 1927).

THE INDAN PORTS ACT (XV OF 1908).[1]

Year.	No.	Short title.	Amendments.
1908	XV	The Indian Ports Act, 1908.	Supptd. Ben. Act III of 1867. Amended. Act IV of 1911; Act VI of 1916; Act XXXVIII of 1920; Act XV of 1922; Act XXX of 1923; Act IX of 1925; Act XXXVI of 1925; Act XI of 1929; Act XI of 1931 and Act XXVI of 1938. (*See also* Act X of 1931.) Rep. in part and Amended, Act XXXVI of 1925. Amended in its application to Madras by Madras Act I of 1926.

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LEG. REF.

[1] For Statement of Objects and Reasons, see *Gazette of India,* 1908, Pt. V, p. 309; for Report of Select Committee, see *ibid.,* 1908, Pt. V, p. 359 and for Proceedings in Council, see *ibid.,* 1908, Pt. VI, pp. 146, 154 and 182.

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THE INDIAN PORTS ACT (XV OF 1908),

[18*th December,* 1908.

An Act to consolidate the Enactments relating to Ports and Port-charges.

WHEREAS it is expedient to consolidate the enactments relating to Ports and Port-charges; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Title and extent.

1. (1) This Act may be called THE INDIAN PORTS ACT, 1908.

(2) it shall extend, save as otherwise appears from its subject or context,—

(*a*) to the ports mentioned in the first schedule, and to such parts of the navigable rivers and channels leading to such ports respectively as have been declared to be subject to Act XXII of 1855 (*for the Regulation of Ports and Port-dues*) or to the Indian Ports Act, 1875, or to the Indian Ports Act, 1889;

(*b*) to the other ports or parts of navigable rivers or channels to which the [1][*] Government, in exercise of the power hereinafter conferred, extends this Act.

LEG. REF. A.O., 1937.

[1] The word "Local" has been omitted by

(3) But nothing in section 31 or section 32 shall apply to any port, river or channel to which the section has not been specially extended by the [1][* *] Government.

Savings.

2. Nothing in this Act shall—

(i) apply to any vessel belonging to, or in the service of, His Majesty [2][* *] or to any vessel of war belonging to any Foreign Prince or State, or

(ii) deprive any person of any right of property or other private right, except as hereinafter expressly provided, or

(iii) affect any law or rule relating to the customs or any order or direction lawfully made or given pursuant thereto.

Definitions.

3. In this Act, unless there is anything repugnant in the subject or context,—

(1) "Magistrate" means a person exercising powers under the Code of Criminal Procedure, 1898, not less than those of a Magistrate of the second class, and includes, in the towns of Calcutta, Madras and Bombay, a Presidency Magistrate:

(2) "master", when used in relation to any vessel, means, subject to the provisions of any other enactment for the time being in force, any person (except a pilot or harbour master) having for the time being the charge or control of the vessel:

(3) "pilot" means a person for the time being authorized by the [1][* *] Government to pilot vessels:

(4) "port" includes also any part of a river or channel in which this Act is for the time being in force:

(5) "port-officer" is synonymous with master-attendant:

(6) "ton" means a ton as determined or determinable by the rules for the time being in force for regulating the measurement of the net tonnage of British ships: and

(7) "vessel" includes anything made for the conveyance by water of human beings or of property:

[3][(8) 'Major port' means any port which the Central Government may by notification in the Official Gazette declare, or may under any law for the time being in force have declared, to be a major port:

(9) 'Government,' as respects major ports, for all purposes, and, as respects other ports, for the purposes of making rules under clause (*p*) of section 6 (1) and of the appointment and control of port health-officers under section 17, means the Central Government, and save as aforesaid, means the Provincial Government.]

CHAPTER II.

POWERS OF THE [1][* *] GOVERNMENT.

Power to extend or withdraw the Act or certain portions thereof.

4. (1) [4][* * * *] The [1][* *] Government may, by notification in the Official Gazette,—

(*a*) extend this Act to any port in which this Act is not in force or to any part of any navigable river or channel which leads to port and in which this Act is not in force;

(*b*) specially extend the provisions of section 31 or section 32 to any port to which they have not been so extended;

LEG. REF.

[1] Omitted by A.O., 1937.

[2] Words "or the Government of India" omitted by A.O., 1937.

[3] Added by A.O., 1937.

[4] The words "With the previous sanction of the Governor-General in Council" were omitted by sec. 2 of the Indian Ports (Amendment) Act, 1916 (VI of 1916).

(*c*) [1]withdraw this Act or section 31 or section 32 from any port or any part thereof in which it is for the time being in force.

(2) A notification under clause (*a*) or clause (*b*) of sub-section (1) shall define the limits of the area to which it refers.

(3) Limits defined under sub-section (2) may include any piers, jetties, landing-places, wharves, quays, docks and other works made on behalf of the public for convenience of traffic, for safety of vessels, or for the improvement, maintenance or good government of the port and its approaches, whether within or without high-water-mark, and, subject to any rights of private property therein, any portion of the shore or bank within fifty yards of high-water-mark.

(4) In sub-section (3) the expression "high-water-mark" means the highest point reached by ordinary spring tides at any season of the year.

Alteration of limits of ports.

5. (1) The [2][* *] Government may, [3][* * *] subject to any rights of private property, alter the limits of any port in which this Act is in force.

(2) When the [2][*] Government alters the limits of a port under sub-section (1), it shall declare or describe, by notification in the Official Gazette, and by such other means, if any, as it thinks fit, the precise extent of such limits.

Power to make port-rules.

6. (1) The [2][* *] Government may, in addition to any [4]rules which it may make under any other enactment for the time being in force, make such rules, consistent with this Act, as it thinks necessary for any of the following purposes, namely:—

[5](*a*) for regulating the time and hours at and during which, the speed at which, and the manner and conditions in and on which, vessels generally or vessels of any class defined in the rules, may enter, leave or be moved in any port subject to this Act;

(*b*) for regulating the berths, stations and anchorages to be occupied by vessels in any such port;

(*c*) for striking the yards and top masts, and for rigging-in the booms and yards, of vessels in any such port, and for swinging or taking in davits, boats and other thinks projecting from such vessels;

(*d*) for the removal or proper hanging or placing of anchors, spars and other things being in or attached to vessels in any such port;

(*e*) for regulating vessels whilst taking in or discharging passengers, ballast or cargo, or any particular kind of cargo, in any such port, and the stations to be occupied by vessels whilst so engaged;

[6][(*ee*) for regulating the manner in which oil or water mixed with oil shall be discharged in any such port and for the disposal of the same;]

[7][(*eee*) for regulating the bunkering of vessels with liquid fuel in any such port and the description of barges, pipe lines or tank vehicles to be employed in such bunkering;]

LEG. REF.

[1] For instance of such a notification, see *Fort St. George Gazette*, 1909, Pt. I, p. 463.

[2] The word "Local" omitted by A.O., 1937.

[3] The words "with the previous sanction of the Governor-General in Council and" were omitted by sec. 3 of the Indian Ports (Amendment) Act, 1916 (VI of 1916).

[4] For rules for the purpose of minimising the risk to shipping in Bombay Harbour owing to the transportation of dangerous peroleum within the port of Bombay, see *Bombay Government Gazette*,, 1909, Pt. I, p. 1711. For rules for the port of Aden, see *Bombay Government Gazette*, 1911, Pt. I, p. 7416.

[5] For rules under clause (*a*) and (*e*) as to the entry, movement and loading and unloading of vessels in the port of Rangoon, see *Burma Gazette*, 1911, Pt. I, p. 147.

[6] Inserted by sec. 2 of the Indian Ports (Amendment) Act, 1923 (XXXIX of 1923).

[7] Inserted by sec. 2 of the Indian Ports (Amendment) Act, 1925 (IX of 1925).

SEC. 6 (1) (*a*).—As to legality of Karachi Port Rules, *see* 1 S.L.R. 201.

(*f*) for keeping free passages of such width as may be deemed necessary within any such port, and along or near to the piers, jetties, landing places, wharves, quays, docks, moorings and other works in or adjoining to the same, and for marking out the spaces so to be kept free;

(*g*) for regulating the anchoring, fastening, mooring and unmooring of vessels in any such port;

(*h*) for regulating the moving and warping of all vessels within any such port and the use of warps therein;

(*i*) for regulating the use of the mooring buoys, chains and other moorings in any such port;

(*j*) for fixing the rates to be paid for the use of such moorings when belonging to the [1][Crown] or of any boat, hawser, or other thing belonging to the [1][Crown];

[2][(*jj*) for regulating the use of piers, jetties, landing places, wharves, quays, warehouses and sheds when belonging to the [1][Crown] and for fixing the rates to be paid for the use of the same;]

(*k*) for licensing and regulating catamarams plying for hire, and flats and cargo, passenger and other boats plying, whether for hire or not, and whether regularly or only occasionally, in or partly within and partly without any such port [3][and for licensing and regulating the crews of any such vessels] and for determining the quantity of cargo or number of passengers [3][or of the crew] to be carried by any such vessels [3][and may by such rules provide for the fees payable in respect of any such license, and in the case of passenger vessels plying for hire, for the rates of hire to be charged and the conditions under which such vessels shall be compelled to ply for hire, and further for the conditions under which any license may be revoked];

(*l*) for regulating the use of fires and lights within any such port;

(*m*) for enforcing and regulating the use of signals or signal lights by vessels by day or by night in any such port;

(*n*) for regulating the number of the crew which must be on board any vessel afloat within the limits of any such port;

(*o*) for regulating the employment of persons engaged in cleaning or painting vessels, or in working in the bilges, boilers or double bottoms of vessels in any such port;

[4][(*p*) [5][* * * *]] for the prevention of danger arising to the public health by the introduction and the spread of any infectious or contagious disease from vessels arriving at, or being in, any such port, and for the prevention of the conveyance of infection or contagion by means of any vessel sailing from any such port, and in particular and without prejudice to the generality of this provision, for—

(i) the signals to be hoisted and the places of anchorage to be taken up by such vessels having any case, or suspected case of any infectious or contagious disease on board, or arriving at such port from a port in which, or in the neighbourhood of which, there is believed to be, or to have been at the time when the vessel left such port, any infectious or contagious disease;

LEG. REF.

[1] For the word "Government" the word "Crown" has been substituted by A.O., 1937.

[2] Inserted by sec. 4 (1) of the Indian Ports (Amendment) Act, 1916 (VI of 1916).

[3] Inserted by sec. 4 (2), Act VI of 1916.

[4] Clause (*p*) was substituted by sec. 2 of the Indian Ports (Amendment) Act, 1911 (IV of 1911).

[5] Words "subject to the control of the Governor-General in Council" omitted by A.O., 1937.

SEC. 6 (1) (k).—Collector has no power to revoke licence. 4 Bom.L.R. 773. As to validity of order making it obligatory on boat owner to ply for hire, *see* 17 M. 397=1 Weir 859. As to causing impediment to service of boat, *see* 1 Weir 860. Disobedience of order of conservator of boats. 17 M. 118=1 Weir 857=4 M.L.J. 38.

(ii) the medical inspection of such vessels and of persons on board such vessels;

(iii) the questions to be answered and the information to be supplied by masters, pilots and other persons on board such vessels;

(iv) the detention of such vessels and of persons on board such vessels;

(v) the duties to be performed in cases of any such disease by masters, pilots and other persons on board such vessels;

(vi) the removal to hospital or other place approved by the health officer and the detention therein of any person from any such vessel who is suffering or suspected to be suffering from any such disease;

(vii) the cleansing, ventilation and disinfection of such vessels or any part thereof and of any articles therein likely to retain infection or contagion, and the destruction of rats or other vermin in such vessels; and

(viii) the disposal of the dead on such vessels; and]

(*q*) for securing the protection from heat of the officers and crew of vessels in any such port by requiring the owner or master of any such vessel—

(i) to provide curtains and double awnings for screening from the sun's rays such portions of the deck as are occupied by, or are situated immediately above, the quarters of the officers and crews;

(ii) to erect windsails so far as the existing portholes or apertures in the deck admit of their being used for ventilating the quarters of the officers and crew;

(iii) when the deck is made of iron and not wood-sheathed, to cover with wooden planks or other suitable non-conducting material such portions of the deck as are situated immediately above the quarters of the officers and crew;

(iv) when the quarters used by the crew and the galley are separated by an iron bulk-head only, to furnish a temporary screen of some suitable non-conducting material between such quarters and the galley.

(1-A) [*Omitted by Act XXVI of* 1938].

(2) The power to make rules under sub-section (1) [1][* * *] is subject to the condition of the rules being made after previous publication:

Provided that nothing in this sub-section shall be construed to affect the validity of any rule in force immediately before the commencement of the Indian Ports Act, 1889, and continued by section 2, sub-section (2), of that Act.

(3) If any person disobeys any rule made under clause (*p*) of sub-section (1), he shall be punishable for every such offence with fine which may extend to one thousand rupees.

(4) If a master fails wholly or in part to do any act prescribed by any rule made under clause (*p*) of sub-section (1), the health-officer shall cause such act to be done, and the reasonable expenses incurred in doing such act shall be recoverable by him from such master.

CHAPTER III.

PORT-OFFICIALS AND THEIR POWERS AND DUTIES.

Appointment of conservator.

7. (1) The [2][* *] Government shall appoint some officer or body of persons to be conservator of every port subject to this Act.

(2) Subject to any direction by the [2][* *] Government to the contrary,—

(*a*) in ports where there is a port-officer, the port-officer shall be the conservator;

(*b*) in ports where there is no port-officer, but where there is a harbour-master, the harbour-master shall be the conservator.

LEG. REF.

[1] Omitted by Act XXVI of 1938.

[2] The word "Local" omitted by A.O., 1937.

(3) Where the harbour-master is not conservator, the harbour-master and his assistants shall be subordinate to, and subject to the control of, the conservator.

(4) The conservator shall be subject to the control of the [1][* *] Government, or of any intermediate authority which [2][the] Government may appoint.

Power of conservator to give and enforce directions for certain specified purposes.

8. (1) The conservator of any port subject to this Act may, with respect to any vessel within the port, give directions for carrying into effect any rule for the time being in force therein under section 6.

(2) If any person wilfully and without lawful excuse refuses or neglects to obey any lawful direction of the conservator, after notice thereof has been given to him, he shall, for every such offence, be punishable with fine which may extend to one hunderd rupees, and in the case of a continuing offence with a further fine which may extend to one hundred rupees for every day during which, after such notice as aforesaid, he is proved to have wilfully and without lawful excuse continued to disobey the direction.

(3) In case of such refusal or neglect, the conservator may do, or cause to be done, all acts necessary for the purpose of carrying the direction into execution, and may hire and employ proper persons for that purpose, and all reasonable expenses incurred in doing such acts shall be recoverable by him from the person so refusing or neglecting to obey the direction.

Power to cut warps and ropes.

9. The conservator of any such port may, in case of urgent necessity, cut, or cause to be cut, any warp, rope, cable or hawser endangering the safety of any vessel in the port or at or near to the entrance thereof.

Removal of obstructions within limits of port.

10 (1) The conservator may remove, or cause to be removed, any timber, raft or other thing, floating or being in any part of any such port, which in his opinion obstructs or impedes the free navigation thereof or the lawful use of any pier, jetty, landing-place, wharf, quay, dock, mooring or other work on any part of the shore or bank which has been declared to be within the limits of the port and is not private property.

(2) The owner of any such timber, raft or other thing shall be liable to pay the reasonable expenses of the removal thereof, and if such owner or any other person has without lawful excuse caused any such obstruction or impediment, or causes any public nuisance affecting or likely to affect such free navigation or lawful use, he shall also be punishable with fine which may extend to one hundred rupees.

(3) The conservator or any Magistrate having jurisdiction over the offence may cause any such nuisance to be abated.

Recovery of expenses of removal.

11. If the owner of any such timber, raft or other thing, or the person who has caused any such obstruction, impediment or public nuisance as is mentioned in the last foregoing section, neglects to pay the reasonable expenses incurred in the removal thereof, within one week after demand, or within fourteen days after such removal has been notified in the Official Gazette or in such other manner as the [1][* *] Government by general or special order directs, the conservator may cause such timber, raft or other thing, or the materials of any

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LEG. REF. 1937.

[1] The word "Local" omitted by A.O., 1937.

[2] Substituted for word 'that' by A.O., 1937.

SEC. 8.—*See* 17 M. 118=1 Weir 857=4 M.L.J. 38.

public nuisance so removed, or so much thereof as may be necessary, to be sold by public auction;

and may retain all the expenses of such removal and sale out of the proceeds of the sale, and shall pay the surplus of such proceeds, or deliver so much of the thing or materials as may remain unsold, to the person entitled to receive the same;

and, if no such person appears, shall cause the same to be kept and deposited in such manner as the [1][ ] Government directs;

and may, if necessary, from time to time, realize the expenses of keeping the same, together with the expenses of sale, by a further sale of so much of the thing or materials as may remain unsold.

Removal of lawful obstructions.

12. (1) If any obstruction or impediment to the navigation of any port subject to this Act has been lawfully made, or has become lawful by reason of the long continuance of such obstruction or impediment, or otherwise the conservator shall report the same for the information of the [1][ ] Government, and shall, with the sanction of [2][the] Government, cause the same to be removed or altered, making reasonable compensation to the person suffering damage by such removal or alteration.

(2) Any dispute arising concerning such compensation shall be determined according to the law relating to like disputes in the case of land required for public purposes.

Fouling of Government moorings.

13. (1) If any vessel hooks or gets foul of any of the buoys or moorings laid down by or by the authority of the [1][ ] Government in any such port, the master of such vessel shall not, nor shall any other person, except in case of emergency, lift the buoy or mooring for the purpose of unhooking or getting clear from the same without the assistance of the conservator;

and the conservator, immediately on receiving notice of such accident, shall assist and superintend the clearing of such vessel;

and the master of such vessel shall, upon demand, pay such reasonable expenses as may be incurred in clearing the same.

(2) Any master or other person offending against the provisions of this section shall, for every such offence, be punishable with fine which may extend to one hundred rupees.

Raising or removal of wreck impeding navigation within limits of port.

14. (1) If any vessel is wrecked, stranded or sunk in any such port so as to impede, or be likely to impede, the navigation thereof, the conservator may cause the vessel to be raised, removed or destroyed.

(2) If any property recovered by a conservator acting under sub-section (1) is unclaimed or the person claiming it fails to pay the reasonable expenses incurred by the conservator under that sub-section and a further sum of twenty per cent. of the amount of such expenses, the conservator may sell the property by public auction, if the property is of a perishable nature, forthwith, and, if it is not of a perishable nature, at any time not less than six months after the recovery thereof.

(3) The expenses and further sum aforesaid shall be payable to the conservator out of the sale-proceeds of the property, and the balance shall be paid to the person entitled to the property recovered, or, if no such person appears and claims the balance, shall be held in deposit for payment, without interest, to any person thereafter establishing his right thereto:

LEG. REF.

[1] The word 'Local' omitted by A.O., 1937.

[2] Substituted for word 'that' by A.O., 1937.

Provided that the person makes his claim within three years from the date of the sale.

Power to board vessels and enter buildings.

15. (1) The conservator or any of his assistants may, whenever he suspects that any offence against this Act has been, or is about to be, committed, or whenever it is necessary for him so to do in the performance of any duty imposed upon him by this Act,

and the person appointed under this Act to receive any port-dues, fees or other charges, payable in respect of any vessel, may, whenever it is necessary for him so to do in the performance of any duty imposed upon him by this Act,

either alone or with any other person, board any vessel, or enter any building or place, within the limits of any port subject to this Act.

(2) If the master of the vessel, or any person in possession or occupation of the building or place, without lawful excuse, refuses to allow any such perosn as is mentioned in sub-section (1) to board or enter such vessel, building or place in the performance of any duty imposed upon him by this Act, he shall for every such offence be punishable with fine which may extend to two hundred rupees.

Power to require crews to prevent or extinguish fire.

16. (1) For the purpose of preventing or extinguishing fire in any port subject to this Act, the conservator or port-officer may require the master of any vessel within the port to place at his disposal such number as he requires, not exceeding three-fourths, of the crew then under the orders of such master.

(2) Any master refusing or neglecting to comply with such requisition shall be punishable with fine which may extend to five hundred rupees, and any seaman then under his orders who, after being directed by the master to obey the orders of the conservator or port-officer for the purpose aforesaid, refuses to obey such orders, shall be punishable with fine which may extend to twenty-five rupees.

Appointment and powers of health-officer.

17. (1) The [1][* *] Government may appoint at any port subject to this Act an officer to be called the health-officer.

(2) A health-officer shall, subject to the control of the [1][* *] Government, have the following powers, within the limits of the port for which he is appointed, namely:—

(*a*) with respect to any vessel, the powers conferred on a shipping-master by the Indian Merchant Shipping Act, 1859,[2] section 71;

(*b*) power to enter on board any vessel and medically examine all or any of the seamen or apprentices on board the vessel;

(*c*) power to require and enforce the production of the log-book and any other books, papers or documents which he thinks necessary for the purpose of enquiring into the health and medical condition of the person on board the vessel;

(*d*) power to call before him and question for any such purpose all or any of those persons and to require true answers to any questions which he thinks fit to ask;

(*e*) power to require any person so questioned to make and subscribe a declaration of the truth of the statements made by him.

Indemnity of Government against act or default of port official or pilot.

18. The Government shall not be responsible for any act or default of any conservator, port- officer or harbour-master, of any port subject to this Act, or of any deputy or assistant of any of the authorities aforesaid, or of any person acting under the control or direction of any such

LEG. REF.

[1] The word 'Local' omitted by A.O., 1937.

[2] *See* now sec. 91 of the Indian Merchant Shipping Act, 1923 (XXI of 1923).

authority ,deputy or assistant, or for any act or default of any pilot, or for any damage sustained by any vessel in consequence of any defect in any of the moorings, hawsers or other things belonging to the Government which may be used by the vessel:

Provided that nothing in this section shall protect the [1][Crown] from a suit in respect of any act done by or under the express order or sanction of the Government.

CHAPTER IV.

RULES FOR THE SAFETY OF SHIPPING AND THE CONSERVATION OF PORTS.

General Rules.

Injuring buoys, beacons and moorings.

19. (1) No person shall, without lawful excuse lift, injure, loosen or set adrift any buoy, beacon or mooring fixed or laid down by, or by the authority of, the [2][*] Government in any port subject to this Act.

(2) If any person offends against the provisions of this section, he shall for every such offence be liable, in addition to the payment of the amount of damage done, to fine which may extend to two thousand rupees, or to imprisonment for a term which may extend to two years.

Wilfully loosening vesse from moorings.

20. If any person wilfully and without lawful excuse loosens or removes from her moorings any vesssl within any such port without leave or authority from the owner or master of the vessel, he shall, for every such offence, be punishable with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to six months.

Improperly discharging ballast.

21. (1) No ballast or rubbish, and no other thing likely to form a bank or shoal or to be detrimental to navigation, shall, without lawful excuse, be cast or thrown into any such port or into or upon any place on shore from which the same is liable to be washed into any such port, either by ordinary or high tides, or by storms or land-floods [3][and no oil or water mixed with oil shall be discharged in or into any such port, to which any rules made under clause (*ee*) of sub-section (1) of section 6 apply otherwise than in accordance with such rules.]

(2) Any person who by himself or another so casts or throws any ballast or rubbish or any such other thing [3][or so discharges any oil or water mixed with oil], and the master of any vessel from which the same is so cast, [4][thrown or discharged], shall be punishable with fine which may extend to five hundred rupees, and shall pay any reasonable expenses which may be incurred in removing the same.

(3) If, after receiving notice from the conservator of the port to desist from so casting or throwing any ballast or rubbish or such other thing [3][or from so discharging any oil or water mixed with oil], any master continues so to cast, [5][throw or discharge the same], he shall also be liable to simple imprisonment for a term which may extend to two months.

(4) Nothing in this section applies to any case in which the ballast or rubbish or such other thing is cast or thrown into [6][or the oil or water mixed with oil is discharged in or into] any such port with the consent in writing of the

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LEG. REF.

[1] Substituted for the words 'Secretary of State for India in Council' by A.O., 1937.

[2] The word "Local" omitted by A O., 1937.

[3] Inserted by sec. 3 of the Indian Ports (Amendment) Act, 1923 (XXXIX of 1923).

[4] These words were substituted for the words "or thrown" by sec. 3, Act XXXIX of 1923.

[5] These words were substituted by sec. 3 of the Indian Ports (Amendment) Act, 1923 (XXXIX of 1923).

[6] Inserted by sec. 3, Act XXXIX of 1923.

conservator, or within any limits within which such act may be authorized by the [1][*] Government.

Graving vessel within prohibited limits.

22. If any person graves, breams or smokes any vessel in any such port contrary to the directions of the conservator, or at any time or within any limits at or within which such act is prohibited by the [1][*] Government, he and the master of the vessel shall for every such offence be punishable with fine which may extend to five hundred rupees each.

Boiling pitch on board vessel within prohibited limits.

23. If any person boils or heats any pitch, tar, resin, dammer, turpentine, oil, or other such combustible matter on board any vessel within any such port, or at any place within its limits where such act is prohibited by the [1][*] Government, or contrary to the directions of the conservator, he and the master of the vessel shall for every such offence be punishable with fine which may extend to two hundred rupees each.

Drawing spirits by unprotected artificial light.

24. If any person, by an unprotected artificial light, draws off spirits on board any vessel within any port subject to this Act, he and the master of the vessel shall for every such offence be punishable with fine which may extend to two hundred rupees each.

Warping.

25. (1) Every master of a vessel in any port subject to this Act shall, when required so to do by the conservator, permit warps or hawsers to be made fast to the vessel for the purpose of warping any other vessel in the port, and shall not allow any such warp or hawser to be let go until required so to do.

(2) A master offending against sub-section (1) shall be punishable for every such offence with fine which may extend to two hundred rupees.

Leaving out warp or hawser after sunset.

26. (1) A master of a vessel shall not cause or suffer any warp or hawser attached to his vessel to be left out in any port subject to this Act after sunset in such a manner as to endanger the safety of any other vessel navigating in the port.

(2) A master offending against sub-section (1) shall be punishable for every such offence with fine which may extend to two hundred rupees.

Dischare of fire-arms in port.

27. If any person, without lawful excuse, discharges any fire-arm in any port subject to this Act, or on or from any pier, landing-place, wharf or quay thereof, except a gun loaded only with gunpowder for the purpose of making a signal of distress, or for such other purpose as may be allowed by the [1][*] Government, he shall for every such offence be punishable with fine which may extend to fifty rupees.

Penalty on master omitting to take order to extinguish fire.

28. If the master of any vessel in which fire takes place, while lying in any such port, wilfully omits to take order to extinguish the fire or obstructs the conservator or the port-officer, or any person acting under the authority of the conservator or port-officer, in extinguishing or attempting to extinguish the fire, he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

LEG. REF.

[1] The word 'Local' omitted by A.O., 1937.

SEC. 22.—Master, when liable for servant's act. *See* 9 Cal. 849.

29. (1) No person, without the permission of the conservator, shall, in any port subject to this Act, creep or sweep for anchors, cables or other stores lost or supposed to be lost therein.

Unauthorized person not to search for lost stores.

(2) If any person offends against the provisions of sub-section (1), he shall be punishable with fine which may extend to one hundred rupees.

30. (1) No person wtihout the permission of the conservator shall in any port subject to this Act remove or carry away any rock, stones, shingle, gravel, sand or soil or any artificial protection from any part of the bank or shore of the port;

Removing stones or injuring shores of port prohibited.

and no person shall sink or bury in any part of such bank or shore, whether the same is public or private property, any mooring-post, anchor or any other thing, or do any other thing which is likely to injure or to be used so as to injure such bank or shore, except with the permission of the conservator, and with the aid or under the inspection of such person, if any, as the conservator may appoint to take part in or overlook the performance of such work.

(2) If any person offends against sub-section (1), he shall for every such offence be punishable with fine which may extend to one hundred rupees and shall pay any reasonable expenses which may be incurred in repairing any injury done by him to the bank or shore.

Special Rules.

31. (1) No vessel of the measurement of two hundred tons or upwards shall enter, leave or be moved in any port to which this section has been specially extended without having a pilot, harbour-master or assistant of the port officer or harbour-master on board;

Moving of vessels without pilot or permission of harbour-master.

and no vessel of any measurement less than two hundred tons and exceeding one hundred tons shall enter, leave or be moved in any such port without having a pilot, harbour-master or assistant of the port-officer or harbour-master on board, unless authority in writing so to do has been obtained from the conservator or some officer empowered by him to give such authority:

[1][Provided that the [2][Government] may, by notification in the Official Gazette, direct that in any port specified in such notification the provisions of this sub-section shall not apply to sailing vessels of any measurement not exceeding a measurement so specified.]

[3][(2) Notwithstanding anything in sub-section (1), the owner or master of a vessel which is by that sub-section required to have a pilot, harbour-master or assistant of the port officer or harbour-master on board, shall be answerable for any loss or damage caused by the vessel or by any fault of the navigation of the vessel, in the same manner as he would have been if he had not been so required by that sub-section:

Provided that the provisions of this sub-section shall not take effect till the first day of January, 1918, or such earlier date as the Central Government may notify in that behalf in the Official Gazette.

[4][(3)] If any vessel, except in case of urgent necessity, enters, leaves or is moved in the port contrary to the provisions of sub-section (1) the master of the vessel shall for every such offence be punishable with fine which may

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LEG. REF.

[1] Inserted by sec. 2 of the Indian Ports (Amendment) Act, 1925 (XXXVI of 1925).

[2] Substituted for 'Governor-General in Council' by A.O., 1937.

[3] Inserted by sec. 5 (*i*) of the Indian Ports (Amendment) Act, 1916 (VI of 1916).

[4] Re-numbered by sec. 5 (*ii*) of the Indian Ports (Amendment) Act, 1916 (VI of 1916).

extend to two hundred rupees, unless upon application to the proper officer the master was unable to procure a pilot, harbour-master or assistant of the port-officer or harbour-master to go on board the vessel.

[1][* * * * *]

Provision of certain vessels with fire-extinguishing apparatus.

32. (1) Every vessel exceeding the measurement of two hundred tons and lying in any port to which this section has been specially extended, shall be provided with a proper force-pump and hose and appurtenances for the purpost of extinguishing any fire which may occur on board.

(2) The master of such a vessel who having been required by the conservator to comply with the provisions of sub-section (1), neglects or refuses, without lawful excuse, so to do for the space of seven days after such requisition, shall be punishable with fine which may extend to five hundred rupees.

CHAPTER V.

PORT-DUES, FEES AND OTHER CHARGES.

Levy of port dues.

33. (1) [2][Subject to the provisions of sub-section (2)], in each of the ports mentioned in the first schedule such port-due, not exceeding the amount specified for the port in the third column of the schedule as the [3][*] Government directs, shall be levied on vessels entering the port and described in the second column of the schedule, but not oftener than the time fixed for the port in the fourth column of the schedule[1].

[4][(2) The [3][*] Government may, by notification in the Official Gazette,[5] alter or add to any entry in the first schedule relating to ports [6][in British India or, as the case may be, in the Province] and this power shall include the power to regroup any such ports:

[7](* * * * * * *).

[8][(3)] Whenever the [3](*) Government [9](* *) declares any other port to be subject to this Act, it may, [9](* *) by the same or any subsequent declaration, further declare,—

(*a*) in the terms of any of the entries in the second column of the first schedule, the vessels which are to be chargeable with port-dues on entering the port,

(*b*) the highest rates at which such dues may be levied in respect of vessels chargeable therewith, and

(*c*) the times at which such vessels are to be so chargeable:

[10](* * * * * * * *).

[8][(4)] All port-dues now leviable in any port shall continue to be so leviable until it is otherwise declared in exercise of the powers conferred by this section.

[8][(5)] An order increasing or imposing port-dues under this section

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LEG. REF.

[1] Sub-secs. (4) and (5), as re-numbered by Act, VI of 1916, were repealed by sec. 2 (2) of the Indian Ports (Amendment) Act, 1925 (XXXVI of 1925).

[2] Inserted by sec. 6 of the Indian Ports (Amendment) Act, 1916 (VI of 1916).

[3] The word 'Local', omitted by A O., 1937.

[4] This sub-section was inserted by sec. 6 (*ii*) of the Indian Ports (Amendment) Act, 1916 (VI of 1916).

[5] For such alterations in Pt. II of the First Schedule to the Act, *see* Fort St. George Gazette, 1925, Pt. I, p. 587.

[6] Substituted for 'within its own province' by A.O., 1937.

[7] Proviso to sub-sec. (2), sec. 33 omitted by A.O., 1937.

[8] Re-numbered by sec. 6 (*iv*) of the Indian Ports (Amendment) Act, 1916 (VI of 1916).

[9] The words "with the previous sanction of the Governor-General in Council" and "with the like sanction" were omitted by sec. 6 (*iii*), *ibid.*

[10] The proviso was added by sec. 6 (*iii*), *ibid*; and the same was omitted by A.O., 1937.

shall not take effect till the expiration of sixty days from the day on which the order was published in the Official Gazette.

Variation of port-dues by Government.

34. The [1][* *] Government may [2][after consulting the authority appointed under section 36] exempt, [3][subject to such conditions, if any, as it thinks fit to impose, any vessel or class of vessels] entering a port subject to this Act from payment of port-dues and cancel the exemption, or may vary the rates at which port-dues are to be levied in the port, in such manner as having regard to the receipts and charges on account of the port, it thinks expedient by reducing or raising the dues, or any of them [2][or may extend the periods for which any vessel or class of vessels entering a port shall be exempt from liability to pay port-dues]:

Provided that the rates shall not in any case exceed the amount authorized to be taken by or under this Act.

Fees for pilotage and certain other services

35. (1) Within any port subject to this Act, fees may be charged for pilotage, hauling, mooring, re-mooring, hooking, measuring and other services rendered to vessels, at such rates as the [1][*] Government may direct.

[4][* * * * * *].

(2) The fees now chargeable for such services shall continue to be charegable unless and until they are altered in exercise of the power conferrd by sub-section (1).

Receipt, expenditure and account of port charges.

36. (1) The [1][*] Government shall appoint some officer or body of persons at every port at which any dues, fees or other charges are authorised to be taken by or under this Act to receive the same and, subject to the control of the [1][*] Government, to expend the receipts on any of the objects authorized by this Act.

(2) Such officer or body shall keep for the port a distinct account, to be called the port fund account, showing, in such detail as the [1][*] Government prescribes, the receipts and expenditure of the port, and shall publish annually as soon after the first day of April, as may be practicable an abstract, in such form as [5][the] Government prescribes, of the account for the past financial year.

[6][* * * * * *]

(4) All money received under this Act at or on account of any port subject to this Act, excluding receipts on account of pilotage but including—

(*a*) fines,

(*b*) proceeds of waifs, and

(*c*) any balance of proceeds of a sale under section 14 where no right

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LEG. REF.

[1] The word 'Local' omitted by A.O., 1937.

[2] Inserted by sec. 7 of Act VI of 1916.

[3] Substituted for the words "the vessels" by *ibid.*

[4] The proviso to S. 35 (1) was omitted by S. 8, Act VI of 1916 and the Proviso added by Act XI of 1929, omitted by A.O., 1937.

[5] Substituted for 'that' by A.O., 1937.

[6] Sub-sec. (3) of S. 36 was omitted by S. 9, Act VI of 1916.

SEC. 36.—PORT OFFICER DISMISSING CLERK —IF ACTS ON BEHALF OF SECRETARY OF STATE.—The Port Officer, in his capacity as officer in charge of the Port office and the clerks employed in the Port office, is not a man appointed under a certain Act to carry out the provisions of that Act, but is the agent or servant of the Local Government appointed by the Local Government to carry out the duties prescribed in S. 36 of the Indian Ports Act. All his actions under S. 36 must be attributed to him as a Governmeat servant and not as a private individual. and his action as a Government servant must be regarded as being actions performed on behalf of the Secretary of State. Where therefore a Port officer employs a clerk and subsequently dismisses him, he must be regarded as having acted for the Secretary of State. 12 R. 556=1934 R. 381.

to the balance has been established on a claim made within three years from the date of the sale,
shall be credited in the port fund account of the port.

(5) All expenses incurred for the sake of any such port, excluding expenses on account of pilotage but including—

(*a*) the pay and allowances of all persons upon the establishment of the port,

(*b*) the costs of buoys, beacons, lights and all other works maintained chiefly for the benefit of vessels being in or entering or leaving the port or passing through the rivers or channels leading thereto,

(*c*) pensions, allowances and gratuities of persons who have been employed in the port under this or any other enactment relating to ports and port-dues or such portion of those pensions, allowances and gratuities as the [1][*], Government may by rule determine,

(*d*) with the previous sanction of the [1][*] Government, contributions towards the support of public hospitals or dispensaries suitable for the reception or relief of seaman or otherwise towards the provision of sanitary superintendence and medical aid for the shipping in the port and for seamen whether ashore or afloat belonging to vessels in the port, and

(*e*) with the like sanction, contributions towards sailors' homes, institutes, rest-houses and coffee-houses and for other purposes connected with the health, recreation and temporal well-being of sailors,
shall be charged to the port fund account of the port,

(6) Subject to the provisions of any local law as to the disposal of any balance from time to time standing to the credit of a port fund account, any such balance may be temporarily invested in such manner as the [1][*] Government may direct.

Grouping of ports.

37. (1) The Provincial Government may direct that for the purposes of the last foregoing section any number of ports [2][in the Province not being major ports] shall be regarded as constituting a single port, and thereupon all moneys to be credited to the port fund account under sub-section (4) of that section shall form a common port fund account which shall be available for the payment of all expenses incurred for the sake of any of the ports:

[3][* * * * * * *].

(2) Where ports are grouped by or under this Act, the following consequences ensue, namely:—

(*a*) the Provincial Government, in the exercise of its control over expenditure debitable to the common port fund account of the group, may [4][*], make rules with respect to the expenditure of the fund for the sake of the several ports of the group on the objects authorized by this Act [5][*]; and

(*b*) the Provincial Government may exercise its authority under section 34 as regards all the ports in the group collectively or as regards any of them separately.

Receipts for port-charges.

38. The person to whom any dues, fees or other charges authorized to be taken by or under this Act are paid shall grant to the person paying the same a proper voucher in writing under his hand, describing the name of his office, the port or place at which the dues, fees or other charges are paid, and the name, tonnage and other proper description of the vessel in respect of which the payment is made.

LEG. REF.

[1] The word 'Local' omitted by A.O., 1937.
[2] Inserted by *ibid.*
[3] The proviso was omitted by *ibid.*
[4] Words 'subject to the control of the Governor-General in Council' omitted by *ibid.*
[5] Words 'and shall cause effect to be given to any direction which the Governor-General in Council may deem it necessary to issue with respect to such expenditure' omitted by *ibid.*

Master to report arrival.

39. (1) Within twenty-four hours after the arrival with the limits of any port subject to this Act of any vessel liable to the payment of port-dues under this Act the master of the vessel shall report her arrival to the conservator of the port.

(2) A master failing without lawful excuse to make such report within the time aforesaid shall for every such offence be punishable with fine which may extend to one hundred rupees.

(3) Nothing in this section applies to tug-steamers, ferry-steamers or river steamers plying to and from any of the ports subject to this Act or to ballam boats plying to and from the port of Chittagong.

Conservator may in certain cases ascertain draught and charge expense to master.

40. If any vessel liable to the payment of port-dues is in any such port without proper marks on the stem and stern posts thereof for denoting her draught, the conservator may cause the same to be ascertained by means of the operating of hooking, and the master of the vessel shall be liabel to pay the expenses of the operation

Ascertainment of tonnage of vessel liable to port-dues.

41. In order to ascertain the tonnage of any vessel liable to pay port-dues the following rules shall be observed, namely:—

(1) (*a*) If the vessel is a British registered vessel or a vessel registered under the Indian Registration of Ships Act, 1841, or the Indian Registration of Ships Act (1841) Amendment Act, 1850, or under any other law for the time being in force for the registration of vessels in British India, the conservator may require the owner or master of the vessel or any person having possession of her register to produce the register for inspection.

(*b*) If the owner or master or such person neglects or refuses to produce the register or otherwise to satisfy the conservator as to what is the true tonnage of the vessel in respect of which the port-dues are payable, he shall be punishable with fine which may extend to one hundred rupees, and the conservator may cause the vessel to be measured, and the tonnage thereof to be, ascertained, according to the mode of measurement prescribed by the rules for the time being in force for regulating the measurement of British vessels, and in such case the owner or master of the vessel shall also be liable to pay the expenses of the measurement.

(2) If the vessel is not a British registered vessel or a vessel registered under the Indian Registration of Ships Act, 1841, or the Indian Registration of Ships Act (1841) Amendment Act (1850) or under any other law for the time being in force for the registration of vessels in British India, and the owner or master thereof fails to satisfy the conservator as to what is her true tonnage according to the mode of measurement prescribed by the rules for the time being in force for regulating the measurement of British vessels, the conservator shall cause the vessel to be measured and the tonnage thereof to be ascertained, according to the mode aforesaid, and in such case the owner or master of the vessel shall be liable to pay the expenses of the measurement.

(3) If the vessel is a vessel of which the tonnage cannot be ascertained, according to the mode of measurement mentioned in clauses (1) and (2), the tonnage of the vessel shall be determined by the conservator on such an estimate as may seem to him to be just.

Distraint and sale on refusal to pay port charges.

42. If the master of any vessel in respect of which any port-dues, fees or other charges are payable under this Act, refuses or neglects to pay the same on demand, the authority appointed to receive such port-dues, fees or other charges may distrain or arrest the vessel, and the tackle, apparel and furniture belonging thereto, or any part thereof, and detain the same until the amount due is paid:

and in case any part of the port-dues, fees or other charges or of the costs of the distress or arrest or of the keeping of the vessel or other thing distrained or arrested remains unpaid for the space of five days next after any such distress or arrest, may cause the vessel or other thing distrained or arrested to be sold, and wtih the proceeds of such sale may satisfy the port-dues, fees or other charges and the costs including the costs of sale remaining unpaid, and shall render the surplus, if any, to the master of the vessel upon demand.

No port-clearance to be granted until por-charges are paid.

43. The officer of [1][the Crown] whose duty it is to grant a port-clearance for any vessel shall not grant such clearance—

(*a*) until her owner or master, or some other person, has paid or secured to the satisfaction of such officer the amount of all port-dues, fees and other charges. and of all fines, penalties and expenses to which the vessel or her owner or master is liable under this Act;

(*b*) until all expenses, which by the [2]Merchant Shiping Act, 1894, section 207, are to be borne by her owner, incurred since her arrival in the port from which he seeks clearance, have been paid.

Port-charges payable in one port recoverable at any other port.

44. (1) If the maser of any vessel in respect of which any such sum as is mentioned in the last foregoing section is pavable causes her to leave any port without having paid the sum, the authority appointed to receive port-dues, fees and other charges at the port under this Act may require in writing the authority appointed to receive port-dues, fees and other charges under this Act at any other port in British India to which she may proceed. or in which she may be, to levy the sum.

(2) The authority to whom the requisition is directed shall proceed to levy such sum in the manner prescribed in section 42, and a certificate purporting to be made by the authority appointed to receive port-dues, fees and other charges at the port where such sum as is mentioned in the last foregoing section became payable, stating the amount payable, shall be sufficient *prima facie* proof of such amount in any proceeding under section 42 and also (in case the amount payable is disputed) in any subsequent proceeding under section 59.

Penalty for evading payment of port-chares.

45. (1) If the master of a vessel evades the payment of any such sum as is mentioned in section 43, he shall be punishable with fine which may extend to five times the amount of the sum.

(2) In any proceeding before a Magistrate on a prosecution under sub-section (1), any such certificate as is mentioned in section 44, sub-section (2), stating that the master has evaded such payment, shall be sufficient *prima facie* proof of the evasion, unless the master shows to the satisfaction of the Magistrate that the departure of the vessel without payment of the sum was caused by stress of of weather, or that there was lawful or reasonable ground for such departure.

(3) Any Magistrate having jurisdiction under this Act in any port to which the vessel may proceed, or in which she may be found, shall be deemed to have jurisdiction in any proceeding under this section.

Port-due on vessels in ballast.

46. A vessel entering any port subject to this Act [3][* * *] in ballast and not carrying passengers shall be charged with a port-due at a rate to be determined by the [4][*] Government and not exceeding three-fourths of the rate with which she would otherwise be chargeable.

LEG. REF.

[1] Substituted for 'Government' by A.O., 1937.

[2] Coll. Stats., Vol. II.

[3] Words 'other than a port in Burma', omitted by A.O., 1937.

[4] The word 'Local' omitted by A.O., 1937.

Port-due on vessels not discharging or taking in cargo.

47. When a vessel enters a port subject to this Act, but does not discharge or take in any cargo or passengers therein (with the exception of such unshipment and reshipment as may be necessary for purposes of repair), she shall be charged with a port-due at a rate to be determined by the [1][*] Government and not exceeding half the rate with which she would otherwise be chargeable.

Port-due not to be chargeable in certain cases.

48. No port-due shall be chargeable in respect of—

(*a*) any pleasure-yacht, or

(*b*) any vessel which, having left any port, is compelled to re-enter it by stress of weather or in consequence of having sustained any damage, or

(*c*) any vessel which, having entered any port within the territories administered by the Governor of Fort Saint George in Council, leaves it within forty-eight hours without discharging or taking in any passengers or cargo.

Power to impose hospital port-dues.

49. (1) The [2][Central Government] may, by notification in the Official Gazette, order that there shall be paid in respect of every vessel entering any port subject to this Act, within a reasonable distance of which there is a public hospital or dispensary suitable for the reception or relief of seamen requiring medical aid, such further port-dues not exceeding one anna per ton as the [2][Central Government] thinks fit.

(2) Such port-dues shall be called hospital port-dues, and the [2][Central Government] shall, in making any order under sub-section (1), have regard to any contributions made under section 36, sub-section (5), clause (*d*).

(3) An order imposing or increasing hospital port-dues shall not take effect till the expiration of sixty days from the day on which the order was published in the Official Gazette.

(4) Whenever the [2][Central Government] is satisfied that proper provision has been made by the owners or agents of any class of vessels for giving medical aid to the seamen employed on board such class of vessels, or that such provision is unnecessary in the case of any class of vessels, it may, by notification in the Official Gazette, exempt such class of vessels from any payment under this section.

Application and account of hospital port-dues.

50. (1) Hospital port-dues shall be applied, as the [2][Central Government] may direct, to the support of any such hospital or dispensary as aforesaid, or otherwise for providing sanitary superintendence and medical aid for the shipping in the port in which they are levied and for the seamen belonging to the vessels therein, whether such seamen are ashore or afloat.

(2) The [2][Central Government] shall publish annually in the Official Gazette, as soon after the first day of April as may be, an account, for the past

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LEG. REF.

[1] The word 'Local' omitted by A.O., 1937.

[2] The words "Central Government" substituted for "Local Government" by *ibid.*

financial year, of the sums received as hospital port-dues at each port where such dues are payable, and of the expenditure charged against those receipts.

(3) Such account shall be published as a supplement to the abstract published under section 36, sub-section (2).

CHAPTER VI.

HOISTING SIGNALS.

Master to hoist number of vessel.

51. (1) The master of every inward or outward bound vessel, on arriving within signal distance of any signal-station established within the limits of the river Hooghly, or within the limits of any part of a river or channel leading to a port subject to this Act, shall, on the requisition of the pilot in charge of the vessel, signify the name of the vessel by hoisting the number by which she is known, or by adopting such other means to this end as may be practicable and usual, and shall keep the signal flying until it is answered from the signal-station.

(2) If the master of a vessel arriving as aforesaid offends against sub-section (1), he shall be punishable for every such offence with fine which may extend to one thousand rupees.

Pilot to require master to hoist number.

52. (1) Every pilot in charge of a vessel shall require the number of the vessel to be duly signalled as provided by the last foregoing section.

(2) When, on such requisition from the pilot, the master refuses to hoist the number of a vessel, or to adopt such other means of making her name known as may be practicable and usual, the pilot may, on arrival at the first place of safe anchorage, anchor the vessel and refuse to proceed on his course until the requisition has ben complied with.

Penalty on pilot disobeying provisions of this Chapter.

53. Any pilot in charge of a vessel who disobeys, or abets disobedience to, any of the provisions of this Chapter, shall be punishable with fine which may extend to five hundred rupees for each instance of such disobedience or abetment, and, in addition, shall be liable to have his authority to act as a pilot withdrawn.

CHAPTER VII.

PROVISIONS WITH RESPECT TO PENALTIES.

Penalty for disobedience to rules and orders of the Government.

54. If any person disobeys any rule or order which a [1][* *] Government has made in pursuance of this Act and for the punishment of disobedience to which express provision has not been made elsewhere in this Act, he shall be punishable for every such offence with fine which may extend to one hundred rupees.

Offences how triable, and penalties how recovered.

55. All offences against this Act shall be triable by a Magistrate, and any Magistrate may, by warrant under his hand, cause the amount of any fine imposed upon the owner or master of any vessel, for any offence committed on board of the vessel or in the management thereof or otherwise in relation thereto, whereof the owner or master is convicted, to be levied by distress and sale of the vessel, and the tackle, apparel and furniture thereof, or so much thereof as is necessary.

LEG. REF.

[1] Word 'Local' omitted by A.O., 1937.

Costs of conviction.

56. (1) In case of any conviction under this Act, the convicting Magistrate may order the offender to pay the costs of the conviction in addition to any fine or expenses to which he may be liable.

(2) Such costs may be assessed by the Magistrate and may be recovered in the same manner as any fine under this Act.

Ascertainment and recovery of expenses and damages payable under this Act.

57. (1) If any dispute arises as to the sum to be paid in any case as expenses or damages under this Act, it shall be determined by a Magistrate upon application made to him for that purpose by either of the disputing parties.

(2) Whenever any person is liable to pay any sum, not exceeding one thousand rupees, as expenses or damages under this Act, any Magistrate, upon application made to him by the authority to whom the sum is payable, may, in addition to or instead of any other means for enforcing payment, recover the sum as if it were a fine.

Cost of distress.

58. Whenever any fine, expenses or damages is or are levied under this Act by distress and sale, the cost of the distress and sale may be levied in addition to such fine, expenses or damages, and in the same manner.

Magistrate to determine the amount to be levied in case of dispute.

59. If any dispute arises concerning the amount leviable by any distress or arrest under this Act or the costs payable under the last foregoing section, the person making the distress or using the arrest may detain the goods distrained or arrested, or the proceeds of the sale thereof, until the amount to be levied has been determined by a Magistrate, who, upon application made to him for that purpose, may determine the amount, and award such costs to be paid by either of the parties to the other of them as he thinks reasonable, and payment of such costs, if not paid on demand, shall be enforced as if they were a fine.

Jurisdiction over offences beyond local limits of jurisdiction.

60. (1) Any person offending against the provisions of this Act in any port subject to this Act shall be punishable by any Magistrate having jurisdiction over any district or place adjoining the port.

(2) Such Magistrate may exercise all the powers of a Magistrate under this Act, in the same manner and to the same extent as if the offence had been committed locally within the limits of his jurisdiction, notwithstanding that the offence may not have been committed locally within such limits, and, in case any such Magistrate exercises the jurisdiction hereby vested in him, the offence shall be deemed, for all purposes, to have been committed locally within the limits of his jurisdiction.

Conviction to be quashed on merits only.

(2) No conviction, order or judgment of any Magistrate under this Act shall be quashed for error of form or procedure, but only on the merits, and it shall not be necessary to state, on the face of the conviction, order or judgment, the evidence on which it proceeds.

(2) If no jurisdiction appears on the face of the conviction, order or judgment, but the depositions taken supply that defect, the conviction, order or judgment shall be aided by what so appears in the depositions.

CHAPTER VIII.

SUPPLEMENTAL PROVISIONS.

Hoisting unlawful colours in port.

62. (1) If any vessel belonging to any of His Majesty's subjects, or sailing under British colours, hoists, carries or wears, within the limits of any port subject to this Act, any flag, jack, pennant or colours, the use whereof on board such vessel has been prohibited by the [1]Merchant Shipping Act, 1894, or any other Statute now or hereafter to be in force, or by any proclamation made or to be made in purusance of any such Statute, or by any of His Majesty's regulations in force for the time being, the master of the vessel shall, for every such offence, be punishable with fine which may extend to fifty rupees.

(2) Such fine shall be in addition to any other penalty recoverable in respect of such an offence.

(3) The conservator of the port, or any officer of His Majesty's Navy or [2][the Royal Indian Navy], may enter on board any such vessel and seize and take away any flag, jack, pennant or colours so unlawfully hoisted, carried or worn on board the same.

Foreign deserters.

63. Any Magistrate, upon an application being made to him by the Consul of any foreign Power to which section 238 of the [1]Merchant Shipping Act, 1894, has, by an Order in Council, been, or shall hereafter be, declared to be applicable, or by the representative of such Consul, and upon complaint on oath of the desertion of any seaman, not being a slave, from any vessel of such foreign Power, may, until a revocation of such Order in Council has been publicly notified, issue his warrant for the apprehension of any such deserter, and, upon due proof of the desertion, may order him to be conveyed on board the vessel to which he belongs, or, at the instance of the Consul, to be detained in custody until the vessel is ready to sail, or, if the vessel has sailed, for a reasonable time not exceeding one month:

Provided that a deposit be first made of such sum as the Magistrate deems necessary for the subsistence of the deserter during the detention and that the detention of the deserter shall not be continued beyond twelve weeks.

Application of sections 10 and 21.

64. (1) The provisions of sections 10 and 21 shall be applicable to all ports heretofore or hereafter declared by the [3][*] Government to be ports for the shipment and landing of goods but not otherwise subject to this Act, and may be enforced by any Magistrate to whose ordinary jurisdiction any such port is subject.

(2) Any penalties imposed by him, and any expenses incurred by his order, under the said provisions shall be recoverable respectively in the manner provided in sections 55 and 57.

(3) In any of the said ports for the shipment and landing of goods the consent referred to in section 21, sub-section (4), may be given by the principal officer of customs at such port or by any other officer appointed in that behalf by the [3][*] Government.

LEG. REF.

[1] Coll. Stats., Vol. II.

[2] Substituted for 'Indian Marine Service' by A.O., 1937.

[3] Word 'Local' omitted by A.O., 1937.

Grant of sites for sailors' institutes.

65. Any local authority in which any immovable property in or near a port is vested may, [1][with the previous sanction, in the case of a cantonment authority or the port authority of a major port, of the Central Government, and in other cases of the Provincial Government] appropriate and either retain and apply, or transfer by way of gift or otherwise, the whole or any part of the property as a site for, or for use as, a sailors' home or other institution for the health, recreation and temporal well-being of sailors.

Exercise of powers of conservator by his assistants.

66. (1) All acts, orders or directions by this Act authorized to be done or given by any conservator may, subject to his control, be done or given by any harbour-master or any deputy or assistant of such conservator or harbour-master.

(2) Any person authorised by this Act to do any act may call to his aid such assistance as may be necessary.

Service of written notices of directions.

67. Any written notice of a direction given under this Act, left for the master of any vessel with any person employed on board thereof, or affixed on a conspicuous place on board of the vessel, shall, for the purposes of this Act, be deemed to have been given to the master thereof.

Publication of orders of Government.

68. Every declaration, order and rule of a [2][*] Government made in pursuance of this Act shall be published in the Official Gazette, and a copy thereof shall be kept in the office of the conservator and at the custom-house, if any, of every port to which the declaration, order or rule relates, and shall there be open at all reasonable times to the inspection of any person without payment of any fee.

Authorities exercising jurisdiction in ports to co-operate in manoeuvres for defence of port.

[3][68-A. Every authority exercising any powers or jurisdiction in, or relating to, any port to which this Act for the time being applies shall, if so required by an officer authorised by general or special order of the Central Government in this behalf, co-operate in such manner, as such officer may direct, in carrying out any manoeuvres in connection with any scheme or preparations for the defence of the said port in time of war, and for this purpose shall, if so required, temporarily place at the disposal of such officer the services of any of its staff and the use of any of its vessels. property, equipment or other material:

Provided, firstly, that if any vessels are placed at the disposal of such officer in accordance with this section, the Central Government shall, in respect of the period during which they are so at [its] disposal, bear the running expenses of such vessels, and be responsible for any damage thereto.

Explanation.—The expression 'running expenses' in this proviso includes all outlay incurred in connection with the use of the vessels other than any charges for their hire, for the wages of the officers and crews of such vessels:

Provided, secondly, that any officer making a requisition under this section shall exercise his powers in such a way as to cause as little disturbance to the

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LEG. REF.

[1] Substituted for 'with the previous sanction of the Local Government' by A O., 1937.

[2] Word "Local" omitted by A.O., 1937.

[3] Ss. 68-A and 68-B were inserted by S. 11 of the Indian Ports (Amendment), Act 1916 (VI of 1916).

ordinary business of the port as is compatible with the exigencies of the efficient carrying out of the manoeuvres:

Provided, thirdly, that no suit or other legal proceeding shall lie against any authority for any default occurring by reason only of compliance with a requisition under this section.

Duties of the said authorities in an emergency.

68-B. Whenever the Central Government is of opinion that an emergency has arisen which renders it necessary that the duties imposed for the purposes specified in section 68-A on the authorities therein mentioned, or other duties of a like nature, should be imposed on such authorities continuously during the existence of the emergency, [1][it] may, by general or special order, authorise any officer to require the said authorities to perform such duties until the Central Government is of opinion that the emergency has passed, and the said authority shall comply accordingly, and the provisions of the said section shall apply subject to the following modification, namely:—

The Central Government shall pay any authority, on whom a requisition has been made, such compensation for any loss or damage attributable to such requisition, and for any services rendered or expenditure incurred in complying therewith as, in default of agreement, shall be decided to be just and reasonable, having regard to the circumstances of the case, by the arbitration of a person to be nominated in this behalf by the Central Government and the decision of such person shall be final.]

69. [*Repeal.*] *Rep. by the Repealing Act* (*I of* 1938), *S.* 2 *and Sch.*

THE FIRST SCHEDULE.

PORTS, VESSELS CHARGEABLE, RATE OF PORT-DUES AND FREQUENCY OF PAYMENT.

(*See sections* 1 *and* 33.)

PART I.—BENGAL.

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4
Calcutta	Sea-going vessels of twenty-tons and upwards.	[2][Not exceeding four annas per ton: provided that in the case of *dhonis* and country vessels employed in the coasting trade or in trade exclusively between India and Burma, the rate shall be one-half the rate chargeable in respect of other vessels.	Whenever the vessel enters the port except in the case of mail-steamers, coasting vessels and vessels engaged in trade exclusively between India and Burma which shall not be chargeable more than once in sixty days.]

LEG. REF.

1 Substituted by A.O., for "he".

2 Substituted by Notification of the Government of India, in the Commerce Department, No. 19-P. (27) 37 dated 7th August, 1937, for the original entry

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4
Calcutta—*contd.*	Tug-steamers and river steamers.	Not exceeding four annas per ton.	Once between the 1st January and the 30th June, and once between the 1st July and the 31st December, in each year.
Cuttack Ports.—namely, False Point and Pooree.	Sea-going vessels of ten tons and upwards.	Not exceeding four annas per ton.	Whenever the vessel enters any one of the ports except in the case of mail-steamers and coasting-vessels, which shall not be chargeable more than once in sixty days.
Balasore Ports,—namely, Balasore, Churaman, Laichhunpur, Chanua, Subarnarekha, Dhamra (Chandbally) and Sartha.	Ditto ..	Dittoo ..	Whenever the vessel enters any one of the ports, except in the case of mail steamers and coasting-vessels, which shall not be chargeable more than once in thirty days.

PART II.—MADRAS PRESIDENCY.

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4
Madras	Sea-going vessels of fifteen tons and upwards.	*Foreign vessels.*	
		(*a*) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements or Ceylon calling at Madras, not exceeding four annas a ton.	The payment of the due at the port will exempt the ship or steamer for a period of sixty days from liability to pay the due again.
		(*b*) In the case of any other foreign ship or steamer calling at Madras, not exceeding four annas a ton.	The due is payable on each entry into the port.
		Coasting Vessels.	
		(*c*) In the case of a coasting ship calling at Madras, not exceeding one and a half annas a ton.	The payment of the due at the port will exempt the ship for a period of sixty days from liability to pay the due again.
		(*d*) In the case of a coasting steamer calling at Madras not exceeding three annas a ton.	The due is payable once in thirty days.

Name of port.		Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1		2	3	4
Eastern Group.				
District.	Port.			
Ganjam.	1. Gopalpur. 2. Baruva. 3. Calingapatam.	Sea-going vessels of fifteen tons and upwards.	*Foreign vessels.* (*a*) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at any one port in the Eastern group, not exceeding three annas a ton.	The payment of the due at the port will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that port.
			(*b*) In the case of any other foreign ship or steamer calling at any one port in the Eastern group, not exceeding three annas a ton.	The due is payable on each entry into the port.
Vizagapatam	4. Bimlipatam. 5. [1][* * *]		(*c*) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at more than one port in the Eastern group, not exceeding four and a half annas a ton.	The payment of the due at the first port called at in the group will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that or any other port in the group.
Godavari.	6. Cocanada 7. Coringa		(*d*) In the case of any other foreign ship or steamer at more than one port in the Eastern group, not exceeding four and a half annas a ton.	The due is payable once for the voyage.
Kistna.	8. Naraspur. 9. Perupalam 10. Mauslipatam. 11. Nagayalanka. 12. Kottapalem.		*Coasting vessels.* (*e*) In the case of a coasting ship calling at any port, not exceeding one and a half annas a ton.	The payment of the due at the port will exempt the ship for a period of sixty days from liability to pay the due again at that port.
Guntur.	13. Moratata 14. Gangadipalem 15. Nizampatnam 16. Ipurupalem 17. Motupalle 18. Kottapatnam		(*f*) In the case of a coasting steamer, calling at one or more ports in the Eastern group, not exceeding three annas a ton.	The payment of the due at the first port called at in the group will exempt the steamer for a period of thirty days from liability to pay the due again at that or any other port in the group.
Nellore.	19. Iskaalle		*Foreign vessels.* (*a*) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at any one port in the Eastern group, not exceeding three annas a ton.	The payment of the due at the port will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that port.

LEG. REF.

1 For the omission of the port of Vizagapatam, *see* Fort St. George Gazette, 1925, Pt. I, p. 587. For the levy of port-dues and that port, *see* Gazette of India, 1934, Pt. I, p. 792.

Name of port. 1		Vessels chargeable. 2	Rate of port-dues. 3	Due how often chargeable in respect of same vessel. 4
Eastern Group—contd.				
District.	Port.			
			Foreign vessels.	
Chingleput.	20. Covelong.	See going vessels of fifteen tons and upwards.	(*b*) In the case of any other foreign ship or steamer calling at any one port in the Eastern group, not exceeding three annas a ton.	The due is payable on each entry into the port.
South Arcot.	21. Cuddalore.		(*c*) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at more than one port in the Eastern group, not exceeding four and a half ton.	The payment of the due at the first port called at in the group will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that or any other port in the group.
	22. Porto Novo.			
	[1]23. *Thandavaraya-solaganpettai.*			
Tanjore.	24. Tirumalavasal.			
	25. Tranquebar.			
	26. Nagore.		(*d*) In the case of any other foreign ship or steamer calling at more than one port in the Eastern group, not exceeding four and a half annas a ton.	The due is payable once for the voyage.
	27. Nagapatam.			
	28. Velankani.			
			Coasting vessels.	
	29. Topputurai.		(*e*) In the case of a coasting ship calling at any port, not exceeding one and a half annas a ton.	The payment of the due at the port will exempt the ship for a period of sixty days from liability to pay the due again at that port.
	30. Point Calimere.			
	31. Mutupet.			
	32. Adirampatnam.			
	33. Gopalapatnam.		(*f*) In the case of a coasting steamer, calling at one or more ports in the Eastern group, not exceeding three annas a ton.	The payment of the due at the first port called at in the group will exempt the steamer for a period of thirty days from liability to pay the due again at that or any other port in the group.
	34. Kattumavedi.			
	35. Krishnajipatnam.			
	36. Ammapatnam.			
			Foreign vessels.	
	37. Kottaipatnam.		(*a*) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at any one port in the Eastern group, not exceeding three annas a ton.	The payment of the due at the port will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that port.
	38. Sundarapandiyapatnam.			
Madura.	39. Vattanam.		(*b*) In the case of any other foreign ship or steamer calling at any one port in the Eastern group, not exceeding three annas a ton.	The due is payable on each entry into the port.
	40. Tondi.			
	41. Pudupatnam.			
	42. Karangadu.			

LEG. REF.

[1] The Act has been withdrawn from this port, *see* Fort St. George Gazette, 1909, Pt. I, p. 257.

Name of port. 1	Vessels chargeable. 2	Rate of port-dues. 3	Due how often chargeable in respect of same vessel. 4
Eastern Group—contd.			
District. / Port.		*Foreign Vessels.*	
Madura—*concld.* 43, Tirupalankudi, 44 Devipatnam, 45. Mudiyanpatnam.	Sea going vessels of fifteen tons and upwards.	(*c*) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at more than one port in the Eastern group, not exceeding four and a half annas a ton.	The payment of the due at the first port called at in the group will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that or any other port in the group.
46. Alagayinkolam.			
47. Attankarai, 48. Emanangundu.			
49. Pamban.		(*d*) In the case of any other foreign ship or steamer calling at more than one port in the Eastern group, not exceeding four and a half annas a ton.	The due is payable once for the voyage.
50. Rameswaram, 51. Mandapam, 52. Vedalai			
		Coasting Vessels.	
53. Muttupettai, 54. Kilakarai, 55. Ervadi, 56. Valinokkam		(*e*) In the case of a coasting ship calling any at port, not exceeding one and a half annas a ton.	The payment of the due at the first port will exempt the ship for a period of sixty days from liability to pay the due again at that port.
Tinnevelly. 7. Vembar, 58. Vaippar		(*f*) In the case of a coasting steamer, calling at one or more ports in the Eastern group, not exceeding three annas a ton.	The payment of the due at the first port called at in the group will exempt the steamer for a period of thirty days from liability to pay the due again at that or any other port in the group.
59. Tuticorin, 60. Ovary, 61. Kayalpatnam, 62. Kulasekharapatnam.			
Western Group.		*Foreign Vessels.*	
Malabar. 63. Cochin, 64. Chavakad		(*a*) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at any one port in the Western group, not exceeding three annas a ton.	The payment of the due at the port will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that port.
65. Velivangod, 66. Ponani, 67. Kuttayi			The due is payable on each entry into the port.
68. Parapanna, 69 Tanur, 70. Parpanangadi		(*b*) In the case of any other foreign ship or steamer calling at any one port in the Western group, not exceeding three annas a ton.	

Name of port. 1	Vessels chargeable. 2	Rate of port-dues. 3	Due how often chargeable in respect of same vessel. 4
Eastern Group—contd.			
District. Port.		*Foreign Vessels.*	
Malabar—*contd.* 71. Ferokh	Sea-going vessels of fifteen tons and upwards.	(*c*) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at more than one port in the Western group, not exceeding four and a half annas a ton.	The payment of the due at the first port called at in the group will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that or any other port in the group.
72 Beypore			
73. Calicut			
74. Kapatta			
75. Quilandi			
76. Kottakkal		(*d*) In the case of any other foreign ship or steamer calling at more than one port in the Western group, not exceeding four and half annas a ton.	The due is payable once for the voyage.
77. Badagara			
78 Muttankal			
79 Chompayi			
80. Kallayi			
81. Talayi		*Coasting Vessels.*	
82 Tellicherry		(*e*) In the case of a coasting ship calling at any port, not exceeding one and a half annas a ton.	The payment of the due at the port will exempt the ship for a period of sixty days from liability to pay the due again at that port.
83. Cannanore			
84. Pudiangudi			
85. Azhikal			
86 Ettikulam		(*f*) In the case of a coasting steamer calling at one or more ports in the Western group, not exceeding three annas a ton.	The payment of the due at the first port ealled at in the group will exempt the steamer for a period of thirty days from liability to pay the due again at that or any other port in the group.
87. Kavvayi			
South Canara.		*Foreign Vessels.*	
88. Hosdrug		(*a*) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at any one port in the Western group, not exceeding three annas a ton.	The payment of the due at the port will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that port.
89. Baikal			
90. Kasaragod			
91. Kumbale			
92. Manjesvara		(*b*) In the case of any other foreign ship or steamer calling at any one port in the Western group, not exceeding three annas a ton.	The due is payable on each entry into the port.
93. Mangalore			
94. Mulki			
95. Padubidri			

Name of port. 1	Vessels chargeable. 2	Rate of port-dues. 3	Due how often chargeable in respect of same vessel. 4
Western Group—concld.			
District. / Port.		*Foreign Vessels.*	
South Canara—concld.	Sea-going vessels of fifteen tons and upwards.		
96. Ermala. 97. Uchhila. 98. Kaph. 99. Malpe.		(*c*) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at more than one port in the Western group, not exceeding four and a half annas a ton.	The payment of the due at the first port called at in the group will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that or any other port in the group.
100. Hangarakatta or Barkur,		(*d*) In the case of any other foreign ship or steamer calling at more than one port in the Western group not exceeding four and a half annas a ton.	The due is payable once for the voyage.
		Coosting vessels.	
101. Coondapoor.		(*e*) In the case of a coasting ship calling at any port, not exceeding one and a half annas a ton.	The payment of the due at the port will exempt the ship for a period of sixty days from liability to pay the due again at that port.
102. Nvakinakatte (Nayakkankottai.) 103. Baindur. 104. Siruru.		(*f*) In the case of a coasting steamer, calling at one or more ports in the Western group, not exceeding three annas a ton.	The payment of the due at the first port called at in the group will exempt the steamer for a period of thirty days from liability to pay the due again at that or any other port in the group.

Explanations to Part II of the First Schedule.

Explanation 1.—In this Part of the schedule—

[1][(*a*) "ship" means a vessel propelled solely by wind power and 'steamer" any vesse other than a ship];

(*b*) "coasting ship" or "coasting steamer" means respectively a ship or steamer which at any port discharges cargo exclusively from, or takes in cargo exclusively for, any port in the island of Ceylon or any part of India, between the westernmost part of Sind and the south easternmost part of Burma; and "coasting steamer" includes a coasting steam-vessel having a general pass under section 164 of the Sea Customs Act, 1878;

LEG. REF. sec. 2.

1 Substituted by Act (Madras) I of 1925.

[1][(*bb*) in so far as the ports of Madras, Vizagapatam and Cochin are concerned "coasting ship" and "coasting steamer" mean, respectively, a ship or steamer which at the port of Madras, Vizagapatam or Cochin discharges cargo exclusively from, or takes in cargo exclusively for, any port in the island of Ceylon or any part of India and Burma, between the western most part of Sind and the south-eastern most part of Burma; and "coasting steamer" includes a coasting steam-vessel having a general pass under section 164 of the Sea Customs Act, 1878;]

(*c*) "foreign ship" or "foreign steamer" means respectively a ship or steamer not being a coasting ship or coasting steamer;

Provided that, for the purpose of the levy of port-dues, a vessel shall not be deemed, during one and the same voyage, to be both a coasting ship or steamer and a foreign ship or steamer, but port-dues shall, in respect of such voyage, be leviable on such vessel either as a coasting or as a foreign ship or steamer, whichever rate is the higher.

Explanation 2.—Ports enclosed in double brackets in the first column of the schedule shall be treated as if they were only one port; every vessel in respect of which such dues have been charged and taken at one of the bracketed ports being exempted from the payment of port-dues entering another port bracketed with it within the period specified in the fourth column of the schedule.

PART III.—BOMBAY PRESIDENCY.

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4
Bombay	Sea-going vessels of ten tons and upwards (except fishing boats).	Not exceeding four annas per ton.	Once in the same month.
	[2][Tug-boats, ferry-boats and river-boats, whether propelled by steam or other mechanical means].	Not exceeding four annas per ton.	Once between the 1st January and the 30th June, and once between the 1st July and 31st December in each year.
Northern group of Ports.			
1. Goga ..	Sea-going vessels of ten tons and upwards (except fishing-boats).	Not exceeding three annas per ton; provided that a coasting steamer whenever it enters any port may be charged at a rate to be determined by the [3][* *] Government and not exceedding the highest rate of port-dues leviable at any port of the group to which such port belongs.	Once in thirty days at the same port: provided that no coasting vessel or coasting steamer, having paid port-dues at any port, shall be chargeable with port-dues again at the same or any other port of the same group within thirty days.
2. Dholera (*Whittle Bandor*). ..			
3. Tankari ..			
4. Dehegam ..			
5. Kavi ..			
6. Dehej ..			
7. Broach ..			
8. Bhagwa ..			
9. Surat ..			
10. Matwad ..			
11. Balsar ..			
12. Umarsadi ..			
13. Kolak ..			
14. Kalai ..			
15 Maroli ..			
16. Umbargam ..			
17. Gholwad ..			
18. Dahanu Creek			
19. Tarapur ..			
20. Olivara Navapur.			
21. Satpati Creek..			
22. Mahim (Kelva)			

LEG. REF.

[1] Inserted by Notification of the Government of India in the Commerce Department, No. 19 P. (27) 37 dated 7th Aug. 1937.

[2] Substituted by Notification of the Government of Bombay in the Marine Department No. 459, dated 27th March, 1923, for "Tug. steamers, ferry-steamers and river steamers."

[3] Word 'Local' omitted by A.O., 1937.

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4
23. Kelva ..		an addition of one-half of such highest rate.	
24. Dantiora ..			
25. Arnala ..			
Southern group of ports.			
1. Bandra ..	Sea-going vessels of ten tons and upwards (except fishing-boats).	Not exceeding three annas per ton : provided that a coasting steamer whenever it enters any port may be charged at a rate to be determined by the [1][* *] Government and not exceeding the highest rate of port-dues leviable at any port of the group to which such port belongs, and an addition of one-half of such highest rate.	Once in thirty days at the same port : provided that no coasting vessel or coasting steamer, having paid port-dues at any port, shall be chargeable with port-dues again at the same or any other port of the same group within thirty days.
2. Vesava ..			
3. Manori ..			
4. Utan ..			
5. Bassein ..			
6. Bahivadi ..			
7. Kalyan ..			
8. Thana ..			
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10. Trombay ..			
11. Panwel ..			
12. Mora ..			
13. Karanja ..			
14. Thal ..			
15. Alibag ..			
16. Revdanda ..			
17. Mandad ..			
18. Bankot ..			
19. Kelshi ..			
20. Harnai ..			
21. Dabhoi ..			
22. Barya .			
23. Jaygad ..			
24. Varavda ..			
25. Ratnagiri ..			
26. Purangad ..			
27. Jayatapur ..			
28. Vijaydurg ..			
29. Devgad ..			
30. Achra ..			
31. Malwan ..			
32. Nivti ..			
33. Vengurla ..			
34. Redi ..			
35. Kirnapani ..			
36. Tilmati ..			
37. Shirashivgad; ..			
38. Karwar, including Baitkhol.			
39. Bingi ..			
40. Chendya ..			
41. Belikeri ..			
42. Ankola ..			
43. Gangavali ..			
44. Tadri ..			
45. Kumpta ..			
46. Honawar ..			
47. Manki ..			
48. Murdeshwar ..			
49. Shirali ..			
50. Bhatk ..			

LEG. REF.

[1] Word 'Local' omitted by the A.O., 1937.

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4
Karachi ..	Sea-going vessels of ten tons and upwards (except fishing-boats).	Not exceeding four annas per ton.	Once in three months.
	[1][Tug-boats, ferry-boats, and river-boats, whether propelled by steam or other mechanical means.]	Ditto.	Once between the 1st January and the 30th June and once between the 1st July and the 31st December, in each year.
[2][* * *	*	*	* *]

[*Part IV.—Burma*] *Rep, by A,O,,* 1937.

PART V —EASTERN BENGAL AND ASSAM.

Name of port.	Vessels chargeable.	Rate of port-dues,	Due how often chargeable in respect of same vessel
1	2	3	4
Chittagong ..	Sea-going vessels of ten tons and upwards, not being ballam-boats.	Not exceeding four and a half annas per ton.	[3][Whenever the vessel enters the port, except in the case of mail steamers coasting vessels, and vessels engaged in trade exclusively between India and Burma, which shall not be chargeable more than once in sixty days].
	Tug-steamers and river steamers.	Not exceeding four and a half annas per ton.	Once between the 1st January and the 30th June and once between the 1st July and the 31st December, in each year.
	Ballam boats.	Not exceeding one anna per ton.	Whenever the vessel enters the port.

LEG. REF.

1 Substituted by Notification of the Government of Bombay in the Marine Department, No. 459, dated 13th July, 1923 for "Tug-steamers and river-steamers".

2 Entries relating to Aden omitted by A. O., 1937.

3 Substituted by Notification of the Government of Bengal in the Department of Commerce and Labour, No. 17 Mne., dated 14th August, 1937, for the original entry.

THE SECOND SCHEDULE.

ENACTMENTS REPEALED.

Rep by the Repealing Act (I of 1938), S. 2.

THE MADRAS INDIAN PORTS (AMENDMENT) ACT, 1925.

ACT No. I OF 1926.

[12*th January*, 1926.

An Act to amend the Indian Ports Act, 1908, in its application to the Presidency of Madras.

WHEREAS it is expedient to amend the Indian Ports Act, 1908, in its application to the Presidency of Madras, and whereas the previous sanction of the Governor-General has been obtained to the passing of this Act; It is hereby enacted as follows:—

Preamble.

Short title.

1. This Act may be called THE "MADRAS INDIAN PORTS (AMENDMENT) ACT, 1925."

Amendment of Part II of the First Schedule of Act XV of 1908.

2. For clause (*a*) of Explanation 1 to Part II of the First Schedule to the Indian Ports Act, 1908, the following clause shall substituted, namely,—

"Ship" means a vessel propelled solely by wind power and "steamer" any vessel other than a ship

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THE INDIAN POST OFFICE ACT (VI OF 1898),

Year.	No	Short title	Amendment
1898	VI	The Indian Post Office Act, 1898.	Repealed in part, XII of 1898, S. 18; X of 1914. Amended, II of 190 ; III of 1912; XIV of 1914; VI of 1921; XV of 1921, XII of 1922 S 4; XIV of 19.2; The Indian Finance Act 19.4; XVI of 19 4: XIII of 19.5; XIX of 1926, V of 1927; V of 19 8, VI of 1929 II of 1930, XV of 1930. *See* the Indian Finance Acts, 1931; VII of 19 3, IX of 1934: V of 1935 and Finance Acts 19 6 to 1946. *See* Acts, XV of 1940; VII of 1941; VIII of 1943.

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THE INDIAN POST OFFICE ACT (VI OF 1891) [1]

[22*nd March*, 1898.

An Act to consolidate and amend the law relating to the Post Office in India.

WHEREAS it is expedient to consolidate and amend the law relating to the Post Office in India; It is hereby enacted as follows:—

CHAPTER I.
PRELIMINARY.

Short title, extent, application and commencement.

1. (1) This Act may be called THE INDIAN POST OFFICE ACT, 1898.

(2) It extends to the whole of British India, inclusive of [2][* * * * *], British Baluchistan, the Sonthal Parganas and the Parganas of Spiti; and it applies also to—

(*a*) all Native Indians subjects of Her Majesty in any place without and beyond British India;

(*b*) all other British subjects within the territories of any Native Prince or Chief in India; and

(*c*) all servants of the Queen, whether British subjects or not, within the territories of any Native Prince or Chief in India.

(3) It shall come into force on the first day of July, 1898.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) the expression "Director-General" means the Director-General of [3][Posts and Telegraphs];

(*b*) the expression "inland," used in relation to a postal article, means—

(i) posted in British India and addressed to any place in British India or to any place for which a Post Office is established by the [4][Central Government or the Crown Representative] beyond the limits of British India; or

(ii) posted at any Post Office established by the [4][Central Government or the Crown Representative] beyond the limits of British India and addressed to any place for which any such Post Office is established or to any place in British India:

[5][Provided that the expression "inland" shall not apply to any class of postal articles which may be specified in this behalf by the Central Government by notification in the Official Gazette, when posted in or at or addressed to any places or post offices which may be described in such notification;]

(*c*) the expression "mail bag" includes a bag, box, parcel or any other envelope or covering in which postal articles in course of transmission by post

LEG. REF.

1 For statement of Objects and Reasons, *see* Gazette of India, 1897, Pat. V, p. 385; for Report of the Select Committee, *see ibid.* 1898, Pt. V., p. 211; for Proceedings in Council *see ibid.*, 1897, Pt. VI, p. 249; *ibid.*, 1898, Pt. VI, pp. 23, 99 and 285 to 285.

2 Repealed by the Burma Laws Act (XIII of 1898).

3 Substituted for he words 'the Post Office of India' by Act XIV of 1914.

4 Substituted for 'Governor-General in Council' by A.O., 1937.

5 Added by Act II of 1903, sec. 2.

are conveyed, whether it does or does not contain any such article;

(*d*) the expression "mail ship" means a ship employed for carrying mails, pursuant to contract or continuing arrangement, by the Central Government or Her Majesty's Government or the Government of any British possession or foreign country:

(*e*) the expression "officer of the Post Office" includes any person employed in any business of the Post Office or on behalf of the Post Office;

(*f*) the expression "postage" means the duty chargeable for the transmission by post of postal articles;

(*g*) the expression "postage stamp" means any stamp provided by the Central Government for denoting postage or other fees or sums payable in respect of postal articles under this Act, and includes adhesive postage stamps and stamps printed, embossed, impressed or otherwise indicated on any envelope, wrapper, post card or other article;

(*h*) the expression "post office" includes every house, building, room, carriage or place used for the purposes of the Post Office, and every letter-box provided by the Post Office for the reception of postal articles;

(*i*) the expression "postal article" includes a letter, postcard, newspaper, book, pattern or sample packet, parcel and every article or thing transmissible by post;

(*j*) the expression "Postmaster-General" includes a Deputy Postmaster-General or other officer exercising the powers of a Postmaster-General; and

(*k*) the expression "the Post Office" means the department [1][established for the purpose of carrying the provisions of this Act into effect and] presided over by the Director-General.

Meanings of "in course of transmission by post" and "delivery."

3. For the purposes of this Act,—

(*a*) a postal article shall be deemed to be in course of transmission by post from the time of its being delivered to a post office to the time of its being delivered to the addressee or of its being returned to the sender or otherwise disposed of under Chapter VII;

(*b*) the delivery of a postal article of any description to a postman or other person authorized to receive postal articles of that description for the post shall be deemed to be a delivery to a post office, and

(*c*) the delivery of a postal article at the house or office of the addressee, or to the addressee or his servant or agent or other person considered to be authorized to receive the article according to the usual manner of delivering postal articles to the addressee, shall be deemed to be delivery to the addressee.

CHAPTER II.

PRIVILEGE AND PROTECTION OF THE GOVERNMENT.

Exclusive privilege of conveying letters reserved to the Government.

4. (1) Wherever within British India posts or postal communications are established by the Central Government, the Central Government shall have the exclusive privilege of conveying by post, form one place to another, all letters, except in the following cases, and shall also have the exclusive privilege of performing all the incidental services of receiving, collecting, sending, despatching, and delivering all letters, except in the following cases. that is to say:—

(*a*) letters sent by a private friend in his way, journey or travel, to be delivered by him to the person, to whom they are directed, without hire, reward or other profit or advantage for receiving, carrying or delivering them;

(*b*) letters solely concerning the affairs of the sender or receiver thereof, sent by a messenger on purpose; and

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LEG. REF.

[1] Added by Act XIV of 1914, sec. 3.

SEC. 4.—As to when a postal article is to be deemed to be "in course of transmission by post," *see* 1930 Lah. 460=129 I.C. 760.

(*c*) letters solely concerning goods or property, sent either by sea or by land to be delivered with the goods or property which the letters concern, without hire, reward or other profit or advantage for receiving, carrying or delivering them:

Provided that nothing in the section shall authorize any person to make a collection of letters excepted as aforesaid for the purpose of sending them otherwise than by post.

(2) For the purposes of this section and section 5, the expression "letters" includes postcards.

Certain persons expressly forbidden to convey letters.

5. Wherever within British India posts or postal communications are established by the Central Government, the following persons are expressly forbidden to collect, carry, tender or deliver letters, or to receive letters for the purpose of carrying or delivering them, although they obtain no hire, reward or other profit or advantage for so doing, that is to say:—

(*a*) common carriers of passengers or goods, and their servants or agents, except as regards letters solely concerning goods in their carts or carriages; and

(*b*) owners and masters of vessels sailing or passing on any river or canal in British India, or between any ports or places in British India, and their servants or agents, except as regards letters solely concerning goods on board, and except as regards postal articles received for conveyance under Chapter VIII.

Exemption from liability for loss, misdelivery, delay or damage.

6. [1][The Crown] shall not incur any liability by reason of the loss, misdelivery or delay of, or damage to, any postal article in course of transmission by post, except in so far as such liability may in express terms be undertaken by the Central Government as hereinafter provided; and no officer of the Post Office shall incur any liability by reason of any such loss, misdelivery, delay or damage, unless he has caused the same fraudulently or by his wilful act or default.

CHAPTER III.

POSTAGE.

Power to fix rates of inland postage.

7. (1) The Central Government may, by notification in the Official Gazette, fix the rates of postage and other sums to be charged in respect of postal articles sent by the inland post under this Act, and may make rules as to the scale of weights, terms and conditions subject to which the rates so fixed shall be charged:

Provided that the highest rate of postage, when prepaid, shall not exceed the rate set forth for each class of postal articles in the first schedule.

(2) Unless and until such notification as aforesaid is issued, the rates set forth in the said schedule shall be the rates chargeable under this Act.

(3) The Central Government may, by notification in the Official Gazette, declare what packets may be sent by the inland post as book, pattern and sample packets within the meaning of this Act.

Power to make rules as to payment of postage and fees in certain cases.

8. The Central Government may, by rule,—

(*a*) require the prepayment of postage on inland postal articles or any class of Inland postal articles, and prescribe the manner in which prepayment shall be made;

LEG. REF.

1 Substituted for 'Secretary of State for India in Council' by A.O., 1937.

SEC. 6.—"Default" is used in the sense of failure in duty, care, etc., as the cause of some untoward event. 1931 A.L.J. 961 = 1932 A. 139. Goods sent by value-payable parcel—Destruction of label—Sale by dead letter office—Liability of Post Office. 79 I. C. 334=46 A. 455=1924 A. 692 (1). On this section, *see also* 1 M.H.C.R. 200.

(*b*) prescribe the postage to be charged on inland postal articles when the postage is not prepaid or is insufficiently prepaid;

(*c*) provide for the redirection of postal articles and the transmission by post of articles so redirected, either free of charge or subject to such further charge as may be specified in the rules; and

(*d*) prescribe the fees to be charged for the "express delivery" of postal articles, in addition to, or instead of, any other postage chargeable thereon under this Act.

Explanation.—"Express delivery" means delivery by a special messenger or conveyance.

Power to make rules as to registered newspapers.

9. (1) The Central Government may make rules providing for the registration of newspapers for transmission by inland post as registered newspapers.

(2) For the purpose of such registration, every publication, consisting wholly or in great part of political or other news, or of articles relating thereto, or to other current topics, with or without advertisements, shal be deemed a newspaper, subject to the following conditions, namely:—

(*a*) that it is published in numbers at intervals of not more than thirty-one days; and

(*b*) that it has a *bona fide* list of subscribers.

(3) An extra or supplement to a newspaper, bearing the same date as the newspaper and transmitted therewith, shall be deemed to be part of the newspaper:

Provided that no such extra or supplement shall be so deemed unless it consists wholly or in great part of matter like that of the newspaper and has the title and date of publication of the newspaper printed at the top of each page.

Explanation.—Nothing in this secition or in the rules thereunder shall be construed to render it compulsory to send newspapers by the inland post.

Power to declare rates of foreign postage.

10. (1) Where arrangements are in force with the United Kingdom, or with any British possession or foreign country, for the transmission by post of postal articles between British India and the United Kingdom or such possession or country, the Central Government may, in conformity with the provisions of such arrangements, declare what postage rates and other sums shall be charged in respect of such postal articles, and may make rules as to the scale of weight, terms and conditions subject to which the rates so declared shall be charged.

(2) Unless and until such declaration as aforesaid is made, the existing rates and regulations shall continue in force.

Liability for payment of postage.

11. (1) The addressee of a postal article on which postage or any other sum chargeable under this Act is due, shall be bound to pay the postage or sum so chargeable on his accepting delivery of the postal article, unless he forthwith returns it unopened:

Provided that, if any such postal article appears to the satisfaction of the Postmaster-General to have been maliciously sent for the purpose of annoying the addressee, he may remit the postage.

(2) If any postal article on which postage or any other sum chargeable under this Act is due, is refused or returned as aforesaid, or if the addressee is dead or cannot be found, then the sender shall be bound to pay the postage or sum due thereon under this Act.

Recovery of postage and other sums due in respect of postal articles.

12. If any person refuses to pay any postage or other sum due from him under this Act in respect of any postal article, the sum so due may, on application made by an officer of the Post Office authorised in this behalf by the written order of the Postmaster-General, be recovered for the use of the Post Office from the person so refusing, as if it were a fine imposed under this Act by any Magistrate having jurisdiction where that person may for the time being be resident; and the Postmaster-General may further direct that any other postal article, not being on Her Majesty's Service, addressed to that person shall be withheld from him until the sum so due is paid or recovered as aforesaid.

Customs duty paid by the Post Office to be recoverable as postage.

13. When a postal article, on which any duty of customs is payable, has been received by post from any place beyond the limits of British India, and the duty has been paid by the postal authorities at any customs port or elsewhere, the amount of the duty shall be recoverable as if it were postage due under this Act.

Post Office marks *prima facie* evidence of certain facts denoted.

14. In every proceeding for the recovery of any postage or other sum alleged to be due under this Act in respect of a postal article,—

(*a*) the production of the postal article, having thereon the official mark of the Post Office denoting that the article has been refused, or that the addressee is dead or cannot be found, shall be *prima facie* evidence of the fact so denoted, and

(*b*) the person from whom the postal article purports to have come shall, until the contrary is proved, be deemed to be the sender thereof.

Official mark to be evidence of amount of postage.

15. The official mark on a postal article denoting that any postage or other sum is due in respect thereof to the Post Office of British India or to the Post Office of the United Kingdom or of any British possession or foreign country, shall be *prima facie* evidence that the sum denoted as aforesaid is so due.

CHAPTER IV.

POSTAGE STAMPS.

Provision of postage stamps and power to make rules as to them.

16. (1) The Central Government shall cause postage stamps to be provided of such kinds and denoting such values as [1][it] may think necessary for the purposes of this Act.

(2) The Central Government may make rules as to the supply, sale and use of postage stamps. . .

(3) In particular and without prejudice to the generality of the foregoing power, such rules may—

(*a*) fix the price at which postage stamps shall be sold;

(*d*) declare the classes of postal articles in respect of which postage stamps shall be used for the payment of postage or other sums chargeable under this Act;

(*c*) prescribe the conditions with regard to perforation, defacement and all other matters subject to which postage stamps may be accepted or refused in payment of postage or other sums;

(*d*) regulate the custody, supply and sale of postage stamps;

(*e*) declare the persons by whom and the terms and conditions subject to which postage stamps may be sold; and

(*f*) prescribe the duties and remuneration of persons selling postage stamps.

LEG. REF.

[1] Substituted by A.O., 1937.

[1][17. (1)] Postage stamps provided under section 16 shall be deemed to be stamps issued by Government for the purpose of revenue within the meaning of the Indian Penal Code, and, subject to the other provisions of this Act, shall be used for the prepayment of postage or other sums chargeable under this Act in respect of postal articles, except where the Central Government directs that prepayment shall be made in some othar way.

Postage stamps to be deemed to be stamps for the purpose of revenue.

[1][(2) Where the Central Government has directed that prepayment of postage or other sums chargeable under this Act in respect of postal articles may be made by prepaying the value denoted by the impressions of stamping machines issued under [2][its] authority, the impression of any such machine shall likewise be deemed to be a stamp issued by Government for the purpose of revenue, within the meaning of the Indian Penal Code.]

CHAPTER V.

CONDITIONS OF TRANSMISSION OF POSTAL ARTICLES.

18. (1) The Central Government may, by rule, provide for the redelivery to sender, without reference to the consent of the addressee and subject to such conditions (if any), as may be deemed fit, of any postal article in course of transmission by post.

Redeliyery to sender of postal article in course of transmission by post.

(2) Save as provided by any rules that may be made under sub-section (1), the sender shall not be entitled to re-call a postal article in course of transmission by post.

19. (1) Except as otherwise provided by rule and subject to such conditions as may be prescribed thereby, no person shall send by post any explosive, dangerous, filthy, noxious or deleterious substance, any sharp instrument not properly protected, or any living creature which is either noxious or likely to injure postal articles in course of transmission by post or any officer of the Post Office.

Transmission by post or anything injurious prohibited.

(2) No person shall send by post any article or thing which is likely to injure postal articles in course of transmission by post or any officer of the Post Office.

Transmission by post of anything indecent, etc., prohibited.

20. No person shall send by post—

(*a*) any indecent or obscene printing, painting, photograph, lithograph, engraving, book or card, or only other indecent or obscene article, or

(*b*) any postal article having thereon, or on the cover thereof, any words, marks or designs of an indecent, obscene, seditious, surrilous, threatening or grossly offensive character.

Power to make rules as to transmission by post of postal articles.

21. [3][(1) The Central Government may make rules as to the transmission of articles by post.

(2) In particular and without prejudice to the generality of the foregoing power such rules may—

(*a*) specify articles which may not be transmitted by post;

(*b*) prescribe conditions on which articles may be transmitted by post;

LEG. REF.

[1] S. 17 re-numbered as S. 17 (1) and sub-s. (2) added by Act XVI of 1924, S. 2.

[2] Substituted by A.O., 1937.

[3] Substituted by Act III of 1912, S. 2.

SEC. 19: SCOPE AND APPLICATION OF SECTION.—*See* 37 A. 289=13 A.L.J. 256=28 I.C. 655 (sending cocaine by post); 32 C. 247 (sending obscene matter in post card). On this section, *see also* 28 A. 100; 3 A. 837; 20 B. 193.

(*c*) provide for the detention and disposal of articles in course of transmission by post in contravention of rules made under clause (*a*) or clause (*b*);

(*d*) provide for the granting of receipts for, and the granting and obtaining of certificates of, posting and delivery of postal articles and the sums to be paid, in addition to any other postage, for such receipts and certificates; and

(*e*) regulate covers, forms, dimensions, maximum weights, and enclosures, and the use of postal articles, other than letters, for making communications.]

(3) Postal articles shall be posted and delivered at such times and in such manner as the Director-General may, by order, from time to time appoint.

Power to postpone despatch, or delivery of certain postal articles.

22 (1) Where the despatch or delivery from a post office of letters would be delayed by the despatch or delivery therefrom at the same time of book, pattern or sample packets and parcels, or any of them, such packets or parcels, or any of them, may, subject to such rules as the Central Government may make in this behalf, be detained in the Post Office so long as may be necessary.

(2) Where separate parcel posts are established, parcels may be forwarded and conveyed by them, being detained, if necessary, in the Post Office for the purpose.

Power to deal with postal articles posted in contravention of Act.

23. (1) Any postal article sent by post in contravention of any of the provisions of this Act may be detained and either returned to the sender or forwarded to destination, in each case charged with such additional postage (if any) as the Central Government may, by rule, direct.

(2) Any officer in charge of a Post Office or authorized by the Postmaster-General in this behalf may open or unfasten any newspaper or any book, pattern or sample packet, in course of transmission by post, which he suspects to have been sent by post in contravention of [1][section 20, clause (*a*), or of] section 21 or of any of the provisions of this Act relating to postage.

(3) Notwithstanding anything in sub-section (1)—

(*a*) any postal article sent by post in contravention of the provisions of section 19 may, under the authority of the Postmaster-General, if necessary, be opened and destroyed; and

[2][(*b*) any postal article sent by post in contravention of the provisions of section 20 may be disposed of in such manner as the Central Government may by rule direct.]

Power to deal with postal articles containing goods contraband or liable to duty.

24. [2][Except as otherwise provided in this Act, where a postal article suspected to contain any goods of which the import by post or the transmission by post is prohibited by or under any enactment for the time being in force,] or anything liable to duty, is received for delivery at a post office, the officer in charge of the post office shall send a notice in writing to the addressee inviting him to attend, either in person or by agent, within a specified time at the post office, and shall in the presence of the addressee or his agent, or if the addressee or his agent fails to attend as aforesaid then in his absence, open and examine the postal article:

Provided, first, that, if the Director-General so directs in the case of any post office or class of post offices, the officer in charge of the Post Office shall

LEG. REF.

[1] Inserted by Act III of 1912.

[2] Substituted by Act III of 1912.

call in two respectable persons as witnesses before he opens a postal article in the absence of the addressee or his agent:

Provided, secondly, that in all cases a postal article after being opened under this section, shall be delivered to the addressee, unless it is required for the purpose of any further proceeding under this or any other law or enactment for the time being in force, and that the opening of the postal article and the circumstances connected therewith shall be immediately reported to the Postmaster-General.

[1] * * * * * *

[2][124-A. The Central Government may, by general or special order, empower any officer of the Post Office, specified in such order, to deliver any postal article, received from beyond the limits of British India and suspected to contain anything liable to duty, to such Customs authority as may be specified in the said order, and such Customs authority shall deal with such article in accordance with the provisions of the Sea Customs Act, 1878, or of any other law for the time being in force.]

Power to deliver such articles to Customs authority.

25. Where a notification has been published under section 19 of the Sea Customs Act, 1878, in respect of any goods of any specified description, [3][or where the import or export into or from British India of goods of any specified description has been prohibited or restricted by or under any other enactment for the time being in force] any officer of the Post Office empowered in this behalf by the Central Government may search, or cause search to be made, for any such goods in course of transmission by post, and shall deliver [4][all postal articles reasonably believed or found to contain such goods] to such officer as the Central Government may appoint in this behalf, and such goods may be disposed of in such manner as the Central Government may direct.

Power to intercept notified goods during transmission by Post.

[5][In carrying out any such search, such officer of the Post Office may open or unfasten, or cause to be opened or unfastened, any newspaper or any book, pattern or sample packet in course of transmission by post.]

26. (1) On the occurrence of any public emergency, or in the interest of the public safety or tranquillity, the Central Government, or a Provincial Government, or any officer specially authorized in this behalf by the [6][Central or the Provincial Government], may, by order in writing, direct that any postal article or class or description of postal articles in course of transmission by post shall be intercepted or detained or [4][shall be disposed of in such manner as the authority issuing the order may direct.]

Power to intercept postal articles for public good.

(2) If any doubt arises as to the existence of a public emergency or as to whether any act done under sub-section (1) was in the interest of the public safety or tranquillity, a certificate [7][of the Central Government or, as the case may be, of the Provincial Government] shall be conclusive proof on the point.

Power to deal with postal articles from abroad bearing fictitious or previously used stamps.

27. (1) Where a postal article is received by post from any place beyond the limits of British India—

(*a*) bearing a fictitious postage stamp, that is to say, any facsimile or imitation or representation of a postage stamp, or

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LEG. REF.

[1] Last proviso omitted by Act XV of 1921.
[2] Inserted by Act XV of 1921.
[3] Inserted by Act II of 1930, s. 40 and Sch. II.
[4] Substituted by Act III of 1912.
[5] Inserted by Act III of 1912
[6] Substituted by the A.O., 1937 for "Governor-General in Council."
[7] Substituted for 'signed by a Secretary to the Government of India or to the Local Government' by the A.O., 1937..

(*b*) purporting to be prepaid with any postage stamp which has been previously used to repay any other postal article,

the officer in charge of the post office at which the postal article is received, shall send a notice to the addressee inviting him to attend, either in person or by agent, within a specified time at the post office to receive delivery of the postal article.

(2) If the addressee or his agent attends at the post office within the time specified in the notice and consents to make known to the officer in charge of the post office the name and address of the sender of the postal article and to redeliver to the officer aforesaid the portion of the postal article which bears the address and the fictitious or previously used postage stamp, or, if the postal article is inseparable from the stamp, the entire postal article, the postal article shall be delivered to the addressee or his agent

(3) If the addressee or his agent fails to attend at the post office within the time specified in the notice, or, having attended within that time, refuses to make known the name and address of the sender or to redeliver the postal article or portion thereof as required by sub-section (2), the postal article shall not be delivered to him, but shall be disposed of in such manner as the Central Government may direct.

Explanation.—For the purposes of this section, the expression "postage stamp" includes any postage stamp for denoting any rate or duty of postage of any part of Her Majesty's dominions or of any [1][Indian] State, or foreign country [2][and the impression of any stamping machine provided or authorised for the like purpose by or under the authority of the Government of such part, State or country.]

Prohibition of transmission by post of certain newspapers.

[3][**27-A.** No newspaper printed and published in British India without conforming to the rules laid down in the Press and Registration of Books Act, 1867, shall be transmitted by post.

Power to detain newspapers and other articles being transmitted by post.

27-B. (1) Any Officer of the Post Office authorised by the Post-Master General in this behalf may detain any postal article in course of transmission by post which he suspects to contain—

(*a*) (i) any newspaper or book as defined in the Press and Registration of Books Act, 1867; or

(ii) any document, containing any seditious matter, that is to say, any matter the publication of which is punishable under section 124-A of the Indian Penal Code; or

(*b*) any newspaper as defined in the Press and Registration of Books Act, 1867, edited, printed or published otherwise than in conformity with the rules laid down in that Act;

and shall deliver any postal article so detained to such officer as the Provincial Government may appoint in this behalf.

(2) Any Officer detaining any postal article under the provisions of sub-section (1) shall forthwith send by post to the addressee of such article notice of the fact of such detention.

(3) The Provincial Government shall cause the contents of any postal article detained under sub-section (1) to be examined, and, if it appears to the Provincial Government that the article contained any newspaper, book or other document, of the nature described in clause (*a*) or clause (*b*) of sub-section

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LEG. REF.

[1] Substituted for the word 'Native' by the A.O., 1937.

[2] The words "and the impression ..... country;" were inserted by Act XVI of 1924, S. 3.

[3] Ss. 27-A to 27-D were inserted by Act XIV of 1922.

(1), may pass such orders as to the disposal of the article and its contents as it may deem proper, and, if it does not so appear, shall release the article and its contents, unless the same be otherwise liable to seizure under any law for the time being in force:

Provided that any person interested in any article detained under the provisions of clause (*a*) of sub-section (1) may, within two months from the date of such detention, apply to the Provincial Government for release of the same and the Provincial Government shall consider such application and pass such orders thereon as it may deem to be proper:

Provided also that, if such application is rejected, the applicant may, within two months from the date of the order rejecting the application, apply to the High Court for release of the article and its contents on the ground that the article did not contain any newspaper, book or other document containing any seditious matter.

(4) In this section "document" includes also any painting, drawing or photograph, or other visible representation.

Procedure for disposal by High Court of applications for release of newspapers and articles so detained.

27-C. Every application made under the second proviso to sub-section (3) of section 27-B shall be heard and determined in the manner provided by sections 99-D to 99-F of the Code of Criminal Procedure, 1898, by a Special Bench of the High Court constituted in the manner provided by Section 99-C of that Code.

Jurisdiction barred.

27-D. No order passed or action taken under section 27-B shall be called in question in any Court otherwise than in accordance with the second proviso to sub-section (3) of that section.]

CHAPTER VI.

REGISTRATION, INSURANCE AND VALUE-PAYABLE POST.

Registration of postal articles.

28. The sender of a postal article may, subject to the other provisions of this Act, have the article registered at the Post Office at which it is posted, and require a receipt therefor; and the Central Government may, by notification in the Official Gazette, direct that, in addition to any postage chargeable under this Act, such further fee as may be fixed by the notification shall be paid on account of the registration of postal articles.

Power to make rules as to registration.

29. (1) The Central Government may make rules as to the registration of postal articles.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(*a*) declare in what cases registration shall be required;

(*b*) prescribe the manner in which the fees for registration shall be paid, and

(*c*) direct that twice the fee for registration shall be levied on the delivery of a postal article required to be registered on which the fee for registration has not been prepaid;

(3) Postal articles made over to the Post Office for the purpose of being registered shall be delivered, when registered, at such times and in such manner as the Director-General may, by order, from time to time appoint.

Insurance of postal articles.

30. The Central Government may, by notification in the Official Gazette direct—

(*a*) that any postal article may, subject to the other provisions of this Act, be insured at the Post Office at which it is posted, against the risk of loss or damage in course of transmission by post, and that a receipt therefor shall be granted to the person posting it; and

(*b*) that, in addition to any postage and fees for registration chargeable under this Act, such further fee as may be fixed by the notification shall be paid on account of insurance of postal articles.

Power to require insurance of postal articles.

31. The Central Government may, by notification in the Official Gazette declare in what cases insurance shall be required, and direct that any postal article containing anything required to be insured, which has been posted without being insured, shall be returned to the sender or shall be delivered to the addressee, subject to the payment of such special fee as may be fixed by the notification:

Provided that the levy of such special fee as aforesaid shall not impose any liability upon the [1][Central Government] or the Secretary of State] in respect of the postal article.

Power to make rules as to insurance.

32. (1) The Central Government may make rules as to the insurance of postal articles.

(2) In particular and without prejudice to the generality of the foregoing power such rules may—

(*a*) declare what classes of postal articles may be insured under section 30; and

(*b*) fix the limit of the amount for which postal articles may be insured;

(*c*) prescribe the manner in which the fees for insurance shall be paid.

(3) Postal articles made over to the Post Office for the purpose of being insured shall be delivered, when insured, at such places and times and in such manner as the Director-General may, by order, from time to time appoint.

Liability in respect of postal articles insured.

33. Subject to such conditions and restrictions as the Central Government may, by rule, prescribe, the [2][Central Government] shall be liable to pay compensation, not exceeding the amount for which a postal article has been insured, to the sender thereof for the loss of the postal article or its contents, or for any damage caused to it in course of transmission by post:

Provided that the compensation so payable shall in no case exceed the value of the article lost or the amount of the damage caused.

Transmission by post of value-payable postal articles.

34. The Central Government may, by notification in the Official Gazette direct that, subject to the other provisions of this Act and to the payment of fees at such rates as may be fixed by the notification, a sum of money specified in writing at the time of posting by the sender of a postal article shall be recoverable on the delivery thereof from the addressee, and that the sum, so recovered, shall be paid to the sender:

Provided that [3][neither the Central Government nor the Secretary of State shall[incur any liability in respect of the sum specified for recovery, unless and until that sum has been received from the addressee.

Explanation—Postal articles sent in accordance with the provisions of this section may be described as "value-payable" postal articles.

LEG. REF.

[1] Substituted for "Secretary of State for India in Council" by the A.O., 1937.

[2] Substituted by the A.O., 1937, for "Secretary of State for India in Council"

[3] Substituted by the A.O., 1937 for "the Secretary of State for India in Council shall not."

SEC. 34.—*See* 46 A. 455=1924 A. 692 under S 6, *supra*. 15 M. L. J. 226 (Liability ty of Post Office for not collecting money for value payable insured parcel).

SEC. 34 (Proviso).—*See* 15 M.L.J. 226 =28 M. 213.

Power to make rules as to value-payable postal articles.

35. (1) The Central Government may make rules as to the transmission by post of value-payable postal articles.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(*a*) declare what classes of postal articles may be sent as value-payable postal article;

(*b*) direct that no postal article shall be so sent unless the sender declares that it is sent in execution of a *bona fide* order received by him;

(*c*) limit the value to be recovered on the delivery of any value-payable postal article [*][1];

(*d*) prescribe the form of declaration to be made by the senders of value-payable postal articles, and the time and manner of the payment of fees;

[2][(*e*) provide for the retention and re-payment to the addressee in cases of fraud of money recovered on the delivery of any value-payable postal article; and

(*f*) prescribe the fees to be charged for inquiries into complaints regarding the delivery of or payment for value-payable postal articles.]

(3) Postal articles shall be made over to the Post Office for the purpose of being sent as "value-payable," and shall be delivered, when so sent, at such times and in such manner as the Director-General may, by order, from time to time appoint.

[3][(4) No suit or other legal proceeding shall be instituted against the [4][Central Government, the Secretary of State] or any officer of the Post Office in respect of anything done, or in good faith purporting to be done, under any rule made under clause (*e*) of sub-section (2).]

Power to give effect to arrangements with other countries.

36. (1) Where arrangements are in force with the United Kingdom, or with any British possession, [5][Indian] State or foreign country, for the transmission by post of registered insured or value-payable postal articles between British India and the United Kingdom or such possession State or country, the Central Government may make rules to give effect to such arrangements.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

(*a*) the form of declaration to be made by the senders of such postal articles as aforesaid; and

(*b*) the fees to be charged in respect thereof.

CHAPTER VII.

UNDELIVERED POSTAL ARTICLES.

Power to make rules as to disposal of undelivered postal articles.

37. (1) The Central Government may make rules as to the disposal of postal articles which for any reason cannot be delivered (hereinafter referred to as "undelivered postal articles").

(2) In particular and without prejudice to the generality of the foregoing power such rules may—

(*a*) prescribe the period during which undelivered postal articles at a post office shall remain in that office; and

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LEG. REF.

[1] The word "and" omitted by Act III of 1912.

[2] Inserted by Act III of 1912.

[3] Inserted by Act III of 1912.

[4] Substituted for 'the Secretary of State for India in Counncil' by the A.O., 1937.

[5] Suubstituted for 'Native' by the A.O. 1937.

SEC. 35.—*See* 33 M. 511=20 M.L.J. 402 and cases referred to therein. *See* same case as to the scope of rules and circulars under this Act.

(*b*) provide for the publication of lists of undelivered postal articles, or of any class of undelivered postal articles.

(3) Every undelivered postal article, after being detained at a post office for the period prescribed by rule under the foregoing provisions of this section, shall be either forwarded, free of further charge, to the post office, at which it was posted, for return to the sender, or sent to the office of the Postmaster-General.

Disposal of undelivered postal articles at office of Postmaster-General.

38. (1) Every postal article received at the office of the Postmaster-General under sub-section (3) of section 37 shall be dealt with as follows:—

(*a*) if practicable, it shall be re-directed and forwarded by post to the addressee; or,

(*b*) if it cannot be re-directed and forwarded as aforesaid, it shall be opened by some officer, appointed by the Postmaster-General in this behalf and bound to secrecy, in order to ascertain the name and address of the sender.

(2) If the name and address of the sender are so ascertained, it shall be returned by post to the sender, free of further charge or subject to such further charge as the Central Government may, by rule, direct.

Final disposal of undelivered postal articles.

39. Undelivered postal articles, which cannot be disposed of under the foregoing provisions, shall be detained in the office of the Postmaster-General for such further period (if any), and shall be dealt with in such manner, as the Central Government may, by rule, direct:

Provided that—

(*a*) letters and postcards shall be destroyed;

(*b*) money or saleable property, not being of a perishable nature, found in any undelivered postal article, shall be detained for a period of one year in the Office of the Postmaster-General, and, if on the expiration of that period no person has established his right thereto, shall, if money, be credited to the Post Office, and, if saleable property, be sold, the sale proceeds being credited to the Post Office.

CHAPTER VIII.

SHIP-LETTERS.

Duty of master of ship, departing from any port in British India and not being a mail ship, to convey mail bags.

40. The master of a ship, not being a mail ship, about to depart from any port in British India to any port within, or any port or place beyond, British India, shall receive on board any mail bag tendered to him by any officer of the Post Office for conveyance, granting a receipt therefor in such form as the Central Government may, by rule, prescribe, and shall, without delay, deliver the same at the port or place of destination.

Duty of master of ship arriving at any port in British India in respect of postal articles and mail bags on board.

41. (1) The master of a ship arriving at any port in British India shall without delay, cause every postal article or mail bag on board which is directed to that port and is within the exclusive privilege conferred on the Central Government by section 4, to be delivered either at the Post Office at that port or to some officer of the Post-Office authorized in this behalf by the Post-Master-General.

(2) If there is on board any postal article or mail bag which is directed to any other place within British India and is within the exclusive privilege aforesaid, the master shall, without delay, report the fact to the officer in charge

of the post office at the port of arrival and act according to the directions he may receive from such officer, and the receipt of such officer shall discharge him from all further responsibility in respect of the postal article or mail bag

Allowance of gratuities for conveyance of postal articles by ships other than mail ships.

42 The Central Government may, by notification in the Official Gazette declare what gratuities shall be allowed to masters of ships, not being mail ships, in respect of postal articles received by them for conveyance on behalf of the Post Office; and the master of a ship, not being a mail ship, about to leave any port in British India as aforesaid shall, if he receives on board a mail bag for conveyance, be entitled to demand and obtain immediately the amount of the gratuity payable under this section in respect of the mail bag and its contents.

CHAPTER IX.

MONEY ORDERS.

Power to maintain money order system and to make rules as to remittances thereby.

43. (1) The Central Government may provide for the remitting of small sums of money through the Post Office by means of money orders, and may make rules as to such money orders.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

(*a*) the limit of amount for which money orders may be issued;

(*b*) the period during which money orders shall remain current; and

(*c*) the rates of commission or the fees to be charged on money orders or in respect thereof.

Power for remitter to recall money order or alter name of payee.

44 (1) Subject to such conditions as the Central Government may, by rules made under section 43, prescribe in respect of the levy of additional rates of commission or fees or any other matters, a person remitting money through the Post Office by means of a money order may require that the amount of the order, if not paid to the payee, be repaid to him or be paid to such person other than the original payee as he may direct.

(2) If neither the payee nor the remitter of a money order can be found, and if within the period of one year from the date of the issue of the order no claim is made by such payee or remitter, the amount of such order shall not be claimable from the Government.

Power to provide for the issue of postal orders.

45. The Central Government may authorize the issue, in such form as may be suitable, of money orders, to be called postal orders or by such other designation as may be deemed appropriate, for certain fixed amounts, and may make rules as to the rates of commission to be charged thereon and the manner in which, and conditions subject to which, they may be issued, paid and cancelled:

Provided that no such order shall be issued for an amount in excess of ten rupees.

SEC. 44 (1).—Money remitted by money order through the Post Office does not cease to be the property of the remitter until it is actually paid to the remittee. 52 I.C. 925 =12 Bur.L.T. 105.

Power to give effect to arrangements with other countries.

46. (1) Where arrangements are in force with the United Kingdom or within any British possession, [Indian State][1] or foreign country, for the issue and payment through the Post Office of money orders between British India and the United Kingdom or such possession, State or country, the Central Government may make rules to give effect to such arrangements.

(2) In particular and without prejudice to the generality of the foregoing power such rules may prescribe—

(*a*) the manner in which, and the conditions subject to which, such orders may be issued and paid in British India; and

(*b*) the rates of commission to be charged thereon.

Recovery of money order paid to the wrong person.

47. If any person, without reasonable excuse, the burden of proving which shall lie on him, neglects or refuses to refund—

(*a*) any amount paid to him in respect of a money order by an officer of the Post Office in excess of what ought to have been paid to him in respect thereof, or

(*b*) the amount of a money order paid by an officer of the Post Office to him, instead of some other person to whom it ought to have been paid,

such amount shall be recoverable by an officer of the Post Office authorized by the Postmaster-General in this behalf from the person so neglecting or refusing as if it were an arrear of land-revenue due from him.

Exemption from liability in respect of money orders.

48. No suit or other legal proceeding shall be instituted against the [Crown][2] or any officer of the Post Office in respect of—

(*a*) anything done under any rules made by the Central Government under this Chapter; or

(*b*) the wrong payment of a money order caused by incorrect or incomplete information given by the remitter as to the name and address of the payee, provided that, as regards incomplete information, there was reasonable justification for accepting the information as a sufficient description for the purpose of identifying the payee; or

(*c*) the payment of any money order being refused or delayed by, or on account of, any accidental neglect, omission or mistake, by, or on the part of, an officer of the Post Office, or for any other cause whatsoever other than the fraud or wilful act or default of such officer; or

(*d*) any wrong payment of a money order after the expiration of one year from the date of the issue of the order; [3][or

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LEG. REF.

[1] Substituted by the A.O., 1937 for "Native State".

[2] Substituted "for Secretary of State for India in Council" by A.O., 1937.

[3] Added by Act III of 1912, S. 8.

SECS. 49 AND 50.—Subordinate Magistrate can commit for offence under S. 49. *See* 5 B.H.C. (Cr.) 36; 3 B.H.C. (Cr.) 8. There must be a fraudulent intention in the act of the accused before he can be convicted under the above section. 19 W.R. (Cr.) 4. Alternative charges under this Act and Penal Code are not legal. *See* 5 S.L.R. 10 I.C. 168=12 Cr.L.J. 224 (Sind).

SENTENCE.—Solitary confinement cannot be awarded as part of a sentence passed under this section. 24 P.R. 1879 (Cr.). Separate sentences for offences arising out of the same transaction are not proper. 2 Weir 454=1 M.H.C.R. 83.

ILLUSTRATIVE CASES.—A *postmaster absenting himself from the station* without giving notice is guilty of an offence. 15 M. 127=1 Weir 72. *See also* 1 Weir 860=14 M. 229. A person is punishable under S. 262, I.P. Code, for *using a postage stamp twice.* 5 C.P.L.R.4 3 (Cr.).

NON-TRACING OF ADDRESSEE—LIABILITY TO THE POST OFFICE.—Where the article sent was never lost in the course of transmission, but the label having been torn it was not possible to deliver it to the addressee, *held*, that S. 6 or S. 34 did not exempt the Post Office from liability. 79 I.C. 334=46 A. 455=1924 A. 692 (1).

DISCOVERY OF POSTAL ARTICLE OUTSIDE POST OFFICE—FINDER GIVING IT BACK TO POST MASTER IN COURSE OF TRANSMISSION

(*e*) any wrong payment or delay in payment of a money order beyond the limits of British India by an officer of any Post Office, not being one established by the Central Government].

CHAPTER X.

PENALTIES AND PROCEDURE.

Offences by Officers of the Post Office.

Penalty for misconduct of person employed to carry or deliver mail bags or postal articles.

49. Whoever, being employed to carry or deliver any mail bag or any postal article in course of transmission by post,—

(*a*) is in a state of intoxication while so employed, or

(*b*) is guilty of carelessness or other misconduct, whereby the safety of any such mail bag or postal article as aforesaid is endangered, or

(*c*) loiters or makes delay in the conveyance or delivery of any such mail bag or postal article as aforesaid, or

(*d*) does not use due care and diligence safely to convey or deliver any such mail bag or postal article as aforesaid,

shall be punishable with fine which may extend to fifty rupees.

Penalty for voluntary withdrawal from duty, without permission or notice, of person employed to carry or deliver mail bags or postal articles.

50. Whoever, being employed to carry or deliver any mail bag or any postal article in course of transmission by post, voluntarily withdraws from the duties of his office without permission or without having given one month's previous notice in writing, shall be punishable with imprisonment which may extend to one month, or with fine which may extend to fifty rupees, or with both.

M, a servant of *K*, having discovered a number of letters lying in a khola opposite a post office, handed them over to his master. One of the letters was addressed to *P* and *K* took it to the addressee who stated that the letter had never been delivered to him. The matter was reported to the Post Master *F*, who took possession of the letters saying that he would take necessary action in the matter. No action being taken by *F*, the matter was reported to the Post Master-General with the result that *F* was sent up for trial. The Magistrate framed two alternate charges against him, first under S. 52, Post Office Act and the other under S. 201, Penal Code. The Magistrate found *F* guilty only under S. 201. It was contended that the charge framed by the Magistrate was defective and prejudiced the accused, the alternate charge was illegal and contravened the provisions of S. 236, Cr.P. Code. *Held*, that the first charge was not defective, as the postal articles in question were "in course of transmission by post" according to S. 3, when they were made over to *F* by *K* and, therefore, the mere fact that the letters had been posted when *F* was not the Post Master of the Post Office was immaterial. The framing of the charge in the alternative under S. 201 did not contravene S. 236, Cr.P. Code. 1930 L. 460=129 I.C. 760.

SEC. 52.—The opening of a newspaper by a person employed in the Post Office and replacing it in its envelope, does not constitute an offence. 19 W.R. (Cr.) 4. Secreting two letters to give to the delivery peon and share with him the bearing postage. 14 M. 229=1 Weir 860. A branch Post Master who was also a dealer in goods opened an envelope containing a railway receipt addressed to him and took delivery of goods but he showed in the books of the Post Office that the letter was not delivered owing to the absence of the addressee. Sometime after he paid the money due to the Post Office and entered delivery of the letter. *Held*, that the Post Master was liable to be convicted under S. 52. 8 L. 662=1928 L. 92=109 I.C. 236. For an offence under S. 52 some contents should be extracted from the parcel and not merely examined. 1938 M.W.N. 962=1939 Mad. 283.

SECS. 52 AND 53.—The respondent, a postman, was charged by the police under S. 52 for secreting two postal articles in course of transmission by post and was committed for trial by the Court of Session. There was no complaint by order or authority from the Director-General of Posts and Telegraphs or Post Master-General. A preliminary objection was taken that the acts also constituted an offence under S. 53 of the Act of detaining postal articles, which under S. 72 of the Act could not be taken cognizance of without such complaint. *Held*, that the offence under S. 52 could be taken cognizance of without any complaint and the commitment was legal. The fact that the acts also constituted a minor offence under S. 53 was no bar to the trial of the offence

Penalty for making false entry in register kept by person employed to carry or deliver postal articles.

51. Whoever, being employed to carry or deliver any postal article in course of transmission by post and required while so employed to keep any register makes, or causes or suffers to be made, any false entry in the register with intent to induce the belief that he has visited a place, or delivered a postal article, which he has not visited or delivered, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one hundred rupees, or with both.

Penalty for theft, dishonest misappropriation, secretion, destruction, or throwing away, of postal articles.

52. Whoever, being an officer of the Postal Office, commits theft in respect of or dishonestly misappropriates, or, for any purpose whatsoever, secretes, destroys or throws away, any postal article in course of transmission by post or anything contained therein, shall be punishable with imprisonment for a term which may extend to seven years, and shall also be punishable with fine.

Penalty for opening, detaining or delaying postal articles.

53. Whoever, being an officer of the Post Office, contrary to his duty, opens, or causes or suffers to be opened, any postal article in course of transmission by post, or wilfully detains or delays, or causes or suffers to be detained or delayed, any such postal article, shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both:

Provided that nothing in this section shall extend to the opening, detaining or delaying of any postal article under the authority of this Act or in obedience to the order in writing of the Central Government or the direction of a competent Court.

Penalty for fraud in connection with official marks and for receipt of excess postage.

54. Whoever, being an officer of the Post Office,—

(*a*) fraudulently puts any wrong official mark on a postal article, or

(*b*) fraudulently alters, removes or causes to disappear any official mark which is on a postal article, or,

(*c*) being entrusted with the delivery of any postal article, knowingly demands or receives any sum of money in respect of the postage thereof which is not chargeable under this Act,

shall be punishable with imprisonment for a term which may extend to two years, and shall also be punishable with fine.

55. Whoever, being an officer of the Post Office entrusted with the preparing

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under S. 52 of the Act. 53 L.W. 70=(1941) 1 M.L.J. 44=1941 M. 392=I.L.R. (1941) M. 345.

SENTENCE.—Where a Sub-Post Master of 13 years' service taking possession of the V.P.P. cover addressed to him and also of the railway receipt, obtained delivery of the goods, but in order to put off payment manipulated the register maintained in the Post Office, sentence of one year's rigorous imprisonment and a fine of Rs. 100 was adequate punishment. 52 Mad. 534=1929 Mad. 447 =56 M.L.J. 551.

EVIDENCE.—Statements made by the postman in course of departmental enquiry are not good evidence. 26 I.C. 307=16 Cr.L.J. 3. Conviction not to be based on mere suspicion. On this section, *see also* 2 Weir 454 =1M.H.C.R. 83.

SEC. 53.—*See* 19 W.R. (Cr.) 4; 5 B.H. C. (Cr.) 36, *supra* 1 Weir 72; *ibid;* 862=16 M. 443 ("Prepare," meaning of)

SEC. 55.—*See* 1 Weir 862.

SANCTION CAN BE OBTAINED AFTER COGNIZANCE OF THE OFFENCE.—Although Sec. 72 requires sanction before a postal employee can be prosecuted under S. 55 still as long as sanction is obtained, it does not matter whether it is obtained before the Court takes cognizance of the offence or not. 52 Mad. 534=30 Cr.L.J. 929=1929 Mad. 447=56 M.L.J. 551.

Penalty for fraudulently preparing, altering, secreting or destroying Post Office documents.

or keeping of any document, fraudulently prepares the document incorrectly, or alters or secretes or destroys the document, shall be punishable with imprisonment for a term which may extend to two years, and shall also be punishable with fine.

Penalty for fraudulently sending unpaid postal articles.

56. Whoever, being an officer of the Post Office, sends by post, or puts into any mail bag, any postal article upon which postage has not been paid or charged in the manner prescribed by this Act, intending thereby to defraud the Government of the postage on such postal article, shall be punishable with imprisonment for a term which may extend to two years, and shall also be punishable with fine.

Punishment of offences committed in India outside British India.

57. (1) Whoever, being an officer of the Post Office employed in any place in India beyond the limits of British India in which posts are established by the [1][Central Government or the Crown Representative], or being appointed to sell postage stamps in any such place, commits therein an offence punishable under this Act, shall be punishable either in the place where the offence was committed by any Court or officer duly empowered by the [1][Central Government or the Crown Representative] to take cognizance of offences committed in that place, or in any part of British India by any Court of competent jurisdiction as if the offence had been committed in that part.

(2) The provisions of section 188 of the Code of Criminal Procedure, 1898, shall not apply to any offence referred to in this section.

Other Offences.

Penalty for contravention of section 4.

58. (1) Whoever—

(*a*) conveys, otherwise than by post, a letter within the exclusive privilege conferred on the Central Government by section 4, or

(*b*) performs any service incidental to conveying, otherwise than by post, any letter within the exclusive privilege aforesaid, or

(*c*) sends, or tenders or delivers in order to be sent, otherwise than by post, a letter within the exclusive privilege aforesaid, or

(*d*) makes a collection of letters excepted from the exclusive privilege aforesaid for the purpose of sending them otherwise than by post,

shall be punishable with fine which may extend to fifty rupees for every such letter.

(2) Whoever, having already been convicted of an offence under this section, is again convicted thereunder, shall, on every such subsequent conviction, be punishable with fine which may extend to five hundred rupees.

Penalty for contravention of section 5.

59. (1) Whoever, in contravention of the provisions of section 5, carries, receives, tenders or delivers letters, or collects letters, shall be punishable with fine which may extend to fifty rupees for every such letter.

(2) Whoever, having already been convicted of an offence under

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LEG. REF.

[1] Substituted by A.O., 1937.

SEC. 60 (*a*).—*See* 13 A.L.J. 356=28 I. C. 655=37 A. 289, cited under S. 61, *infra*.

SEC. 61: ILLUSTRATIVE CASES.—The circulation, by post, of a postcard containing an advertisement regarding a patent medicine in language of an obscene character is an offence under S. 61. 32 C. 247=2 Cr.L.J. 201. A person who sends cocaine by post is not guilty under this section, though he may be convicted under S. 60. 13 A.L.J. 356=28 I.C. 655=37 A. 289. *See also* 10 C.W.N. 1029=4 C L.J. 170 (transmission of obscene article). "Indecent' means immodest and offending against the recognized standard of decency and suggestive of or tending to obscenity. 31 P.L.R. 129=1930 Lah. 552.

this section, is again convicted thereunder, shall, on every such subsequent conviction, be punishable with fine which may extend to five hundred rupees.

Penalty for breach of rules under section 16.

60. Whoever, being appointed to sell postage stamps,—

(*a*) takes from any purchaser for any postage stamp or quantity of postage stamps a price higher than that fixed by any rule made under section 16, sub-section (3), clause (*a*), shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both; or

(*b*) commits a breach of any other rule made under section 16, shall be punishable with fine which may extend to two hundred rupees.

Penalty for contravention of section 19 or 20.

61. (1) Whoever, in contravention of the provisions of section 19 or section 20, sends or tenders or makes over in order to be sent by post any postal article or anything, shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

(2) The detention in the Post Office of any postal article on the ground of its having been sent in contravention of the provisions of section 19 or section 20, shall not exempt the sender from any proceedings which might have been taken if the postal article had been delivered in due course of post.

Penalty for defiling or injuring post office letter-boxes.

62. Whoever places in or against any letter-box provided by the Post Office for the reception of postal articles any fire, match or light any explosive, dangerous, filthy, noxious or deleterious substance, or any fluid, or commits a nuisance in or against any such letter-box, or does anything likely to injure any such letter-box or its appurtenances or contents, shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

Penalty for affixing without authority thing to, or painting, tarring or disfiguring, post office or post office letter-box.

63. Whoever, without due authority, affixes any placard, advertisement, notice, list, document, board or other thing in or on or paints, tars or in any way disfigures any Post Office or any letter-box provided by the Post Office for the reception of postal articles, shall be punishable with fine which may extend to fifty rupees.

64. Whoever, being required by this Act to make a declaration in respect

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LEG. REF.

[1] Inserted by Act XV of 1921, S. 4.

SEC. 64: ORDER TO SEND A PARCEL BY VALUE-PAYABLE POST INSURED.—*Bona fides* of sender—Rule 133. 6 A.L.J. 481=9 Cr. L.J. 537=2 I.C. 228. An order to send the article cannot be inferred merely because the addressee did not refuse to receive nor return by post any of the previous issues sent to him, and did not make a protest even after he received intimation that he had been enrolled as a subscriber and that the issue in question would be sent by Value-Payable Post. 33 M. 511=20 M.L.J. 402=5 I.C. 738.

WANT OF SANCTION.—Where the accused was proved to have sent blank papers in an insured cover addressed to himself and claimed the value of the currency notes which he alleged had been enclosed in the cover and he was prosecuted for offences under S. 64 of the Post Office Act and Ss. 420 and 511, I.P. Code and convicted for the latter offences only, *held*, that it was doubtful if an offence under S. 64 of the Post Office Act had been committed, and that at any rate the prosecution under S. 64 was unsustainable for want of sanction under S. 72. *Held also*, that the conviction for the major offences under the Penal Code was perfectly valid. 9 P. 126=11 Pat.L.T. 224=31 Cr.L.J. 934=1930 P. 622.

Penalty for making false declaration.

of any postal article to be sent by post or the contents or value thereof, makes in his declaration any statement which he knows, or has reason to believe, to be false, or does not believe to be true, shall be punishable with fine which may extend to two hundred rupees, and, if the false declaration is made for the purpose of defrauding the Government, with fine which may extend to five hundred rupees.

Penalty for master of ship failing to comply with the provisions of section 40 or 41.

65. Whoever, being the master of a ship,—

(*a*) fails to comply with the provisions of section 40, or,

(*b*) without reasonable excuse, the burden of proving which shall lie on him, fails to deliver any postal article or mail bag or to comply with the directions of the officer in charge of the Post Office at a port of arrival, as required by section 41,

shall be punishable with fine which may extend to one hundred rupees.

Penalty for detention of letters on board vessel arriving in port.

66. (1) Whoever, being either the master of a ship arriving at any port in British India or any one on board, knowingly has in his baggage or in his possession or custody, after the postal articles on board or any of them have been sent to the Post Office at the port of arrival, any postal article within the exclusive privilege conferred on the Central Government by section 4, shall be punishable with fine which may extend to fifty rupees for every such postal article as aforesaid.

(2) Whoever, being such master or other person as aforesaid, detains any such postal article as aforesaid after demand made for it by an officer of the Post Office, shall be punishable with fine which may extend to one hundred rupees for every such postal article.

Penalty for detaining mails or opening mail bag.

67. Whoever, except under the authority of this Act [1][or of any other Act for the time being in force] or in obedience to the order in writing of the Central Government or the direction of a competent Court, detains the mails or any postal article in course of transmission by post or on any pretence opens a mail bag in course of transmission by post, shall be punishable with fine which may extend to two hundred rupees:

Provided that nothing in this section shall prevent the detention of an officer of the Post Office carrying the mails or any postal article in course of transmission by post, on a charge of having committed an offence declared to be cognizable by the Code of Criminal Procedure, 1898, or any other law for the time being in force.

Penalty for retaining postal articles wrongly delivered or mail bags.

68. Whoever fraudulently retains, or wilfully secretes or makes away with, or keeps or detains, or when required by an officer of the Post Office, neglects or refuses to deliver up, any postal article in course of transmission by post which ought to have been delivered to any other person, or a mail bag containing a postal article, shall be punishable with imprisonment for a term which may extend to two years, and shall also be punishable with fine.

Penalty for unlawfully diverting letters.

69. Whoever, not being an officer of the Post Office, wilfully and maliciously, with intent to injure any person, either opens or causes to be opened any letter which ought to have been delivered, or does any act whereby the due deli-

LEG. REF.

[1] Inserted by Act XV of 1921, sec. 4.

very of a letter to any person is prevented or impeded, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hunderd rupees, or with both:

Provided that nothing in this section shall apply to a person who does any act to which the section applies, if he is a parent, or in the position of a parent or guardian, of the addressee, and the addressee is a minor or a ward.

General.

Penalty for abetting, or attempting to commit offences under Act.

70. Whoever abets the commission of any offence punishable under this Act or attempts to commit any offence so punishable, shall be punishable with the punishment provided for that offence.

Property in cases of offences to be laid in the Post office.

71. In every prosecution for an offence in respect of a mail bag or of any postal article sent by post, it shall be sufficient, for the purpose of the charge, to describe the mail bag or postal article as being the property of the Post Office, and it shall not be necessary to prove that the mail bag or postal article was of any value.

Authority for prosecutions under certain sections of Act.

72. No Court shall take cognizance of an offence punishable under any of the provisions of sections 51, 53, 54, clauses (*a*) and (*b*), 55, 56, 58, 59, 61, 64, 65, 66 and 67 of this Act, unless upon complaint made by order of, or under authority from, the Director-General or a Post-Master-General.

CHAPTER XI.

SUPPLEMENTAL.

Zamindari and other district posts.

73. (1) The Central Government may make rules for the management of any zamindari or other district posts.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may declare what portions of this Act shall be applicable to zamindari and other district posts and to the persons employed in connection therewith.

General power to make rules and provisions as to rules under Act.

74. (1) In addition to the powers hereinbefore conferred, the Central Government may make rules to carry out any of the purposes and objects of this Act.

(2) In making any rule under this Act, the Central Government may direct that a breach of it shall be punishable with fine which may extend to fifty rupees.

SEC. 72.—A prosecution under S. 61 of the Act, although authorized by the Post Master-General, is illegal unless such prosecution takes place on a complaint as defined in S. 4, Cl. (*h*) of the Cr.P. Code. 10 C. W.N. 1029=4 C.L.J. 70. *See also* 125 I. C. 770=11 Pat.L.T. 224=31 Cr.L.J. 934 =1930 P. 622=9 Pat. 26. It is not necessary that sanction to prosecute under S. 72 must precede a prosecution under S. 55, and a conviction under the latter section is valid even though the sanction to prosecute was obtained only after the prosecution was launched. 52 M. 534=1929 M. 447=56 M. L.J. 551.

SECS. 72, 52 AND 53.—Offence under S. 52 could be taken cognizance of without any complaint. The fact that the acts also constituted a minor offence under S. 53 was no bar to the trial of the offence under S. 52. I.L.R. (1941) Mad. 345=53 L.W. 70= 1941 Mad. 392=(1941) 1 M.L.J. 44.

SEC. 74.—Rules framed under the Act—Effect of. *See* 5 I.C. 7=M.L.T. 69. 733= 33 M. 511. *See also* 1937 Mad. 797=1937 M.W.N. 294. Rule 100—"Failure"—What constitutes. Omission to do a thing is a failure and it is unnecessary that there should have been an attempt or intention to do it).

(3) All rules made by the Central Government under this Act shall be published in the Official Gazette and, on such publication, shall have effect as if enacted by this Act.

Delegation of powers, other than rule-making powers, to Director-General.

75. The Central Government may, by notification in the Official Gazette, authorize, either absolutely or subject to conditions, the Director-General to exercise any of the powers conferred upon the Central Government by this Act, other than a power to make rules.

76. [*Repeal.*] *Rep. by the Repealing and Amending Act* (*X of* 1914), *S.* 3 *and Sch. II.*

Saving.

77. Nothing in this Act shall derogate from or affect the provisions of the East India Company Act, 1780, or any enactment amending or extending the same.

THE FIRST SCHEDULE.

Schedule to be inserted in the Indian Post Office Act, 1898

(*See Section* 3, *Finance*, 1945:-*also Finance Act*, 1946 *and* 1947)

"THE FIRST SCHEDULE.[1]

INLAND POSTAGE RATES.

(See section 7)

Letters

For a weight not exceeding one tola	One and a half annas
For every tola or fraction thereof, exceeding one tola	One anna.

Postcards.

Single	Six pies.
Reply	One anna.

Book, Pattern and Sample Packets

For the first five tolas or fraction thereof	Nine pies.
For every additional two and a half tolas, or fraction thereof, in excess of five tolas	Three pies.

Registered Newspapers

For Weight not exceeding ten tolas	Quarter of an anna
For a weight exceeding ten tolas and not exceeding twenty tolas.	Half an anna
For every twenty tolas or fraction thereof, exceeding twenty tolas.	Half an anna.
In the case of more than one copy of the same issue of a registered newspaper being carried in the same packet—	
For a weight not exceeding ten tolas	Half an anna.
For every additional five tolas, or fraction thereof, in excess of ten tolas	Quarter of an anna
Provided that such packet shall not be delivered at any addressee's residence but shall be given to a recognised agent at the post office.	

Parcels.

For a weght not exceeding forty tolas	Six annas.
For every forty tolas, or fraction thereof. exceeding forty tolas	Six annas.]]

Parcels.

THE SECOND SCHEDULE.

ENACTMENTS REPEALED. [*Repealed by the Repealing and Amending Act X of* 1941.]

[1][First Schedule substituted by Finance Act. (1945].

SUPPLEMENT TO VOLUME III.

[*N.B*—**The following Acts that have been passed while the book was in print are** given in the Supplement to Vol. III with a view to keep the volume up to date.]

THE ANTIQUITIES (EXPORT CONTROL) ACT (XXXI OF 1947).

18*th April*, 1947.

An Act to control the export of antiquities.

WHEREAS it is expedient to make better provision for controlling the export of objects of antiquarian or historical interest or significance;

It is hereby enacted as follows:—

1. **Short title and extent.**—(1) This Act may be called THE ANTIQUITIES (EXPORT CONTROL) ACT, 1947.

(2) It extends to the whole of British India.

2. **Interpretation.**—In this Act, unless there is anything repugnant in the subject or context—

(a) "antiquity" includes—

(i) any coin, sculpture, manuscript, epigraph, or other work of art or craftsmanship,

(ii) any article, object or thing detached from a building or cave,

(iii) any article, object or thing illustrative of science, art, crafts, literature, religion, customs, morals or politics in bygone ages,

(iv) any article, object or thing declared by the Central Government by notification in the official Gazette to be an antiquity for the purposes of this Act,—

which has been in existence for not less than one hundred years;

(b) "export" means export from British India by sea, land or air.

3. **Prohibition of export.**—No person shall export any antiquity except under the authority of a licence granted by the Central Government.

4. **Application of Act VIII of 1878.**—All antiquities the export of which is prohibited under section 3 shall be deemed to be goods of which the export has been prohibited under section 19 of the Sea Customs Act, 1878, and all the provisions of that Act shall have effect accordingly, except that, the provisions of section 183 of that Act notwithstanding, any confiscation authorised under that Act shall be made, unless the Central Government, on application to it in such behalf, otherwise directs.

5. **Penalty and procedure.**—(1) If any person exports or attempts to export an antiquity in contravention of section 3, he shall, without prejudice to any confiscation or penalty to which he may be liable under the provisions of the Sea Customs Act, 1878 (VIII of 1878) as applied by section 4, be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to five thousand rupees, or with both.

(2) No Court shall take cognizance of an offence punishable under this section except upon complaint in writing made by an officer generally or specially authorised in this behalf by the Central Government, and no Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any such offence.

6. **Power to determine whether or not an article is an antiquity.**—If any question arises whether any article, object or thing is or is not an antiquity for the purposes of this Act, it shall be referred to the Director General of Archaeology in India, and his decision thereon shall be final.

7. **Power to make rules.**—(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe the procedure for granting licences for the export of antiquities, and fix the fees payable on applications therefor.

8. Protection of action taken under this Act.—No suit, prosecution or other legal proceeding shall lie against any person for anything in good faith done or intended to be done under this Act.

9. Application of other laws not barred.—The provisions of this Act shall be in addition to, and not in derogation of, the provisions of the Ancient Monuments Preservation Act, 1904 (VII of 1904) or any other law for the time being in force.

THE COAL MINES LABOUR WELFARE FUND ACT (XXXII OF 1947).

18*th April*, 1947.

An Act to make better provision for financing measures for promoting the welfare of labour employed in the coal-mining industry.

WHEREAS it is expedient to make better provision for financing measures for promoting the welfare of labour employed in the coal-mining industry, including housing and the provision of dispensary services, and for such purposes to impose a cess and constitute a fund;

It is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Act may be called THE COAL MINES LABOUR WELFARE FUND ACT, 1947.

(2) It extends to the whole of British India.

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

Interpretation.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) "Advisory Committee" means the Advisory Committee constituted under section 8;

(b) "Commissioner" means the Coal Mines Labour Welfare Commissioner appointed under section 9, and includes any officer authorised in writing by the Commissioner to exercise any of his functions under this Act;

(c) "Housing Board" means the Coal Mines Labour Housing Board constituted under section 6;

(d) "Fund" means the Coal Mines Labour Housing and General Welfare Fund constituted under section 4;

(e) "prescribed" means prescribed by rules made under this Act.

Imposition and collection of duty.

3. (1) There shall be levied and collected as a cess for the purposes of this Act a duty of excise on all coal and coke despatched from collieries in British India, at such rate not less than four annas and not more than eight annas per ton, as may from time to time be fixed by the Central Government by notification in the official Gazette:

Provided that the Central Government may, by notification in the official Gazette, exempt from liability to the duty any specified class or classes of coal or coke.

(2) The duty levied under sub-section (1) shall, subject to and in accordance with rules made in this behalf, be collected by such agencies and in such manner as may be prescribed.

Coal Mines Labour Housing and General Welfare Fund.

4. (1) The proceeds of the duty levied under section 3 shall be paid by the collecting agencies into the Reserve Bank of India at Calcutta in the prescribed manner, and shall be credited to a fund to be called the Coal Mines Labour Housing and General Welfare Fund, and apportioned under two separate accounts, to be called the housing account of the Fund and the general welfare account of the Fund, in such manner as the Central Government from time to time may, by notification in the official Gazette, determine:

Provided that there shall at all times be credited—

(a) to the housing account of the Fund, not less than one anna and four pies, and

(b) to the general welfare account of the Fund, not more than four annas and eight pies,—

out of the duty collected under this Act on every ton of coal or coke.

(2) There shall also be credited to the housing account of the Fund—

(a) any grants made thereto by the Central Government;

(b) rents, if any, realised from housing accommodation constructed out of such account;

(c) any other moneys received by the Housing Board.

Expenditure from the Fund.

5. (1) The cost of administering the Fund and the salaries and allowances, if any, of the Commissioner, Inspectors, Welfare Officers and other staff appointed to supervise or carry out measures financed from the Fund shall be defrayed out of the Fund, and shall be apportioned between and debited to the housing account and the general welfare account in such manner as may be prescribed.

(2) The Central Government may out of the general welfare account of the Fund pay annually grants-in-aid to such of the colliery owners as maintain to the satisfaction of the Commissioner dispensary services of the prescribed standard for the benefit of labour employed in their collieries, so however that the amount payable as grant-in-aid to the owner of a colliery shall not exceed—

(i) the amount of the duty at the rate of eight pies per ton recovered in respect of coal or coke despatched from the colliery less the proportionate cost of recovery, or

(ii) the amount spent by the owner of the colliery in the maintenance of the dispensary service, as determined by the Commissioner,

whichever is less:

Provided that no grant-in-aid shall be payable in respect of any dispensary service maintained by the owner of the colliery if the amount expended, thereon, as determined by the Commissioner, is less than eighty rupees per mensem.

(3) The balance of the moneys in the general welfare account of the Fund shall be applied by the Central Government to meet expenditure, incurred in connection with measures which are in the opinion of the Central Government necessary or expedient to promote the welfare of labour employed in the coal-mining industry.

(4) Without prejudice to the generality of sub-section (3) the moneys in the general welfare account of the Fund may be utilised to defray—

(a) the cost of measures for the benefit of labour employed in the coal-mining industry directed towards—

(i) the improvement of public health and sanitation, the prevention of disease, the provision of medical facilities and the improvement of existing medical facilities, including the provision and maintenance of dispensary services in collieries the owners of which do not receive grants-in-aid under sub-section (2),

(ii) the provision of water-supplies, and facilities for washing and the improvement of existing supplies and facilities,

(iii) the provision and improvement of educational facilities,

(iv) the improvement of standards of living including nutrition, amelioration of social conditions, and the provision of recreational facilities,

(v) the provision of transport to and from work;

(b) the grant to a Provincial Government, a local authority or the owner, agent or manager of a coal mine of money in aid of any scheme approved by the Central Government for any purpose for which moneys in the general welfare account of the Fund may be utilised;

(c) the allowances, if any, of the members of the Advisory Committee and the amounts debitable to the account under sub-section (1);

(d) any other expenditure which the Central Government directs to be defrayed out of the moneys in the general welfare account of the Fund.

(5) The Central Government shall publish annually in the official Gazette an estimate of receipts into and expenditure from the general welfare account of the Fund together with a statement of the accounts and a report of the activities financed during the previous year from the general welfare account of the Fund, and shall forward copies of such statement and report to members of the Advisory Committee.

(6) The moneys in the housing account of the Fund shall be applied by the Housing Board to defray—

(a) the cost of erecting, maintaining and repairing housing accommodation for labour employed in the coal-mining industry and of providing services and facilities connected therewith;

(b) the cost of preparing schemes, and of acquiring any land required, for the purposes referred to in clause (a);

(c) the grant subject to the previous approval of the Central Government, to a Provincial Government, a local authority or the owner, agent or manager of a coal mine of money in aid of any scheme approved by the Housing Board for the purposes referred to in clauses (a) and (b);

(d) the allowances, if any, of members of the Housing Board and the amounts debitable to the account under sub-section (1);

(e) any other expenditure which the Central Government directs to be defrayed out of the moneys in the housing account of the Fund.

(7) In February of each year the Housing Board shall submit of the Central Government a statement in the prescribed form of the estimated receipts into and expenditure from the housing account of the Fund for the ensuing financial year together with a report of the activities financed during the previous year, from the housing account of the Fund, and may at any time during the ensuing financial year submit to the Central Government a supplementary statement and shall forward copies of such statements and report to members of the Advisory Committee.

(8) The Housing Board shall comply with such directions as the Central Government may from time to time think fit to give in respect of expenditure from the housing account of the Fund.

(9) The Housing Board may invest moneys in the housing account of the Fund in securities of the Government of India or, with the previous approval of the Central Government, in other securities.

(10) The Housing Board shall cause to be maintained such books of account as may be prescribed and shall prepare in the prescribed manner an annual statement of the accounts.

(11) The Housing Board shall cause the housing account of the Fund to be audited annually by a person qualified under the provisions of section 144 of the Indian Companies Act, 1913, to act as an auditor of companies, and as soon as the said account has been audited the Housing Board shall forward copies thereof together with copies of the report of the auditor thereon to the Central Government and to members of the Advisory Committee.

(12) The Central Government shall have power to decide whether any particular expenditure is or is not debitable to the housing account, or the general welfare account, of the Fund, and its decision shall be final.

(13) Before incurring any expenditure from the Fund other than expenditure of a routine or urgent nature the Central Government or, as the case may be the Housing Board, shall consult the Advisory Committee.

Coal Mines Labour Housing Board.

6. (1) The Central Government shall, by notification in the official Gazette, constitute a Coal Mines Labour Housing Board to prepare and carry out, subject to the previous approval of the Central Government, schemes, financed from the housing account of the Fund for the provision of suitable housing accommodation for labour employed in the coal-mining industry, and to carry out the other functions of the Housing Board under this Act.

(2) The Commissioner shall be the chairman of the Housing Board, and the other members thereof shall be appointed by the Central Government and shall be of such number and chosen in such manner as may be prescribed.

(3) The Housing Board shall be a body corporate by the name of the Coal Mines Labour Housing Board, having perpetual succession and a common seal, with power to acquire property both movable and immovable, and shall by the said name sue and be sued.

(4) No act done by the Housing Board shall be called in question in the ground merely of the existence of any vacancy in, or defect on the constitution of, the Housing Board.

Provisions regarding housing accommodation.

7. (1) The occupation by any person of any housing accommodation provided out of the housing account of the Fund shall be subject to compliance by that person at all times with such conditions relating to his occupation of such accommodation as may be prescribed.

(2) Before any person occupies any such accommodation he shall be furnished with a copy of the conditions referred to in sub-section (1), and if he so desires the said conditions shall be read over to him in a language which he understands; and the Housing Board shall cause to be published in such manner as it thinks best adapted for informing the persons concerned any changes which may from time to time be made in the said conditions.

(3) If, in the opinion of the Housing Board, any person in occupation of any such accommodation fails or ceases to comply with any of the conditions referred to in sub-section (1), it may, by notice in writing require him to vacate the accommodation on or before such date, not being less than thirty days after the service of the notice, as may be specified in the notice; and the occupation of such accommodation by such person or any dependent of his after the date so specified shall be unlawful, and such

person or dependent may be evicted accordingly by due process of law from such accommodation.

(4) There shall be payable in respect of the occupation of any such accommodation as aforesaid rent at such rate as may be prescribed:

Provided that the Housing Board may remit, subject to compliance at all times with the conditions referred to in sub-section (1), either the whole or any part of the prescribed rent:

Provided further that where, in the case of any person who is by virtue of a remission under the first proviso paying either no rent or a reduced rent, the Housing Board has reason to believe that such person has contravened any of the said conditions, it may by notice in writing require such person to pay, with effect on and after the expiry of seven days from the service of the notice, rent for the accommodation occupied by him at the full prescribed rate.

(5) All rent payable in respect of the occupation of such accommodation as aforesaid, whether at the full prescribed rate or at a lesser rate, shall be recoverable as an arrear of land revenue.

Advisory Committee.

8. (1) The Central Government shall, by notification in the official Gazette, constitute an Advisory Committee, to advise on matters on which the Central Government or the Housing Board is required by this Act to consult the Committee and on any other matters arising out of the administration of this Act which the Central Government may refer to it for advice.

(2) The members of the Advisory Committee shall be appointed by the Central Government and shall be of such number and chosen in such manner as may be prescribed:

Provided that the Advisory Committee shall include an equal number of members representing Government, the owners of coal mines and workmen employed in the coal-mining industry, and that at least one member of the Advisory Committee shall be a woman.

(3) The chairman of the Advisory Committee shall be an officer of the Central Government appointed by the Central Government.

Appointment and powers of officers.

9. (1) The Central Government may appoint a Coal Mines Labour Welfare Commissioner and such number of Inspectors, Welfare Officers and other staff as it thinks fit to supervise and carry out measures financed from the Fund.

(2) Any person so appointed shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

(3) The Commissioner or any Inspector or Welfare Officer may, with such assistance, if any, as he thinks fit, enter at all reasonable times any place which he considers it necessary to enter for the purpose of supervising or carrying out the measures financed from the Fund, and may do therein anything necessary for the proper discharge of his duties.

Power to make rules.

10. (1) The Central Government may, by notification in the official Gazette, and subject to the condition of previous publication, make rules to carry into effect the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, rules made under this section may provide for—

(i) the manner in which the duty levied under sub-section (1) of section 3 shall be collected, the persons who shall be liable to make the payments, the making of refunds, remissions and recoveries, the deduction by collecting agencies of a percentage of the realizations to cover the cost of collection, and the proceedure to be followed in remitting the proceeds to the Reserve Bank of India;

(ii) the composition of the Housing Board, the manner in which its members shall be chosen, the term of office of its members, the allowances if any payable to them and the manner in which the Housing Board shall conduct its business, including the number of members necessary to form a quorum at a meeting thereof;

(iii) the books of account to be maintained by the Housing Board, and the form of its financial estimates and statements of account;

(iv) the composition of the Advisory Committee, the manner in which its members shall be chosen, the term of office of its members, the allowances if any payable to them and the manner in which the Advisory Committee shall conduct its business;

(v) the apportionment between the housing account and the general welfare account of the Fund of the expenditure on the administration of the Fund

and on the salaries and allowances of the Commissioner, Inspectors, Welfare Officers and other staff employed for the purposes of this Act;

(vi) the standard of dispensary service to be provided by owners of collieries for the purposes of sub-section (2) of section 5, and the inspection and supervision of the dispensaries and other places at which such services are provided;

(vii) the application by owners of collieries for grants-in-aid, the authority to whom and the manner in which such applications shall be made and the particulars to be specified in such applications;

(viii) the manner in which dispensary services may be provided by the Central Government;

(ix) the conditions governing the grant of money from the general welfare account of the Fund to a Provincial Government, a local authority or the owner, agent or manager of a coal mine;

(x) the rate of rent for housing accommodation provided out of the housing account of the Fund;

(xi) the conditions of service and the duties of Inspectors, Welfare Officers and other officers appointed to supervise or carry out measures financed from the Fund;

(xii) the duties and functions of the Commissioner;

(xiii) the furnishing by owners, agents or managers of coal mines of statistical or other information, and the punishment by fine not exceeding two hundred rupees of failure to comply with the requirements of any rules made under this clause;

(xiv) any other matter which under this Act is to be or may be prescribed.

Repeal of Ord. VII of 1944.

11. (1) The Coal Mines Labour Welfare Fund Ordinance 1944, is hereby repealed.

(2) For the avoidance of doubts it is hereby declared that the provisions of section 6 of the General Clauses Act, 1897, shall apply to the repeal effected by this section.

(3) Any balance remaining in the Fund constituted under the aforesaid Ordinance shall be credited to the Fund constituted under this Act, and shall be apportioned between the housing account and the general welfare account of such Fund in such manner as the Central Government may determine.

THE CAPITAL ISSUES (CONTINUANCE OF CONTROL) ACT (XXIX OF 1947)

18th April, 1947.

(An Act to provide for the continuance of control over issues of capital.)

WHEREAS it is expedient to provide for the continuance of control over issues of capital;

It is hereby enacted as follows:—

Short title, extent and duration.

1. (1) This Act may be called THE CAPITAL ISSUES (CONTINUANCE OF CONTROL) ACT 1947.

(2) It extends to the whole of British India, and applies also to British subjects and servants of the Crown in any part of India and to British subjects who are domiciled in any part of India wherever they may be.

(3) It shall cease to have effect on the first day of April, 1950.

Definitions.

2. In this Act,—

(a) "issue of capital" means the issuing of any securities whether for cash or otherwise;

(b) "securities" means any of the following instruments issued, or to be issued, by or for the benefit of a company, whether incorporatd in British India or not, namely:—

(i) shares, stocks and bonds;

(ii) debentures;

(iii) other instruments creating a charge or lien on the assets of the company; and

(iv) instruments acknowledging loan to or indebtedness of the company and guaranteed by a third party or entered into jointly with a third party.

Control over issues of capital.

3. (1) No company incorporated in British India shall, except with the consent of the Central Government, make an issue of capital outside British India.

(2) No company, whether incorporated in British India or not, shall except with the consent of the Central Government,—

(a) make an issue of capital in British India;

(b) make in British India any public offer of securities for sale;

(c) renew or postpone the date of maturity or repayment of any security maturing for payment in British India.

(3) The Central Government may on application make an order according recognition to an issue of capital made or to be made outside British India by a company not incorporated in British India.

(4) The Central Government may qualify any consent or recognition accorded by it under sub-section (2) or sub-section (3) with such conditions, whether for immediate or future fulfilment, as it may think fit to impose; and where a company acts in pursuance of such consent or recognition, it shall comply with the terms of any condition so imposed.

(5) Where an application for the consent or recognition of the Central Government under any of the provisions of this section is refused, the Central Government shall, upon the request of the applicant, communicate to him in writing the reasons for such refusal.

Control over prospectuses and other advertisements.

4. No person shall issue in British India any prospectus or other document offering for subscription or publicly offering for sale any securities which does not include a statement that the consent or recognition, as the case may be, of the Central Government has been obtained to the issue or offer of the securities, and no person shall without the consent of the Central Government issue in British India any document publicly offering for sale any security issued with the consent or recognition of the Central Government if such issue was made by a private company or if the order according its consent or recognition contained a condition that the securities should be privately subscribed.

Purchase and sale of securities.

5. (1) No person shall accept or give any consideration for any securities in respect of an issue of capital made or proposed to be made in British India or elsewhere unless the consent or recognition of the Central Government has been accorded to such issue of capital.

(2) No person shall sell or purchase or otherwise transfer or accept transfer of any securities issued by a company in respect of any issue of capital made after the 17th day of May 1943 in British India or elsewhere unless such issue has been made with the consent or recognition of the Central Government.

Power to exempt and to condone contraventions.

6. (1) The Central Government may, by general order which shall be notified in the official Gazette, provide for the granting of exemption from all or any of the provisions of sections 3, 4 and 5.

(2) The Central Government may by order condone a contravention of any of the provisions of section 3 or section 4, and on the making of such order the provisions of this Act, shall have effect as if an exemption had been granted under sub-section (1) of this section in respect of the thing done or omitted to be done in contravention of section 3 or section 4, as the case may be.

Power to call for information.

7. Any officer authorised in this behalf by the Central Government may, for the purpose of enquiring into the correctness of any statement made in an application for consent or recognition to an issue of capital or for the purpose of ascertaining whether or not the requirements of any condition attached to an order according such consent or recognition have been complied with, require any company, or any officer of a company, which has made such application, or obtained such order to submit to him such accounts, books or other documents, or to furnish to him such information, as he may reasonably think necessary.

False statements.

8. No person shall, when complying with any requisition under section 7 or when making any application for consent or recognition to an issue of capital, give any information or make any statement which he knows, or has reasonable cause to believe, to be false or not true in any material particular.

Prohibition against disclosing information.

9. No person who obtains any information by virtue of this Act shall, otherwise than in connection with the execution of the provisions of this Act or of any order made in pursuance thereof, disclose that information to any other person except with the permission of the Central Government.

Power to delegate function.

10. The Central Government may by order direct that any power or duty which by or under any of the preceding provisions of this Act is conferred or imposed upon the Central Government shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged by any officer subordinate to that Government.

Committee to advise Government.

11. The Central Government shall, by notification in the official Gazette, constitute an Advisory Committee consisting of not more than five members, and may from time to time refer to it for advice any such matters arising out of the administration of this Act as the Central Government may think fit.

Power to make rules.

12. The Central Government may by notification in the official Gazette make rules for carrying out the purposes of this Act.

Penalties.

13. (1) Whoever contravenes, or attempts to contravene, any of the provisions of this Act or of any order made thereunder shall be punishable with imprisonment for a term which may extend to one year or with fine or with both.

(2) If the person committing an offence punishable under this section is a company or other body corporate, every director, manager, secretary or other officer thereof shall, unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent its commission, be deemed to be guilty of such offence.

Burden of proof in certain cases.

14. Where any person is prosecuted for contravening any provision of this Act or of any order made thereunder which prohibits him from doing an act without the consent or permission of any authority the burden of proving that he had the requisite consent or permission shall be on him.

Protection of action taken under Act.

15. No suit, prosecution or other legal proceedings shall lie against any person for anything in good faith done or intended to be done under this Act or any rule or order made thereunder.

Continuance of existing orders and savings.

16. (1) All orders made or deemed to be made under the provisions of the Capital Issues (Continuance of Control) Ordinance, 1947, and in force immediately before the commencement of this Act shall continue to be in force and be deemed to be orders made under the corresponding provisions of this Act.

(2) Section 6 of the General Clauses Act, 1897, shall apply upon the expiration of the said Ordinance as if it had then been repealed by this Act.

THE INDIAN COINAGE (AMENDMENT) ACT (XXVII OF 1947).

18th April, 1947.

An Act further to amend the Indian Coinage Act, 1906.

WHEREAS it is expedient further to amend the Indian Coinage At, 1906, for the purposes hereinafter appearing;

It is hereby enacted as follows:—

Short title and commencement.

1. (1) This Act may be called THE INDIAN COINAGE (AMENMENT) ACT, 1947.

(2) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint in this behalf.

Ommission of sections 4 and 5, Act III of 1906.

2. In the Indian Coinage Act, 1906 (hereinafter referred to as the said Act), sections 4 and 5 and 5 and the heading above section 4 shall be omitted.

Substitution of new section for section 6. Act III of 1906.

3. For section 6 of the said Act and the heading above that section, the following heading and section shall be substituted, namely:—

"Coinage.

Denominations, dimensions, designs and composition of coins.

3. Coins may be coined at the Mint for issue under the authority of the Central Government, of such denominations not higher than one rupee, of such dimensions and designs, and of such metals or of mixed metals of such composition as the Central Government may, by notification in the official Gazette, determine."

Omission of sections 10, 11 and 12, Act III of 1906.

4. Sections 10, 11 and 12 of the said Act, and the heading above section 10, shall be omitted.

Substitution of new sec. for sec. 13, Act III of 1906.

5. For section 13 of the said Act, the following section shall be substituted, namely:—

Coin, when a legal tender.

"13. (1) The coins issued under the authority of section 6 shall be a legal tender in payment or on account,—

(*a*) in the case of a rupee coin, for any sum;

(*b*) in the case of a half-rupee coin, for any sum not exceeding ten rupees;

(*c*) in the case of any other coin, for any sum not exceeding one rupee:

Provided that the coin has not been defaced and has not lost weight so as to be less than such weight as may be prescribed in its case.

(2) All silver coins issued under this Act after the 10th day of March, 1940, shall continue as before to be a legal tender in payment or on account,—

(*a*) in the case of a rupee coin, for any sum;

(*b*) in the case of a half-rupee coin, for any sum not exceeding ten rupees;

(*c*) in the case of a quarter-rupee, for any sum not exceeding one rupee:

Provided that the coin has not been defaced and has not lost weight so as to be less than—

(*i*) 176.4 grains Troy in the case of a rupee coin, or

(*ii*) 88.2 grains Troy in the case of a half-rupee coin, or

(*iii*) such weight as may be prescribed in the case of a quarter rupee coin.

(3) All nickel, copper and bronze coins which may have been issued under this Act before the 24th day of January, 1942, shall continue as before to be a legal tender in payment or on account for any sum not exceeding one rupee."

Omission of section 15, Act III of 1906.

6. Section 15 of the said Act shall be omitted.

Amendment of sec. 15-A Act III of 1906.

7. In section 15-A of the said Act,—

(*a*) for the words and figures "section 12, section 13, or section 15," the word and figures "section 13", shall be substituted;

(*b*) for the words "any of those sections" the words "that section" shall be substituted

Amendmeut of sec. 20, Act III of 1906.

8. (1) In section 20 of the said Act,—

(*a*) the words "silver or other" shall be omitted;

(*b*) after the words "is counterfeit" the words "or has been fraudulently defaced" shall be inserted.

(2) In the marginal heading of the said section 20, for the words "silver or nickel" the words "or fraudulently defaced" shall be substituted.

Amendment of sec. 21 Act III of 1906.

9. In sub-section (2) of section 21 of the said Act,—

(*a*) clause (*a*) shall be omitted;

(*b*) in clause (*c*), for the words "in any case than two per cent." the words "than two per cent. in case of silver coins or five per cent. in the case of pure nickel coins," shall be substituted.

Omission of section 24, Act III of 1906.

10. Section 24 of the said Act shall be omitted.

THE INDIAN COMPANIES (AMENDMENT) ACT (XIII OF 1946).

[18*th April*, 1946.

An Act further to amend the Indian Companies Act, 1913.

WHEREAS it is expedient further to amend the Indian Companies Act, 1913 (VII of 1913), for the purpose hereinafter appearing;

It is hereby enacted as follows:—

Short title.

1. This Act may be called THE INDIAN COMPANIES (AMENDMENT) ACT, 1946.

Amendment of section 282-B, Act VII of 1913.

2. To sub-section (2) of section 282-B of the Indian Companies Act, 1913, the following proviso shall be added, namely:—

"Provided that where one-tenth part of the whole amount of the moneys belonging to such fund exceeds the maximum amount which may be deposited in a Post Office Savings Bank account under the rules regulating such deposits for the time being in force, the amount of such excess may be kept or deposited in a special account to be opened for the purpose in a scheduled bank as defined in clause (*c*) of section 2 of the Reserve Bank of India Act, 1934 (II of 1934)."

THE ESSENTIAL SUPPLIES (TEMPORARY POWERS) ACT (XXIV OF 1946).

[19*th November*, 1946.

An Act to provide for the continuance during a limited period of powers to control the production, supply and distribution of, and trade and commerce in, certain commodities.

WHEREAS it is necessary to provide for the continuance during a limited period of powers to control the production, supply and distribution of, and trade and commerce in, foodstuffs (including edible oilseeds and oils), cotton and woollen textiles, paper (including newsprint), petroleum and petroleum products, spare parts of mechanically propelled vehicles, coal, iron, steel and mica;

AND WHEREAS the Indian Legislature has been empowered by section 2 of the Indian (Central Government and Legislature) Act, 1946, to make laws with respect to the matters aforesaid;

It is hereby enacted as follows:—

1. (1) This Act may be called THE ESSENTIAL SUPPLIES (TEMPORARY POWERS) ACT, 1946.

(2) It extends to the whole of British India.

(3) It shall cease to have effect on the expiration of the period mentioned in section 4 of the India (Central Government and Legislature) Act, 1940, except as respects things done or omitted to be done before the expiration thereof, and section 6 of the General Clauses Act, 1897, shall apply upon the expiry of this Act as if it had then been repealed by a Central Act.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "essential commodity" means any of the following classes of commodities:—

(i) foodstuffs,

(ii) cotton and woollen textiles,

(iii) paper,

(iv) petroleum and petroleum products,

(v) spare parts of mechanically propelled vehicles,

(vi) coal,

(vii) iron and steel,

(viii) mica;

(*b*) "food-crops" shall include crops of sugarcane;

(*c*) "foodstuffs" shall include edible oilseeds and oils;

(*d*) "notified order" means an order notified in the official Gazette;

(*e*) "paper" shall include newsprint;

(*f*) "Provincial Government", in relation to a Chief Commissioner's Province, means the Chief Commissioner.

Powers to control production, supply, distribution, etc., of essential commodities

3. (1) The Central Government, so far as it appears to it to be necessary or expedient for maintaining or increasing supplies of any essential commodity, or for securing their equitable distribution and availability at fair prices, may by notified order provide for regulating or prohibiting the production, supply and distribution thereof, and trade and commerce therein.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), an order made thereunder may provide—

(*a*) for regulating by licences, permits or otherwise the production or manufacture of any essential commodity;

(*b*) for bringing under cultivation any waste or arable land whether appurtenant to a building or not, for the growing thereon of food-crops generally or of specified food-crops, and for otherwise maintaining or increasing the cultivation of food-crops generally, or of specified food-crops;

(*c*) for controlling the prices at which any essential commodity may be bought or sold;

(*d*) for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of any essential commodity;

(*e*) for prohibiting the withholding from sale of any essential commodity ordinarily kept for sale;

(*f*) for requiring any person holding stock of an essential commodity to sell the whole or a specified part of the stock at such prices and to such persons or class of persons or in such circumstances, as may be specified in the order;

(*g*) for regulating or prohibiting any class of commercial or financial transactions relating to foodstuffs or cotton textiles, which, in the opinion of the authority making the order are, or if unregulated are likely to be, detrimental, to public interest;

(*h*) for collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters;

(*i*) for requiring persons engaged in the production, supply or distribution of, or trade or commerce in, any essential commodity to maintain and produce for inspection such books, accounts and records relating to their business and to furnish such information relating thereto, as may be specified in the order;

(*j*) for any incidental and supplementary matters, including in particular the entering, and search of premises, vehicles, vessels and aircraft, the seizure by a person authorised to make such search of any articles in respect of which such person has reason to believe that a contravention of the order has been, is being or is about to be committed, the grant or issue of licences, permits or other documents, and the charging of fees therefor.

(3) An order made under sub-section (1) may confer powers and impose duties upon the Central Government or officers and authorities of the Central Government, notwithstanding that it relates to a matter in respect of which the Provincial Legislature also has power to make laws.

(4) The Central Government, so far as it appears to it to be necessary for maintaining or increasing the production and supply of an essential commodity, may by order authorise any person (hereinafter referred to as an authorised controller) to exercise, with respect to the whole or any part of any such undertaking engaged in the production and supply of the commodity as may be specified in the order, such functions of control as may be provided by the order; and so long as an order made under this sub-section is in force with respect to any undertaking or part thereof—

(*a*) the authorised controller shall exercise his functions in accordance with any instructions given to him by the Central Government, so, however, that he shall not have any power to give any direction inconsistent with the provisions of any Act or other instrument determining the functions of the undertakers except in so far as may be specifically provided by the order, and

(*b*) the undertaking or part shall be carried on in accordance with any directions given by the authorised controller in accordance with the provisions of the order, and any person having any functions of management in relation to the undertaking or part shall comply with any such directions.

Delegation of powers.

4. The Central Government may by notified order direct that the power to make orders under section 3 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by—

(*a*) such officer or authority subordinate to the Central Government, or

(*b*) such Provincial Government or such officer or authority subordinate to a Provincial Government, as may be specified in the direction.

Power to issue directions to Provinces.

5. The Central Government may give directions to any Provincial Government as to the carrying into execution in the Province of any order made under section 3.

Effect of orders inconsistent with other enactments.

6. Any order made under section 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.

Penalties.

7. (1) If any person contravenes any order made under section 3, he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both, and if the order so provides, any Court trying such contravention may direct that any property in respect of which the Court is satisfied that the order has been contravened shall be forfeited to His Majesty:

Provided that where the contravention is of an order relating to foodstuffs which contains an express provision in this behalf, the Court shall make such direction, unless for reasons to be recorded in writing it is of opinion that the direction should not be made in respect of the whole, or, as the case may be, a part, of the property.

(2) If any person to whom a direction is given under sub-section (4) of section 3 fails to comply with the direction, he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

Attempts and abetments.

8. Any person who attempts to contravene, or abets a contravention of, any order made under section 3 shall be deemed to have contravened that order.

Offences by corporations.

9. If the person contravening an order made under section 3 is a company or other body corporate, every director, manager, secretary or other officer or agent thereof shall, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention, be deemed to be guilty of such contravention.

False statements.

10. If any person—

(*i*) when required by any order made under section 3 to make any statement or furnish any information, makes any statement or furnishes any information which is false in any material particular and which he knows or has reasonable cause to believe to be false, or does not believe to be true, or

(*ii*) makes any such statement as aforesaid in any book, account, record, declaration, return of other document which he is required by any such order to maintain or furnish he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

Cognizance of offences.

11. No Court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in section 21 of the Indian Penal Code.

Power to try offences summarily.

12. Any magistrate or bench of magistrates empowered for the time being to try in a summary way the offences specified in sub-section (1) of section 260 of the Code of Criminal Procedure, 1898, may, on application in this behalf being made by the prosecution, try in accordance with the provisions contained in sections 262 to 265 of the said Code any offence punishable under this Act.

Special provision regarding fines.

13. Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898, it shall be lawful for any Magistrate of the First Class specially empowered by the Provincial Government in this behalf and for any Presidency Magistrate to pass a sentence of fine exceeding one thousand rupees on any person convicted of contravening an order made under section 3.

Presumption as to orders.

14. (1) No order made in exercise of any power conferred by or under this Act shall be called in question in any Court.

(2) Where an order purports to have been made and signed by an authority in exercise of any power conferred by or under this Act, a Court shall, within the meaning of the Indian Evidence Act, 1872, presume that such order was so made by that authority.

Burden of proof in certain cases.

15. Where any person is prosecuted for contravening any order made under section 3 which prohibits him from doing an act or being in possession of a thing without lawful authority or without a permit, licence or other document, the burden of proving that he has such authority, permit, licence or other document, shall be on him.

Protection of action taken under the Act.

16. (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of any order made under section 3.

(2) No suit or other legal proceeding shall lie against the Crown for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of any order made under section 3.

Repeal and saving.

17. (1) The Essential Supplies (Temporary Powers) Ordinance, 1946, is hereby repealed.

(2) Any order made or deemed to be made under the said Ordinance and in force immediately before the commencement of this Act shall continue in force and be deemed to be an order made under this Act; and all appointments made, licences or permits granted and directions issued under any such order and in force immediately before such commencement shall likewise continue in force and be deemed to be made, granted or issued in pursuance of this Act.

(3) For the removal of doubts it is hereby declared—

(*a*) that for the purposes of the said Ordinance and this Act an order of the nature referred to in section 5 of the said Ordinance made before the commencement of the said Ordinance and not previously rescinded shall be deemed to be, and always to have been, an order in force immediately before such commencement, notwithstanding that such order of parts of it, may not then have been in operation, either at all or in particular areas;

(*b*) that for the purposes of this Act an order made or deemed to be made under the said Ordinance and not rescinded prior to the commencement of this Act shall be deemed to be an order in force immediately before the commencement of this Act, notwithstanding

that such order, or parts of it, may not then be in operation, either at all or in particular areas.

THE EXPIRING LAWS CONTINUANCE ACT, 1946.

(10 & 11 GEO. 6 CH. 1.)

CHAPTER I.

An Act to continue certain expiring laws.

[19*th December*, 1946.

WHEREAS the Acts mentioned in the Schedule to this Act are, in so far as they are in force and are temporary in their duration, limited to expire—

(*a*) as respects those mentioned in Part I of the said Schedule, on the thirty-first day of December nineteen hundred and forty-six, and

(*b*) * * * *

AND WHEREAS it is expedient to provide for the continuance, as in this Act mentioned, of those Acts and of the enactments amending or affecting the same:

BE, it therefore enacted by the King's Most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Continuance of Acts in Schedule.

1. (1) The Acts mentioned in Part I of the Schedule to this Act shall, to the extent specified in column three of that Part, be continued until the thirty-first day of December, nineteen hundred and forty-seven.

(2) * * * * *

(3) Any unrepealed enactments which are temporary in their duration shall, in so far as they amend or affect any enactment continued by the foregoing provisions of this Act, be continued in like manner as that enactment whether they are mentioned in the Schedule to this Act or not.

Short title and application to Northern Ireland.

2. (1) This Act may be cited as the Expiring Laws Continuance Act, 1946.

(2) * * * * *

SCHEDULE.

PART I.

Session and Chapter.	Short title.	How far continued.	Amending Acts.
*	*	*	*
(3)			
9 and 10 Geo. 5 Ch. 92	The Aliens Restriction Amendment Act, 1919.	Section one	——
*	*	*	*

THE FACTORIES (AMENDMENT) ACT (V OF 1947).

[11*th March*, 1947.

An Act further to amend the Factories Act, 1934.

WHEREAS it is expedient further to amend the Factories Act, 1934, for the purposes hereinafter appearing; It is hereby enacted as follows:—

Short title.

1. This Act may be called THE FACTORIES (AMENDMENT) ACT, 1947.

Insertion of new section 33-A in Act XXV of 1934.

2. In Chapter III of the Factories Act, 1934 (hereinafter referred to as the said Act), after section 33 the following section shall be inserted, namely:—

"33-A. (1) The Provincial Government may make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, an adequate canteen shall be provided for the use of the workers.

Power to make rules for the provision of canteens.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

(*a*) the date by which such canteen shall be provided;

(*b*) the standards in respect of construction, accommodation, furniture and other equipment of the canteen;

(*c*) the foodstuffs to be served therein and the charges which may be made therefor;

(*d*) representation of the workmen in the management of the canteens;

(*e*) enabling, subject to such conditions, if any, as may be specified, the power to make rules under clause (*c*) to be exercised also by the Chief Inspector."

Amendment of section 34, Act XXV of 1934.

3. In the proviso to section 34 of the said Act, the word "non-seasonal" shall be omitted.

THE INDIAN FINANCE ACT (XX OF 1947).

[31*st March*, 1947.

An Act to give effect to the financial proposals of the Central Government for the year beginning on the 1st day of April, 1947.

WHEREAS it is expedient to discontinue the duty on salt manufactured in, or imported into, British India, to fix maximum rates of postage under the Indian Post Office Act, 1898, to continue, subject to certain modifications, for a further period of one year the additional duties of customs imposed by section 6 of the Indian Finance Act, 1942, to continue the temporary export duty on raw cotton and the enhanced rates of export duties on raw jute and jute manufactures, to enhance the export duty on tea, to fix rates of income-tax and super-tax, and to make certain provisions relating to income-tax, super-tax and excess profits tax;

It is hereby enacted as follows:—

Short title and extent.

1. (1) This Act may be called THE INDIAN FINANCE ACT, 1947.

(2) It extends to the whole of British India.

Discontinuance of salt duty.

2. For the year beginning on the 1st day of April, 1947, no duty shall be levied on salt manufactured in, or imported by sea or by land into, British India.

Inland postage rates.

3. For the year beginning on the 1st day of April, 1947, the Schedule contained in the First Schedule to the Indian Finance Act, 1945, shall again be inserted in the Indian Post Office Act, 1898, as the First Schedule to that Act.

Continuation of additional duties of customs imposed by section 6, Act XII of 1942.

4. The additional duties of customs on certain goods chargeable with a duty of customs under the First Schedule to the Indian Tariff Act, 1934, or under the said Schedule read with any notification of the Central Government for the time being in force, imposed up to the 31st day of March 1943 by section 6 of the Indian Finance Act, 1942, and continued, subject to certain modifications, up to the 31st day of March, 1947, by section 5 of the Indian Finance Act, 1946, shall continue to be levied and collected, as provided in the said section 6 and subject to the aforesaid modifications, up to the 31st day of March, 1948.

Provision regarding certain temporary duties of customs and enhanced rates of duties of customs.

5. (1) For the Second Schedule to the Indian Tariff Act, 1934, the following shall be substituted, namely:—

"THE SECOND SCHEDULE.

Export Tariff.

Item number.	Name of article.	Rate of duty.
1	RAW JUTE (other than Bimlipatam jute)—	
	(1) Cuttings	Rs. 4--8 per bale of 400 lb.
	(2) All other descriptions	Rs. 15 per bale of 400 lb.
2	JUTE MANUFACTURES (other than of Bimlipatam jute), when not in actual use as coverings, receptacles or bindings for other goods—	
	(1) Sacking (cloth, bags, twist, yarn, rope and twine).	Rs. 50 per ton.
	(2) Hessians and all other descriptions of jute manufactures not otherwise specified.	Rs. 80 per ton.
3	RAW COTTON	At such rate not exceeding Rs. 75 per bale of 400 lb. as the Central Government by notification in the Offical Gazette may from time to time determine.
4	RICE, with or without huske, including rice flour, but excluding rice bran and rice dust, which are free.	Two annas and three pies per standard maund.
5	TEA	Four annas per lb."

(2) The following Ordinances are hereby repealed, namely:—

(*a*) The Indian Tariff Act (Amendment) Ordinance, 1946;

(*b*) The Indian Tariff Act (Second Amendment) Ordinance, 1946;

(*c*) The Indian Tariff (Amendment) Ordinance, 1947.

Income-tax and super-tax.

6. (1) Subject to the provisions of sub-sections (3), (4), (5) and (6), for the year beginning on the 1st day of April, 1947—

(*a*) income-tax shall be charged at the rates specified in Part I of the Schedule, and

(*b*) rates of super-tax shall, for the purposes of section 55 of the Indian Income-tax Act, 1922, be those specified in Part II of the Schedule.

(2) In making any assessment for the year ending on the 31st day of March, 1948, there shall be deducted from the total income of an assessee, in accordance with the provisions of section 15-A of the Indian Income-tax Act, 1922, an amount equal to one-fifth of the earned income, if any, included in his total income, but not exceeding in any case four thousand rupees.

(3) In making any assessment for the year ending on the 31st day of March, 1948,—

(*a*) where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" as reduced by the deduction for earned income appropriate thereto, or any income chargeable under the head "Interest on securities", or any income from dividends in respect of which he is deemed under section 49-B of the Indian Income-tax Act, 1922, to have paid income-tax imposed in British India, the income-tax payable by the assessee on that part of his total income which consists of such inclusions shall be an amount bearing to the total amount of income-tax payable according to the rates applicable under the operation of the Indian Finance Act, 1946, on his total income the same proportion as the amount of such inclusions bears to his total income;

(*b*) where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" on which super-tax has been or might have been deducted under the provisions of sub-section (2) of section 18 of the Indian Income-tax Act, 1922, the super-tax payable by the assessee on that portion of his total income which consists of such inclusion shall be an amount bearing to the total amount of super-tax payable according to the rates applicable under the operation of the Indian Finance Act, 1946, on his total income the same proportion as the amount of such inclusion bears to his total income.

(4) In making any assessment for the year ending on the 31st day of March, 1948, where the total income of an assessee consists partly of earned income and partly of unearned income, the super-tax payable by him shall be—

(i) on that part of the earned income chargeable under the head "Salaries" to which clause (*b*) of sub-section (3) applies, the amount of super-tax computed in accordance with the provisions of that sub-section, *plus*

(ii) on the remainder of the earned income, the amount which bears to the total amount of super-tax which would have been payable on his total income had it consisted wholly of earned income the same proportion as such remainder bears to his total income, *plus*

(iii) on the unearned income, the amount which bears to the total amount of super-tax which would have been payable on his total income had it consisted wholly of unearned income the same proportion as the unearned income bears to his total income.

(5) In making any assessment for the year ending on the 31st day of March, 1948,—

(*a*) where the total income of a company includes any profits and gains from life insurance business, the super-tax payable by the company shall be reduced by an amount computed at the rate of two annas in the rupee on that part of its total income which consists of such inclusion;

(*b*) where the total income of an assessee, not being a company, includes any profits and gains from life insurance business, the income-tax and super-tax payable by the assessee on that part of his total income which consists of such inclusion shall be an amount bearing to the total amount of such taxes payable according to the rates applicable under the operation of the Indian Finance Act, 1942, on his total income the same proportion as the amount of such inclusion bears to his total income, so however that the aggregate of the taxes so computed in respect of such inclusion shall not in any case exceed the amount of tax payable on such inclusion at the rate of five annas in the rupee.

(6) In cases to which section 17 of the Indian Income-tax Act, 1922, applies, the tax chargeable shall be determined as provided in that section but with reference to the rates imposed by sub-section (1), and in accordance, where applicable, with the provisions of sub-sections (3), (4) and (5) of this section.

(7) For the purposes of making any deduction of income-tax in the year beginning on the 1st day of April, 1947, under sub-section (2) or sub-section (2-B) of section 18 of the Indian Income-tax Act, 1922, from any earned income chargeable under the head "Salaries" the estimated total income of the assessee under this head shall, in computing the income-tax to be deducted, be reduced by an amount equal to one-fifth of such earned income, but not exceeding in any case four thousand rupees.

(8) For the purposes of this section and of the rates of tax imposed thereby, the expression "total income" means total income as determined for the purposes of income-tax or super-tax, as the case may be, in accordance with the provisions of the Indian Income-tax Act, 1922, and the expression "earned income" has the meaning assigned to it in clause (6-AA) of section 2 of that Act.

Amendment of section 10, Act XII of 1942.

7. To sub-section (2) of section 10 of the Indian Finance Act, 1942, the following proviso shall be added, namely:—

"Provided that if it is subsequently found that the sum so repaid was excessive, the excess repayment shall be recoverable, and the provisions of law referred to in sub-section (4) of section 2 of the Excess Profits Tax Ordinance, 1943, shall apply to the payment and recovery of the amount of the excess repayment as if that amount were a deposit required to be made under that section, but notwithstanding the provisions of sub-section (7) of section 46 of the Indian Income-tax Act, 1922, as applied by the said sub-section (4), such recovery may be made at any time."

THE SCHEDULE.

(*See* Section 6.)

PART I.

Rates of Income-tax.

A.—In the case of every individual, Hindu undivided family, unregistered firm and other association of persons not being a case to which paragraph B of this Part applies—

	Rate.
1 On the first Rs. 1,500 of total income	Nil.
2 On the next Rs. 3,500 of total income	One anna in the rupee.
3 On the next Rs. 5,000 of total income	Two annas in the rupee.
4 On the next Rs. 5.000 of total income	Three and a half annas in the rupee.
5 On the balance of total income	Five annas in the rupee

Provided that—

(i) no income-tax shall be payable on a total income which, before deduction of the allowance, if any, for earned income, does not exceed Rupees 2,500;

(ii) the income-tax payable shall in no case exceed half the amount by which the total income (before deduction of the said allowance, if any, for earned income) exceeds Rs. 2,500;

(iii) the income-tax payable on the total income as reduced by the allowance for earned income shall not exceed either—

(*a*) a sum bearing to half the amount by which the total income (before deduction of the allowance for earned income) exceeds Rs. 2,500 the same proportion as such reduced total income bears to the unreduced total income, or

(*b*) the income-tax payable on the income so reduced at the rates herein specified,—

whichever is less.

B.—In the case of every company and local authority, and in every case in which under the provisions of the Indian Income-tax Act, 1922, income-tax is to be charged at the maximum rate—

	Rate,
On the whole of total income	Five annas in the rupee.

PART II.

Rates of Super-tax.

A.—In the case of every individual, Hindu undivided family, unregistered firm and other association of persons, not being a case to which any other paragraph of this Part applies—

	Rate, if income wholly earned.	Rate, if income wholly unearned.
1 On the first Rs. 25,000 of total income ..	Nil.	Nil.
2 On the next Rs. 5,000 of total income ..	Two annas in the rupee.	Three annas in the rupee.
3 On the next Rs. 5,000 of total income ..	Two and a half annas in the rupee.	Three and a half annas in the rupee.
4 On the next Rs. 10,000 of total income ..	Three annas in the rupee.	Four annas in the rupee.
5 On the next Rs. 10,000 of total income ..	Four annas in the rupee.	Five annas in the rupee.
6 On the next Rs. 10,000 of total income ..	Five annas in the rupee.	Six annas in the rupee.
7 On the next Rs. 10,000 of total income ..	Six annas in the rupee.	Seven annas in the rupee.
8 On the next Rs. 15,000 of total income ..	Seven annas in the rupees.	Eight annas in the rupee.
9 On the next Rs. 15,000 of total income ..	Eight annas in the rupee.	Nine annas in the rupee.

	Rate, if income wholly earned.	Rate, if income wholl unearned.
10 On the next Rs. 15,000 of total income ..	Nine annas in the rupee.	Ten annas in the rupee.
11 On the next Rs. 30,000 of total income ..	Ten annas in the rupee.	Ten and a half annas in the rupee.
12 On the balance of total income ..	Ten and a half annas in the rupee.	Ten and a half annas in the rupee.

B.—In the case of every local authority—

	Rate.
On the whole of total income	Two annas in the rupee.

C.—In the case of an association of persons being a co-operative society, other than the Sanikatta Saltowners' Society in the Bombay Presidency, for the time being registered under the Co-operative Societies Act, 1912, or under an Act of a Provincial Legislature governing the registration of co-operative societies—

	Rate.
1 On the first Rs. 25,000 of total income	Nil.
2 On the balance of total income	Two annas in the rupee.

D.—In the case of every company—

	Rate.
On the whole of total income	Two annas in the rupee.

and in addition, in respect of that part of the total income (as reduced by the amount of dividends payable at a fixed rate) which does not exceed the amount of dividends, not being dividends payable at a fixed rate, declared in British India in respect of the whole or part of the previous year for the assessment for the year ending on the 31st day of March, 1948, on the amount by which such part—

	Rate.
(*a*) exceeds 30 per cent. but does not exceed 40 per cent. of the total income as so reduced.	Three annas in the rupee.
(*b*) exceeds 40 per cent. but does not exceed 50 per cent. of the total income as so reduced.	Five annas in the rupee.
(*c*) exceeds 50 per cent. of the total income as so reduced.	Seven annas in the rupee :

Provided that—

(i) no additional super-tax shall be payable where such part is less than, or equal to five per cent. on the capital of the company;

(ii) where such part is more than five per cent. on the capital of the company, the additional super-tax payable shall be reduced by the amount of additional super-tax which would, but for the provisions of clause (*i*) of this proviso, have been payable had such part been equal to five per cent. on the capital of the company;

(iii) the additional super-tax shall be payable only by a company in which the public are substantially interested within the meaning of the *Explanation* to sub-section (1) of section 23-A of the Indian Income-tax Act, 1922, or a subsidiary company of such a company where the whole of the share capital of such subsidiary company is held by the parent company or by the nominees thereof.

Explanation.—For the purposes of this paragraph,—

(*a*) the expression "capital of the company" shall be deemed to mean the paid-up share capital at the beginning of the previous year for the assessment for the year ending on the 31st day of March, 1948 (other than capital entitled to a dividend at a fixed rate) plus any reserves other than depreciation reserves and reserves for bad or doubtful debts at the same date as diminished by the amount on deposit on the same date with the Central Government under section 10 of the Indian Finance Act, 1942, or section 2 of the Excess Profits Tax Ordinance, 1943;

(*b*) the expression "dividend" shall be deemed to include any distribution included in that expression as defined in clause (6-A) of section 2 of the Indian Income-tax Act, 1922, and any such distribution made during the year ending on the 31st day of March, 1948 shall be deemed to have been made in respect of the whole or part of the previous year;

(*c*) where any portion of the profits and gains of a company is not included in its total income by reason of such portion being exempt from tax under any provision of the Indian Income-tax Act, 1922, the capital of the company, the total amount of dividends and the amount of dividends payable at a fixed rate shall each be deemed to be the proportion thereof that the total income of the company bears to its total profits and gains.

THE FOREIGNERS ACT (XXXI OF 1946.)

[22*nd November*, 1946.

An Act to confer upon the Central Government certain powers in respect of foreigners.

WHEREAS it is expedient to provide for the exercise by the Central Government of certain powers in respect of the entry of foreigners into British India, their presence therein and their departure therefrom;

It is hereby enacted as follows:—

Short title and extent.

1. (1) This Act may be called THE FOREIGNERS ACT, 1946.

(2) It extends to the whole of British India

Definitions.

2. In this Act—

(*a*) "foreigner" means a person who—

(i) is not a natural-born British subject as defined in sub-sections (1) and (2) of section 1 of the British Nationality and Status of Aliens Act, 1914, or

(ii) has not been granted a certificate of naturalization as a British subject under any law for the time being in force in British India, or

(iii) is not a ruler or subject of an Indian State, or

(iv) is not a native of the Tribunal areas:

Provided that any British subject who, under any law for the time being in force in British India, ceases to be a British subject shall thereupon be deemed to be a foreigner;

(*b*) "prescribed" means prescribed by orders made under this Act;

(*c*) "specified" means specified by direction of a prescribed authority.

Power to make orders.

3. (1) The Central Government may by order make provision, either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigners, for prohibiting, regulating or restricting the entry of foreigners into British India or their departure therefrom or their presence or continued presence therein.

(2) In particular and without prejudice to the generality of the foregoing power, orders made under this section may provide that the foreigner—

(*a*) shall not enter British India, or shall enter British India only at such times and by such route and at such port or place and subject to the observance of such conditions on arrival as may be prescribed;

(*b*) shall not depart from British India, or shall depart only at such times and by such route and from such port or place and subject to the observance of such conditions on departure as may be prescribed;

(*c*) shall not remain in British India or in any prescribed area therein;

(*d*) shall remove himself to, and remain in, such area in British India as may be prescribed;

(*e*) shall comply with such conditions as may be prescribed or specified—

(i) requiring him to reside in a particular place;

(ii) imposing any restrictions on his movements;

(iii) requiring him to furnish such proof of his identity and to report such particulars to such authority in such manner and at such time and place as may be prescribed or specified;

(iv) requiring him to allow his photograph and finger impressions to be taken and to furnish specimens of his handwriting and signature to such authority and at such time and place as may be prescribed or specified;

(v) requiring him to submit himself to such medical examination by such authority and at such time and place as may be prescribed or specified;

(vi) prohibiting him from association with persons of a prescribed or specified description;

(vii) prohibiting him from engaging in activities of a prescribed or specified description;

(viii) prohibiting him from using or possessing prescribed or specified articles;

(ix) otherwise regulating his conduct in any such particular as may be prescribed or specified;

(*f*) shall enter into a bond with or without sureties for the due observance of, or as an alternative to the enforcement of, any or all prescribed or specified restrictions or conditions;

(*g*) shall be arrested and detained or confined; and may make provision for such incidental and supplementary matters as may, in the opinion of the Central Government, be expedient or necessary for giving effect to this Act.

Internees.

4. (1) Any foreigner (hereinafter referred to as an internee) in respect of whom there is in force any order made under clause (*g*) of sub-section (2) of section 3, directing that he be detained or confined, shall be detained or confined in such place and manner and subject to such conditions as to maintenance, discipline and the punishment of offences and breaches of discipline as the Central Government may from time to time determine.

(2) Any foreigner (hereinafter referred to as a person on parole) in respect of whom there is in force an order under clause (*e*) of sub-section (2) of section 3 requiring him to reside at a place set part for the residence under supervision of a number of foreigners, shall while residing therein be subject to such conditions as to maintenance, discipline and the punishment of offences and breaches of discipline as the Central Government may from time to time by order determine.

(3) No person shall—

(*a*) knowingly assist an internee or a person on parole to escape from custody or the place set apart for his residence, or knowingly harbour an escaped internee or person on parole, or

(*b*) give an escaped internee or a person on parole any assistance with intent thereby to prevent, hinder or interfere with the apprehension of the internee of the person on parole

(4) The Central Government may by order provide for regulating access to, and the conduct of persons in, places in British India where internees or persons on parole are detained or restricted, as the case may be, and for prohibiting or regulating the despatch or conveyance from outside such places to or for internees or persons on parole therein of such articles as may be prescribed.

Change of name

5. (1) No foreigner who was in British India on the date on which this Act came into force shall, while in British India after that date, assume or use or purport to assume or use for any purpose any name other than that by which he was ordinarily known immediately before the said date

(2) Where, after the date on which this Act came into force, any foreigner carries on or purports to carry on (whether alone or in association with any other person) any trade or business under any name or style, other than that under which that trade or business was being carried on immediately before the said date, he shall, for the purposes of sub-section (1), be deemed to be using a name other than that by which he was ordinarily known immediately before the said date.

(3) In relation to any foreigner who, not having been in British India on the date on which this Act came into force, thereafter enters British India, sub-sections (1) and (2) shall have effect as if for any reference in those sub-sections to the date on which this Act came into force there were substituted a reference to the date on which he first enters British India thereafter.

(4) For the purposes of this section—

(*a*) the expression "name" includes a surname, and

(*b*) a name shall be deemed to be changed if the spelling thereof is altered

(5) Nothing in this section shall apply to the assumption or use—

(*a*) of any name in pursuance of a Royal licence or permission granted by the Central Government; or

(*b*) by any married woman, of her husband's name.

Obligations of masters of vessels, etc.

6. (1) The master of any vessel landing or embarking at a port in British India passengers coming to or going from that port by sea and the pilot of any aircraft landing or embarking at any place in British India passengers coming to or going from that place by air, shall furnish to such person and in such manner as may be prescribed a return giving the prescribed particulars with respect to any passengers or members of the crew, who are foreigners.

(2) Any District Magistrate and any Commissioner of Police or, where there is no Commissioner of Police, any superintendent of Police may, for any purpose connected with the enforcement of this Act or any order made thereunder, require the master of any such vessel or the pilot of any such aircraft to furnish such information as may be prescribed in respect of passengers or members of the crew on such vessel or aircraft, as the case may be.

(3) Any passenger on such vessel or such aircraft and any member of the crew of such vessel or aircraft shall furnish to the master of the vessel or the pilot of the aircraft, as the case may be, any information required by him for the purpose of furnishing the return referred to in sub-section (1) or for furnishing the information required under sub-section (2).

(4) For the purposes of this section—

(*a*) "master of a vessel" and "pilot of any aircraft" shall include any person authorised by such master or pilot, as the case may be, to discharge on his behalf any of the duties imposed on him by this section;

(*b*) "passenger" means any person not being a *bona fide* member of the crew, travelling or seeking to travel on a vessel or aircraft.

Obligation of hotel keepers and others to furnish particulars.

7. (1) It shall be the duty of the keeper of any premises whether furnished or unfurnished where lodging or sleeping accommodation is provided for reward, to submit to such person and in such manner such information in respect of foreigners accommodated in such premises, as may be prescribed.

Explanation.—The information referred to in this sub-section may relate to all or any of the foreigners accommodated at such premises and may be required to be submitted periodically or at any specific time or occasion.

(2) Every person accommodated in any such premises shall furnish to the keeper thereof a statement containing such particulars as may be required by the keeper for the purpose of furnishing the information referred to in sub-section (1).

(3) The keeper of every such premises shall maintain a record of the information furnished by him under sub-section (1) and of the information obtained by him under sub-section (2) and such record shall be maintained in such manner and preserved for such period as may be prescribed, and shall at all times be open to inspection by any police officer or by a person authorised in this behalf by the District Magistrate.

Determination of nationality.

8. (1) When a foreigner is recognised as a national by the law of more than one foreign country or where for any reason it is uncertain what nationality if any is to be ascribed to a foreigner, that foreigner may be treated as the national of the country with which he appears to the prescribed authority to be most closely connected for the time being in interest or sympathy or if he is of uncertain nationality, of the country with which he was last so connected:

Provided that where a foreigner acquired a nationality by birth, he shall, except where the Central Government so directs either generally or in a particular case, be deemed to retain that nationality unless he proves to the satisfaction of the said authority that he has subsequently acquired by naturalization or otherwise some other nationality and still recognised as entitled to protection by the Government of the country whose nationality he has so acquired.

(2) A decision as to nationality given under sub-section (1) shall be final and shall not be called in question in any Court:

Provided that the Central Government either of its own motion or on an application by the foreigner concerned, may revise any such decision.

Burden of proof.

9. If in any case not falling under section 8 any question arises with reference to this Act or any order made or direction given thereunder, whether any person is or is not a foreigner or is not a foreigner of a particular class or description the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall, notwithstanding anything contained in the Indian Evidence Act, 1872, lie upon such person.

Power to exempt from application of Act.

10. The Central Government may by order declare that any or all of the provisions of this Act or the orders made thereunder shall not apply, or shall apply only with such modifications or subject to such conditions as may be specified, to or in relation to any individual foreigner or any class or description of foreigner.

Power to give effect to orders, directions, etc.

11. (1) Any authority empowered by or under or in pursuance of the provisions of this Act to give any direction or to exercise any other power, may, in addition to any other action expressly provided for in this Act, take, or cause to be taken such steps and use, or cause to be used, such force as may, in its opinion, be reasonably necessary for securing compliance with such direction or for preventing or rectifying any breach thereof, or for the effective exercise of such power as the case may be.

(2) Any police officer may take such steps and use such force as may, in his opinion, be reasonably necessary for securing compliance with any order made or direction given under or in pursuance of the provisions of this Act or for preventing or rectifying any breach of such order or direction.

(3) The power conferred by this section shall be deemed to confer upon any person acting in exercise thereof a right of access to any land or other property whatsoever.

Power to delegate authority.

12. Any authority upon which any power to make or give any direction, consent or permission or to do any other act is conferred by this Act or by any order made thereunder may, unless express provision is made to the contrary, in writing authorise, conditionally or otherwise, any authority subordinate to it to exercise such power on its behalf, and thereupon the said subordinate authority shall, subject to such conditions as may be contained in the authorisation, be deemed to be the authority upon which such power is conferred by or under this Act.

Attempts, etc., to contravene the provisions of this Act, etc.

13. (1) Any person who attempts to contravene, or abets or attempts to abet, or does any act preparatory to, a contravention of, the provisions of this Act or of any order made or direction given thereunder, or fails to comply with any direction given in pursuance of any such order, shall be deemed to have contravened the provisions of this Act.

(2) Any person who, knowing or having reasonable cause to believe that any other person has contravened the provisions of this Act or of any order made or direction given thereunder, gives that other person any assistance with intent thereby to prevent, hinder or otherwise interfere with his arrest, trial or punishment for the said contravention shall be deemed to have abetted that contravention.

(3) The master of any vessel or the pilot of any aircraft, as the case may be, by means of which any foreigner enters or leaves British India in contravention of any order made under, or direction given in pursuance of, section 3 shall, unless he proves that he exercised all due diligence to prevnt the said contravention, be deemed to have contravened this Act.

Penalties.

14. If any person contravenes the provisions of this Act or of any order made thereunder, or any direction given in pursuance of this Act or such order, he shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine; and if such person has entered into a bond in pursuance of clause (*f*) of subsection (2) of section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof, or show cause to the satisfaction of the convicting Court why such penalty should not be paid.

Protection to persons acting under this Act.

15. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Application of other laws not barred.

16. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of the Registration of Foreigners Act, 1939, the Indian Passport Act, 1920, and of any other enactment for the time being in force.

Repeals.

17. The Foreigners Act, 1864, the Foreigners Act, 1940, and the Foreigners Act (Amendment) Ordinance, 1946, are hereby repealed.

THE IMPORTS AND EXPORTS (CONTROL) ACT (XVIII OF 1947).

An Act to continue for a limited period powers to prohibit or control imports and exports.

WHEREAS it is expedient to continue for a limited period powers to prohibit, restrict or otherwise control imports into and exports from British India;

It is hereby enacted as follows:—

Short title, extent, commencement and duration.

1. (1) This Act may be called THE IMPORTS AND EXPORTS (CONTROL) ACT, 1947.

(2) It extends to the whole of British India.

(3) It shall come into force on the 25th day of March, 1947, and shall remain in force for a period of three years only.

Interpretation.

2. In this Act,—

(*a*) "Customs-collector" means a Customs-collector as defined in the Sea Customs Act, 1878, or a Collector of Land Customs appointed under the Land Customs Act, 1927;

(*b*) "import" and "export" means respectively bringing into, and taking out of, British India by sea, land or air;

(*c*) "officer of Customs" means an officer of Customs appointed under the Sea Customs Act, 1878, or a Land Customs Officer appointed under the Land Customs Act, 1924.

Powers to prohibit or restrict imports and exports.

3. (1) The Central Government may, by order published in the official Gazette, make provision for prohibiting, restricting or otherwise controlling, in all cases or in specified classes of cases, and subject to such exceptions, if any, as may be made by or under the order,—

(*a*) the import, export, carriage coastwise or shipment as ships' stores of goods of any specified description;

(*b*) the bringing into any port or place in British India of goods of any specified description intended to be taken out of British India without being removed from the ship or conveyance in which they are being carried.

(2) All goods to which any order under sub-section (1) applies shall be deemed to be goods of which the import or export has been prohibited or restricted under section 19 of the Sea Customs Act, 1878, and all the provisions of that Act shall have effect accordingly, except that section 183 thereof shall have effect as if for the word "shall" therein the word "may" were substituted.

(3) Notwithstanding anything contained in the aforesaid Act, the Central Government may, by order published in the official Gazette, prohibit, restrict or impose conditions on the clearance, whether for home consumption or for shipment abroad, of any goods or class of goods imported into British India.

Continuance of existing orders.

4. All orders made under rule 84 of the Defence of India Rules or that rule as continued in force by the Emergency Provisions (Continuance) Ordinance, 1946, and in force immediately before the commencement of this Act shall, so far as they are not inconsistent with the provisions of this Act, continue in force and be deemed to have been made under this Act.

Penalty.

5. If any person contravenes any order made or deemed to have been made under this Act, he shall, without prejudice to any confiscation or penalty to which he may be liable under the provisions of the Sea Customs Act, 1878, as applied by sub-section (2) of section 3, be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

Cognizance of offences.

6. No Court shall take cognizance of any offence punishable under section 5 except upon complaint in writing made by a Customs-collector or by an officer of Customs authorized in writing in this behalf by a Customs-collector, and no Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any such offence.

Savings.

7. No order made or deemed to have been made under this Act shall be called in question in any Court, and no suit, prosecution or other legal proceeding shall lie against any person for anything in good faith done or intended to be done under this Act or any order made or deemed to have been made thereunder.

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